

Minnesota  
**REAL ESTATE**  
Principles

First Edition Update



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# Real Estate Courses from Kaplan Real Estate Education

Welcome to Kaplan Real Estate Education. It is our goal to make your experience with us both educational and enjoyable. Please take a moment to review the following information concerning real estate licensing and course completion requirements. In addition, if you are taking live classroom courses with us, there is also information about school policies. (See the Appendix for more detailed information about licensing requirements and the state exam.)

## ■ LICENSING REQUIREMENTS

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There are 5 steps to obtaining a salesperson's license in Minnesota:

1. Complete Course I
2. Pass the state licensing exam
3. Complete Course II
4. Complete Course III
5. Apply for a license online at [www.pulseportal.com](http://www.pulseportal.com). Only a licensed broker can submit the application.

We are required by the Minnesota Department of Commerce to certify your compliance with these requirements.

## ■ COURSE COMPLETION REQUIREMENTS

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1. Each course must be completed in its entirety prior to beginning the next course in the sequence. In other words, students must complete Course I before beginning Course II, and must complete Course II before beginning Course III.
2. Should you miss any portion of a course, simply call our registration office at 651-641-1000 to arrange for a make-up time and location. In most cases, missed portions may be made up within 2 weeks.
3. Units of an individual course may be taken out of sequence only with prior approval from our registration office.
4. In order to successfully complete Course I, each student must
  - attend the entire 30-hour course (10 units); and
  - turn in a completed attendance record.
5. The attendance record is your property and your only proof of attendance. It is your responsibility to
  - affix the stamp for each unit; and
  - turn it in upon course completion.
6. If we have received full payment of tuition and materials charges, a Certificate of Completion will be issued promptly upon receipt of your completed Attendance Record for Course I.

v

# Live Classroom Announcements

## ■ RESTROOMS

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### **St. Paul (Bandana Square)**

Across from coffee area

### **Bloomington (BLN Office Park)**

Located in main hall

### **Plymouth (Four Seasons Mall)**

Located near break area

## ■ SMOKING AREAS

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### **St. Paul (Bandana Square)**

Outside at least 20 feet from building

### **Bloomington (BLN Office Park)**

Outside at least 25 feet from building

### **Plymouth (Four Seasons Mall)**

Outside main entrance and around the corner on the south side of the building only

## ■ PARKING

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### **St. Paul (Bandana Square)**

Parking ramp on east side of building; additional space in lot at northeast corner of building near entrance

### **Bloomington (BLN Office Park)**

Parking ramp on east side of building

### **Plymouth (Four Seasons Mall)**

Parking lot in front of the building (Kaplan Professional Schools is on the north end of the mall)

## ■ AREA EATING ESTABLISHMENTS

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### St. Paul (Bandana Square)

- Vending machines
- Gabe's: east on Energy Park Drive at Lexington
- Fast food on Snelling Avenue: go north towards Har Mar Mall, or south to University Avenue

### Bloomington (BLN Office Park)

- Cafeteria and convenience store: located on lower level
- Capers: located on lower level, 7:00 am–2:30 pm
- Vending machines
- Fast food: west on 494 at Lyndale, Nicollet, and Portland exits
- Mall of America: third floor food courts on north and south sides

### Plymouth (Four Seasons Mall)

Fast food and restaurants nearby on County Road 9, Nathan Lane, and Rockford Road:

- Burger King
- Chili's
- Wendy's
- Dairy Queen
- McDonald's
- Leeann Chin
- Applebee's
- Caribou Coffee
- Cici's Pizza
- Qdoba Mexican Grill

## ■ LIVE CLASSROOM SCHOOL POLICIES

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- Complimentary coffee and tea are available at each location.
- Private phones are available for making local calls. Please limit calls in number and duration (1–2 minutes).
- There will be a 5-minute break every hour.
- Lunch breaks are 1 hour. They will be taken at 11:30 AM on weekends and at 12:00 PM on weekdays.
- Attendance is monitored during class to verify your attendance.
- Tape recording is prohibited. All rights are reserved by Kaplan, Inc.
- Certificates of Completion will be distributed upon completion of each course.
- Your evaluation of this course is appreciated. Please turn in the evaluation form at the end of class.

- No recruitment or solicitation. We are not affiliated with, nor do we endorse, any company or service provider. Please do not
  - create or distribute student lists or rosters;
  - display or distribute brochures, business cards or other promotional materials; or
  - sponsor food or refreshments.
- Please report any policy violation to Rolfe Kurtyka, Real Estate Licensing Manager, at 800-373-1295, ext. 3103.

As a courtesy to others:

- Pagers and mobile phones must be silenced during class. Laptop computers must be turned off.
- Please refrain from talking and other distracting behavior in the classroom.



# 1 UNIT



## Real Estate Brokerage License Law Statutory References

■ **LEARNING OBJECTIVES** *Upon completion of this unit, students should be able to*

- **summarize** the 5 forms of agency and describe how each form affects an agent's duty to a buyer or seller, including how to use an agency disclosure form according to Minnesota law;
- **describe** how Chapter 82 of the Minnesota State Statutes regulates real estate licensees; and
- **list** Minnesota real estate licensees' standards of conduct.

## Study Plan

Before class, read Unit 1

During class, complete Glossary Review

After class, complete Quiz

## Key Points

- In Minnesota, 5 forms of agency relationships are recognized: seller's broker, subagent, buyer's broker, dual agent, and facilitator. In a residential transaction, a real estate licensee is required to give the buyer and/or seller an agency disclosure form that explains these relationships. The form must be provided during the licensee's first substantive contact with the buyer and/or seller.
- If a facilitator broker/salesperson, working with a buyer, shows a property listed by the facilitator, then the facilitator must act as a **seller's broker** and not the buyer's broker. The reverse is also true—when a facilitator broker/salesperson is working with a seller, and a buyer they have under contract views the property, the facilitator represents the buyer as the buyer's broker.
- With dual agency, the broker represents the buyer and the seller to the same transactions. Both parties must agree to dual agency. **Dual agency disclosure** and consent provisions must be included in listing, buyer's representation, and purchase agreements.
- When a buyer or seller signs a written agency agreement contract, the broker/salesperson owes that person fiduciary duties of loyalty, confidentiality, disclosure, obedience, reasonable care and skill, and accounting.
- Listing agreements and buyer's representation agreements are employment contracts between a broker and a seller or a buyer. Both contracts must be in writing, have a definite expiration date, state the listing price and terms of sale, state the amount of and method of computing the commission, include a negotiable commissions clause, include a dual agency disclosure provision, and include a notice concerning closing services and how/if the contract may be canceled. They may not include a holdover clause. They may contain an override clause, which creates a protection period not to exceed 6 months.
- Chapter 82 of the Minnesota State Statutes regulates real estate licensees. The Minnesota Commissioner of Commerce administers the real estate license law, formulates rules implementing the law, issues licenses, and takes disciplinary action against those who violate the law.
- Anyone who, for another and for a fee, lists, sells, exchanges, manages, buys, rents, auctions, or negotiates options on real estate, a business opportunity, or a business (or a business's goodwill, inventory, or fixtures) must have a real estate license. Commercial loan brokers, certain non-institutional lenders, and rental services are also required to have a broker's license. A property owner involved in 5 or more transactions per year without being represented by a broker is required to have a real estate license.
- Every applicant for a Minnesota real estate salesperson's license must be at least 18 years old, complete three 30-hour real estate courses, pass the salesperson's examination, and pay the license fee. Each new licensee must

complete 30 hours of continuing education within the first licensing period, and 30 hours of continuing education during each 24-month renewal period thereafter. At least 15 of the 30 credit hours must be completed during the first 12 months of the 24-month licensing period.

- A Minnesota salesperson must be licensed under only one primary Minnesota broker. When a salesperson stops working for a broker, the salesperson's license is ineffective until it has been transferred to another broker.
- A real estate licensee's failure to comply with the Commissioner's Standards of Conduct is grounds for license denial, suspension, or revocation. The Commissioner may also censure a licensee. A disciplinary hearing will be held before the license is suspended or revoked. A licensee may be fined up to \$10,000 per occurrence for violating state licensing law.
- A broker's special responsibilities include supervising salespeople, maintaining a trust account, and keeping records for each real estate transaction.
- The license law includes detailed standards of conduct and prohibitions that all real estate licensees are required to follow. Among many other provisions, there are prohibitions against guaranteeing future profits, interfering with an exclusive agency, misrepresentation, and acting without a signed agency agreement. Licensees are required to make several disclosures, including an agency disclosure (in residential transactions) and a disclosure to the buyer of known material facts that might adversely affect the use or enjoyment of the property.
- The real estate education, research, and recovery fund promotes education and research in the real estate field. The recovery portion of the fund is used to compensate claimants who have obtained a judgment against a licensee based on fraud in a real estate transaction, but have been unable to collect the judgment from the licensee.

## ■ AGENCY IN MINNESOTA

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### Forms of agency

Minnesota recognizes the following forms of agency:

**Seller's broker**—represents the seller.

**Subagent**—works with a buyer but represents seller. Furthermore, in Minnesota, license law does not allow a salesperson to act independently of the broker. Therefore, the salesperson acts as an agent of the broker, who represents the buyer or the seller. This *agent of an agent* is sometimes referred to as a subagent.

**Buyer's broker**—represents the buyer.

**Dual agency**—represents both buyer and seller. In Minnesota, dual agency arises when a broker represents both the buyer and the seller of the same transaction, whether both parties have the same salesperson or not. To legally allow dual agency, it must be disclosed to both parties, and both parties must agree to it in writing.

**Facilitator**—licensee who performs services for a buyer, a seller, or both but does not represent either in a fiduciary capacity as a buyer's broker, seller's broker, or dual agent.

These forms of representation are explained in the required agency disclosure form.

**Agency disclosure.** An agent representing a buyer is also specifically required to disclose that agency relationship to the seller, before the property is shown and before any negotiations are entered into. Failure to fulfill these requirements is grounds for disciplinary action. Likewise, an agent representing a seller is required to disclose that agency relationship before showing the property to any potential buyers.

In addition, a licensee who has not made the required disclosures in a residential transaction is not entitled to sue for a commission.

**Agency disclosure form.** At the first substantive contact with any prospective client or customer in a residential transaction, a licensee is required to provide the consumer with an agency disclosure form similar to the one shown in Figure 1.1. A substantive contact may include a face-to-face meeting or phone call with a customer, but likely would not include an incidental contact, such as a customer attending a salesperson's open house.

The disclosure form explains the various types of agency representation recognized by Minnesota law and facilitator relationships (a non-agency relationship wherein a licensee provides services but not representation), and the role of the licensee under each option. The fundamental fiduciary duties of an agent are likewise explained.

The disclosure form is not a contract. However, the agency disclosure form shall provide a signature line for acknowledgment of receipt by the consumer.

Note: The disclosures required by this law apply only to residential real estate transactions.

## ■ AGENCY AGREEMENTS IN MINNESOTA

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### Listing agreements

In Minnesota, all listing agreements must be in writing, signed by the broker/salesperson and seller(s), and include the following information:

1. A definite expiration date. Without this date the contract is unenforceable.
2. The legal description of the real property involved.
3. The list price and any terms required by the seller.
4. The amount of any compensation or commission or the basis for computing the commission.

**FIGURE 1.1****Agency Relationships in Real Estate Transactions Form**

**Minnesota law requires** that early in any relationship, real estate brokers or salespersons discuss with consumers what type of agency representation or relationship they desire. The available options are listed below. This is **not** a contract. **This is an agency disclosure form only. If you desire representation, you must enter into a written contract according to state law** (a listing contract or a buyer representation contract). Until such time as you choose to enter into a written contract for representation, you will be treated as a customer and will not receive any representation from the broker or salesperson. The broker or salesperson will be acting as a Facilitator (see paragraph V below), unless the broker or salesperson is representing another party as described below.

ACKNOWLEDGMENT: I/We acknowledge that I/We have been presented with the below-described options. I/We understand that until I/We have signed a representation contract, I/We are not represented by the broker/salesperson. I/We understand that written consent is required for a dual agency relationship. THIS IS A DISCLOSURE ONLY, NOT A CONTRACT FOR REPRESENTATION.

---

 Signature

---

 Date

---

 Signature

---

 Date

**I. Seller's Broker:** A broker who lists a property, or a salesperson who is licensed to the listing broker, represents the Seller and acts on behalf of the Seller. A Seller's broker owes to the Seller the fiduciary duties described below.(2) The broker must also disclose to the Buyer material facts as defined in Minnesota Statutes, section 82.22, subdivision 8, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property. If a broker or salesperson working with a Buyer as a customer is representing the Seller, he or she must act in the Seller's best interest and must tell the Seller any information disclosed to him or her, except confidential information acquired in a facilitator relationship (see paragraph V below). In that case, the Buyer will not be represented and will not receive advice and counsel from the broker or salesperson.

**II. Subagent:** A broker or salesperson who is working with a Buyer but represents the Seller. In this case, the Buyer is the broker's customer and is not represented by that broker. If a broker or salesperson working with a Buyer as a customer is representing the Seller, he or she must act in the Seller's best interest and must tell the Seller any information that is disclosed to him or her. In that case, the Buyer will not be represented and will not receive advice and counsel from the broker or salesperson.

**III. Buyer's Broker:** A Buyer may enter into an agreement for the broker or salesperson to represent and act on behalf of the Buyer. The broker may represent the Buyer only, and not the Seller, even if he or she is being paid in whole or in part by the Seller. A Buyer's broker owes to the Buyer the fiduciary duties described below.(2) The broker must disclose to the Buyer material facts as defined in Minnesota Statutes, section 82.22, subdivision 8, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property. If a broker or salesperson working with a Seller as a customer is representing the Buyer, he or she must act in the Buyer's best interest and must tell the Buyer any information disclosed to him or her, except confidential information acquired in a facilitator relationship (see paragraph V below). In that case, the Seller will not be represented and will not receive advice and counsel from the broker or salesperson.

**IV. Dual Agency-Broker Representing both Seller and Buyer:** Dual agency occurs when one broker or salesperson represents both parties to a transaction, or when two salespersons licensed to the same broker each represent a party to the transaction. Dual agency requires the informed consent of all parties, and means that the broker and salesperson owe the same duties to the Seller and the Buyer. This role limits the level of representation the broker and salespersons can provide, and prohibits them from acting exclusively for either party. In a dual agency, confidential information about price, terms, and motivation for pursuing a transaction will be kept confidential unless one party instructs the broker or salesperson in writing to disclose specific information about him or her. Other information will be shared. Dual agents may not advocate for one party to the detriment of the other.(3) Within the limitations described above, dual agents owe to both Seller and Buyer the fiduciary duties described below.(2) Dual agents must disclose to Buyers material facts as defined in Minnesota Statutes, section 82.22, subdivision 8, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property.

**V. Facilitator:** A broker or salesperson who performs services for a Buyer, a Seller, or both but does not represent either in a fiduciary capacity as a Buyer's Broker, Seller's Broker, or Dual Agent. **THE FACILITATOR BROKER OR SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY DUTIES LISTED BELOW, EXCEPT CONFIDENTIALITY, UNLESS THOSE DUTIES ARE INCLUDED IN A WRITTEN FACILITATOR SERVICES AGREEMENT.** The facilitator broker or salesperson owes the duty of confidentiality to the party but owes no other duty to the party except those duties required by law or contained in a written **facilitator services agreement**, if any. In the event a facilitator broker or salesperson, working with a Buyer, shows a property listed by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a Seller's Broker (see paragraph I above). In the event a facilitator broker or salesperson, working with a Seller, accepts a showing of the property by a Buyer being

**FIGURE 1.1**

**Agency Relationships in Real Estate Transactions Form (continued)**

represented by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a Buyer's Broker (see paragraph III above).

(1) This disclosure is required by law in any transaction involving property occupied or intended to be occupied by 1–4 families as their residence.

(2) The fiduciary duties mentioned above are listed below and have the following meanings:

Loyalty-broker/salesperson will act only in client(s)' best interest.

Obedience-broker/salesperson will carry out all client(s)' lawful instructions.

Disclosure-broker/salesperson will disclose to client(s) all material facts of which broker/salesperson has knowledge which might reasonably affect the client's use and enjoyment of the property.

Confidentiality-broker/salesperson will keep client(s)' confidences unless required by law to disclose specific information (such as disclosure of material facts to Buyers).

Reasonable Care-broker/salesperson will use reasonable care in performing duties as an agent.

Accounting-broker/salesperson will account to client(s) for all client(s)' money and property received as agent.

(3) If Seller(s) decides not to agree to a dual agency relationship, Seller(s) may give up the opportunity to sell the property to Buyers represented by the broker/salesperson. If Buyer(s) decides not to agree to a dual agency relationship, Buyer(s) may give up the opportunity to purchase properties listed by the broker.

**Subd. 4. Creation of dual agency.**

If circumstances create a dual agency situation, the broker must make full disclosure to all parties to the transaction as to the change in relationship of the parties to the broker due to dual agency. A broker, having made full disclosure, must obtain the consent of all parties to these circumstances in residential real property transactions in the purchase agreement in the form set forth below which shall be set off in a boxed format to draw attention to it:

Broker represents both the seller(s) and the buyer(s) of the property involved in this transaction, which creates a dual agency. This means that broker and its salespersons owe fiduciary duties to both seller(s) and buyer(s). Because the parties may have conflicting interests, broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without the consent of both seller(s) and buyer(s).

Seller(s) and buyer(s) acknowledge that:

(1) confidential information communicated to broker which regards price, terms, or motivation to buy or sell will remain confidential unless seller(s) or buyer(s) instruct(s) broker in writing to disclose this information. Other information will be shared;

(2) broker and its salespersons will not represent the interests of either party to the detriment of the other; and

(3) within the limits of dual agency, broker and its salespersons will work diligently to facilitate the mechanics of the sale.

With the knowledge and understanding of the explanation above, seller(s) and buyer(s) authorize(s) and instruct(s) broker and its salespersons to act as dual agents in this transaction.

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Minnesota law requires the following statement regarding negotiable commissions be included on the listing agreement:

“NOTICE: THE COMPENSATION FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER’S CLIENT.”

This *negotiable commission clause* must be printed in boldface type and placed immediately before the provision relating to the broker’s compensation.

A net listing refers to the manner in which the broker is compensated. With a net listing, the seller stipulates a net amount of money he wants to earn from the sale of the property. If the property is sold, the broker’s commission is the portion of the sales price over and above the seller’s net amount. Net listings are not illegal in Minnesota, but they are strongly discouraged. To give sellers with net listing agreements some protection, Minnesota law requires the broker to reveal the amount of her commission to the seller before the seller signs the contract with the buyer. Failure to do so may result in suspension or revocation of the broker’s license.

5. A clear statement explaining the events or conditions that will entitle a broker to a commission.
6. A clear statement explaining if the agreement may be canceled and the terms under which the agreement may be canceled.
7. Information regarding an override (broker protection) clause, if applicable. This clause makes the client liable for a commission during a specified period after the listing agreement expires, if the property is sold to someone the agent dealt with during the listing term.

The override clause will not be effective unless the licensee supplies the seller with a protective list within 72 hours after the expiration of the listing agreement.

A protection period cannot last for more than 6 months. The exception is a sale of a business, when the protection period may last for up to 2 years.

8. For residential property listings, there must be a disclosure regarding dual agency. As you recall, the consumer first learns about dual agency in the agency disclosure form. Dual agency is disclosed again within the agency agreements. Minnesota law requires the disclosure be worded exactly as depicted in Figure 1.2.
9. A notice requiring the seller to state, in writing, whether they agree to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing.

Furthermore, if the broker has a controlled business relationship with the closing or title company, that relationship must be disclosed.

It is illegal for a broker or salesperson to require the parties use a particular closing agent, lender, attorney, or title company.

10. For residential listings, a notice stating that after the expiration of the listing agreement, the seller will not be obligated to pay the licensee a fee or commission if the seller has signed another valid listing agreement where the seller is obligated to pay a fee or commission to another licensee for the sale,

**FIGURE 1.2**

**Dual Agency Disclosure**

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

Seller's Instructions to Broker

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

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

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Real Estate Company Name

\_\_\_\_\_  
Salesperson

\_\_\_\_\_  
Date:

lease, or exchange of the real property in question. This notice may be used in the listing agreement for any other type of real estate.

**Prohibited provisions.** Licensees shall not include in a listing agreement a holdover clause, automatic extension, or any other similar provision, or an override clause, the length of which is more than 6 months after the expiration of the buyer's broker agreement.

- *Holdover clauses.* A holdover clause (automatic renewal clause) provides that the listing will renew itself indefinitely unless it is specifically canceled by the seller. It is illegal to include a holdover clause in a listing agreement, even if the seller is willing to have one. If the listing is to be renewed, the renewal must be negotiated and expressly agreed upon between the seller and the broker.
- *Override clauses.* Licensees shall not seek to enforce an override clause unless a protective list has been furnished to the buyer within 72 hours after the expiration of the buyer's broker agreement.
- *Protective lists.* A licensee has the burden of demonstrating that each property on the protective list has been shown to the buyer, or specifically brought to the attention of the buyer, during the time the buyer's broker agreement was in effect.



## Buyer's Representation Agreement

Licensees shall obtain a signed buyer's broker agreement from a buyer before performing any acts as a buyer's representative and before a purchase agreement is signed.

**Contents.** The buyer's representation agreement is structured the same way, and has the same requirements and prohibitions, as the listing agreement.

## ■ LICENSING LEGISLATION AND ADMINISTRATION

### Minnesota Department of Commerce

Minnesota Department of Commerce: oversees real estate licensing and business practices

In Minnesota, the **Department of Commerce** oversees and regulates the real estate industry. This department is headed by the Commissioner of Commerce, who is appointed by the state governor. The Commissioner administers the real estate licensing laws, which are the state statutes that control real estate licensing and business practices (Chapters 82 and 83 of Minnesota Statutes). The Commissioner may also formulate and administer the real estate rules, which are the regulations that implement the real estate laws. Together, the Minnesota real estate laws and real estate rules are often referred to as the license law.

The main purpose of the license law is to protect the public from unscrupulous, uninformed, or negligent real estate agents.

The Commissioner of Commerce has the authority to issue, deny, suspend, and revoke licenses, or censure a licensee.

**Commissioner's powers.** To implement the license law, the Commissioner of Commerce has the authority to screen and qualify applicants for a real estate license, issue and renew licenses, investigate complaints against licensees, investigate anyone who is alleged to be acting as a real estate agent without a license, and regulate certain aspects of the sale of subdivision lots, nonexempt franchises, and real property securities.

The Commissioner also has the power to hold formal hearings to decide issues involving a licensee, a license applicant, or a land subdivider.

After holding a hearing, the Commissioner may deny, suspend, or revoke a license or order sales in a subdivision to be stopped. The Commissioner can sue to obtain an injunction or restitution for members of the public who have been harmed by real estate agents violating the license law. The Commissioner can also bring an action to prevent trust fund violations. The Commissioner also has the power to impose a civil penalty not to exceed \$10,000 per violation upon any person who violates provisions of Chapter 82 or its rules and regulations.

Note that the Commissioner does not arbitrate disputes between individual real estate agents (such as fee splitting disputes, or problems between a salesperson and a broker).

## ■ WHO MUST BE LICENSED

A real estate license is required in order to list, sell, exchange, manage, buy, rent, auction, or negotiate options on

- real estate,
  - a business opportunity, or
  - a business,
- when the action is taken for someone else and for compensation.

In Minnesota, anyone who lists, sells, exchanges, manages, buys, rents, auctions, or negotiates options on real estate, a business opportunity, or a business (or the goodwill, inventory, or fixtures of a business) must have a real estate license, if the action is taken for someone else and for a fee or commission.

■ **FOR EXAMPLE** You don't have to have a real estate license to sell your own home or business, but you must have a license if you agree to sell someone else's home or business for them for a commission.

### Licensing exceptions

There are a number of exceptions to the **licensing requirements**. The following people are not required to have a real estate license:

1. A licensed practicing attorney
2. A court-appointed trustee, executor, administrator, guardian, receiver, or anyone else acting under court order
3. Someone owning and operating a cemetery and selling lots solely for use as burial plots
4. The custodian, janitor, or employee of the owner or manager of a residential building who leases units in the building
5. A bank, trust company, savings and loan association, industrial loan and thrift company, public utility, land mortgage, or farm loan association engaged in a business transaction within the scope of its powers as provided by law
6. Public officers, while performing their official duties
7. A bonded auctioneer engaged in the specific performance of duties as an auctioneer, under the direction and supervision of an attorney or broker
8. Someone who acquires real estate for constructing residential or commercial buildings for resale, if no more than 25 transactions occur in any 12-month period
9. A licensed securities broker-dealer or securities agent who offers to sell real estate that is a security only as an incident to the sale of securities
10. Someone who offers to sell a registered franchise
11. Someone who contracts with a resident to provide care in a continuing care facility
12. A broker-dealer, when participating in the conveyance of a business or business opportunity (when the broker-dealer is licensed pursuant to Chapter 80A of Minnesota Statutes)
13. An accountant acting as an incident to the practice of accounting
14. A federally approved or certified lender, when negotiating mortgage loans with prospective borrowers.

A court-appointed trustee selling property is exempt from Minnesota's real estate licensing requirement.

**Trustee.** A trustee (*see #2* on the list of licensing exceptions) is a person who holds property *in trust* for another, generally under one of two scenarios.

First, a fiduciary trustee is one who holds property in trust for another and is responsible to protect, preserve, and enhance the value and the highest and best use of

the property. Care should be taken to structure a trust agreement to accurately delineate the duties, powers, and responsibilities of the trustee.

A second type of trustee is one who holds property in trust for another to secure payment or performance of an obligation. For instance, a bankruptcy court may appoint a trustee to preserve and manage property involved in a bankruptcy.

Residential mortgage loan originators are required to obtain a residential mortgage loan originator license. However, the licensing requirement does not apply to real estate brokers or their salespeople who incidentally assist clients obtaining financing.

### Residential mortgage loan originators

Residential mortgage loan originators (MLOs) negotiate loans secured by mortgages or contracts for deed on residential real estate and cooperatives. They arrange loans between borrowers and lenders, but usually do not lend money themselves.

An ordinary agent who helps a buyer obtain financing is not considered a residential mortgage originator, as long as the agent doesn't receive a separate commission or fee for the financing assistance. Real estate licensees who originate mortgages incidentally to their primary activities as a licensee may do so only after applying for an exemption from the commissioner.

Residential mortgage loan originators must meet minimum standards required by the Nationwide Mortgage Licensing System (NMLS) in compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act). These standards include submittal of a credit report, a criminal background check, education, and testing requirements. Those who actually make loans are required to maintain a certain net worth and meet bonding requirements. A license application is filed with the Commissioner of Commerce. Once licensed, originators and employees must abide by strict standards of conduct, disclosure, and recordkeeping requirements. For details of the Minnesota Residential Mortgage Originator and Servicer Licensing Act, refer to Minnesota Statutes, Chapter 58, and The National Mortgage Licensing System and Registry at: [www.mortgage.nationwidelicingsystem.org](http://www.mortgage.nationwidelicingsystem.org).

Loan broker: must have a real estate license and follow certain standards of conduct

### Loan brokers

Loan brokers negotiate loans secured by mortgages or contracts for deed on *non-residential* real estate. Like residential mortgage originators, they are paid to arrange loans for others, but typically do not lend money themselves.

Loan brokers are required to be **licensed real estate brokers**. However, the licensing requirement does not apply to federally regulated banks, savings and loans, and other lending institutions, or to their employees who negotiate loans.

For non-residential loans, a loan broker may obtain a limited broker's license to comply with this requirement. Although loan brokers have real estate licenses, they are treated as a separate category from regular real estate agents. The real estate license law prescribes special standards of conduct for loan brokers. A loan broker must enter into a written contract with each customer, and give the customer a copy of the contract, before receiving any payment for loan brokerage services. The contract has to include specific provisions and disclosures, such as a description of the services the loan broker will perform, the maximum interest

rate to be charged on any loan obtained, and the customer's right to rescind the contract within 3 days after signing.

If the customer pays any fees to the loan broker before a loan is actually funded (referred to as advance fees), the broker must deposit them in an escrow account within **48 hours**. The contract must set forth the circumstances under which the loan broker will be entitled to payment from the account. Additionally, the customer has an unconditional right to rescind the contract for loan brokerage services for 3 days after the contract is signed.

The loan broker is required to keep a separate record for each customer, showing all fees received and each disbursement from the escrow account. Each customer must also be given a receipt for any fees paid to the broker. At least once a month, the loan broker must provide each customer with a detailed written accounting.

### Non-institutional lenders

Licensing requirements also extend to people who use their own funds to make loans secured by real estate. A person who makes 4 or more residential real estate loans during any 12-month period is required to have a license. If the loans are secured by non-residential real estate, the person must obtain a real estate broker license. This rule only applies to non-institutional lenders; private parties who lend money. Again, lending institutions and their employees are not required to hold mortgage originator or real estate licenses.

Limited broker: owner buying or selling own property if involved in 5 or more transactions in a year; may not act as a real estate agent for others

### Limited brokers

Generally, a property owner does not need a real estate license in order to sell her own property.

However, an owner who is involved in **5 or more transactions in 1 year** either must be represented by a real estate licensee or obtain a real estate license.

Some real estate investors obtain a limited broker's license. Limited brokers are only licensed to buy or sell property for themselves, not to act as real estate agents for other property owners or buyers. A limited broker also cannot be a real estate salesperson's primary broker; the salesperson must be licensed under a regular broker.

(An applicant for a limited broker's license is not required to have experience as a salesperson.)

### Builders

Builders who sell no more than 25 units per year are not required to have a real estate license. (See # 8 on the list of licensing exceptions shown earlier.) However, builders do need to have a license to sell more than 25 units. Builders may obtain a limited broker's license to fulfill this requirement.

Rental service: required to have real estate broker's license

### Rental services

Rental services provide prospective tenants with information about properties that are available for rent.

A rental service is required to have a real estate broker's license. Employees acting on behalf of a rental service must have a salesperson's license if they give out information about rental properties to the public.

Before providing any information regarding a rental unit, a rental service has to obtain the permission of the property owner (the landlord). It's illegal for a rental service to advertise in a manner that is misleading with regard to fees charged, services provided, the availability of rental units, or rental terms or conditions.

Residential closing agent: required to have special license

### Residential closing agents

A residential closing agent is someone who provides closing services in residential real estate transactions. A closing agent doesn't have to have a real estate broker's or salesperson's license, but is required to obtain a closing agent's license from the Commissioner of Commerce. Although real estate brokers and salespeople often provide residential closing services, they aren't required to have a closing agent's license in addition to a broker's or salesperson's license. Lawyers and title insurance company employees are also allowed to perform residential closing services without a closing agent's license.

If a broker, salesperson, or licensed closing agent provides closing services, they may charge a closing fee. That fee must be disclosed in writing at least 1 business day prior to settlement (closing), according to RESPA (Real Estate Settlement Procedures Act).

### Broker price opinions (BPOs)

Anyone who produces a broker price opinion must be licensed as a real estate salesperson, a real estate broker, or a real estate appraiser. A BPO is an estimate that details the probable selling price of a particular property and provides a varying level of detail about the property's condition, market, and neighborhood, as well as information on comparable sales, but does not include an automated valuation model. A broker price opinion is not an appraisal.

**Requirements.** A real estate licensee or licensed appraiser may prepare and provide a broker price opinion and may charge and collect a fee.

In Minnesota, a broker price opinion may not be used as the primary basis to determine the value of a property for the purpose of obtaining a loan to purchase a consumer's principal dwelling. An appraisal, prepared by a licensed appraiser, must be used for this purpose.

## ■ LICENSING REQUIREMENTS

Salesperson's license requires the following:

1. 18 years old
2. Three 30-hour courses
3. Examination
4. Written application and fee
5. BCA criminal background check
6. Tax Clearance Certificate

### Salesperson's license

An applicant for a Minnesota real estate salesperson's license must

1. be at least 18 years old;
2. complete three 30-hour real estate courses (Courses I, II, and III);
3. pass the salesperson's examination after completing Course I;
4. **within 1 year** of passing the examination, submit an application (on a form provided by the Commissioner and signed by the employing broker) and pay the license fee;
5. pass a Bureau of Criminal Apprehension (BCA) criminal background check; and
6. obtain a *Tax Clearance Certificate* furnished by the Commissioner of revenue indicating that the applicant owes \$499 or less in delinquent taxes.

**Application.** The Minnesota Department of Commerce has established an online system for real estate license application and renewal.

A completed application must be submitted within 1 year of passing the real estate examination.

■ **FOR EXAMPLE** Rufus attends Course I and passes his real estate exam on May 1. Rufus must complete all the licensing requirements and submit his application by May 1 of the following year. Failure to do so would require reexamination.

The license application must be sworn to and signed by the applicant; it must also be signed by a licensed real estate broker. A salesperson is licensed to act on behalf of a broker and may not act as a real estate agent independently.

The broker that a salesperson is licensed under is referred to as the salesperson's primary or principal broker. A salesperson may only work for one licensed Minnesota broker at a time. The salesperson's license is held by the primary broker and must remain in the broker's possession until it is canceled or the salesperson leaves the broker's employment.

Note that Minnesota does not require an applicant for a salesperson's license to have a high school diploma or a college degree. There is also no state residency requirement.

**Licensing fees.** Various fees are charged by the state including, but not limited to, salesperson's and broker's license and renewal, corporate, limited liability company or partnership license, transfer of license, and reinstatement of license. For a comprehensive list of current fees, refer to Minnesota Statutes, Chapter 82 at [www.revisor.mn.gov/statutes/?id=82](http://www.revisor.mn.gov/statutes/?id=82).

Broker's license requires the following:

1. 3 years' experience as salesperson
2. Broker's course
3. Examination
4. Open a trust account
5. Application and fee
6. 3 years' salesperson experience, effective July 1, 2011

Corporation, partnership, or LLC license: at least one officer or partner individually licensed as broker

## Broker's license

A person with an active salesperson's license for 3 of the last 5 years (does not have to be consecutively) may apply for a broker's license. The applicant must also have completed a 30-hour broker's course, passed the broker's examination, opened a trust account, and paid the license fee. A broker may hold licenses of salespeople who represent the broker.

If a broker dies or becomes incapacitated, the individual licenses of all salespersons acting on behalf of the broker are automatically ineffective. Note that there is a provision in Minnesota law that allows the Commissioner to issue a *temporary 45-day broker permit* to a qualified salesperson to allow the business to continue while the salesperson completes the broker education and testing requirements.

## Corporation, partnership, or LLC license

Often, a business entity such as a corporation, partnership, or a limited liability company (LLC) is licensed as a real estate broker.

A corporation, partnership, or limited liability company applying for a license must have at least one officer or partner individually licensed as a broker to act as the responsible broker on behalf of the business. In other words, the corporation and so on must have a minimum of two licenses.

In addition, any other officer or partner who intends to act as a broker must also obtain a license. These licenses only authorize the officers or partners to act as brokers for the corporation, partnership, or limited liability company, not to represent anyone outside the scope of their company in real estate transactions. An officer or partner may hold a salesperson's license instead of a broker's license, but in that case is not allowed to operate in a management capacity.

**Primary broker.** *Primary broker* or *principal broker* means the broker on whose behalf salespersons are licensed to act. In the case of a corporation licensed as a broker, *primary broker* means each officer of the corporation who is individually licensed to act as broker for the corporation. In the case of a partnership, *primary broker* means each partner licensed to act as a broker for the partnership.

The individual licenses of all salespeople acting on behalf of a corporation, partnership, or limited liability company are automatically ineffective if the broker's license of the business is suspended or revoked. On the other hand, the Commissioner may suspend or revoke the license of an officer or partner without suspending or revoking the license of the business.

As in the case of an individual broker license, if an officer becomes incapacitated, the corporation could apply for a **45-day temporary permit** to allow time for a qualified salesperson (who must become an officer) to complete broker educational testing requirements.

## Expiration and renewal

A real estate license is valid for 24 months and expires on June 30 of the licensing period. A new license issued during a 24-month licensing period will expire on June 30 of the expiration year assigned to the license. All requirements for renewal, including filing of forms, continuing education requirements, and payment of renewal fees must be filed by June 15 of the licensee's renewal year. This is referred to as the deadline for *timely renewal*. If the application for renewal is not submitted by June 15, the license will become ineffective after June 30 and remain so until approval of renewal is received by the applicant. (If the license were to remain ineffective for 2 years or more, the former licensee would have to fulfill the educational requirements again and retake the licensing examination in order to obtain a license.)

As a general rule, all new licenses expire on the second June 30, after issuance. As a result, the length of the initial license period varies, depending on the time of year the license was originally issued.

■ **FOR EXAMPLE** Scott Weston's license was first issued in August 2011. Cora Taylor's license was first issued in November 2011. Both of their licenses will likely expire on June 30, 2013, unless renewed. If Weston and Taylor renew their licenses, both licenses will then be effective for a full 24 months, until June 30, 2013.

Continuing education: new licensees, 30 hours by first renewal; thereafter, 15 hours every year

## Continuing education

After becoming licensed, real estate salespeople and brokers are required to take continuing education classes. New licensees must complete 30 hours of continuing education during their initial licensing period.

After their first license renewal date, all licensees (brokers as well as salespeople) must successfully complete 30 hours of continuing education every 24 months, with at least 15 of the 30 hours completed during the first 12 months of the 24-month period. Continuing education credits have to be earned and reported to the broker by June 15 each year.

Annual module requirement effective July 1, 2011.

At least 3.75 or 7.5 hours of the education requirement must come from education modules developed and approved by the Department of Commerce. Topics and number of hours is established annually by the Commissioner. These hours are included within the 30-hour requirement.

The modules must cover topics in real estate that are significant and are of current interest in the real estate market and profession. The Commissioner shall determine the specific topics to be covered by modules for each license year and the number of credit hours allocated to each module.

Real estate licensees are required to take and pass a test on each module class, demonstrating their comprehension. Tests are not required on elective (non-module) continuing education.

The module requirement does not apply to licensees who solely practice commercial real estate.



For brokers, the 30 hours of continuing education per license period must include a module of at least 1 hour each license year specifically designed to address issues relevant to brokers.

In addition, during each 24-month license period, salespersons and brokers must spend at least 1 hour in courses concerning agency representation and disclosure, and at least 1 hour in courses concerning state and federal fair housing laws and other anti-discrimination laws.

The agency and fair housing course requirement does not apply to licensees whose business is limited to commercial real estate. To be exempt under the rule, a licensee must file with a verification of their commercial status with the Commissioner of Commerce.

Salesperson's license is

- only effective while working for broker; and
- may transfer to another broker before expiration.

### License termination and transfer

As we've already discussed, a salesperson must be licensed under a primary broker. When the salesperson stops working for that broker, the salesperson's license becomes *ineffective*.

Within 10 days after the termination, the broker is required to return the salesperson's license to the Commissioner.

The salesperson may apply to have the license transferred to another broker at any time before it expires. If the license expires before an application for transfer is made, the Commissioner will require the salesperson to apply for a new license.

■ **FOR EXAMPLE** Johnson is a real estate salesperson; his primary broker is Howe. Johnson decides he can't stand working for Howe, so he quits on April 20, even though he hasn't made arrangements to work for a different broker. Howe sends Johnson's license back to the Commissioner within 10 days. The Commissioner will transfer Johnson's license to a new broker if Johnson requests the transfer before June 30 (the license expiration date). But if Johnson does not find work with another broker until August, he will be required to file an application for a new license.

**Automatic transfer.** When a salesperson quits working for one broker in order to begin working for another broker right away, an automatic transfer of the salesperson's license can be arranged.

To apply for an automatic transfer, the salesperson fills out and signs an automatic transfer form, then asks both the former broker and the new broker to sign the form. Both brokers must indicate on the form the date and time that they signed it. The former broker must sign before the new broker does, and must destroy the salesperson's license immediately after signing. The new broker must sign within 5 days after the former broker signed. The salesperson is considered unlicensed during the period between the time the former broker signs and the time the new broker signs. The application form and transfer fee must be sent to the Commissioner (either by certified mail, personal delivery, or electronic delivery approved by the Commissioner) within 72 hours after the new broker signs the form. The transfer is effective as soon as the form is sent or delivered.

The automatic transfer procedure can also be used when someone who has a broker's license decides to stop acting as a broker, in order to go to work as a salesperson under another broker instead.

## ■ PENALTIES FOR LICENSE LAW VIOLATIONS

Violation of real estate license law is a crime.

The Minnesota license law includes many rules about what a licensee must do and must not do in handling real estate transactions. Those rules, known as the *Standards of Conduct and Prohibitions*, are reviewed later in this unit. A real estate licensee's failure to comply with the standards of conduct is grounds for disciplinary action by the Commissioner. Depending on the nature of the misconduct, the Commissioner may decide to censure the licensee, suspend the licensee's license temporarily, or permanently revoke the license. (Misconduct can also lead the Commissioner to deny an initial license application or refuse to renew a license.)

Violation of any provision of the license law is a gross misdemeanor.

So a licensee's misconduct can result in criminal prosecution in addition to disciplinary action by the Commissioner. It is unusual for criminal charges to be filed, except in serious cases. However, real estate licensees are frequently subject to civil liability in addition to losing their licenses. If a client or customer files a civil lawsuit against a licensee for breach of fiduciary duties, negligence, or fraud, the licensee may be required to compensate the injured party.

### Notice to the Commissioner

A real estate licensee who gets into serious legal trouble is required to notify the Commissioner. The Commissioner must be notified in writing or in the format prescribed by the Commissioner, within 10 days after any of the following events:

1. A court enters a civil judgment against the licensee for fraud, misrepresentation, or the conversion of funds.
2. The licensee has a real estate license or any other occupational license suspended or revoked by the licensing authority (in Minnesota or another jurisdiction).
3. A licensee is charged with a gross misdemeanor involving fraud, misrepresentation, conversion of funds, or a similar license law violation.
4. A licensee is charged with, convicted of, or pleads guilty (or nolo contendere) to any felony.

Licensee with legal problem must notify Commissioner within 10 days

Notify Commissioner within 10 days of any change of address, name, and so on

The Commissioner must also be notified in writing or in the format prescribed by the Commissioner within 10 days of any change of information contained in the licensee's license application, including but not limited to change of name, home address, or business address. This includes a change in a licensee's personal name or address, and a change in a broker's name or address—even if a broker moves from one office to another in the same building.

The Commissioner

1. must investigate any written complaint against real estate licensee;
2. may hold a hearing; and
3. may suspend or revoke license.

## Disciplinary action

After receiving a written complaint, the Commissioner is required to investigate the actions of a licensee. An investigation may also be started on the Commissioner's own motion, without waiting for a complaint from a member of the public. The Commissioner (or someone authorized by the Commissioner) may call an informal conference and ask everyone involved in the problem to attend. If the initial investigation indicates that the complaint is serious enough, a formal hearing will be held. In most circumstances, a formal hearing must be held before the Commissioner may deny, suspend, or revoke any license.

For the formal hearing, the Commissioner appoints a hearing officer to hear the case and make recommendations. The Commissioner takes the role of the complainant, bringing the charges against the licensee. (The person who brought the matter to the Commissioner's attention may appear as a witness at the hearing.) The licensee is given notice of the hearing and may attend it with or without a lawyer. At the hearing, witnesses testify under oath, and a written record of the proceedings is made.

The Commissioner can accept, reject, or modify the recommendations of the hearing officer. If the Commissioner decides to suspend or revoke the license, the licensee has the right to appeal the decision to the district court.

## ■ STANDARDS OF CONDUCT

When the Commissioner issues a real estate license, the Commissioner grants the licensee the right to represent others in real estate transactions. In exchange for that right, the licensee is required to fulfill specific responsibilities and to meet certain standards of conduct outlined in the Minnesota license law.

In this section, we'll look first at the rules that apply only to brokers and then at the rules that apply to all real estate licensees.

Broker's responsibilities include the following:

- Adequate supervision of salespeople
- Investigate complaints
- Review documents
- Maintain trust accounts
- Keep transaction records for 6 years

### Broker's responsibilities

In addition to the duties that all real estate licensees are required to fulfill, brokers have a number of special responsibilities. These include supervising salespeople, handling trust funds, and recordkeeping.

**Supervision.** A broker is responsible for everything that a salesperson or closing agent does while acting on the broker's behalf and must provide **adequate supervision** as a result. Each officer of a corporation or partner in a partnership licensed as a broker has the same responsibility. If the salesperson's action causes harm to a member of the public, and the Commissioner determines that the salesperson was not adequately supervised by his primary broker, the broker's license (as well as the salesperson's license) can be suspended or revoked.

Supervision includes the ongoing monitoring of listing agreements, purchase agreements, other real estate-related documents that are prepared or drafted by

the broker's salespersons or employees, and the review of all trust account books and records.

If a salesperson is charged with a violation of license law, the Commissioner will often charge the principal broker with a failure to supervise and be subject to censure, license suspension, or license revocation.

If an individual broker maintains more than one place of business, each office is under the broker's direction and supervision. When a business entity (such as a corporation or partnership) is licensed as a broker and the business entity maintains more than one place of business, each place of business shall be under the direction and supervision of an individual broker licensed to act on behalf of the brokerage.

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

**Errors and omissions (E&O) insurance.** Note that the Commissioner's power exists by Minnesota statutes. Consumers may seek damages through civil actions in our court system. To protect against civil claims of malpractice, most brokers will purchase errors and omissions (E&O) insurance. Many brokers also require each salesperson to participate in the E&O policy.

**Copy of license law.** A broker must keep a copy of the license law and the Subdivided Lands Act (Chapters 82 and 83 of Minnesota statutes and Rules and Regulations) at each real estate office (main office and branch offices) and make it available to the salespeople who work there. Access to the statutes and rules may be made available through an electronic agent. Minnesota statutes and rules may be accessed via the Minnesota Office of the Revisor of Statutes Web site at [www.revisor.mn.gov](http://www.revisor.mn.gov).

**Complaints.** If a client or customer complains about a salesperson, the broker is expected to investigate the problem and try to resolve it. The license law requires a broker to maintain a complaint file for each salesperson, and keep all documents relating to any written complaint for at least 3 years.

**Documents and copies.** As part of their supervisory duties, brokers are expected to review all the listing agreements, purchase agreements, and other documents their salespeople and employees prepare. Even though the broker has delegated the preparation of agreements to a salesperson, the broker remains responsible for their accuracy.

A broker or salesperson is permitted to fill out standard contract forms for the parties in a real estate transaction. However, real estate agents should never insert

complicated provisions that require legal expertise and should never draft a contract from scratch instead of using a standard form. Those actions could be considered the unauthorized practice of law.

The parties to a real estate transaction are legally entitled to a copy of any document that pertains to their interests. The broker or salesperson must provide copies when the parties sign the documents or when the documents become available.

**Unlicensed staff.** It's not necessary for all of a broker's employees to be licensed salespeople. However, the broker is required to manage unlicensed employees, especially when they discuss information about properties listed with the broker. A broker may authorize an unlicensed employee to provide factual information about a property that is listed with the broker. The information must be provided by the broker to the unlicensed employee in written or electronic form. Unlicensed employees are only allowed to discuss with the public the specific information provided by the broker. The broker and the unlicensed employee could be subject to disciplinary action if the employee shares any information about the property other than what has been provided by the broker.

**Trust accounts.** The license law requires every broker to maintain an interest-bearing account for the deposit of trust funds. This is one of a broker's most important responsibilities. In Minnesota, the trust account may be at a bank, trust company, savings and loan association, credit union, or any other Minnesota industrial loan and thrift company. It can be a savings account or checking account, but it must pay the highest current passbook savings account rate of interest.

**Trust funds.** Trust funds are money received by a broker or salesperson on behalf of a client or any other person in real estate transaction. This includes earnest money deposits, down payments, rents, tax, and insurance escrow payments, damage deposits, and any funds received on behalf of any person. Any funds received by the broker in a fiduciary capacity, such as earnest money, must be deposited in the broker's trust account.

**Earnest money** must be deposited in the listing broker's trust account. The time frame in Minnesota for deposit is within 3 **business days** of receipt by the listing broker, unless otherwise specified by written agreement signed by the parties to the transaction.

The interest accruing on the trust account, less reasonable transaction costs, must be paid by the lending institution to the Minnesota Housing Trust Fund, unless the parties to the transaction specify otherwise in a written agreement (typically the purchase agreement).

**Prohibited actions.** The primary purpose of a trust account is to keep the trust funds separate from the broker's own money.

When a broker mixes trust funds together with her own money, it's called commingling. Commingling is illegal; it's both a breach of fiduciary duty and a serious violation of Minnesota's license law. To avoid commingling, a broker receiving a

**commission check** from a seller must not deposit the check into the trust account and must instead, use a private account.

There is one limited exception to the rule against commingling: brokers can keep some of their own money in the trust account to cover back service charges or comply with minimum balance requirements. The sum of money to be used for those purposes can be any amount, but it must be specifically identified in the account records.

If there are any changes in the status of a broker's trust account (if the broker opens a trust account at a new bank, for example), the broker is required to notify the Commissioner of Commerce. A broker may not close a trust account without giving the Commissioner notice 10 days in advance.

The 6-year requirement is effective as of August 1, 2010.

**Recordkeeping.** In addition to trust account records, a broker must keep copies of all documents related to real estate transactions (listings, purchase agreements, etc.) and the brokerage business in general.

All of a broker's records (including trust account records) have to be retained for at least **6 years** (72 months).

The 6-year period is measured from the closing date, or if the transaction never closed, from the date the listing or the buyer representation agreement was signed.

**Fee splitting.** The buyer and seller may only pay their brokers. Neither party may pay the salesperson directly.

A broker is not allowed to pay a finder's fee or share a real estate commission unless the payment is made to

- one of the broker's own salespeople;
- a real estate broker licensed in Minnesota or another state;
- a corporation owned solely by a licensed broker or salesperson; or
- one of the parties to the real estate transaction.

It is illegal for a broker to pay an unlicensed person a finder's fee, either for helping the broker obtain a listing or for locating a buyer. This rule applies to gifts as well as monetary payments.

### Rules for all licensees

The license law's standards of conduct can be grouped into two main categories: prohibited conduct (things that real estate licensees are required to avoid) and mandatory conduct (things that licensees are required to do). The most important provisions are summarized here.

Prohibited conduct is grounds for license suspension or revocation

**Prohibited conduct.** Any of the following actions are grounds for suspension or revocation of a real estate license.

***Lying to the Commissioner.*** This includes material misstatements in a license application or any other information provided to the Commissioner's office.

***Guaranteeing future profits.*** It's illegal for a real estate licensee to guarantee a buyer or tenant future profits from a purchase or lease, unless the terms of the guarantee are spelled out in the purchase agreement, lease, or other contract.

***Disclosing an offer.*** Never disclose the terms of one prospective buyer's offer to another prospective buyer before presenting the offer to the seller.

***Interfering with an exclusive agency.*** When you are aware that an owner, buyer, or tenant has already signed an exclusive contract with another broker, do not try to deal directly with the principal. All negotiations must be conducted through the exclusive licensee. You are also required to ask owners, buyers, or tenants whether they have signed an exclusive contract with another real estate broker (so ignorance is no excuse).

***Encouraging breach of contract.*** A real estate licensee must not try to convince any party to a contract to breach it. That includes persuading a seller who has listed with another broker to list with you instead, or telling one of your clients to back out of a purchase agreement in order to accept a better offer.

***Discouraging use of an attorney.*** A licensee should never do anything to prevent or discourage any party to a transaction from consulting a lawyer. That's a violation of the license law, even if you honestly believe a lawyer's services are an unnecessary expense in a particular case.

***Undisclosed conflict of interest.*** When acting as the agent of any party to a transaction, if you have a conflict of interest that could affect your ability to represent your principal, you may not continue with the representation unless you disclose the conflict to your principal and obtain her permission to proceed.

***Undisclosed dual agency.*** A licensee may not act on behalf of both the buyer and the seller in a transaction unless both of the parties have consented to that arrangement.

***Blind advertising.*** When a real estate licensee advertises property without mentioning his licensed status in the ad, this is known as a *blind ad*. Blind advertising is illegal. Even when a real estate licensee advertises his own property, the ad must indicate that a licensee is involved.

The license law also forbids a real estate licensee from advertising property or brokerage services in any way that is misleading or inaccurate.

***Teams.*** If a licensee is part of a team within the brokerage, the team name may be included in advertising if the team name is authorized by the primary broker of the real estate brokerage and the brokerage (company) name is displayed more prominently than the team name.

**Discrimination.** Violation of any state or federal anti-discrimination law intended to protect real estate buyers or tenants is also a violation of the license law.

**Misrepresentation.** A real estate licensee must not make any material misrepresentations, and also must not allow anyone else (a client, for example) to misrepresent the facts. In addition to that general rule against misrepresentation, the license law specifically prohibits licensees from making (or allowing anyone else to make) false or misleading statements that are likely to induce someone to enter into a real estate transaction. This differs from the practice of puffing, in which a licensee may make non-factual, extravagant claims that are obviously not meant to be taken literally (e.g., “the most beautiful view in the world.”).

Not only can misrepresentation lead to license suspension or revocation, the real estate licensee may also be sued for fraud. Misrepresentation is actionable (grounds for a lawsuit) if the licensee knew or should have known that his statement was false.

If the licensee knew the statement was false and intentionally misled the other party, that’s known as actual fraud. If the misrepresentation was the result of carelessness (rather than an intention to mislead), it’s called constructive fraud. In either case, if the other party relied on the misrepresentation and was harmed as a result, the licensee can be held liable and ordered to pay damages.

Buyer’s representation agreement required before performing any acts as a buyer’s agent.

**Acting without a signed agency agreement.** The license law forbids a real estate licensee from advertising another person’s property for sale (including placement of a For Sale sign on the property) unless the seller has signed a listing agreement or some other written authorization. A licensee is also forbidden to perform any acts as a buyer’s agent in a residential transaction unless the buyer has signed a buyer representation agreement. Without a signed listing or buyer representation agreement, the licensee cannot sue for a commission. (In addition, a licensee who sues must be able to prove that she was licensed at the time the commission was earned.) It’s also a license law violation to demand a commission when you know you are not entitled to payment.

**Securities dealing.** A real estate license does not permit the licensee to engage in the business of buying, selling, or arranging the purchase or sale of contracts for deed, mortgages, or other evidence of indebtedness regarding real estate. A securities dealer’s license is required for those activities. A real estate licensee may arrange for the sale of a contract, mortgage, or other instrument only if the licensee is acting as an agent in the sale or lease of the security property (representing the seller, buyer, lessor, or lessee). The licensee may not receive any additional compensation for this service, beyond his share of the brokerage commission.

**Price fixing.** When two or more real estate brokers who do not work for the same firm agree to charge a certain commission rate, that’s price fixing. Price fixing is a violation of the antitrust laws. Minnesota license law also prohibits real estate licensees from engaging in any anti-competitive activity.



As previously discussed, Minnesota law requires the following notice in not less than ten-point boldface type immediately preceding any provision of a listing or buyer's broker agreement relating to compensation of the licensee:

**“NOTICE: THE COMPENSATION FOR THE PURCHASE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER’S CLIENT.”**

*Accepting undisclosed kickbacks.* When acting on behalf of a client, it's illegal for a real estate licensee to accept any gift or payment from a third party without telling the client.

*Holdover clauses and excessive override (broker protection) clauses.* Including a holdover clause (an automatic renewal clause) in a listing agreement or buyer's representation agreement is grounds for license suspension or revocation. Including an override (broker protection) clause that creates a protection period longer than 6 months (or longer than 2 years in the sale of a business) is also grounds for license suspension or revocation.

*Commingling.* Commingling trust funds with personal funds is a violation of the license law. In fact, it's a common reason for revocation of a real estate license. The Commissioner can take disciplinary action against a licensee for commingling, even if the licensee had no intention of misusing the trust funds.

When a licensee does use trust funds for her own purposes, it's called conversion of funds. Conversion is a crime, as well as grounds for disciplinary action.

**Mandatory Conduct.** A real estate licensee's failure to fulfill any of the following duties in appropriate circumstances is grounds for license suspension or revocation.

*Disclosure of personal interest and licensed status; use of trust funds.* When selling your own property or buying property for yourself, you must inform the other party in writing that you have a direct interest in the transaction and that you have a real estate license. It's illegal to pretend that you are representing a third party rather than yourself, or to pretend that you aren't a real estate agent. These disclosures must be made before you begin negotiating with the other party.

If you receive any money in the transaction that would be considered trust funds if you were acting on behalf of a client, you must put the money in a trust account, unless the other party agrees in writing to have it handled differently.

■ **FOR EXAMPLE** You're selling your own house. A prospective buyer gives you a \$2,000 check as earnest money, along with her offer to purchase. You must deposit the check in a trust account by the third business day. If you would rather place the check in a personal account, you must obtain the buyer's written permission to do so.

**Disclosure of relationship.** When you're involved in a transaction in which one of the parties is a relative or business associate of yours, you are required to disclose that fact to the other party in writing. For example, if the buyers are your parents, you must inform the seller, in writing, that you are related to them.

**Agency disclosure.** As previously discussed, at the first substantive contact with any prospective client or customer in a residential transaction, a licensee is required to provide the consumer with an agency disclosure form. An agent representing a buyer is also specifically required to disclose that agency relationship to the seller, before the property is shown, and before any negotiations are entered into. Failure to fulfill these requirements is grounds for disciplinary action. In addition, a licensee who has not made the required disclosures in a residential transaction is not entitled to sue for a commission.

**Disclosure of material facts.** Minnesota (and most other states) requires sellers, in addition to licensees, to disclose all material facts pertaining to the property. Statute defines a material fact as anything that 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 licensee is aware.

By law, it is not a material fact that the property is or was occupied by one diagnosed with HIV or AIDS; was the site of a suicide, accidental death, natural death, or perceived paranormal activity; or is located in a neighborhood containing any adult family home, community-based residential facility, or nursing home.

There is no duty to disclose information regarding the proximity of a registered sex offender if the licensee or seller provides a mandatory written notice that information about the predatory offender registry and persons registered with the registry may be obtained by contacting local law enforcement or the Department of Corrections. The notice should include the Web site for the Department: [www.corr.state.mn.us/](http://www.corr.state.mn.us/).

Because it may be difficult for a licensee or a seller to judge the condition of a property, they may depend upon a qualified home inspector to make the disclosures regarding the physical condition of the property. In such a case, the written report produced by the qualified inspector may serve as the basis for disclosure.

A seller who fails to make disclosures as required and was aware of the condition of the property is liable for damages to the buyer. A civil action for inaccurate or incomplete disclosures must be initiated within 2 years after closing.

When a real estate licensee is aware of any material facts about the property that might adversely affect the use or enjoyment of it, Minnesota's license law requires the licensee to disclose those facts to prospective buyers.

■ **FOR EXAMPLE** A licensee representing the seller is told by the seller that there was water damage to the home, but the damage had been fixed. While showing the property to a buyer, the licensee notices that the water damage has not been fixed. The licensee must disclose this to the buyer.

In complying with this rule, the licensee is supposed to consider how an ordinary buyer would be likely to use the property, not every possible use. But if the licensee knows that a particular buyer intends to make some special use of the property, the licensee must be sure to reveal any facts that could interfere with that intended use.

Fraud usually involves a false or misleading statement, but concealing or failing to disclose information that you have a legal duty to disclose can also constitute fraud. Active concealment or an intentional failure to disclose is actual fraud, and negligent failure to disclose is constructive fraud.

If a seller asks a licensee to conceal, cover up, or not disclose material facts, the licensee should cancel the listing agreement.

***Presentation of all offers.*** Whenever a prospective buyer or tenant gives a real estate licensee a written offer to buy or lease, the licensee must submit the offer to the property owner promptly.

The licensee should never hold an offer back in the hope that someone else will make a better one. It's also illegal for a licensee to decide that a particular offer is so low it isn't even worth presenting to the owner at all. The owner, not the real estate agent, decides which offer is acceptable.

***Disclosures regarding closing costs.*** Before an offer to purchase is signed by the prospective buyer or presented to the seller, a real estate licensee must warn each party that he or she may be required to pay certain closing costs. State law also states it is the listing broker's responsibility for making sure that each party receives a detailed closing statement at the time of closing. A closing agent (whether it's a licensed closing agent or a real estate agent) may only charge a borrower a fee for closing services if the fee is disclosed in writing at least 1 business day before closing. Failure to fulfill these duties is grounds for disciplinary action by the Commissioner.

***Deposit of earnest money checks.*** When a real estate licensee receives an earnest money deposit from an offeror (a prospective buyer), it must be deposited in the listing broker's trust account no later than the third business day after receipt by the listing broker.

However, the parties to the transaction can specify in writing (typically in the purchase agreement) a different handling of the earnest money. For example, the buyer and seller may agree to delay the deposit until after certain contractual contingencies have been met, such as a property inspection. Also, the parties to the transaction can elect to have earnest money placed in escrow at the title company they will use to close the transaction. Remember though, without any such direction from the parties to the transaction, earnest money must be deposited in the listing broker's trust account within 3 business days after receipt by the listing broker.

A broker can also hold or disburse earnest money if authorized to do so by a written agreement between the parties (usually included in the purchase agreement) or by a court order.

If an offer is rejected after the offeror has provided earnest money, the earnest money must be returned to the offeror by the next business day. If the offer is accepted, but the offeror's check bounces, the seller must be notified immediately.

- **Nondeposable items.** Anything nondeposable that a real estate licensee receives in lieu of cash as an offeror's earnest deposit must first be accepted by the seller, and then held by an authorized escrow agent.

In the event earnest money or other down payments in a real estate transaction are received by the broker or salesperson in the form of a nondeposable item such as a note, bond, stock certificate, treasury bill, or any other thing of value, such items must be deposited immediately with an authorized escrow agent.

The escrow agent must have a signed written agreement with the offeror, authorizing the escrow agent to hold the deposit. If the broker is acting as escrow agent, both the offeror and the offeree must give written authorization, signed by the offeror, offeree, and the broker. The offeror must be given a receipt for the nondeposable item. In all cases, the parties involved must be advised of the details relative to the nondeposable item, including the nature of the item, the amount, and in whose custody such item is being held. If the nondeposable item is held by the broker, it must be recorded in the broker's trust account records.

**Disclosure of nonperformance.** When one of the parties to a purchase agreement notifies a real estate licensee that she is not going to perform as agreed, the licensee has a duty to let the other party know that immediately. If possible, you should first warn the party who is backing out that you are required to inform the other party.

**Guaranteed sale disclosure.** In a guaranteed sale plan, a listing broker promises to buy the property if he fails to find another buyer within a specified period.

Guaranteed sale plans are legal in Minnesota, but the broker must give the seller a written disclosure that explains under exactly what conditions the broker will be required to purchase the property. The disclosure must also state what will be done with any profit the broker makes by reselling the property after buying it from the seller. The broker is required to give the seller the written disclosure before the seller signs the listing agreement.

### **Real estate education, research, and recovery fund**

The real estate education, research, and recovery fund (REERRF) is held in the state treasury and administered by the Commissioner of Commerce. The fund can be used to

- promote the advancement of education and research in the field of real estate;

- underwrite educational seminars and other educational projects for licensees;
- establish a real estate chair or courses at Minnesota state institutions of higher learning;
- contract for a particular educational or research project in the field of real estate;
- pay any reasonable costs and disbursements incurred in defending actions against the fund; and
- provide information to the public on housing issues, including environmental safety and housing affordability.

Money for the REERRF is taken out of the licensing fees charged to real estate licensees.

**Recovery portion of the REERRF.** A certain part of the REERRF, known as the recovery portion, is used to satisfy unpaid claims against real estate licensees.

The claimant has to have obtained a court judgment against the licensee for fraudulent, deceptive, or dishonest practices or conversion of trust funds. The claimant must also have tried unsuccessfully to collect the judgment from the licensee.

**Claims procedure.** Once a final judgment has been entered against a real estate licensee and there are no other proceedings pending (such as an appeal), the judgment creditor may make a claim for payment from the recovery portion of the REERRF. The claimant files a verified application for payment in the court in which judgment was entered, requesting an order directing payment out of the recovery portion.

The claim has to be filed within 1 year after the claimant's judgment became final or any appeal in the case was decided.

The claimant must be able to prove that he has made a diligent effort to collect the judgment from the licensee, and that the licensee does not have assets that could be used in collecting the judgment. It does not matter if the judgment has been discharged in bankruptcy; a claim for payment from the REERRF can still be filed.

Payment from the fund will cover the amount of direct out-of-pocket losses (actual damages) in the real estate transaction, but will not cover any attorney's fees or interest included in the claimant's judgment. The fund will not pay a claim filed by the spouse of the judgment debtor (in other words, by the guilty licensee's husband or wife).

**Recovery limits.** There are limits on how much claimants can recover from the fund. One claimant cannot be paid more than \$150,000 out of the fund for a claim based on a single real estate transaction (no matter how much the licensee actually owes the claimant).

■ **FOR EXAMPLE** Mr. Arkwright hired a real estate broker to help him sell some valuable commercial property, and the broker ended up swindling him out of a great deal of money in the transaction. Arkwright sued and was awarded a judgment for \$180,000 in actual damages, plus \$17,000 in attorney's fees. The broker didn't pay

Recovery portion of REERRF: used to satisfy unpaid claims against licensees

Recovery limits: \$150,000 for one claimant; for claims against one licensee, \$250,000

the judgment and doesn't have any assets that Arkwright can levy against to collect the judgment.

Arkwright applies to the recovery portion for payment of his claim. He is paid \$150,000, the maximum for one claimant in one transaction, even though the broker owed him considerably more than that. (Note that Arkwright's attorney's fees could not be paid out of the fund, even if Arkwright's claim had not reached the \$150,000 limit.)

Also, the recovery portion of the REERRF cannot pay more than \$250,000 for claims against one licensee, no matter how many claims have been filed against the licensee. When that \$250,000 is not enough to pay all the valid claims in full, the money is distributed among the claimants according to the ratio that each one's claim bears to the total of all the claims.

■ **FOR EXAMPLE** Bailey, a real estate broker, got into financial difficulties and tried to extricate herself by defrauding several of the clients she worked for. She was sued by 6 clients, based on 6 different real estate transactions, and 6 judgments were entered against her. Adams was awarded \$15,000 in actual damages; Brandon, \$21,000; Cellini, \$75,000; Domenowski, \$36,000; Enderland, \$90,000; and Frankel, \$63,000.

Altogether, the judgments add up to \$300,000, but the recovery portion will only pay \$250,000 for claims against one licensee. The claimants against Bailey will receive the following shares of the \$250,000:

- Adams: 5 percent (\$12,500)
- Brandon: 7 percent (\$17,500)
- Cellini: 25 percent (\$62,500)
- Domenowski: 12 percent (\$30,000)
- Enderland: 30 percent (\$75,000)
- Frankel: 21 percent (\$52,500)

Payment out of the recovery portion of the REERRF is limited to damages that resulted from activities for which a real estate license is required. If someone who happened to be a licensed real estate agent defrauded people in a way that had nothing to do with real estate transactions (a credit card scam, for example), the recovery portion could not be used to pay the fraud victims' claims.

The damages must also have resulted from a transaction in which the property was intended for the buyer's personal habitation, or for the buyer's own commercial use. If the buyer was purchasing the property only as an investment, no judgment arising out of that transaction can be satisfied out of the REERRF.

If recovery portion of REERRF covers a claim, the licensee's license is suspended.

**Effect on license.** When a claim is paid out of the recovery portion, the license of the broker or salesperson whose actions gave rise to the claim is suspended. The license is automatically suspended on the effective date of the order for payment from the fund.

The suspended license will not be reinstated until the broker or salesperson has reimbursed the fund for twice the amount paid out, plus 12 percent interest, and has obtained a \$40,000 surety bond. The bond must remain in effect for as long as the real estate broker or salesperson is licensed. No further payment will be made from the recovery portion based on claims against any broker or salesperson who was reinstated under this rule.

Repaying the fund does not automatically reinstate the agent's license. If there are other independent grounds for the suspension, the license will remain suspended.

## UNIT 1 LECTURE OUTLINE AND NOTES

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### I. AGENCY IN MINNESOTA

#### A. Agency disclosure requirements

1. When representing a buyer and before showing the property, the broker/salesperson must disclose that to the seller or the seller's agent.
2. When representing a seller and before showing a property, the broker/salesperson must disclose that to the buyer or the buyer's agent.
3. A licensee who has not made the required disclosures in a residential transaction may not sue for a commission.
4. All brokers and salespersons must provide an agency disclosure form at the \_\_\_\_\_ with a residential buyer or seller.
  - a) *Agency Relationships in Real Estate Transactions*
  - b) Has a provision for consumer to sign to acknowledge receipt
  - c) \_\_\_\_\_ and does not create an agency relationship—only information and disclosure
  - d) Disclosure must be in writing; verbal disclosure alone not enough
5. If the agency representation changes, the broker/salesperson must disclose that to all parties immediately.

#### B. The 5 types of agency relationships

- The 5 types of agency relationships allowed in Minnesota are explained in the \_\_\_\_\_ in the Real Estate Transactions form.
1. Seller's broker represents the seller
    - a) A broker who lists a property
    - b) A salesperson that is licensed to the listing broker
      - Represents the seller on behalf of the broker
    - c) Owes the seller fiduciary duties (OLDCAR)



2. Subagent (agent of an agent)
  - a) A broker or salesperson that works with the buyer but represents the seller is not common
    - (1) Buyer is the customer
    - (2) Broker/salesperson must act in the seller's best interests
    - (3) Owes the seller fiduciary duties
  - b) When a salesperson acts as an agent of the broker
    - (1) Agent of an agent
    - (2) Broker is the agent; \_\_\_\_\_ becomes what is often referred to as a \_\_\_\_\_
3. Buyer's broker represents the buyer
  - a) A broker that acts on behalf of the buyer
  - b) A salesperson that is licensed to the buyer's broker
    - Represents the buyer on behalf of the broker
  - c) Owes the buyer fiduciary duties (OLDCAR)
4. Dual agency
  - a) When the broker represents both parties to the same transaction
    - (1) Created by agreement of broker and client (seller or buyer) in the \_\_\_\_\_.
    - (a) This agreement is signed by both the \_\_\_\_\_ and \_\_\_\_\_.
    - (b) Seller or buyer chooses to accept or not accept dual agency.
      - i) The seller's property will not be shown to buyers represented by the seller's broker and
      - ii) the buyer will not be shown properties listed with the buyer's broker.

(2) Seller and buyer give further and final consent to dual agency when the seller and buyer agree to and sign the **purchase agreement**.

(a) Dual agency disclosure and consent in the purchase agreement \_\_\_\_\_  
\_\_\_\_\_.

b) The buyer and seller can either

(1) work with the same salesperson, licensed to the same broker; or

(2) work with 2 salespersons, licensed to the broker.

c) Limits the level of representation the broker and salespersons can provide

d) Dual agent must keep certain information confidential, unless the buyer or seller gives the agent written permission to disclose it to the other party

(1) Price

(2) Terms

(3) Motivation (PTM)

e) Agent may not advocate for one party over another.

5. Facilitator licensee performs services but does not represent either party

a) Broker or salesperson that provides services without taking on \_\_\_\_\_.

(1) Does not represent the buyer or seller

(2) Only owes the duty of confidentiality, but no other, except those required by law or those contained in a facilitator services agreement

b) A written Facilitator Services Agreement \_\_\_\_\_  
\_\_\_\_\_.

c) A salesperson cannot be a facilitator if his broker represents the buyer and/or seller.

■ The broker/salesperson is then the seller's broker or the buyer's broker.

- d) If facilitator shows property listed by the facilitator's broker, the facilitator will now be considered the \_\_\_\_\_.
  - e) If facilitator accepts a showing to a buyer who is represented by the facilitator's broker, facilitator will now be considered buyer's broker.
- Remember: \_\_\_\_\_.

**C. Brokers and their salespeople, acting as agents, owe clients fiduciary duties learned under the common law of agency (OLDCAR).**

1. Must disclose all material facts
2. Must maintain confidentiality, especially of PTM (price, terms, and motivations)

**II. SELLER AND BUYER AGENCY AGREEMENTS IN MINNESOTA**

**A. All agency agreements (listing and buyer representation) must \_\_\_\_\_ signed by client and broker/salesperson, and include the following information:**

1. A definite expiration date
2. The legal description of the property
3. The list price and any other terms required by the seller
4. The amount of compensation, and how it is computed
  - a) Negotiable commission clause
    - Clause must be in 10-point boldface type and placed immediately before the provision relating to the broker's compensation.

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

- b) Percentage of selling price or net selling price
- c) Flat fee
- d) Net is not recommend but sometimes used in commercial transactions

5. Statement explaining the events/conditions that entitle a broker to a commission
6. Statement explaining whether the agreement may be cancelled by either party and the terms for canceling
7. \_\_\_\_\_
  - a) Broker/salesperson is entitled to a commission if a prospect buys the property after the listing expires.
  - b) Broker/salesperson must give a protective list to the seller within \_\_\_\_\_ after the listing expires.
  - c) The protection period cannot be longer than \_\_\_\_\_ (exception: up to \_\_\_\_\_ for the purchase or sale of a business).
  - d) The clause terminates if the \_\_\_\_\_.
8. Dual agency disclosure and consent provision, worded verbatim as according to Minnesota law \_\_\_\_\_
9. A notice to the seller, to state in writing, if the seller does or does not want to have the licensee arrange for closing services
  - Agreement must also disclose any controlled business arrangements with a closing agent or title company
10. For residential listings, a notice stating that the seller will not be obligated to pay the licensee after the listing expires, if the seller enters into another valid listing agreement where she is obligated to pay a commission
11. Prohibited provisions in a listing agreement
  - a) Holdover (automatic renewal) clause
  - b) Override clause longer than 6 months for most properties
12. Both listing and buyer's representation agreements must be signed \_\_\_\_\_ signing the purchase agreement.

**B. Broker price opinions (BPOs)**

1. A licensed salesperson, broker, or appraiser may produce a BPO.

2. A BPO should state it is not an appraisal.
  - An appraiser’s license is required to perform an appraisal.
3. A BPO may not be used for financing in lieu of an appraisal for residential properties.

**III. LICENSE LAW AND ADMINISTRATION**

**A. Legislation: Chapter 82 of Minnesota Statutes**

**B. Commissioner of the Department of Commerce**

1. Appointed by the governor
2. Head of the Department of Commerce
3. Department of Commerce \_\_\_\_\_

**C. Commissioner’s responsibilities**

1. Administer law
2. Make rules and regulations
3. Issue licenses
4. Hold hearings and issue injunctions
5. Take disciplinary action
  - \_\_\_\_\_
6. Does not arbitrate disputes between licensees or handle ethics charges

**IV. WHO MUST HAVE A REAL ESTATE LICENSE**

**A. Different licenses under the umbrella of real estate**

1. Any person who for \_\_\_\_\_: lists, sells, exchanges, manages, buys, rents, auctions, or negotiates options on real estate or a business opportunity or a business, or its goodwill, inventory, or fixtures
  - a) Exceptions
    - (1) Attorneys

- (2) \_\_\_\_\_ (trustees, executors, administrators, etc.)
- (3) Cemetery owners selling burial plots
- (4) Employees of a residential building owner (e.g., caretakers, custodians, or janitors)
  - Applies to \_\_\_\_\_
- (5) Public officers while performing official duties
- (6) Auctioneers under the direction and supervision of an attorney or broker
- (7) Those who sell franchises
- (8) Licensed securities brokers or agents, if incidental to the sale of securities
- (9) Sales of manufactured or mobile homes that are not attached to land

b) Trustees

- (1) Only a court-appointed trustee, such as those who oversee a bankruptcy, are **exempt**.
- (2) A trustee managing a trust-owned property and receiving a fee to sell the property is \_\_\_\_\_ and must have a real estate license or hire a licensee.

2. Residential mortgage loan originators (MLOs)

- a) Negotiate loans for residential real estate
- b) Must be registered with the Nationwide Mortgage Licensing System (NMLS)
- c) Must obtain a mortgage loan originator license from the Department of Commerce
- d) Mortgage license is not required for a broker or salesperson that incidentally assists buyers with obtaining financing, as part of the transaction

3. Commercial loan brokers negotiate loans secured by a mortgage or contract for deed on \_\_\_\_\_ real estate.

- a) Must be a \_\_\_\_\_

- b) Exceptions: banks, savings and loans, and their employees
- c) Special standards of conduct for commercial loan brokers
  - (1) Written contract with each customer and a receipt for fees
  - (2) Fees received prior to loan funding must be deposited in escrow account within \_\_\_\_\_ after receipt
  - (3) Client has \_\_\_\_\_ to cancel most loans
  - (4) Maintain separate records for each customer
  - (5) Provide, at least monthly, a written accounting of disbursements

**B. Any person who buys or sells in 5 or more transactions during any 12-month period without a licensee representing him or her**

- Remember: \_\_\_\_\_.
- 1. Exception: Those in the business of constructing residential or commercial buildings for the purpose of resale, not to exceed \_\_\_\_\_ in any 12-month period.
- 2. An unlicensed person may be issued a \_\_\_\_\_ license in order to comply. Limited brokers can buy or sell an \_\_\_\_\_ number of properties, but may neither \_\_\_\_\_.
- An applicant for a \_\_\_\_\_ broker's license is not required to have experience as a salesperson, attend classes or pass a test.

**C. Rental services**

- 1. A rental service must have a real estate broker's license.
- 2. A rental agent acting as a real estate salesperson (placing renters for another and a fee) must have a real estate salesperson's license.

- 3. A rental service shall not provide information regarding a rental unit without the express authority of the owner of the unit.
- 4. A rental service shall not advertise in a manner that is misleading with regard to fees charged, services provided, the availability of rental units, or rental terms or conditions.

**D. Closing agents/settlement agents**

- 1. A broker, salesperson, or licensed closing agent may charge closing fees.
- 2. Per RESPA, fees must be disclosed in writing at least \_\_\_\_\_ before settlement.

**V. LICENSING REQUIREMENTS, TERMINATIONS, TRANSFERS**

**A. Licensing and regulatory authority**

- \_\_\_\_\_

**B. Individual salesperson and broker licensing requirements**

- 1. Age \_\_\_\_\_ or older at time of application
- 2. Education requirements for salesperson (90 hours)
  - a) Complete 30-hour Course I
  - b) Take and pass the state salesperson license exam
  - c) Then, complete Course II (30 hours) and Course III (30 hours), and apply for a license
    - Must apply within \_\_\_\_\_ of passing exam
- 3. Education and experience requirements for broker
  - a) Experience requirement
    - 3 or more of the last 5 years as a salesperson; need not be consecutive
  - b) Education requirement
    - (1) Additional 30-hour broker's course
    - (2) Take and pass the state broker license exam



## 4. Application process

- a) Complete and sign application
  - Salesperson license requires the signature of the broker. The license will be held by the broker.
- b) Pass a Bureau of Criminal Apprehension (BCA) check
- c) Obtain a tax clearance certificate
- d) Pay the state license fee
- e) \_\_\_\_\_
- f) No residency requirement

## 5. Other broker license issues

- a) Upon death or incapacity, a \_\_\_\_\_ broker permit may be issued to a qualified salesperson.
- b) If a broker's license is suspended or revoked, salesperson licenses are \_\_\_\_\_.

**C. Corporation, partnership, or limited liability company licensed as broker**

1. In addition to the primary broker license, the entity (any of the above) must be licensed.
2. At least one officer/partner must be licensed as a broker.
  - a) *Primary broker or principal broker*: The broker on whose behalf salespersons are licensed to act.
  - b) Primary broker has responsibility for all salespeople. Licensed brokers acting as brokers within the brokerage are responsible for salespeople they manage.
    - (1) Corporation licensed as a broker
      - Primary broker: each officer of the corporation who is individually licensed to act as broker for the corporation
    - (2) Partnership licensed as a broker
      - Primary broker: each partner licensed to act as a broker for the partnership

3. A salesperson's license may be issued to an officer/partner who does not have authority over the trust account and does not supervise others.
4. An officer/partner may lose a license without automatically affecting the corporation, partnership, or LLC license.
5. Upon death or incapacity of an officer/partner, a temporary 45-day permit may be issued to a qualified salesperson (who must become an officer).
6. If entity's broker license is suspended or revoked, salesperson licenses are \_\_\_\_\_.

## VI. LICENSE RENEWAL

### A. Expiration and renewal

1. All licenses expire on \_\_\_\_\_ at the end of each \_\_\_\_\_ license period.
2. Timely renewal deadline is \_\_\_\_\_.
3. The primary \_\_\_\_\_ salesperson's license.

### B. Continuing education requirements

1. 30 hours in first license period (from initial activation to the second June 30)
2. 30 hours every license period thereafter
  - After renewal, at least 15 hours must be completed in the first 12 months of the license period.
3. Required education
  - a) 1-hour agency and 1-hour fair housing per 2-year license period
  - b) 3.75- or 7.5-hour annual module education, content determined by the Commissioner
  - c) Licensee is required to pass a test on each module for the credit to count
  - d) Agency and fair housing and module education requirement does not apply to those who exclusively practice commercial real estate

**VII. LICENSE TERMINATION AND TRANSFER****A. Termination/dismissal**

1. Broker must return salesperson's license to Commissioner within \_\_\_\_\_ days.
2. License is \_\_\_\_\_ until reactivated (within 2 years).

**B. Automatic transfer**

1. A broker may use automatic transfer to become a salesperson for another broker.
2. A salesperson may use an automatic transfer to become a salesperson for another broker.
3. Procedure
  - a) Salesperson fills in form and signs.
  - b) Broker 1 signs form (marking date and time) and destroys license; salesperson is \_\_\_\_\_.
  - c) Broker 2 signs form (marking date and time) within 5 days; salesperson is licensed again (total of 3 signatures).
  - d) Form and fee must be given to the Commissioner within \_\_\_\_\_.

**VIII. PENALTIES FOR LICENSE LAW VIOLATIONS****A. Notice to Commissioner, within \_\_\_\_\_, in writing, of any of the following:**

1. \_\_\_\_\_ (e.g., change suite in same building)
2. Suspension or revocation of any occupational license in any state
3. Civil judgment involving fraud, misrepresentation, or conversion of funds
4. Gross misdemeanor charge involving
  - a) fraud, misrepresentation, conversion of funds; or
  - b) any similar violation of a real estate licensing law.

5. \_\_\_\_\_

- a) Charge
- b) Conviction
- c) Plea of no-contest

**B. Penalties for violating Minnesota state license law**

- 1. May be a gross misdemeanor, not a felony
- 2. Civil fines not to exceed \_\_\_\_\_ per violation
- 3. Denial of licensure (initial application or renewal)
- 4. License suspension or temporary suspension during investigation
  - License ineffective during suspension
- 5. License revocation
- 6. Censure
  - Bad mark on your record; public information

**IX. BROKERAGE AND BROKER RESPONSIBILITIES**

**A. Broker’s responsibilities**

- 1. Supervise salespeople and employees—brokers have total responsibility
  - a) Must provide \_\_\_\_\_ in all locations, \_\_\_\_\_
    - Primary broker responsible even when there is a branch office manager
  - b) Violations of license law may lead to the broker being charged with \_\_\_\_\_
- 2. Deliver documents to all parties \_\_\_\_\_ or as soon as available
- 3. Retain copies of all listings, deposit receipts, cancelled checks, and trust account records for \_\_\_\_\_
- 4. Provide access to license law in the main office and each branch office

5. Manage the disclosure of listed property information by allowing only authorized individuals to disclose factual information, as provided in writing by the broker, pertaining to listed properties
  - Note: To protect against civil claims of malpractice, most brokers will purchase errors and omissions (E&O) insurance.

## B. Brokerage trust accounts and funds

1. A broker is required to maintain an interest-bearing demand account for the deposit of trust funds.
  - a) The demand account can be a savings or checking account, but it must pay the highest current passbook savings account rate of interest.
  - b) The interest earned in the account is paid to the Minnesota Housing Trust Fund.
2. The trust account may be at a
  - a) bank,
  - b) trust company,
  - c) savings and loan association,
  - d) credit union, or
  - e) a Minnesota industrial loan and thrift company.
3. Trust funds to be deposited include
  - a) down payments,
  - b) \_\_\_\_\_,
  - c) \_\_\_\_\_,
  - d) tax and insurance escrow payments,
  - e) \_\_\_\_\_, and
  - f) any funds received on behalf of any person.
4. Earnest money must be deposited in the listing broker's trust account.

5. Earnest money must be deposited by the \_\_\_\_\_ after receipt, unless both parties agree otherwise.
  - Typically when the offer becomes an executory contract
6. Brokerage trust account funds may be held or distributed by written agreement between the parties (e.g., purchase agreement) or by court order.
7. If the offer is rejected, return to buyer by the next business day.
8. If the check bounces, notify the seller immediately.
9. If it is a nondepositable item, such as a promissory note,
  - a) must \_\_\_\_\_;
  - b) give a receipt to the offeror of the item; and
  - c) authorize escrow agent in written agreement signed by offeror and escrow agent.
10. The Commissioner must be given a 10-day advance notice if closing a trust account.
11. Must keep records for \_\_\_\_\_
  - Listings/buyer representation agreements, purchase agreements, trust account records, and so on
12. Prohibited actions include the following:
  - a) Commingling is prohibited; personal funds cannot mix with trust funds.
    - Exception: brokerage personal funds used to maintain accounts and pay banking fees
  - b) A broker must not deposit \_\_\_\_\_ in the trust account.
  - c) A broker must not issue a non-sufficient funds (NSF) check from the trust account.
  - d) A broker must not use trust funds for personal reasons (conversion).

### C. Brokerage operations accounts and commission payments

1. The sellers/buyers and landlords/tenants \_\_\_\_\_ (includes all payments and commissions).
2. It is illegal for a licensed broker or salesperson to pay an unlicensed person a finder's (referral) fee.
3. A salesperson may receive 100 percent direct expense reimbursements (e.g., payment for a loaf of bread).
4. The broker may split fees or pay only
  - a) the salespeople;
  - b) a corporation owned solely by one of the brokerage firm's salespeople;
  - c) licensed Minnesota brokers;
  - d) licensed out-of-state brokers; and
  - e) parties to a current transaction \_\_\_\_\_.

## X. STANDARDS OF CONDUCT

### A. Prohibited conduct

1. License may be denied, suspended, or revoked for violation.
2. Licensees (brokers and salespersons) must not
  - a) make a false statement to the Commissioner (e.g., \_\_\_\_\_);
  - b) guarantee future profits;
  - c) disclose terms of offers to other buyers prior to presentation;
  - d) deal directly with owners who have listed with someone else or with buyers who are represented by someone else;
  - e) encourage breach of listing or purchase agreement;
  - f) discourage use of an \_\_\_\_\_;
  - g) act as a dual agent for both parties to a transaction without a signed \_\_\_\_\_ (dual agency);

- h) advertise properties unless listed;
- i) advertise in misleading fashion;
  - Does not include puffing (making non-factual extravagant claims)
- j) advertise a team name unless it is authorized by the broker, and the broker/age name is more prominent than the team name;
- k) discriminate;
- l) misrepresent through statements or omission;
- m) demand commissions without a signed listing (must be licensed at time commission is earned—cause of action);
- n) deal in contracts for deed or mortgages without a securities dealer's license;
- o) engage in price-fixing (violation of Sherman antitrust laws penalty is treble damages and a fine of up to \$10 million);
- p) pay commissions or give gifts of value to an unlicensed person;
  - Exception: parties to a transaction
- q) accept undisclosed kickbacks;
- r) include a holdover clause in a listing or buyer representation agreement;
- s) include an override (broker protection) clause that exceeds 6 months;
  - Exception: 2 years for sale or purchase of a business
- t) commingle personal funds with trust funds (exception is money identified and used to pay service charges or satisfy minimum deposit requirements);
- u) issue a non-sufficient funds (NSF) check from the trust account; or
- v) use trust funds for personal reasons (conversion).



## B. Mandatory conduct

1. Licensees, brokers, and salespersons must do the following (otherwise grounds for censure, license suspension, or revocation):
  - a) Disclose licensed status when buying, selling, or advertising licensee's own property and deposit funds in a trust account.
  - b) Disclose license status when representing a \_\_\_\_\_.
  - c) Disclose licensee's present or future financial interest in a property before negotiations.
  - d) Disclose all material facts about a listed property, even if a buyer agrees to purchase the \_\_\_\_\_.
    - (1) Licensees and sellers must disclose all \_\_\_\_\_ that could adversely and significantly affect an ordinary purchaser's use or enjoyment of the property.
    - (2) \_\_\_\_\_.
    - (3) If asked by seller to conceal, licensee should cancel listing.
    - (4) A licensee or seller can depend on a \_\_\_\_\_ to make the physical property disclosures.
      - If so, no additional seller disclosure required
    - (5) Certain stigmatized property issues are not a material fact that requires disclosure. Licensees and sellers would not disclose that the property is or was
      - (a) occupied by one with HIV or AIDS;
      - (b) was the site of a suicide, accidental death, natural death,
      - (c) perceived paranormal activity; or
      - (d) is located in a neighborhood containing any adult family home, community-based residential facility, or nursing home.

- (6) Megan's Law Disclosure: There is no duty to disclose information regarding a registered sex offender if the licensee or seller provides a mandatory written notice of how a buyer or renter can obtain this information at MN Department of Corrections 651-361-7200 or *www.corr.state.mn.us/*.
  - (7) A seller who fails to make a disclosure as required and was aware of the condition of the real property is liable to the prospective buyer who may bring a civil action within \_\_\_\_\_ after closing.
- e) Submit all written offers to the seller promptly.
  - f) Disclose estimated closing costs when presenting offers.
  - g) Give parties a complete, detailed closing statement indicating all expenditures made on their behalf.
  - h) Disclose immediately that a party is backing out.
  - i) If offering a guaranteed sale program, disclose in writing the terms and disposition of any resale profit prior to the execution of a listing agreement.
  - j) Disclose broker's licensed name in all advertisements for listed property.
  - k) Operate only under one Minnesota broker.
  - l) Submit protective list within 72 hours of expiration of listing or buyer representation agreement.
  - m) All brokers must disclose who they represent at first opportunity.
    - Residential brokers must give a written disclosure (referenced earlier) at the first substantive contact.
  - n) Disclose immediately if representation changes.

## **XI. REAL ESTATE EDUCATION, RESEARCH, AND RECOVERY FUND (REERRF)**

### **A. Real estate education, research, and recovery fund**

1. Administered by Commissioner of Commerce
2. Amount in recovery portion determined by Commissioner

3. Excess used for
  - a) education for licensees or public on housing issues,
  - b) research projects, and
  - c) defense of fund (not used to defend licensees).
4. Recovery maximums
  - a) \_\_\_\_\_ per transaction
  - b) \_\_\_\_\_ total per licensee, regardless of the number of claims
5. Remedies against licensee
  - a) Suspension of license
  - b) Repay twice the amount + 12 percent interest + \$40,000 bond.
6. Application must be made within \_\_\_\_\_ after final judgement against licensee

# UNIT 1 GLOSSARY REVIEW

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4 transactions  
45-day temporary permit  
48 hours  
adequate supervision  
buyer representation  
Commerce  
commission check

disciplinary action  
dual agency disclosure  
exempt  
facilitator  
licensed real estate broker  
listing  
purchase agreement

seller's broker  
6 years  
third business day  
trust account  
within 1 year  
within 10 days

1. The Department of \_\_\_\_\_ is the division of the state government that oversees and regulates the real estate industry in Minnesota.
2. A real estate broker or salesperson providing services without taking on fiduciary duties is acting as a \_\_\_\_\_.
3. An individual may be involved in no more than \_\_\_\_\_ in a 12-month period without becoming licensed or hiring a licensee.
4. Unless the buyer and seller agree otherwise, a broker must deposit earnest money into the trust account no later than the \_\_\_\_\_ after receipt.
5. To avoid commingling, a broker receiving a \_\_\_\_\_ from a seller must not deposit the check into the trust account.
6. Brokers must provide all employees and salespersons working on behalf of the broker with \_\_\_\_\_.
7. A commercial loan broker must be a \_\_\_\_\_ real estate broker.
8. A broker who relocates her office to a different office building must notify the Commissioner \_\_\_\_\_ of the move.
9. A court-appointed trustee, an attorney, and a residential building owner's employees leasing rental units are \_\_\_\_\_ from real estate licensing requirements.
10. Upon passing the real estate exam, the candidate must complete the licensing requirements and submit an application \_\_\_\_\_.
11. A licensee is required to sign the \_\_\_\_\_ and consent in the listing and buyer representation agreements but *NOT* the disclosure and consent in the \_\_\_\_\_.
12. A salesperson acting as facilitator and showing a property listed by the salesperson's brokerage must act as the \_\_\_\_\_.
13. A \_\_\_\_\_ may be issued to a qualified salesperson if the primary broker becomes incapacitated.
14. Brokers must keep and maintain records of trust account activity, representation agreements, purchase agreements, and so on for a minimum of \_\_\_\_\_.
15. A loan broker must deposit any fees into an escrow account within \_\_\_\_\_ after receipt.

# UNIT 1 QUIZ

1. A salesperson with ABC Realty is working as a facilitator with a buyer. The buyer would like the salesperson to show him a property listed by ABC Realty. Which of the following statements is *TRUE*?
  - a. The salesperson can show the property as a facilitator.
  - b. The buyer can only view the property through another company.
  - c. The salesperson must represent the seller.
  - d. The salesperson must represent the buyer.
2. A listing broker must give a buyer an agency disclosure
  - a. verbally, at first substantive contact.
  - b. before closing.
  - c. in writing, at first substantive contact.
  - d. prior to writing a purchase agreement.
3. Which state agency regulates real estate licensees?
  - a. Attorney General
  - b. Department of Labor and Industry
  - c. Minnesota Association of REALTORS®
  - d. Department of Commerce
4. Which of the following would *NOT* need a real estate license when helping another sell real estate for a fee?
  - a. A licensed practicing attorney
  - b. A trustee selling property for a trust
  - c. An employee selling the employer's residential apartment building
  - d. A daughter selling her father's home
5. ABC Realty has relocated their office to a different suite in the same office building. ABC must notify the Commissioner of Commerce within
  - a. 72 hours.
  - b. 3 business days.
  - c. 10 days.
  - d. 21 days.
6. A prospective licensee passed the salesperson examination April 4. The prospective licensee must complete the remaining requirements and apply for her license by
  - a. April 3 of the following year.
  - b. April 4 of the following year.
  - c. June 30 of the following year.
  - d. July 1 of the following year.
7. A client sued a real estate salesperson. On January 12, the court issued a final judgment against the salesperson to pay the client \$100,000. After paying the client \$65,000, the salesperson declared bankruptcy and has no remaining assets. To receive reimbursement from the real estate education, research, and recovery fund (REERRF), the client must apply
  - a. within 10 days.
  - b. within 3 business days.
  - c. by June 30.
  - d. by January 12 of the following year.
8. Minnesota license law contains special provisions for loan brokers. Which of the following is *NOT* a requirement for loan brokers?
  - a. Provide an agency disclosure form
  - b. Hold a real estate broker's license
  - c. Allow clients a 3-day recession period
  - d. Deposit fees into escrow within 48 hours
9. A salesperson has a home listed. A broker has a client who wants to write an offer using a promissory note as earnest money, and asks the salesperson if that would be okay. Which of the following is *TRUE*?
  - a. The salesperson must have her broker's permission to receive a non-depositable item.
  - b. The salesperson must have the seller's permission to accept the offer.
  - c. The broker must establish an escrow at a title company.
  - d. The seller and the buyer must sign an escrow agreement.

10. Brokers owe fiduciary obligations to
- the parties who employ them.
  - the parties who pay them.
  - the salespeople who bring the listings.
  - all parties in the transaction.
11. Who renews the salesperson's license?
- The salesperson
  - The Commissioner of Commerce
  - The primary broker
  - The branch manager
12. Which of the following would be required to hold a real estate license when working for another and for a fee?
- A mobile home broker who sells mobile homes not attached to land
  - Someone who will manage 3 properties that she owns
  - An auctioneer working for an attorney
  - A commercial loan broker
13. A licensee and his sister have formed a corporation to invest in real estate. The licensee must disclose
- that he is licensed.
  - the maximum amount they are willing to pay.
  - the percentage of ownership vested in the licensee.
  - the corporation's desired capitalization rate.
14. A licensed real estate broker must retain copies of listings, purchase agreements, and trust account records for a minimum of
- 3 years.
  - 5 years.
  - 6 years.
  - 10 years.
15. An individual must obtain a real estate license if the individual buys or sells in \_\_\_\_ or more transactions during any 12-month period of time without a licensee representing the individual.
- 4
  - 5
  - 10
  - 25
16. Builders who sell no more than \_\_\_\_ units per year are *NOT* required to have a real estate license.
- 20
  - 25
  - 40
  - 50
17. For an officer of a real estate company to take an active role in managing sales people and employees, the officer must
- register all real estate transactions with the Commissioner.
  - have a salesperson's license.
  - have a broker's license.
  - have a limited broker's license.
18. The maximum that may be recovered from the real estate education, research, and recovery fund in any one transaction is
- \$25,000.
  - \$150,000.
  - \$250,000.
  - \$350,000.
19. A person who violates a provision of the Standard of Conduct law may face all of the following *EXCEPT*
- temporary suspension of license.
  - prosecution for a felony.
  - prosecution for a gross misdemeanor.
  - permanent revocation of license.
20. Which of the following would require disclosure as a material fact?
- The seller has HIV or AIDS.
  - The property was the site of a suicide.
  - The property next door is a community-based residential facility.
  - The property was used as a methamphetamine laboratory.
21. When a real estate licensee receives earnest money from a prospective buyer, the earnest money must be deposited in the listing broker's trust account no later than the \_\_\_\_ business day after receipt by the listing broker.
- second
  - third
  - fourth
  - fifth

22. Which of the following would *NOT* be required to be in writing and signed by the real estate agent?
- a. Property disclosure statement
  - b. Dual agency disclosure in the purchase agreement
  - c. Facilitator services agreement
  - d. Dual agency disclosure in the listing
23. A salesperson or a broker performing services for a seller but *NOT* representing the seller is a
- a. seller's broker.
  - b. buyer's broker.
  - c. dual agent.
  - d. facilitator.
24. Unless otherwise agreed to in writing, a commercial property manager must deposit rents and security deposits into the
- a. property manager's trust account.
  - b. owner's private account.
  - c. property manager's business account.
  - d. owner's business account.
25. Brokers are required to provide their employees and salespersons
- a. a workspace.
  - b. business phone answering.
  - c. adequate supervision.
  - d. approved forms.

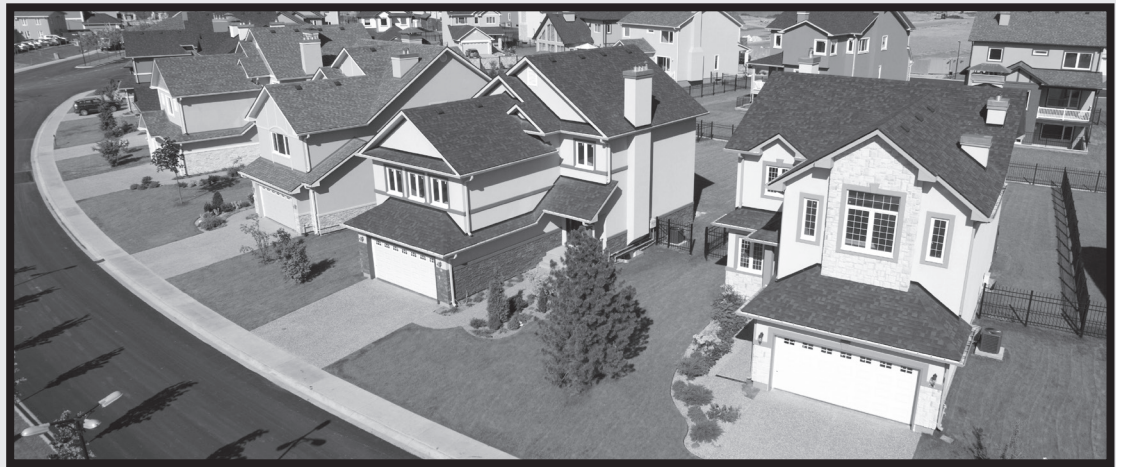
# UNIT 1 QUIZ ANSWERS

1. **c** In the event a facilitator broker or salesperson working with a buyer shows a property listed by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a seller's broker.
2. **c** At the first substantive contact, a real estate broker or salesperson shall provide an agency disclosure form to a consumer of a residential real property transaction. Incidental meetings are not substantive, but a one-on-one conversation certainly is.
3. **d** The Department of Commerce promulgates license law and oversees regulation of licensees.
4. **a** A licensed attorney is exempt from the licensing requirement. Only court-appointed trustees, such as bankruptcy trustees, are exempt. Employees, such as caretakers, are only exempt when leasing rental units in residential buildings.
5. **c** Notice in writing shall be given to the Commissioner by a licensee of any change of information, including but not limited to personal name, trade name, address, or business location, not later than 10 days after the change.
6. **b** Salespersons must complete all requirements and apply within 1 year of successfully completing the exam.
7. **d** In order to collect from REERRF, the application must be filed no more than 1 year after the judgment becomes final.
8. **a** The agency disclosure form is only required in residential real estate transactions. Loan brokers provide financing solutions for non-residential real estate.
9. **b** The seller must authorize an agent to inform others that a non-depositable item would be acceptable as earnest money; authorization would be in the listing agreement.
10. **a** Fiduciary obligations are owed to the party who employs the broker, not the party who pays the broker.
11. **c** The primary broker must renew the licenses of all qualified salespeople.
12. **d** Commercial loan brokers must have a real estate license. A cemetery owner, someone who will manage 3 owned properties, and an auctioneer working for an attorney are all exempt from holding a real estate license.
13. **a** Licensees must disclose licensed status when buying, selling, or advertising licensee's own property and deposit funds in a trust account.
14. **c** A broker's responsibilities include keeping transaction records for 6 years.
15. **b** Individuals are allowed 4 transactions within a 12-month period. Five or more transactions in a 12-month period require the individual to either be represented by a real estate agent or obtain a real estate license.
16. **b** Builders who sell no more than 25 units per year are not required to have a real estate license. However, builders do need to have a license to sell more than 25 units. Most builders obtain a limited broker's license to fulfill this requirement.
17. **c** A corporation, partnership, or limited liability company applying for a license must have at least 1 officer or partner individually licensed to act as broker on behalf of the business.
18. **b** One claimant cannot be paid more than \$150,000 out of the fund for a claim based on a single real estate transaction (no matter how much the licensee actually owes the claimant).
19. **b** A violation is not a felony offense. Violation might include the following: gross misdemeanor, civil fines not to exceed \$10,000 per violation, denial of licensure (initial application or renewal), license suspension or temporary suspension during investigation, license revocation, and censure.
20. **d** By law, it is not a material fact that the property is or was occupied by one diagnosed with HIV or AIDS; was the site of a suicide, accidental death, natural death, or perceived paranormal activity; or is located in a neighborhood containing any adult family home, community-based residential facility, or nursing home.



21. **b** When a real estate licensee receives an earnest money deposit from a prospective buyer, it must be deposited in the listing broker's trust account no later than the third business day after receipt by the listing broker.
22. **b** The dual agency disclosure in the purchase agreement is signed by the buyer and the seller, not the agent.
23. **d** A facilitator is a licensee providing services but not serving in a fiduciary capacity.
24. **a** Rents collected on behalf of clients are trust funds. Without a written agreement with specific instructions, trust funds must be deposited in the broker/manager's trust account.
25. **c** Brokers are required to provide adequate supervision of all employees and salespersons. The broker may or may not provide other items needed in the business.

# CHAPTER 2



## Property Ownership, Taxation, and Disclosures

■ **LEARNING OBJECTIVES:** *Upon completion of this unit, students should be able to*

- **differentiate** between the different forms of property ownership;
- **summarize** property taxation in Minnesota; and
- **follow** state property and environmental disclosure requirements.

## Study Plan

Before class, read Unit 2

During class, complete Glossary Review

After class, complete Quiz

## Key Points

- In Minnesota, a married couple can own property separately. However, when conveying ownership of homestead property, both spouses must sign the deed—one to buy, two to sell.
- In Minnesota, co-ownership is presumed to be a tenancy in common. The other form of co-ownership is called joint tenancy.
- In a divorce proceeding, the court may issue a decree of dissolution of marriage, which severs all joint tenancy interests, except for the ones the divorcing couple chooses to keep intact.
- Common interest communities (CIC) include condominiums, townhouses, planned communities (PUD), cooperatives, and timeshares. The purchaser of a condominium unit or a townhouse, or who makes a purchase in a planned community buys an individual unit, (fee simple ownership) plus an undivided interest in the common areas (co-ownership as a tenant in common). A cooperative purchaser buys shares of stock in the cooperative corporation and receives a proprietary lease for a unit. A timeshare purchaser buys the use of a unit for a particular time period.
- The Subdivided Lands Act is essentially a consumer protection law that protects buyers of property governed under the Act.
- General property taxes are called *ad valorem* taxes because the amount of the tax is based on the value of the property. General property taxes are levied to support the general operation and services of government. Special assessments are levied for the cost of specific local improvements, and only those pieces of property that benefit from the improvement are taxed.
- The seller is required to disclose all material facts the buyer is aware of that could adversely and significantly affect an ordinary buyer's use and enjoyment of the property.
- Minnesota law requires sellers to disclose information concerning septic systems and wells before a purchase agreement is signed.

## ■ FORMS OF OWNERSHIP

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Minnesota recognizes estates in terms of the number and connectedness of the owners. The estates are divided into estates in severalty, tenancy in common, and joint tenancy.

### Ownership (estate) in severalty

Ownership in severalty means sole and separate ownership by one individual or entity. In Minnesota, a married individual may own real estate in severalty. However, statutes provide spousal rights protection for the non-owning spouse by

requiring that the spouse must sign any documents transferring ownership. This is true regardless of marital status at the time ownership was acquired. Either spouse may separately appoint an attorney-in-fact to sell or convey any real estate owned by that spouse.

**Homestead property versus non-homestead property.** In Minnesota, property owners can choose to homestead their property, to receive protection in accordance with the Homestead Act (*see* unit 3 for further discussion on the Homestead Act). According to state statutes on spousal interests and homestead property, if the owner is married, no conveyance of the homestead shall be valid without the signatures of both spouses. A spouse's signature may be made by the spouse's attorney-in-fact, which grants that individual the power of attorney.

For properties in Minnesota that have not been homesteaded, and therefore, do not have the same protections under the Homestead Act, the statute states that “a husband and wife, by their joint deed, may convey the real estate of either. A spouse, by separate deed, may convey any real estate owned by that spouse, except the homestead, subject to the rights of the other spouse therein; and either spouse may, by separate conveyance, relinquish all rights in the real estate so conveyed by the other spouse. Either spouse may separately appoint an attorney-in-fact to sell or convey any real estate owned by that spouse, or join in any conveyance made by or for the other spouse.”

In other words, only homestead property requires the signature of both spouses on the deed. Non-homestead real estate can be sold separately (separate deed) by the spouse who bought it, with one signature on the deed. However, such real estate is conveyed “subject to” the spousal interest of the other spouse. That spousal interest can be conveyed via a separate deed, usually a quit claim deed. Therefore, homestead property requires one deed with two signatures, and other property can be sold with either one deed with two signatures, or two separate deeds with two separate signatures.

One to buy, two to sell

Since homesteaded property owned by a married Minnesotan cannot be sold or otherwise transferred without the signature of both spouses, the phrase, “one to buy, two to sell” has become commonplace in real estate circles.

**Syndication.** Syndication refers to the formation of a group, typically for business or investment purposes. Examples include corporations, LLCs, and partnerships. Individual members of the syndication own a share of the entity. The syndicate is a legal entity and may be an individual entity that owns a property in severalty.

In some cases, ownership interests in a syndicate are securities. Securities are interests that may be bought and sold separately from the entity itself (shares of stock in a corporation, for example). The sale of securities is regulated federally by the Securities and Exchange Commission (SEC) and in Minnesota by the Commissioner of Commerce under the state *Blue Sky* laws. These regulations generally require registration of securities, and those who sell these interests for another and for a fee may be required to obtain a securities license.

## Multiple ownership

Multiple ownership means that more than one individual or entity owns the property—more than one name appears on the property deed. Multiple ownership is also referred to as co-ownership.

The major difference between tenancy in common and joint tenancy lies in the disposition of an owner's interest in the property upon death. In *Modern Real Estate Practice*, we looked at the two main forms of multiple ownership: tenancy in common and joint tenancy. Let's now look at how these forms of ownership are addressed in Minnesota.

Tenancy in common allows for unequal shares of co-ownership. Example: One owner holds 40 percent, and the other, 60 percent.

**Tenancy in common.** Tenancy in common is a form of co-ownership between two or more people wherein each co-owner holds an undivided interest in the entire property. While tenancy in common allows for unequal shares of ownership, equal shares will be assumed unless otherwise specified.

In Minnesota, co-ownership of a property is assumed to be as tenants in common with equal shares of ownership unless expressly declared otherwise.

There is no right of survivorship in a tenancy in common. If one of the co-owners dies, the deceased owner's ownership interest passes to heirs, rather than the surviving co-owners.

Joint tenancy—each co-owner has an equal interest in the property.

**Joint tenancy.** In Minnesota, a joint tenancy is created when a grant or devise of land is expressly declared to be in joint tenancy. Each joint tenant has an equal interest in the property and an equal right to possess the entire property. As in a tenancy in common, a particular joint tenant cannot be restricted to any specific part of the property.

Title passes directly to the other joint tenant(s) upon death of one joint tenant, which means a joint tenancy interest can not be willed or inherited. The heirs of a deceased joint tenant have no rights or interest in the property, as it no longer belongs to the joint tenant at the moment of death. This means joint tenancy property does not have to go through the probate process. Instead, the surviving owners record the death certificate and an executed affidavit of survivorship in order to eliminate the deceased's interest in the property.

Sale of joint tenant interest creates tenancy in common.

**Severance of joint tenancy.** If all the joint tenants want to sever the joint tenancy, they can do so by signing an agreement to that effect. In Minnesota, this agreement does not have to be recorded to be effective.

Each joint tenant also has the power to sever the joint tenancy without the consent of the other joint tenants. In Minnesota, this can be done by recording an instrument of severance in the county where the joint tenancy property is located. In some cases, the instrument of severance is simply a declaration of intent to sever the joint tenancy.

In Minnesota, a severance of a joint tenancy is legally effective when only one of the following requirements is met:

- The instrument of severance is recorded in the office of the county recorder or the registrar of titles in the county where the real estate is situated.
- The instrument of severance is executed by all of the joint tenants.
- The severance is ordered by a court of competent jurisdiction.
- A severance is effected pursuant to bankruptcy of a joint tenant.

Furthermore, if a joint tenant transfers her shares in the property to a third party, that deed will act as an instrument of severance. In other words, if an owner sells her joint tenancy, the new owner takes it as a tenant in common. The other owners still own the property as joint tenants to each other, but are now tenants in common to the new co-owner.

Decree of dissolution severs all joint tenancies except joint tenancies that are specifically preserved.

In a **divorce** proceeding or legal separation, a court may issue a **decree of dissolution** of a marriage. This decree **severs** all joint tenancy interests in real estate between the parties to the marriage. However, the parties to the marriage and the court may agree to continue to hold a particular property as joint tenants after the divorce. In this event, the decree would specifically declare that the parties will continue to hold an interest in real estate as joint tenants. In other words, a decree of dissolution of a marriage severs all joint tenancy interests in real estate between the parties to the marriage, except to the extent the decree declares that the parties continue to hold an interest in real estate as joint tenants.

**Partition lawsuit.** As stated in *Modern Real Estate Practice*, both tenancy in common and joint tenancy can be severed, unilaterally, by a partition lawsuit. A partition suit is a legal action that divides the interests in the property. This can occur in one of two ways. If possible, the court will physically divide the land, granting each former tenant their fair share. If it is not possible to divide the property fairly, the court can order the property to be sold. The proceeds of the sale are then divided among the former tenants.

**Tenancy by the entirety.** A third form of co-ownership, which does not apply in Minnesota, is called tenancy by the entirety. This is a special form of ownership available exclusively to married couples.

## ■ COMMON INTEREST OWNERSHIP

Certain types of real estate developments are structured (physically and legally) to combine sole ownership with co-ownership. These developments, which are sometimes referred to as **common interest communities**, or CICs, include the following:

- Condominiums and townhouses
- Planned communities
- Cooperatives
- Timeshares

The development and sale of these types of properties are regulated under the Minnesota Common Interest Ownership Act and related laws.

Condominium: buyer acquires ownership of an individual unit, plus an interest in the common elements

## Condominiums

The term condominium was coined to describe an ownership situation in which people have common control or dominion over property that is jointly owned.

When purchasers buy a condominium unit, they receive ownership of the individual unit in **severalty**, plus an undivided interest in the condominium's **common elements**. They share ownership and use of the common elements with the other unit owners, as tenants in common.

The common elements (sometimes called common areas) typically include the grounds, parking lot, lobby, hallways, elevators, and stairs. Shared structural elements of a building, such as the roof and exterior walls, are also common elements. In some condominiums, the common elements include recreational amenities, such as a tennis court or a swimming pool.

Residential condominiums are popular in many urban and resort areas. Condominium ownership may also be used for commercial or business properties, such as office and professional buildings, medical clinics, shopping centers, or recreational developments.

**Creation.** Condominiums can be created in two ways: 1) a developer may purchase land and obtain a construction loan to build a condominium project; or 2) an existing building (usually one with rental units) may be converted into a condominium.

120-day notice for conversion of apartments to condominiums

Under Minnesota law, when an existing building is converted into a condominium, the developer is required to give the current tenants at least 120 days' notice before requiring them to vacate. The current tenants have an option to purchase their units for 60 days after the notice is sent.

Current tenants have 60-day option to buy.

Furthermore, tenants, or subtenants, in possession of a residential unit may demand to be given 60 additional days before being required to vacate, if any of them, or any person residing with them, is 62 years of age or older, disabled, or a minor child on the date the notice is given.

Declaration must be recorded to establish condominium or other common interest community

To establish a condominium (whether it's new construction or a conversion), the developer is required to record a condominium declaration. The declaration must state the name of the condominium and provide detailed information about the property. It is required to include a legal description of the land and a plat showing the location and dimensions of the improvements, along with the boundaries and floor plan of each unit.

In addition, all of the common elements and limited common elements must be described in the declaration. A limited common element is any common element or area of the property that is reserved for the use of a certain unit or certain units, to the exclusion of other units. Some examples of **limited common elements** are assigned parking spaces, storage units, and balconies. The declaration specifies which unit or units each limited common element is assigned to.

The undivided interest each unit owner holds in the common elements (stated as a fraction or percentage) is listed in the declaration, along with what fraction or percentage of the common expenses each owner will be required to pay. The declaration also states the number of votes each owner has in the homeowners' association.

The declaration indicates the purpose the units are intended to be used for—residential, commercial, or retail use, for example. It also specifies any restrictions on use or transfer of a unit.

Certain major changes in a condominium—relocation of unit boundaries, for example—can only be made if an amendment to the declaration is approved by the homeowners' association and recorded. At least 67 percent approval by association members is required for most amendments.

The declaration will also state whether or not time shares will be allowed, and the parameters under which the timeshares will operate (which units will be timeshares, the minimum time increment, and so on). Timeshares are discussed later in this unit.

Homeowners' association: manages the common elements in a condominium

**Homeowners' association.** The declaration provides for the formation of a homeowners' association (often called a condominium association). The association is made up of the owners of the individual condominium units; each unit owner is automatically a member of the association. The main purpose of the association is to manage, control, regulate, and maintain the common elements in the condominium.

The homeowners' association holds a meeting at least once each year.

The association members elect a board of directors. The board of directors is responsible for making decisions concerning maintenance, repair, and management of the condominium. The board of directors governs the condominium in accordance with the bylaws of the association. The bylaws require periodic meetings of the association members—at least once per year, according to Minnesota statutes—and an annual report on the association's finances.

The association (usually through the board of directors) adopts rules, regulations, and budgets. It creates and amends bylaws. It also imposes and collects **assessments** for common expenses.

The association has the power to assess each unit for funds necessary for the maintenance, repair, or replacement of any of the common elements (e.g., roof replacement). Each unit is assessed an amount based on its assigned percentage. If a unit owner doesn't pay the required assessments, a lien may be placed on the unit and eventually the unit may be foreclosed.

■ **FOR EXAMPLE** If a unit owner has a 2 percent interest in the common elements, her portion of any maintenance costs would be 2 percent of the total.

**Voting power.** In many situations, the members of the association—the unit owners themselves—vote on various issues concerning the condominium. Normally, the voting power of each owner in the association is measured by percentage of interest.



■ **FOR EXAMPLE** If a unit owner has a 3 percent undivided interest in the common elements, her vote in the association would count as 3 percent. But some associations disregard the percentage of interest and allow each unit owner one vote.

**Title and taxation.** Each purchaser of a condominium unit receives a deed for each individual unit. The deed gives a legal description of the unit and states what percentage of interest in the common elements the new owner is receiving.

■ **FOR EXAMPLE** Deed language may read as, “Unit 6 in Horizon Hills Condominium, as shown in the declaration recorded in Ramsey County under recording number 8504010239, together with an 8 percent undivided interest in the common elements of said condominium.” (An undivided interest in the common elements cannot be sold separately from the unit it is allocated to.)

Each unit in a condominium is assessed and taxed separately. The common elements are not taxed, since the assessed value of each unit includes the value of the percentage of interest in the common elements that go along with the unit.

**Insurance.** The association maintains two types of insurance: commercial general liability insurance and property insurance. The commercial general liability policy protects against claims and liabilities arising in connection with the ownership, use, or management of the property. The property insurance covers the full insurable replacement cost of the common elements. Insurance maintained by the association does not cover a unit owner’s furnishings and other personal property, or most injuries that occur inside a unit. A unit owner who wants to be fully covered must purchase separate hazard and liability insurance for the unit.

**Financing.** Since individual condominium units are separately owned, they can be separately financed. An owner may mortgage his own unit. If the owner defaults, the lender may foreclose on the individual unit. The rest of the unit owners in the condominium are not affected.

**Disclosure and rescission rights.** Minnesota’s Common Interest Ownership Act includes a number of consumer protection provisions intended to protect unit buyers.

When a condominium developer sells a unit to a buyer, the law requires a disclosure statement be given to the buyer before title is conveyed. In fact, the disclosure statement should always be provided to a condominium buyer before a purchase agreement is signed.

A buyer who does not receive a copy of the disclosure statement at least 10 days before signing a purchase agreement has a right to rescind (cancel) the agreement within 10 days after receiving the statement. If the agreement is rescinded, the buyer’s earnest money must be refunded in full, and the real estate agent is not entitled to a commission.

However, if the buyer was given the disclosure statement at least 10 days before signing the purchase agreement, the buyer has no right of rescission. That’s why most real estate agents make sure buyers receive a disclosure statement as soon as

Condominium buyers must receive disclosure statement

Right to rescind purchase agreement within 10 days after receipt of disclosure statement

possible. It is a common practice to give prospective buyers the statement when they first view the property.

Note that the right of rescission ends when title is conveyed to the buyer, even if the 10-day period following receipt of the disclosure statement has not yet elapsed.

**Contents of disclosure statement.** Along with various other information, the required disclosure statement must include all of the following information:

- A general description of the condominium
- The name and address of the declarant (the developer)
- A copy of the declaration (not necessarily including the plat) and any amendments
- The association's articles of incorporation and bylaws
- Any recorded covenants, conditions, and restrictions
- Any contracts or leases to be signed by the buyer at closing
- A brief description of contracts or leases charged to the association (for example, a property management contract)
- The association's budget, including current and estimated future common expense assessments
- A description of insurance coverage
- Information about any liens that will continue to affect title to the unit after conveyance
- The terms of any warranties provided by the declarant

The disclosure statement is also required to include an explanation of the buyer's 10-day right of rescission.

**Resale documents.** The disclosure statement requirement applies when a condominium unit is sold to a buyer by the declarant. When a unit owner eventually resells the unit, she is also required to fulfill certain disclosure requirements. The seller must give the new buyer copies of the declaration, the association's articles of incorporation and bylaws, any rules and regulations, and any amendments.

In addition, the seller is required to obtain a resale disclosure certificate from the homeowners' association and give this certificate to the buyer. The certificate, which must be dated no more than 90 days earlier than the date the purchase agreement is signed, provides current information concerning the association's finances and the common expenses and fees associated with the unit being purchased.

The buyer's 10-day right of rescission applies to the resale of a unit, as well as to a sale by the declarant. If the seller fails to give the buyer the resale certificate and other required documents at least 10 days before the purchase agreement is signed, the buyer may rescind the agreement within 10 days after receiving the documents.

**Termination of condominium status.** Condominium status is not necessarily permanent. If unit owners holding at least 80 percent of the voting rights in the association vote in favor of it, a condominium can be terminated by written agreement. The approval of lenders holding first mortgages against 80 percent of

the units must also be obtained. The condominium property will be sold, with the proceeds distributed among the former unit owners, and the association will be dissolved.

### Town houses

Town houses, like condominiums, combine ownership in severalty with tenancy in common (an undivided interest in the common elements). But in a town house development, each owner not only owns a dwelling unit, but also owns the lot the home is located on in severalty. In most cases, town houses are regulated as condominiums under the Minnesota Common Interest Ownership Act; the same requirements concerning the declaration and disclosure statements apply.

### Planned community

Minnesota law defines a *planned community* as a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be a part of a planned community. A planned community is often referred to as a planned unit development, or PUD.

PUDs are a relatively recent land use idea, and often allow for more efficient land development. By using the PUD concept, the same number of housing units may be built upon a parcel of land as in traditional development, but the use of a PUD may allow for more open spaces and fewer streets.

Though similar, a PUD is different from a condominium. An owner in a PUD owns a lot; there is typically no direct ownership interest in the common areas, and the community association is in corporate form.

### Cooperatives

Another form of common interest community is the cooperative. Like most condominiums, most cooperatives are residential buildings, although they may also be used for commercial or retail purposes.

Title to a cooperative building (and the surrounding land) is generally held by a corporation formed for that purpose. A person who wants to live in the building buys shares of stock in the corporation, instead of renting or buying a unit. The building's residents are the corporation's stockholders.

■ **FOR EXAMPLE** A cooperative has a total of 33 units. There are 1-, 2-, and 3-bedroom units. The units on the west side of the building have a view overlooking the lake, and are therefore valued higher than the units with no view. The units are assigned individual values running from 20 to 40 shares. The total value of the complex is 1,000 shares. Johnson wants to live in a 1-bedroom unit with no view. His unit is valued at 20 shares. He must purchase 20 shares of stock in the cooperative corporation. Davis wants to occupy a 2-bedroom unit with a view of the lake. Her unit is valued at 35 shares. She must purchase 35 shares of stock in the corporation.

Each stockholder is given a proprietary lease for a particular unit. A proprietary lease has a longer term than most ordinary leases, and gives the stockholder

Cooperative is run by tenants' association, which is managed by a board of trustees

Cooperative buyers purchase shares of stock (personal property) and receive a proprietary lease.

One blanket mortgage and one tax bill for entire cooperative building

considerably more rights than an ordinary tenant would have. The lease typically does not state a fixed rental amount for the term of the lease. Instead, each year the amount that will be needed to pay the property's expenses (the mortgage, insurance, operating expenses, and so on) is estimated. Each stockholder is then assessed a share of that amount based on percentage of ownership.

■ **FOR EXAMPLE** In the previous example, Johnson owns 20 shares, which is 2 percent of the total value of the complex. Davis owns 35 shares, which is 3½ percent of the total value of the complex. Johnson must pay 2 percent of the property's expenses, while Davis must pay 3½ percent.

**Regulation of co-ops.** Residential cooperatives established in Minnesota since June 1, 1994, are generally subject to the Minnesota Common Interest Ownership Act, and cooperatives established before that date may also elect to be governed by the act. However, cooperatives with 12 units or less are usually exempt from the requirements of the act.

When a cooperative is subject to the Minnesota Common Interest Ownership Act, the declarant and subsequent sellers must fulfill most of the same disclosure requirements that apply to condominium sales. Buyers have a 10-day right of rescission if a disclosure statement or resale documents are not provided at least 10 days before a purchase agreement is signed.

A cooperative that is not subject to the Common Interest Ownership Act may be regulated under the Subdivided Lands Act. The Subdivided Lands Act is covered later in this unit.

**Creation of a co-op.** Under the Minnesota Common Interest Ownership Act, a cooperative is established by recording a declaration and a deed granting title to the property to the cooperative corporation. The declaration must fulfill most of the same requirements as a condominium declaration.

**Tenants' association.** The corporation that owns the cooperative property is usually the cooperative tenants' association, the equivalent of the homeowners' association in a condominium.

A cooperative tenants' association is managed by a board of trustees. The trustees are elected by the members of the association (the stockholder/tenants). A majority of the trustees must be members of the association and residents of the co-op themselves.

Under the Common Interest Ownership Act, a cooperative tenants' association has the same responsibilities and powers as a condominium association. The association and its board manage the cooperative according to the guidelines set out in the association's bylaws. The board has the power to levy assessments to cover the cooperative's common expenses, such as the cost of maintenance, repairs, and insurance.

A member of a cooperative tenants' association is not allowed to transfer an ownership interest in the association (by selling shares of stock) without also transfer-

ring the possessory interest evidenced by the proprietary lease in his cooperative unit.

**Financing and taxation.** In a typical cooperative, there is a single blanket mortgage on the entire building, and the entire building is assessed as a single parcel for tax purposes. This is in contrast to a condominium, where each individual unit (along with its undivided interest in the common elements) is financed and taxed as a separate parcel of real estate.

The financial interdependence of all of the stockholders is one of the chief disadvantages of a cooperative. If an individual stockholder defaults on her share of the property's expenses, the other stockholders must make up the difference, or run the risk that the entire building could be foreclosed on or sold at a tax sale. They can then seek reimbursement from the stockholder who did not pay. If that stockholder still doesn't pay, she can be terminated as a stockholder.

Under the Minnesota Common Interest Ownership Act, the required disclosure statement for a cooperative must include a statement explaining how a stockholder's interest would be affected if the association failed to make the mortgage payments or pay the real estate taxes on the property.

In a **timeshare** arrangement, a co-owner has the exclusive right to possess the property for a specified time period each year.

### Timesharing

Timesharing is usually—but not always—a special type of condominium ownership. Instead of purchasing an entire unit, buyers purchase the use of a unit for a particular time period.

■ **FOR EXAMPLE** Alice has a timeshare interest in a condominium unit in Palm Springs. Alice's interest gives her the right to use the unit from December 1 through December 15 each year. She schedules her vacation during that period. Bob, Carl, Diane, Elizabeth (and so on) have similar interests in the same unit, each for a different annual period.

Each timeshare owner purchases his interest for a fraction of the total cost of the unit. A timeshare arrangement could be developed for any kind of housing, but it has been most commonly used for resort condominiums.

Timeshares in Minnesota are governed by the Minnesota Common Interest Ownership Act and by the Subdivided Lands Act. A real estate agent should be aware that most sales of timeshare interests must meet the disclosure requirements of one of these two laws. If the Subdivided Lands Act applies, real estate agents are required to give purchasers a right of rescission that runs for 5 days from receipt of an executed purchase agreement.

## ■ SUBDIVIDED LANDS ACT

Some common interest ownership communities, such as timeshares, are governed under Chapter 83 of Minnesota statutes, the **Subdivided Lands Act**.

*Subdivision* or *subdivided land* means any real estate, wherever located, improved or unimproved, which is divided or proposed to be divided for the purpose of sale or lease, including sales or leases of any timeshare interest.

The act generally applies to any real estate divided for sale or lease, located outside of an incorporated Minnesota municipality, which is offered or sold in Minnesota. In the wording of this law, *sale* refers to any transfer of an interest in real estate, including a lease. Timeshares and some cooperative housing transactions are also covered by the act.

The Subdivided Lands Act does not apply to subdivisions with 10 parcels or less, or to condominiums and other common interest communities that are regulated under the Minnesota Common Interest Ownership Act.

### Requirements

The Subdivided Lands Act requires everyone who offers or sells interests in subdivided lands to have a real estate broker's or salesperson's license. Before property covered by the Subdivided Lands Act can be offered for sale or sold, the following requirements have to be met:

- The property must be registered with the Commissioner.
- A **public offering** statement must be filed, and a copy must be given to each person to whom an offer is made (each prospective buyer). The public offering statement must disclose to prospective buyers all unusual and material circumstances or features affecting the property.
- Any advertising must be approved by the Commissioner. Approval of the advertising does not mean that the Commissioner approves or recommends the property.

The subdivider may consolidate the **registration** of additional property with an earlier registration, provided that the additional property is contiguous to the property already registered.

For property covered by the Subdivided Lands Act, a buyer (or lessee) has a five-day right of rescission. That means the buyer can rescind or cancel the purchase agreement within 5 days after receiving a legible copy of the signed purchase agreement.

## ■ PROPERTY TAXATION

Whether an individual or group takes title to an estate in severalty, a joint tenancy, or a common interest ownership community, they all will be required to pay property taxes. As was covered in *Modern Real Estate Practice*, taxing real property has long been a method of raising revenue for the government, because land has a fixed location, is relatively indestructible, is easy to assess, and is difficult to conceal.

There are two types of taxes on real property: general property taxes (also called ad valorem taxes), and special assessments (also called special improvement taxes).

Property buyers should be concerned about what the taxes on a given property are going to be. It is especially important to learn whether there are any special assessments that a buyer will be required to pay, since these are an expense in addition to the general property taxes.

General property taxes: levied to support general governmental operations

Ad valorem taxes: based on the value of the property being taxed

## General property taxes

General property taxes are levied to support the general operation and services of government, such as police and fire protection. These taxes are called *ad valorem* (meaning, *according to value*) taxes because the amount of the tax is based on the value of the property being taxed; the higher the value of the property, the higher the taxes.

**Determining the amount needed.** Every year, each taxing community prepares a budget for the next year. This budget includes all of the items the tax money will pay for, such as police salaries, local welfare programs, public libraries, park maintenance, and so on.

In Minnesota, only counties have the authority to tax property, so each community turns its budget over to the county. The county then adds up the total amount needed to cover these local budgets and may add additional county expenses, such as county road maintenance. The county then takes the total budget amount for the whole county and subtracts estimated revenue that will come from various sources, such as business licenses. The amount left over must be paid by property taxes.

Assessed property value: determined by county assessor

Board of equalization: hears and decides appeals of value assessments

**Assessed value.** The next step in the taxation process is to determine how much taxable property lies within the county. The county assessor's office has the duty of appraising each taxable piece of property.

In Minnesota, real property is appraised at least once every 4 years to determine its estimated fair market value. The assessed value of each piece of property is listed as of January 2 of each year. A property owner who is dissatisfied with the assessment of his property may appeal to a county board of equalization. The board will either affirm or reduce the assessment.

It is important to note that certain special types of property are exempt from property taxation. These exempt properties include cemeteries, public hospitals, churches, property owned by non-profit, tax exempt corporations, and government-owned property.

Class tax rates: all real property is taxed according to its category (agricultural, commercial)

**Class tax rates.** Next, tax rates are applied to all assessed property. In Minnesota, all real property is categorized into classes. Each class is then broken down into subclasses. And finally, a particular tax rate is assigned to each of these classes. There are several different classes, and each class may be taxed at a different rate.

Tax extension rate: percentage used in calculating the amount a property owner must pay in taxes

**Tax extension rate.** Once the budget has been determined, assessed values have been established, and class tax rates applied, each community will then determine a tax extension rate (sometimes called a mill rate).

■ **FOR EXAMPLE** The total assessed value of all taxable property within a particular community is \$500 million. When the class rate for each type of property is applied, the total amount is \$10 million. The total budget for this community is \$8.5 million. In order to meet their budget, the community uses a tax extension rate of 85 percent.

Tax amount: assessed value  $\times$  class tax rate  $\times$  tax extension rate

The amount that each property owner must pay is determined by multiplying the assessed value of the property by its class tax rate, then multiplying this amount by the tax extension rate.

■ **FOR EXAMPLE** Johnson owns property that is in a class that has a tax rate of 3 percent. The assessed value of his property is \$50,000. Three percent of \$50,000 is \$1,500. The tax extension rate in his community is 85 percent. Eighty-five percent of \$1,500 is \$1,275. Johnson owes property taxes of \$1,275.

This system may be a little confusing, but it is all figured out by the taxing authority. The individual owner simply gets a tax bill in the mail, stating how much she owes.

A buyer should find out how much the seller was required to pay in taxes this year, to get a rough idea of how much the taxes will be next year. What is significant to a buyer, and therefore to a real estate agent, is the assessed value of the property; the higher the assessed value, the higher the taxes.

Another important point is how expensive a particular community is. In other words, what is the community's tax extension rate? If a community's budget is high in comparison to the value of property in the community, its tax extension rate will be high. For example, the tax extension rate might be only 85 percent in one community, but 110 percent in another. The higher the tax extension rate, the more tax a property owner will have to pay.

Taxes may be paid in two installments: on May 15 and October 15

**Payment of taxes.** The property tax year in Minnesota runs from January 1 through December 31. Taxes become a perpetual lien on the property from the year in which they are assessed. In certain counties, taxes are not actually due until the following year.

Once the tax amounts have been determined, a tax bill is mailed to each property owner. Taxes may be paid in 2 installments and are due May 15 and October 15 or 21 days after the postmark date on the envelope containing the property tax statement (the tax bill), whichever occurs later.

■ **FOR EXAMPLE** The assessed value is determined as of January 2. The taxes become a lien against the property at that time. They are due and payable on May 15 and October 15.

Taxes are considered paid if the payment is received or postmarked on or before the due date.



Penalty percentage rate is higher on non-homestead properties

**Penalties for late payment.** If taxes are not paid by the due date, penalties begin to accrue. The **delinquent tax penalty** is charged as an interest rate on the unpaid balance. The penalty begins to accrue on May 16 or 21 days after the actual tax statement (the tax bill) is sent to the property owner, whichever is later.

Penalty increases each month taxes are unpaid

The initial penalty rate for homestead property is lower than the initial penalty rate charged to non-homestead property. Regardless of homestead status, the penalty rate is increased each month the taxes go unpaid. The later the tax is paid, the higher the interest percentage.

Certain commercial property classifications, such as seasonal resorts, will not incur a penalty until after June 1, provided the owner submits an affidavit attesting to the seasonal nature of their business.

The penalty percentage rate that must be paid is computed based on such things as the date of payment, the postmark date on the property tax statement, and the classification of the property. The penalty percentage rate is not based on the property's value.

Delinquent taxpayer may redeem property within time limit; otherwise, public sale

**Failure to pay.** If a property owner does not pay the taxes when due, the property is in default and may be seized by the state via a foreclosable tax lien, subject to redemption by the owner. Redemption is a right that allows the owner to reclaim the property by paying the back taxes, interest, costs, and other penalties.

The redemption period is generally 5 years for homestead property; for other types of property, it is generally 3 years or less. If the owner has not redeemed the property by the end of the redemption period, the owner will be removed from the property, and the state will offer the property for public sale.

Special assessments: levied against benefiting properties to pay for specific local improvements

### Special assessments

The second type of real estate tax is the special assessment. Special assessments are different from general property taxes in a number of ways. They are levied to pay for specific local improvements, such as streets and sewers. Only those pieces of property that benefit from the improvement are taxed, on the theory that the value of those properties will increase because of the improvement.

A levied special assessment is charged.

■ **FOR EXAMPLE** Property owners within the Thousand Oaks subdivision petitioned the city to have street lights installed. When the lights are installed, the properties within the Thousand Oaks subdivision must pay a special assessment to cover the cost of their new street lights.

Public improvement projects that result in special assessments are commonly funded by bonds issued and sold by the local agency making the improvement. Once bonds have been issued, the special assessment becomes a lien on the benefited properties and is paid together with the annual property taxes.

A pending special assessment is approved but not charged.

A problem may arise with a special assessment when property is sold after an improvement has been approved, but before the assessment is made. This is referred to as a pending special assessment.

■ **FOR EXAMPLE** Samuels owns property in the Thousand Oaks subdivision. A new street light installation has been approved, but Samuels has not yet received the special assessment bill. Samuels sells his property to Bernstein. Bernstein has no idea that street lights are being installed as a local improvement. Two months after moving into his new house, Bernstein receives a very large special assessment bill. Bernstein is not happy.

A real estate agent should ask about any special assessment liens on the property, and should also look for and inquire about any recent improvements or pending special assessments.

## ■ STATE PROPERTY/ENVIRONMENTAL DISCLOSURE REQUIREMENTS

So far in this unit, we've looked at the different ways to own property in Minnesota, as well as the taxes we have to pay on the properties we own. Now let's look at the property disclosure requirements for Minnesota.

### Residential seller's disclosure requirement

Before signing an agreement to sell or transfer residential real property, Minnesota law requires the seller to make a written disclosure about the seller's property to the prospective buyer. These disclosures can be made by filling out a *Seller's Property Disclosure Form* (see Figure 2.1). This form should be filled out by the seller(s) only, and never the listing agent.

The disclosure must include all material facts of which the seller is aware that could adversely and significantly affect

- an ordinary buyer's use and enjoyment of the property; or
- any intended use of the property of which the seller is aware.

The disclosure must be made in good faith and based upon the best of the seller's knowledge at the time of the disclosure.

**Disclosure to licensee.** A seller may provide the required disclosure form to a real estate licensee representing or assisting the prospective buyer. The written disclosure provided to the real estate licensee is considered to have been provided to the prospective buyer.

**Qualified third party.** Since it may be difficult for a seller to judge the condition of the property, the seller may depend upon a qualified third party to make the necessary disclosures. In that situation, a seller is not required to disclose information relating to the real property if the written report disclosing the information has been prepared by a qualified third party and provided to the prospective buyer. A **qualified third party** means a federal, state, or local governmental agency, or a home inspector who has the necessary expertise. A seller must disclose to the prospective buyer any material facts known by the seller that contradict any information included in the written report.

**FIGURE 2.1**

**Seller's Property Disclosure Statement**

**SELLER'S PROPERTY  
DISCLOSURE STATEMENT**

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- 1. Date \_\_\_\_\_
- 2. Page 1 of \_\_\_\_\_ pages

**3. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.**

4. **NOTICE:** This Disclosure Statement satisfies the disclosure requirements of MN Statutes 513.52 through 513.60.  
 5. Under Minnesota law, Sellers of residential property, with limited exceptions listed on page nine (9), are obligated to disclose to prospective Buyers all material facts of which Seller is aware that could adversely and significantly affect an ordinary Buyer's use or enjoyment of the property or any intended use of the property of which Seller is aware.  
 6. MN Statute 513.58 requires Seller to notify Buyer in writing as soon as reasonably possible, but in any event before closing, if Seller learns that Seller's disclosure was inaccurate. Seller has disclosure alternatives allowed by MN Statutes. See *Seller's Disclosure Alternatives* form for further information regarding disclosure alternatives. This disclosure is not a warranty or a guarantee of any kind by Seller or licensee representing or assisting any party in the transaction.

13. **INSTRUCTIONS TO BUYER:** Buyers are encouraged to thoroughly inspect the property personally or have it inspected by a third party, and to inquire about any specific areas of concern. **NOTE:** If Seller answers NO to any of the questions listed below, it does not necessarily mean that it does not exist on the property. NO may mean that Seller is unaware that it exists on the property.

17. **INSTRUCTIONS TO SELLER:** (1) Complete this form yourself. (2) Consult prior disclosure statement(s) and/or inspection report(s) when completing this form. (3) Describe conditions affecting the property to the best of your knowledge. (4) Attach additional pages, with your signature, if additional space is required. (5) Answer all questions. (6) If any items do not apply, write "NA" (not applicable).

21. Property located at \_\_\_\_\_,  
 22. City of \_\_\_\_\_, County of \_\_\_\_\_, State of Minnesota.

**23. A. GENERAL INFORMATION:**

- 24. (1) What date \_\_\_\_\_, 20 \_\_\_\_\_ did you  **Acquire**  **Build** the home?  
 -----(Check one.)-----
- 25. (2) Type of title evidence:  Abstract  Registered (Torrens)
- 26. Location of Abstract: \_\_\_\_\_
- 27. To your knowledge, is there an existing Owner's Title Insurance Policy?  Yes  No
- 28. (3) Have you occupied this home continuously for the past 12 months?  Yes  No
- 29. If "No," explain: \_\_\_\_\_
- 30. (4) Is the home suitable for year-round use?  Yes  No
- 31. (5) To your knowledge, is the property located in a designated flood plain?  Yes  No
- 32. (6) Are you in possession of prior seller's disclosure statement(s)? (If "Yes," please attach.)  Yes  No
- 33. (7) Is the property located on a public or a private road?  Public  Private
- 34. (8) For property abutting a lake, stream or river, does the property meet the minimum local government lot size requirements?  Yes  No  Unknown
- 35. If "No," or "Unknown," Buyer should consult the local zoning authority.
- 36. Are you aware of any
- 37. (9) encroachments?  Yes  No
- 38. (10) association, covenants, historical registry, reservations or restrictions that affect or
- 39. may affect the use or future resale of the property?  Yes  No
- 40. (11) easements, other than utility or drainage easements?  Yes  No
- 41. (12) Comments: \_\_\_\_\_
- 42. \_\_\_\_\_

43. **ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.**  
 MN: SPDS-1 (8/10)

FIGURE 2.1

Seller's Property Disclosure Statement (continued)

SELLER'S PROPERTY DISCLOSURE STATEMENT

44. Page 2

45. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.

46. Property located at \_\_\_\_\_.

47. B. GENERAL CONDITION: To your knowledge, have any of the following conditions previously existed or do they
48. currently exist?

49. (1) Has there been any damage by wind, fire, flood, hail or other cause(s)? [ ] Yes [ ] No

50. If "Yes," give details of what happened and when: \_\_\_\_\_

51. \_\_\_\_\_

52. \_\_\_\_\_

53. (2) Have you ever had an insurance claim(s) against your Homeowner's
54. Insurance Policy? [ ] Yes [ ] No

55. If "Yes," what was the claim(s) for (e.g., hail damage to roof)? \_\_\_\_\_

56. \_\_\_\_\_

57. \_\_\_\_\_

58. Did you receive compensation for the claim(s)? [ ] Yes [ ] No

59. If you received compensation, did you have the items repaired? [ ] Yes [ ] No

60. What dates did the claim(s) occur? \_\_\_\_\_

61. \_\_\_\_\_

62. (3) (a) Has/Have the structure(s) been altered? [ ] Yes [ ] No
63. (e.g., additions, altered roof lines, changes to load-bearing walls)

64. If "Yes," please specify what was done, when and by whom (owner or contractor):

65. \_\_\_\_\_

66. \_\_\_\_\_

67. (b) Has any work been performed on the property? (e.g., additions to the property, wiring, plumbing,
68. retaining wall, general finishing.) [ ] Yes [ ] No

69. If "Yes," please explain: \_\_\_\_\_

70. \_\_\_\_\_

71. (c) Are you aware of any work performed on the property for which
72. appropriate permits were not obtained? [ ] Yes [ ] No

73. If "Yes," please explain: \_\_\_\_\_

74. \_\_\_\_\_

75. (4) Has there been any damage to flooring or floor covering? [ ] Yes [ ] No

76. If "Yes," give details of what happened and when: \_\_\_\_\_

77. \_\_\_\_\_

78. (5) Are you aware of any insect/animal/pest infestation? [ ] Yes [ ] No

79. If "Yes," please explain: \_\_\_\_\_

80. \_\_\_\_\_

81. ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.

MN: SPDS-2 (8/10)

**FIGURE 2.1**

**Seller's Property Disclosure Statement (continued)**

**SELLER'S PROPERTY DISCLOSURE STATEMENT**

82. Page 3

**83. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.**

84. Property located at \_\_\_\_\_.

85. (6) Do you have or have you previously had any pets?  Yes  No

86. If "Yes," indicate type \_\_\_\_\_ and number \_\_\_\_\_.

87. (7) Comments: \_\_\_\_\_

88. \_\_\_\_\_

89. \_\_\_\_\_

90. **C. STRUCTURAL SYSTEMS:** To your knowledge, have any of the following conditions previously existed or do they currently exist?

91. \_\_\_\_\_

92. (ANSWERS APPLY TO ALL STRUCTURES, SUCH AS GARAGE AND OUTBUILDINGS.)

93. (1) **THE BASEMENT, CRAWLSPACE, SLAB:**

- |                             |                              |                             |                      |                              |                             |
|-----------------------------|------------------------------|-----------------------------|----------------------|------------------------------|-----------------------------|
| 94. (a) cracked floor/walls | <input type="checkbox"/> Yes | <input type="checkbox"/> No | (e) leakage/seepage  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 95. (b) drain tile problem  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | (f) sewer backup     | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 96. (c) flooding            | <input type="checkbox"/> Yes | <input type="checkbox"/> No | (g) wet floors/walls | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 97. (d) foundation problem  | <input type="checkbox"/> Yes | <input type="checkbox"/> No | (h) other            | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

98. Give details to any questions answered "Yes": \_\_\_\_\_

99. \_\_\_\_\_

100. \_\_\_\_\_

101. \_\_\_\_\_

102. \_\_\_\_\_

103. \_\_\_\_\_

104. \_\_\_\_\_

105. (2) **THE ROOF:** To your knowledge,

106. (a) what is the age of the roofing material? \_\_\_\_\_ years

107. (b) has there been any interior or exterior damage?  Yes  No

108. (c) has there been interior damage from ice buildup?  Yes  No

109. (d) has there been any leakage?  Yes  No

110. (e) have there been any repairs or replacements made to the roof?  Yes  No

111. Give details to any questions answered "Yes": \_\_\_\_\_

112. \_\_\_\_\_

113. \_\_\_\_\_

114. \_\_\_\_\_

115. \_\_\_\_\_

116. \_\_\_\_\_

117. \_\_\_\_\_

118. **ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.**

**FIGURE 2.1**

**Seller's Property Disclosure Statement (continued)**

**SELLER'S PROPERTY DISCLOSURE STATEMENT**

119. Page 4

120. **THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.**

121. Property located at \_\_\_\_\_.

**122. D. APPLIANCES, HEATING, PLUMBING, ELECTRICAL AND OTHER MECHANICAL SYSTEMS:**

123. **NOTE:** This section refers only to the working condition of the following items. Answers apply to all such  
 124. items unless otherwise noted in comments below. Personal property is included in the sale **ONLY IF**  
 125. specifically referenced in the *Purchase Agreement*.

126. **Cross out only those items not physically located on the property.**

	In Working Order		In Working Order		In Working Order			
	Yes	No	Yes	No	Yes	No		
129. Air-conditioning .....	<input type="checkbox"/>	<input type="checkbox"/>	Garbage disposal .....	<input type="checkbox"/>	<input type="checkbox"/>	Trash Compactor .....	<input type="checkbox"/>	<input type="checkbox"/>
130. <input type="checkbox"/> Central <input type="checkbox"/> Wall <input type="checkbox"/> Window			Heating system (central) .....	<input type="checkbox"/>	<input type="checkbox"/>	TV antenna system .....	<input type="checkbox"/>	<input type="checkbox"/>
131. Air exchange system .....	<input type="checkbox"/>	<input type="checkbox"/>	Heating system (supplemental) .....	<input type="checkbox"/>	<input type="checkbox"/>	TV cable system .....	<input type="checkbox"/>	<input type="checkbox"/>
132. Carbon Monoxide Detector .....	<input type="checkbox"/>	<input type="checkbox"/>	Incinerator .....	<input type="checkbox"/>	<input type="checkbox"/>	TV satellite dish .....	<input type="checkbox"/>	<input type="checkbox"/>
133. Ceiling fan .....	<input type="checkbox"/>	<input type="checkbox"/>	Intercom .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Rented <input type="checkbox"/> Owned		
134. Dishwasher .....	<input type="checkbox"/>	<input type="checkbox"/>	Lawn sprinkler system .....	<input type="checkbox"/>	<input type="checkbox"/>	TV satellite receiver .....	<input type="checkbox"/>	<input type="checkbox"/>
135. Doorbell .....	<input type="checkbox"/>	<input type="checkbox"/>	Microwave .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Rented <input type="checkbox"/> Owned		
136. Drain tile system .....	<input type="checkbox"/>	<input type="checkbox"/>	Plumbing .....	<input type="checkbox"/>	<input type="checkbox"/>	Washer .....	<input type="checkbox"/>	<input type="checkbox"/>
137. Dryer .....	<input type="checkbox"/>	<input type="checkbox"/>	Pool and equipment .....	<input type="checkbox"/>	<input type="checkbox"/>	Water heater .....	<input type="checkbox"/>	<input type="checkbox"/>
138. Electrical system .....	<input type="checkbox"/>	<input type="checkbox"/>	Range/oven .....	<input type="checkbox"/>	<input type="checkbox"/>	Water treatment system .....	<input type="checkbox"/>	<input type="checkbox"/>
139. Exhaust system .....	<input type="checkbox"/>	<input type="checkbox"/>	Range hood .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Rented <input type="checkbox"/> Owned		
140. Fire sprinkler system .....	<input type="checkbox"/>	<input type="checkbox"/>	Refrigerator .....	<input type="checkbox"/>	<input type="checkbox"/>	Windows .....	<input type="checkbox"/>	<input type="checkbox"/>
141. Fireplace .....	<input type="checkbox"/>	<input type="checkbox"/>	Security system .....	<input type="checkbox"/>	<input type="checkbox"/>	Window treatments .....	<input type="checkbox"/>	<input type="checkbox"/>
142. Fireplace mechanisms .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Rented <input type="checkbox"/> Owned			Wood-burning stove .....	<input type="checkbox"/>	<input type="checkbox"/>
143. Furnace humidifier .....	<input type="checkbox"/>	<input type="checkbox"/>	Smoke detectors (battery) .....	<input type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input type="checkbox"/>
144. Freezer .....	<input type="checkbox"/>	<input type="checkbox"/>	Smoke detectors (hardwired) .....	<input type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input type="checkbox"/>
145. Garage door opener (GDO) .....	<input type="checkbox"/>	<input type="checkbox"/>	Solar collectors .....	<input type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input type="checkbox"/>
146. Garage auto reverse .....	<input type="checkbox"/>	<input type="checkbox"/>	Sump pump .....	<input type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input type="checkbox"/>
147. GDO remote .....	<input type="checkbox"/>	<input type="checkbox"/>	Toilet mechanisms .....	<input type="checkbox"/>	<input type="checkbox"/>	Other .....	<input type="checkbox"/>	<input type="checkbox"/>

148. Comments: \_\_\_\_\_

149. \_\_\_\_\_

**150. E. SUBSURFACE SEWAGE TREATMENT SYSTEM DISCLOSURE:**

151. (A subsurface sewage treatment system disclosure is required by MN Statute 115.55.) (*Check appropriate box.*)

152. Seller certifies that Seller  **DOES**  **DOES NOT** know of a subsurface sewage treatment system on or serving  
 -----(*Check one.*)-----

153. the above-described real property. (If answer is **DOES**, and the system does not require a state permit, see  
 154. *Subsurface Sewage Treatment System Disclosure Statement.*)

155.  There is a subsurface sewage treatment system on or serving the above-described real property.

156. (*See Subsurface Sewage Treatment System Disclosure Statement.*)

157.  There is an abandoned subsurface sewage treatment system on the above-described real property.

158. (*See Subsurface Sewage Treatment System Disclosure Statement.*)

159. **ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.**

MN: SPDS-4 (8/10)

**FIGURE 2.1**

**Seller's Property Disclosure Statement (continued)**

**SELLER'S PROPERTY DISCLOSURE STATEMENT**

160. Page 5

**161. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.**

162. Property located at \_\_\_\_\_.

163. **F. PRIVATE WELL DISCLOSURE:** (A well disclosure and Certificate are required by MN Statute 1031.235.)

164. (Check appropriate box.)

165.  Seller certifies that Seller does not know of any wells on the above-described real property.

166.  Seller certifies there are one or more wells located on the above-described real property.

167. (See Well Disclosure Statement.)

168. Are there any wells serving the above-described property that are not located on the  
169. property?  Yes  No

170. To your knowledge, is this property in a Special Well Construction Area?  Yes  No

171. **G. PROPERTY TAX TREATMENT:**

172. **Valuation Exclusion Disclosure** (Required by MN Statute 273.11, Subd. 16.)

173. (Check appropriate box.)

174. There  **IS**  **IS NOT** an exclusion from market value for home improvements on this property. Any  
----- (Check one.) -----

175. valuation exclusion shall terminate upon sale of the property, and the property's estimated market value for  
176. property tax purposes shall increase. If a valuation exclusion exists, Buyers are encouraged to look into the  
177. resulting tax consequences.

178. Additional comments: \_\_\_\_\_

179. \_\_\_\_\_

180. \_\_\_\_\_

181. **Preferential Property Tax Treatment**

182. Is the property subject to any preferential property tax status or any other credits affecting the property?

183. (e.g., Disability, Green Acres, CRP, RIM, Rural Preserve)  Yes  No

184. If "Yes," would these terminate upon the sale of the property?  Yes  No

185. Explain: \_\_\_\_\_

186. \_\_\_\_\_

187. \_\_\_\_\_

188. **H. METHAMPHETAMINE PRODUCTION DISCLOSURE:**

189. (A Methamphetamine Production Disclosure is required by MN Statute 152.0275, Subd. 2 (m).)

190.  Seller is not aware of any methamphetamine production that has occurred on the property.

191.  Seller is aware that methamphetamine production has occurred on the property.

192. (See Methamphetamine Production Disclosure Statement.)

193. **I. NOTICE REGARDING AIRPORT ZONING REGULATIONS:** The property may be in or near an airport safety  
194. zone with zoning regulations adopted by the governing body that may affect the property. Such zoning regulations  
195. are filed with the county recorder in each county where the zoned area is located. If you would like to determine  
196. if such zoning regulations affect the property, you should contact the county recorder where the zoned area is  
197. located.

198. **J. NOTICE REGARDING CARBON MONOXIDE DETECTORS:** MN Statute 299F.51 requires Carbon Monoxide  
199. Detectors to be located within ten (10) feet from all sleeping rooms. Carbon Monoxide Detectors may or may not  
200. be personal property and may or may not be included in the sale of the home.

201. **ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.**

FIGURE 2.1

Seller's Property Disclosure Statement (continued)

SELLER'S PROPERTY DISCLOSURE STATEMENT

202. Page 6

203. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.

204. Property located at \_\_\_\_\_

205. K. CEMETERY ACT:

206. MN Statute 307.08 prohibits any damage or illegal molestation of human remains, burials or cemeteries. A person who intentionally, willfully and knowingly destroys, mutilates, injures, disturbs or removes human skeletal remains or human burial grounds is guilty of a felony.

209. To your knowledge, are you aware of any human remains, burials or cemeteries located

210. on the property? [ ] Yes [ ] No

211. If "Yes," please explain: \_\_\_\_\_

212. \_\_\_\_\_
213. All unidentified human remains or burials found outside of platted, recorded or identified cemeteries and in contexts which indicate antiquity greater than 50 years shall be dealt with according to the provisions of MN Statute 307.08, Subd. 7.

216. L. ENVIRONMENTAL CONCERNS:

217. To your knowledge, have any of the following environmental concerns previously existed or do they currently exist on the property?

- 219. Asbestos? [ ] Yes [ ] No Mold? [ ] Yes [ ] No
220. Diseased trees? [ ] Yes [ ] No Radon? [ ] Yes [ ] No
221. Formaldehyde? [ ] Yes [ ] No Soil problems? [ ] Yes [ ] No
222. Hazardous wastes/substances? [ ] Yes [ ] No Underground storage tanks? [ ] Yes [ ] No
223. Lead? (e.g., paint, plumbing) [ ] Yes [ ] No Other? [ ] Yes [ ] No

224. Are you aware if there are currently, or have previously been, any orders issued on the property by any governmental authority ordering the remediation of a public health nuisance on the property? [ ] Yes [ ] No

226. If answer above is "Yes," seller certifies that all orders [ ] HAVE [ ] HAVE NOT been vacated.
------(Check one.)-----

227. Give details to any question answered "Yes": \_\_\_\_\_

228. \_\_\_\_\_

229. \_\_\_\_\_

230. M. OTHER DEFECTS/MATERIAL FACTS:

231. Are you aware of any other material facts that could adversely and significantly affect an ordinary buyer's use or enjoyment of the property or any intended use of the property? [ ] Yes [ ] No

233. If "Yes," explain below: \_\_\_\_\_

234. \_\_\_\_\_

235. \_\_\_\_\_

236. \_\_\_\_\_

237. N. ADDITIONAL COMMENTS:

238. \_\_\_\_\_

239. \_\_\_\_\_

240. \_\_\_\_\_

241. ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.



**FIGURE 2.1****Seller's Property Disclosure Statement (continued)****SELLER'S PROPERTY  
DISCLOSURE STATEMENT**

242. Page 7

**243. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.**

244. **O. WATER INTRUSION AND MOLD GROWTH:** Recent studies have shown that various forms of water intrusion  
 245. affect many homes. Water intrusion may occur from exterior moisture entering the home and/or interior moisture  
 246. leaving the home.

247. Examples of exterior moisture sources may be

- 248. • improper flashing around windows and doors,
- 249. • improper grading,
- 250. • flooding,
- 251. • roof leaks.

252. Examples of interior moisture sources may be

- 253. • plumbing leaks,
- 254. • condensation (caused by indoor humidity that is too high or surfaces that are too cold),
- 255. • overflow from tubs, sinks or toilets,
- 256. • firewood stored indoors,
- 257. • humidifier use,
- 258. • inadequate venting of kitchen and bath humidity,
- 259. • improper venting of clothes dryer exhaust outdoors (including electrical dryers),
- 260. • line-drying laundry indoors,
- 261. • houseplants—watering them can generate large amounts of moisture.

262. In addition to the possible structural damage water intrusion may do to the property, water intrusion may also result  
 263. in the growth of mold, mildew and other fungi. Mold growth may also cause structural damage to the property.  
 264. Therefore, it is very important to detect and remediate water intrusion problems.

265. Fungi are present everywhere in our environment, both indoors and outdoors. Many molds are beneficial to  
 266. humans. However, molds have the ability to produce mycotoxins that may have a potential to cause serious health  
 267. problems, particularly in some immunocompromised individuals and people who have asthma or allergies to mold.  
 268.

269. To complicate matters, mold growth is often difficult to detect, as it frequently grows within the wall structure. If you  
 270. have a concern about water intrusion or the resulting mold/mildew/fungi growth, you may want to consider having the  
 271. property inspected for moisture problems before entering into a purchase agreement or as a condition of your  
 272. purchase agreement. Such an analysis is particularly advisable if you observe staining or musty odors on the  
 273. property.

274. For additional information about water intrusion, indoor air quality, moisture or mold issues, go to the Minnesota  
 275. Association of REALTORS® web site at [www.mnrealtor.com](http://www.mnrealtor.com).

276. **ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.**

MN: SPDS-7 (8/10)

FIGURE 2.1

Seller's Property Disclosure Statement (continued)

SELLER'S PROPERTY DISCLOSURE STATEMENT

277. Page 8

278. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.

279. Property located at \_\_\_\_\_.

280. P. NOTICE REGARDING PREDATORY OFFENDER INFORMATION: Information regarding the predatory
281. offender registry and persons registered with the predatory offender registry under MN Statue 243.166
282. may be obtained by contacting the local law enforcement offices in the community where the property
283. is located or the Minnesota Department of Corrections at (651) 361-7200, or from the Department of
284. Corrections web site at www.corr.state.mn.us.

285. LISTING BROKER AND LICENSEES MAKE NO REPRESENTATIONS AND ARE
286. NOT RESPONSIBLE FOR ANY CONDITIONS EXISTING ON THE PROPERTY.

287. Q. SELLER'S STATEMENT:
288. (To be signed at time of listing.)
289. Seller(s) hereby states the material facts as stated above are true and accurate and authorizes any licensee(s)
290. representing or assisting any party(ies) in this transaction to provide a copy of this Disclosure to any person or
291. entity in connection with any actual or anticipated sale of the property.

292. \_\_\_\_\_
(Seller) (Date) (Seller) (Date)

293. R. BUYER'S ACKNOWLEDGEMENT:
294. (To be signed at time of purchase agreement.)
295. I/We, the Buyer(s) of the property, acknowledge receipt of this Seller's Property Disclosure Statement and agree
296. that no representations regarding material facts have been made other than those made above.

297. \_\_\_\_\_
(Buyer) (Date) (Buyer) (Date)

298. S. SELLER'S ACKNOWLEDGMENT:
299. (To be signed at time of purchase agreement.)
300. AS OF THE DATE BELOW, I/we, the Seller(s) of the property, state that the material facts stated above are the
301. same, except for changes as indicated below, which have been signed and dated.

302. \_\_\_\_\_
303. \_\_\_\_\_
304. \_\_\_\_\_
305. \_\_\_\_\_
306. \_\_\_\_\_

307. \_\_\_\_\_
(Seller) (Date) (Seller) (Date)

308. For purposes of the seller disclosure requirements of MN Statutes 513.52 through 513.60:
309. "Residential real property" or "residential real estate" means property occupied as, or intended to be occupied as, a
310. single-family residence, including a unit in a common interest community as defined in MN Statute 515B.1-103, clause
311. (10), regardless of whether the unit is in a common interest community not subject to chapter 515B.
312. The seller disclosure requirements of MN Statutes 513.52 through 513.60 apply to the transfer of any interest in
313. residential real estate, whether by sale, exchange, deed, contract for deed, lease with an option to purchase or any
314. other option.

315. ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.

MN:SPDS-8 (8/10)

**FIGURE 2.1****Seller's Property Disclosure Statement (continued)****SELLER'S PROPERTY  
DISCLOSURE STATEMENT**

316. Page 9

**317. THE INFORMATION DISCLOSED IS GIVEN TO THE BEST OF SELLER'S KNOWLEDGE.****318. Exceptions**

319. The seller disclosure requirements of MN Statutes 513.52 through 513.60 **DO NOT** apply to

- 320. (1) real property that is not residential real property;
- 321. (2) a gratuitous transfer;
- 322. (3) a transfer pursuant to a court order;
- 323. (4) a transfer to a government or governmental agency;
- 324. (5) a transfer by foreclosure or deed in lieu of foreclosure;
- 325. (6) a transfer to heirs or devisees of a decedent;
- 326. (7) a transfer from a cotenant to one or more other cotenants;
- 327. (8) a transfer made to a spouse, parent, grandparent, child or grandchild of Seller;
- 328. (9) a transfer between spouses resulting from a decree of marriage dissolution or from a property agreement incidental to that decree;
- 330. (10) a transfer of newly constructed residential property that has not been inhabited;
- 331. (11) an option to purchase a unit in a common interest community, until exercised;
- 332. (12) a transfer to a person who controls or is controlled by the grantor as those terms are defined with respect to a declarant under section 515B.1-103, clause (2);
- 334. (13) a transfer to a tenant who is in possession of the residential real property; or
- 335. (14) a transfer of special declarant rights under section 515B.3-104.

**336. Waiver**

337. The written disclosure required under sections 513.52 to 513.60 may be waived if Seller and the prospective Buyer  
338. agree in writing. Waiver of the disclosure required under sections 513.52 to 513.60 does not waive, limit or abridge  
339. any obligation for seller disclosure created by any other law.

**340. No Duty to Disclose**

- 341. A. There is no duty to disclose the fact that the property
  - 342. (1) is or was occupied by an owner or occupant who is or was suspected to be infected with Human
  - 343. Immunodeficiency Virus or diagnosed with Acquired Immunodeficiency Syndrome;
  - 344. (2) was the site of a suicide, accidental death, natural death or perceived paranormal activity; or
  - 345. (3) is located in a neighborhood containing any adult family home, community-based residential facility or nursing
  - 346. home.
- 347. B. **Predatory Offenders.** There is no duty to disclose information regarding an offender who is required to register  
348. under MN Statute 243.166 or about whom notification is made under that section, if Seller, in a timely manner,  
349. provides a written notice that information about the predatory offender registry and persons registered with the  
350. registry may be obtained by contacting the local law enforcement agency where the property is located or the  
351. Department of Corrections.
- 352. C. The provisions in paragraphs A and B do not create a duty to disclose any facts described in paragraphs A and B  
353. for property that is not residential property.
- 354. D. **Inspections.**
  - 355. (i) Except as provided in paragraph (ii), Seller is not required to disclose information relating to the real property  
356. if a written report that discloses the information has been prepared by a qualified third party and provided to  
357. the prospective buyer. For purposes of this paragraph, "qualified third party" means a federal, state or local  
358. governmental agency, or any person whom Seller or prospective buyer reasonably believes has the expertise  
359. necessary to meet the industry standards of practice for the type of inspection or investigation that has been  
360. conducted by the third party in order to prepare the written report.
  - 361. (ii) Seller shall disclose to the prospective buyer material facts known by Seller that contradict any information  
362. included in a written report under paragraph (i) if a copy of the report is provided to Seller.

363. **ORIGINAL COPY TO LISTING BROKER; COPIES TO SELLER, BUYER, SELLING BROKER.**

MN:SPDS-9 (8/10)

**Exemptions.** The seller disclosure requirements do not apply to any of the following situations:

- Real property that is not residential real property
- A gratuitous (free) transfer
- A transfer pursuant to a court order
- A transfer to a government or governmental agency
- A transfer by foreclosure or deed in lieu of foreclosure (disclosure is required when the lender subsequently sells the property)
- A transfer to heirs or devisees of a decedent
- A transfer from a co-owner to one or more other co-owners
- A transfer made to a spouse, parent, grandparent, child, or grandchild of the seller
- A transfer between spouses resulting from a decree of marriage dissolution or from a property settlement agreement incidental to that decree
- A transfer of newly constructed residential property that has not been inhabited
- An option to purchase a unit in a common interest community, until exercised
- A transfer to a person who controls or is controlled by the grantor
- A transfer to a tenant who is in possession of the residential real property
- A transfer of special declarant rights under section 515B.3-104.

State law requires sellers to disclose known septic systems or wells before purchase agreement signed

### Septic systems, wells, and storage tanks

Minnesota law requires property sellers to disclose information concerning septic systems and wells to potential buyers. These disclosures must be made in writing before a purchase agreement is signed. Minnesota law also covers the disclosures for storage tanks containing hazardous materials.

A septic system inspection is required for all construction or replacement of a septic system for single-family and 2-family units

**Septic systems.** A seller must disclose whether there is an individual sewage treatment system (such as a **septic system**) either on the property or serving the property. If so, the seller must indicate the location of the system on a map drawn from available information. The seller is required to state whether the system is in use and (to the best of the seller's knowledge) whether it is in compliance with applicable laws. A seller who fails to comply with these requirements may be held liable to the buyer for any costs incurred in bringing the system into compliance. An action by a buyer seeking to collect such costs from the seller must be commenced within **2 years** of closing on the purchase of the property.

Permits for new construction (5 years) or additions with a bedroom (3 years) require a Certificate of Compliance issued by a licensed septic inspector.

A septic system inspection by a licensed septic inspector is required in order to obtain building permits for new construction or additions with a bedroom. An inspection is also required for replacement of most septic systems. Proof of satisfactory installation comes in the form of a Certificate of Compliance.

A Certificate of Compliance for existing systems is valid for 3 years. A Certificate of Compliance for a new system is valid for 5 years.

**Wells.** A seller is also required to disclose whether there are any **wells** on the property, and if so, where they are located, and whether each one is in use, not in use, or sealed. Again, a map showing the approximate location of the well or wells should be provided.

If there are any wells on the property, at closing, the seller must sign a well disclosure certificate that sets forth the same information as the earlier disclosure. If the seller is not aware of any wells, the following statement should be included in the deed: “The seller certifies that the seller does not know of any wells on the described real property.” Unless that statement is included, a deed cannot be recorded without a well disclosure certificate.

A seller who inaccurately discloses the existence or status of a well that he knows about (or has reason to know about) can be held liable to the buyer for **6 years** from closing for the cost of sealing the well, plus applicable attorney’s fees.

**Storage tanks.** The existence of storage tanks—located above or underground—on real property is a material fact. Therefore, disclosure of **storage tanks** should be handled in accordance with **material fact** disclosure requirements as previously discussed.

*Seller’s disclosure requirements per the PCA.* In addition to material fact disclosures, the Pollution Control Agency (PCA) has the following requirements for storage tanks.

- **Leaking storage tanks.** Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank, or had contained an underground or aboveground storage tank in the past, which had a leak for which no corrective action was taken, the owner must record with the county recorder or registrar of titles of the county in which the property is located an affidavit containing
  - a legal description of the property where the tank is located;
  - a description of the tank, of the location of the tank, and of any known release from the tank of a regulated substance;
  - a description of any restrictions currently in force on the use of the property resulting from any release; and
  - the name of the owner.

When the affidavit is recorded, it allows the leaking storage tank to be disclosed during the normal search of the county records by a title company or abstract company (see *Modern Real Estate Practice* and unit 3 of this course for a further discussion of recordation). Before transferring ownership of property that the owner knows contains a leaking underground or aboveground storage tank, the owner must deliver a copy of the affidavit to the purchaser, as well as any additional information necessary to make the facts in the affidavit accurate as of the date of transfer of ownership.

However, if there is or was no leaking storage tank on the property, all the seller must disclose to the purchaser is the PCA’s owner’s notification requirements. That way, the purchaser knows where she can double-check, just in case there is a question whether or not a property has or had a leaking storage tank on it.

- **Exemptions.** The following items are exempt from PCA disclosure requirements:
  - Farm or residential motor fuel tanks containing 1,100 gallons or less used for noncommercial purposes
  - Heating oil tanks containing 1,100 gallons or less
  - Storage tanks on or above the basement floor

Finally, the Pollution Control Agency (PCA) requires 10 days' notice before the installation or removal of a storage tank. Once the tank is installed, the owner must—within 30 days after installation—fill out the required PCA forms pertaining to the tank.

## UNIT 2 LECTURE OUTLINE AND NOTES

### I. PROPERTY OWNERSHIP

#### A. Forms of ownership national review

1. A form of co-ownership with no rights of survivorship and allows for unequal shares of ownership is tenants in common.
2. The form of co-ownership that includes the right of survivorship and requires equal shares of ownership is joint tenancy.
3. Ownership by one person or entity is called ownership in severalty.

#### B. Property ownership law in Minnesota

1. Property owned in severalty
  - a) If married, spouse must sign the deed to release statutory interest: \_\_\_\_\_
  - b) Spousal interest
    - (1) If the owner is married, no conveyance of the homestead shall be valid without the signatures of both spouses.
    - (2) A spouse's signature may be made by the spouse's attorney-in-fact.
    - (3) A \_\_\_\_\_ is often used in the \_\_\_\_\_.
2. Multiple ownership in Minnesota
  - a) Tenants in common: \_\_\_\_\_  
 \_\_\_\_\_  
 unless otherwise specified in the deed
  - b) Joint tenancy: issues in divorce
    - (1) A decree of dissolution of marriage (divorces) severs all joint tenancies EXCEPT \_\_\_\_\_  
 \_\_\_\_\_.
    - A \_\_\_\_\_  
 severs joint tenancies.

- A \_\_\_\_\_ may be used to release the spousal interest in other properties per the decree.

c) Note: Buyers should obtain an attorney’s advice to determine the most appropriate form of co-ownership.

**C. Minnesota Common Interest Ownership Act**

1. \_\_\_\_\_  
(CIC): Any entity with the right to charge \_\_\_\_\_.

2. Minnesota \_\_\_\_\_ regulates CIC properties, which include condominiums, townhouses, planned communities (PUD), and cooperatives created after June 1, 1994.

a) The act does not cover the following:

(1) \_\_\_\_\_  
(e.g., apartments or 4-plexes)

(2) Single-family homes, unless they are part of a CIC

3. Condominiums

a) Ownership: \_\_\_\_\_ ownership of the unit, plus an undivided interest in common elements \_\_\_\_\_

b) May be applied to any type of real estate

c) Establishment may be reversed

d) Created in one of two ways—new construction or converting an existing structure

e) For an existing building

(1) Developer must give \_\_\_\_\_ notice to vacate

(2) Current tenants have option to purchase unit for \_\_\_\_\_ delivery of notice



- f) Condominium \_\_\_\_\_ must include the following:
- (1) Specification of common and limited common elements
    - (a) A *limited common element* is any common element reserved for the use of one or more unit(s) to the exclusion of other units.
    - (b) Examples: assigned \_\_\_\_\_  
\_\_\_\_\_.
  - (2) Restrictions on use and sale of units
  - (3) Whether or not timeshares are allowed and the parameters
  - (4) For major changes, such as relocation of unit boundaries, an amendment to the declaration, approved by a vote of approval by two-thirds of the association members, must be recorded.
- g) Each unit owner, upon receiving the deed, automatically becomes a member of the homeowners' association.
- (1) Association charges and collects assessments
    - (a) Has the power to file and foreclose a lien by advertisement for unpaid assessments
  - (2) Holds annual meetings
    - (a) Association members \_\_\_\_\_  
\_\_\_\_\_ to attend the annual meetings.
- h) Disclosure and rescission rights
- (1) Declaration, budget, association rules disclosed by date of purchase agreement (at least 10 days prior to closing)
  - (2) \_\_\_\_\_  
after receipt of disclosures
4. Planned community (planned unit development [PUD])
- A common interest community that is not a condominium or a cooperative

## 5. Cooperative

- a) Sales in new cooperatives regulated under the Minnesota Common Interest Ownership Act; others governed by the Subdivided Lands Act
  - Often used in senior housing projects

## 6. Timeshares

- Sales regulated by the Minnesota Subdivided Lands Act

### **D. Subdivided Lands Act**

#### 1. Subdivided lands: Any offering of more than 10 parcels of real estate, which is divided or will be divided for the purpose of sale or lease in Minnesota

- a) The act generally applies to any real estate located outside of an incorporated Minnesota municipality.
- b) Also includes the following:
  - (1) All timeshare sales
  - (2) Sales or leases of cooperative housing constructed prior to June 1, 1994
- c) Excludes the following:
  - (1) Common interest communities regulated under the Minnesota Common Interest Ownership Act
  - (2) Properties divided into 10 or fewer parcels

#### 2. Developer requirements for offering and sales

- a) \_\_\_\_\_ with the Commissioner, including the following:
  - (1) Name and address of developer/subdivider
  - (2) Legal description and location of subdivision
  - (3) Title opinion or title insurance policy
  - (4) Copy of purchase agreement to be used in sales
  - (5) Copy of approved plat map of the subdivision

- b) To consolidate additional lands into one registration, they must be contiguous with the original lands.
- c) A public offering statement must be \_\_\_\_\_ with the Commissioner.
- d) The public offering statement must be \_\_\_\_\_.
- e) Advertising must be made available for inspection by the Commissioner, but it may not indicate that the Commissioner approves or recommends the property.
- f) Developer must have or obtain a Minnesota real estate license or hire a licensee to sell parcels.
- g) Buyer has 5-day right to rescind after receiving a copy of the signed purchase agreement.
- h) Developer is \_\_\_\_\_ to have on-site inspections by the Department of Commerce.

## II. PROPERTY TAXATION

### A. General property taxes

1. The property tax year in Minnesota runs from January 1 through December 31.
2. Taxes are due by \_\_\_\_\_.
3. Property taxes are paid to the county where property is located and enforced by foreclosable lien.

### B. Penalties and redemption

1. An \_\_\_\_\_ is charged on unpaid taxes. The penalty interest rates are determined by
  - a) \_\_\_\_\_ of the tax statement (the tax bill), and
  - b) postmark date of \_\_\_\_\_.
  - (1) Taxes are due on May 15 or October 15 or 21 days after the postmark on the tax statement, whichever is later.
  - (2) The rate increases each month past due.

- c) Homestead classification
  - d) \_\_\_\_\_
    - (1) Tax bill is determined by assessed value.
    - (2) Penalty rate is on unpaid taxes.
  - e) \_\_\_\_\_ the prop-erty owner for performing maintenance to be in compliance with codes. Assessments could be for
    - (1) cutting \_\_\_\_\_, and so on;
    - (2) unpaid city-provided utilities, such as sewer, water, and trash; and
    - (3) special assessments, which cities or counties may create, are charges against properties \_\_\_\_\_.
2. The redemption period is \_\_\_\_\_ for homestead and \_\_\_\_\_ for other property.

**III. STATE PROPERTY/ENVIRONMENTAL DISCLOSURE REQUIREMENTS**

**A. Seller disclosure**

- 1. \_\_\_\_\_ property must disclose in writing before signing the purchase agreement, \_\_\_\_\_ of which the seller is aware. A material fact is a fact that could adversely and significantly affect
  - a) an ordinary buyer’s use and enjoyment of the property; or
  - b) any intended use of the property of which the seller is aware.
    - (1) Seller may give disclosure to licensee representing the buyer.
    - (2) Seller may rely on a qualified third party (such as a home inspector) to make the disclosures.

2. Disclosure is not required for
  - a) qualified third-party inspection,
  - b) foreclosure,
    - (1) A lender selling a home acquired \_\_\_\_\_ must give the buyer a disclosure.
    - (2) A homeowner in foreclosure \_\_\_\_\_ to disclose to the lender who is foreclosing.
    - (3) A homeowner giving a deed in lieu of foreclosure is not required to disclose.
  - c) \_\_\_\_\_,
  - d) selling to a family member, and
  - e) giving property as gift or donation.
3. In Minnesota, by law, it is \_\_\_\_\_ fact if the property
  - a) is or was occupied by someone with HIV or AIDS;
  - b) was the site of a suicide, accidental death, or natural death;
  - c) has perceived paranormal activity; or
  - d) is located in a neighborhood containing any adult family home, community-based residential facility, or nursing home.
4. There is no duty to disclose further information regarding registered sex offenders if the seller provides the mandatory notice stating information may be obtained from the Minnesota Department of Corrections.
5. A seller who fails to disclose as required and was aware of the condition of the real property is liable to the prospective buyer who may bring a civil action within \_\_\_\_\_ after closing.
6. Minnesota has an additional seller disclosure requirement regarding knowledge or suspicion of methamphetamine production \_\_\_\_\_.

**B. Disclosure of wells and septic systems**

1. Minnesota law requires sellers to disclose the following \_\_\_\_\_:  
  - a) Whether or not municipal services are available or connected
  - b) Location of all wells and septic systems, including capped and closed wells and septic systems, and that they comply with laws
  - c) Whether each well is in use, not in use, or sealed, regardless of when it was sealed
  
2. Deed can't be recorded unless it has either a statement disclaiming knowledge of wells or a well disclosure certificate.
  
3. Seller is liable for inaccurate well disclosure for \_\_\_\_\_ from closing and inaccurate septic disclosure for \_\_\_\_\_ from closing.
  
4. Liabilities may include the following:
  - a) Costs associated with sealing the well
  - b) Attorney's fees
  
5. Septic systems' \_\_\_\_\_ is issued by a licensed septic inspector.
  - a) The seller must disclose the existence of a septic system \_\_\_\_\_.
  - b) The seller is not required to supply buyer with a *current* Certificate of Compliance for the septic system. However, the seller must give the buyer a copy of any Certificate in the seller's possession.
    - (1) Sellers with an \_\_\_\_\_ septic system; Certificate of Compliance is valid for \_\_\_\_\_
    - (2) Seller with a \_\_\_\_\_ septic system; Certificate of Compliance is valid for \_\_\_\_\_

- (3) Addition of a bedroom requires a new Certificate of Compliance
  - (4) A building permit or Certificate of Occupancy assures a buyer the septic system is in compliance.
6. A septic system inspection is required for all new construction or replacement of a septic system.

### C. Disclosure of aboveground and underground storage tanks

1. Storage tanks on a property are a \_\_\_\_\_ and must be disclosed as part of the seller's disclosure.
2. If the tank is a commercial storage tank or a residential tank exceeding 1,100 gallons, the tank must also comply with the Pollution Control Agency (PCA) disclosure and registration requirements.
  - a) Before transferring property with a leaking storage tank or where there was a spill, an affidavit must be recorded with the county recorder.
  - b) If the storage tank is *not* leaking and there was not a spill, the purchaser must still receive written notice of the seller's requirements regarding leaking storage tanks.
  - c) Exemptions: (apply to PCA registration requirements, not to seller disclosure laws)
    - (1) Motor fuel tanks 1,100 gallons or less
    - (2) Heating oil tanks 1,100 gallons or less
    - (3) Heating fuel tanks on or above basement floor
  - d) A \_\_\_\_\_ installation or removal of storage tank must be given to the PCA.
  - e) Within \_\_\_\_\_ installation or removal, owner must fill out the required PCA forms for storage tanks.

# UNIT 2 GLOSSARY REVIEW

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assessments	fee simple	6 years
common elements	limited common	storage tanks
common interest communities	multitenant rental	Subdivided Lands Act
Common Interest Ownership Act	public offering	third party
decree of dissolution	quitclaim	2 years
delinquent tax penalty rate	registration	wells and septic
divorce	seller's disclosure	

1. A state law that applies to the sale of more than 10 parcels of land and requires registration with the Commissioner of Commerce, filing of a Public Offering Statement, and a real estate license to sell parcels is the \_\_\_\_\_.
2. The \_\_\_\_\_ is affected by the postmark date of the statement and payment, as well as homestead classification.
3. The Subdivided Lands Act requires \_\_\_\_\_ of the development with the commissioner and the filing of a \_\_\_\_\_ statement.
4. Common interest community (CIC) associations, cities, cooperatives, and counties may levy foreclosable \_\_\_\_\_ on a property.
5. A \_\_\_\_\_ of marriage severs all joint tenancies except those joint tenancies preserved in the decree.
6. In a common interest community, reserved parking stalls and balconies would be considered \_\_\_\_\_ elements.
7. A \_\_\_\_\_ and \_\_\_\_\_ deed would sever a married couple's joint tenancy ownership in their homestead and release their spousal interests in any remaining properties.
8. Property where an individual owner would have \_\_\_\_\_ ownership in severalty in a unit, combined with an undivided interest in the \_\_\_\_\_ as a tenant in common of the property is a condominium.
9. Sellers of residential property are required to disclose if there are \_\_\_\_\_ on the land, because it is a material fact.
10. A landlord selling a home to the home's current renter would *NOT* have to provide a \_\_\_\_\_.
11. Condominiums, cooperatives, and planned communities are examples of \_\_\_\_\_.
12. According to the Common Interest Ownership Act, a \_\_\_\_\_ property is *NOT* a common interest community.
13. Before accepting an offer, Minnesota law requires property sellers to disclose information concerning \_\_\_\_\_ systems to potential buyers.
14. A seller is liable for inaccurate well disclosures for \_\_\_\_\_ and inaccurate septic disclosure for \_\_\_\_\_ from closing.
15. A seller's disclosure form is *NOT* required if the seller obtains an inspection from a qualified \_\_\_\_\_.



# UNIT 2 QUIZ

1. An owner of a condominium unit is in default on her monthly association fee. What remedy is available to the association?
  - a. Foreclosure by advertisement on its assessment lien, if necessary
  - b. Change the lock on the unit's door until payment is received
  - c. File a special assessment lien in the recorder's office
  - d. No remedy
2. A married couple has separated. They owned their home as joint tenants, but each has purchased a new home to live in prior to the divorce. What could they do to release each other's interests in properties?
  - a. Re-file the deeds to the properties to show new ownership
  - b. Get a divorce and give quitclaim deeds to each other
  - c. File a lis pendens for a quiet title suit
  - d. Update the abstracts for each property to show new ownership
3. A seller must disclose the status and location of all known wells on the property before
  - a. signing the listing agreement.
  - b. signing a purchase agreement.
  - c. advertising the property for sale.
  - d. substantive contact is made with a potential buyer.
4. A married couple is getting a divorce. They currently own a home as joint tenants. Their divorce will
  - a. create a spousal rights lien on the property.
  - b. create a tenancy in common.
  - c. not effect homestead property.
  - d. sever the joint tenancy.
5. All of the following would be considered common interest communities *EXCEPT*
  - a. planned community.
  - b. 4-plex.
  - c. condominium.
  - d. cooperative.
6. An individual holds ownership in a condominium in severalty plus
  - a. joint tenancy in the common elements.
  - b. severalty owner in the common elements.
  - c. divided interest in the common elements.
  - d. tenancy in common in the common elements.
7. The owner of a property has applied for a building permit for new construction that will include a private septic system. In order to obtain a building permit, the owner must obtain which document from a licensed inspector or site evaluator?
  - a. Certificate of occupancy
  - b. Certificate of approval
  - c. Certificate of compliance
  - d. Certificate of underground tanks
8. When converting an apartment building to condominiums, the owner must provide the tenants with a notice to vacate in a minimum of
  - a. 30 days.
  - b. 60 days.
  - c. 120 days.
  - d. 180 days.
9. When a licensed inspector grants approval of a new septic system, the certificate is valid for
  - a. 1 year.
  - b. 2 years.
  - c. 3 years.
  - d. 5 years.
10. A certificate of compliance for an existing septic system is valid for
  - a. 1 year.
  - b. 2 years.
  - c. 3 years.
  - d. 5 years.
11. Which of the following must a seller disclose to a potential buyer?
  - a. A suicide occurred at the property.
  - b. The seller has HIV.
  - c. The tenant is a medical marijuana user.
  - d. A homicide occurred in the home.

12. Under the Common Interest Ownership Act, a purchaser may rescind a purchase agreement within 10 days after
- receipt of the disclosure statement.
  - first viewing the property.
  - receipt of the signed purchase agreement.
  - closing.
13. When must the seller of property disclose to the buyer how sewage generated at the property is managed?
- Before signing the purchase agreement
  - At closing
  - During the inspection
  - When signing the listing
14. Jones has purchased the home he was renting from Smith. Smith did *NOT* provide Jones with a property condition disclosure statement. Is this legal?
- No, because a seller's disclosure is required
  - No, because an inspection is required
  - Yes, because Jones was a current tenant
  - Yes, because Jones agreed to buy the property *as-is*
15. Minnesota's Subdivided Lands Practices Act requires developers to do all of the following *EXCEPT*
- register the subdivision with the Commission of Commerce.
  - give all buyers a copy of the public offering.
  - file a public offering statement with the Commission of Commerce.
  - have an on-site inspection of the property by the Commissioner.
16. The penalty percentage rate charged on delinquent property taxes would be determined by all of the following *EXCEPT*
- the property value.
  - the homestead classification.
  - the date the tax statement was sent.
  - the date the tax payment was sent.
17. In Minnesota, property taxes are due and payable
- June 15 and November 15.
  - April 15 and October 15.
  - May 15 and September 15.
  - May 15 and October 15.
18. According to the Minnesota Common Interest Ownership Act, a condominium unit owner must do all of the following *EXCEPT*
- attend the annual meeting.
  - pay association assessments.
  - pay taxes on the unit plus a percentage of the common elements.
  - comply with the association's regulations.
19. Who is responsible for disclosing the existence of an underground storage tank?
- The agent
  - The Commissioner of the Pollution Control Agency
  - The Department of Commerce
  - The seller
20. A seller of a property containing a leaking storage tank must
- notify the Pollution Control Agency.
  - file an affidavit with the county recorder.
  - take remedial action to clean up the discharge.
  - notify the Department of Commerce.
21. The owner of a steel fabrication plant has decided to install a 1,200 gallon underground storage tank. The owner must notify the Pollution Control agency
- 10 days before installation.
  - 10 days after the installation.
  - 15 days before installation.
  - 30 days before installation.
22. Which of the following situations would require a seller's disclosure of material facts regarding the property?
- Landlord selling to a neighbor
  - Lender foreclosing on a home
  - Owner giving the property to a nonprofit
  - Father selling a property to his daughter

23. A Decree of Dissolution of Marriage severs all joint tenancies *EXCEPT*
- the homestead, if owned fewer than 2 years.
  - agricultural property of more than 10 acres.
  - joint tenancies the decree preserves.
  - only joint tenancies acquired after the marriage.
24. Which entity may *NOT* assess charges on a property?
- The city, for mowing grass and shoveling snow to comply with ordinances
  - Common interest community associations, for costs incurred by the association
  - Counties, for road improvements benefiting the property
  - Trade associations, for street beautification projects
25. Jones is the owner of an apartment building and plans to convert it to condominiums. Jones must give the tenants an option to purchase the unit they are occupying at *LEAST* how long after delivery of the notice to vacate?
- 21 days
  - 28 days
  - 60 days
  - 120 days

# UNIT 2 QUIZ ANSWERS

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1. **a** The condominium association has the right to collect assessments. Unpaid assessments create a lien foreclosable by advertisement against the unit and its common element interest.
2. **b** The divorce will sever the joint tenancy in the homestead; primary home and quitclaim deeds will release spousal interests in the 2 new homes.
3. **b** Sellers must complete a well disclosure form prior to accepting and signing an offer.
4. **d** A divorce results in a Decree of Dissolution of Marriage, which severs all joint tenancies except those specified in the decree.
5. **b** Rental properties are not common interest communities.
6. **d** Unit owners share an undivided interest in the common elements as tenants in common.
7. **c** A Certificate of Compliance is required to obtain a building permit for new construction and additions that include a bedroom.
8. **c** Condominium conversions require a 120-day notice to vacate.
9. **d** The certificate of compliance for a new septic system is good for 5 years.
10. **c** The Certificate of Compliance for an existing septic system is good for 3 years.
11. **d** A homicide is a material fact and therefore must be disclosed.
12. **a** A buyer has a right to rescind (cancel) the purchase agreement within 10 days after receiving the disclosure statement. If the agreement is rescinded, the buyer's earnest money must be refunded in full, and the real estate agent is not entitled to a commission.
13. **a** Prior to accepting or signing an offer, sellers must disclose whether or not municipal sewage service is available, and the location and known status of septic systems.
14. **c** A seller's disclosure is not required when selling to a current tenant.
15. **d** An on-site inspection by the Department of Commerce is not required.
16. **a** The penalty rate applied to delinquent taxes is not affected by the property value or the amount of taxes owed.
17. **d** In Minnesota, taxes are due and payable May 15 and October 15 or 21 days after the tax bill statement is received, whichever date is later.
18. **a** Association members are not required to attend the annual meeting.
19. **d** Sellers are required to disclose all material facts regarding the property, including storage tanks.
20. **b** A seller of a property containing a leaking storage tank must file an affidavit with the county recorder's office.
21. **a** The owner must notify the PCA 10 days prior to installation or removal of a storage tank.
22. **a** A seller's disclosure is required, unless specifically exempted by disclosure law.
23. **c** A decree of dissolution automatically severs joint tenancies held by divorcing couples, unless the decree specifically preserves a particular joint tenancy.
24. **d** Trade associations have no right or power to assess property.
25. **c** In a condominium conversion, current tenants must be given the option to purchase the unit they occupy for a minimum of 60 days, which may run concurrently with the 120-day notice to vacate.

# 3 UNIT



## Financial Instruments, Foreclosures and Foreclosable Liens, and Protection of Rights and Interests

■ **LEARNING OBJECTIVES:** *Upon completion of this unit, students should be able to*

- **recognize** the differences between a mortgage and a contract for deed;
- **describe** Minnesota's foreclosure and redemption rights, as well as other lien rights;
- **interpret** Minnesota's laws and statutes providing protection for property owners

## Study Plan

Before class, read Unit 3

During class, complete Glossary Review

After class, complete Quiz

## Key Points

- A contract for deed is a form of seller financing. The seller retains legal title, but the buyer has the right of possession. By contrast, a mortgage is usually held by a bank or other lending institution. The mortgagor (borrower) holds title to the property, and the mortgagee (lender) is merely given a lien against the property.
- Most mortgage foreclosures in Minnesota are done under a power of sale clause, which allows foreclosure by advertisement. The lender may foreclose on the mortgaged property and have it sold without taking the matter to court. If a mortgage does not contain a power of sale clause, the mortgage must be foreclosed judicially.
- A mechanic's lien (also called a construction lien) arises when someone provides labor, skill, equipment, or materials for improvements on a property.
- The Minnesota homestead law gives homestead property (up to 160 acres in the country, or one-half acre in the city) limited protection from forced sale by creditors. It does not apply to property tax or special assessment liens, mechanics' liens, mortgage liens, or condominium association liens. Homestead property is also entitled to special property tax treatment.
- Under the Torrens system, an owner applies for registration of title with the court administrator. A court hearing is held to determine title. A certificate of title, naming the legally recognized title holder and listing all existing encumbrances, is then placed in the Register of Titles.
- In the transfer of Torrens property, the buyer's attorney or title insurance company reviews a registered property abstract (RPA) to determine whether the title is marketable. The buyer's deed is recorded and a new certificate of title is placed in the Register of Titles.
- Agents, sellers, and landlords must also comply with the Minnesota Human Rights Act. This act prohibits discrimination based on race, religion, color, sex, national origin, marital status, familial status, disability, status with regard to public assistance, or sexual orientation. This statute also makes it unlawful to deny a handicapped person with a service dog equal access to real property. There are limited exemptions from the Minnesota Act. However, none of the exemptions apply if a real estate agent's services are used.
- The Statute of Frauds requires that most real estate contracts must also be in writing.
- Minnesota has a Landlord-Tenant Act that establishes rules concerning notice of termination, automatic renewal clauses, written leases, security deposits, habitability, and privacy rights.
- In Minnesota, a security deposit is any deposit of money meant to secure the performance of a residential rental agreement. When a lease is terminated, the landlord may use the deposit to cover any unpaid rent and to pay for any damage caused by the tenant. If any part of the deposit is left over, it must be

returned to the tenant within 3 weeks, along with 3 percent simple interest until August 1, 2003, then 1 percent thereafter.

## ■ FINANCIAL INSTRUMENTS

### The contract for deed versus the mortgage

The contract for deed and the mortgage are the two types of real estate financing instruments used most frequently in Minnesota. The contract for deed is most often used for rural or agricultural property. However, when lending practices and laws are more restrictive, we see the use of contracts for deed increase in urban areas.

When lending laws and interest rates are favorable, purchases of urban residential property are most often financed with a mortgage. A seller generally cannot offer contract for deed financing if the seller's property has an existing mortgage containing an alienation (due on sale) clause.

Contract for deed most often used for rural property; urban home purchase usually financed with mortgage

Contract for deed: buyer takes possession; seller retains title until buyer pays in full

Contract for deed remedy for default is termination

Mortgage: buyer holds title; lender has a lien until repaid

### Contract for deed

A contract for deed is a type of seller financing that is similar to an installment sale. When a contract for deed is used, the buyer (vendee) makes regular payments (typically monthly) to the seller (vendor) in installments. The vendor retains title, but the vendee takes possession of the property and holds an equitable interest in it. If the vendee defaults and does not redeem the property within the time limit, the vendor may terminate the contract and retake possession of the property.

Since the vendor retains title to the property until all payments have been made, the deed is not actually delivered to the vendee at the time of the sale. Furthermore, as there is no mortgage used in a contract for deed sale, Minnesota foreclosure laws do not apply—which means there is no statutory redemption period (see *Mortgage Foreclosure and Redemption Rights* later in this unit).

If the buyer defaults on the contract for deed, the seller may cancel the contract. Minnesota law requires the seller to send the buyer a written notice of the default. The buyer cannot be asked to waive his right of notice. After receiving the notice, the buyer has an equitable redemption period of at least 60 days to cure the default by paying any back payments, plus reasonable legal expenses. If the buyer does not cure the default, the seller may terminate the contract and regain possession of the property.

### Mortgage

In contrast to a contract for deed, a mortgage is usually held by a bank or other lending institution. A private seller may also use a mortgage when providing seller financing to a buyer.

With a mortgage, the buyer actually holds title to the property, in addition to being entitled to possession and use of the property. The lender is merely given a

**TABLE 3.1**

**Contract for Deed versus Mortgage**

Contract for Deed	Mortgage
Buyer has possession; holds equitable title	Buyer has possession; holds legal title
Seller retains legal title	Lender is merely given a lien on the property
Termination after default	Foreclosure after default
Only equitable redemption; no statutory redemption	Equitable redemption and statutory redemption
No state deed tax	Seller pays state deed tax
No mortgage registry tax	Borrower pays mortgage registry tax

lien on the property. When the mortgage is fully paid off, the lien is released, and the lender provides the borrower a mortgage satisfaction notice. The borrower must record this notice at the county recorder’s office.

If the borrower defaults on the mortgage, the property may be foreclosed upon. However, even after the foreclosure sale, there is a statutory redemption period during which the borrower has the right to redeem the property. A mortgage borrower ordinarily has a much longer period in which to redeem the property than a vendee under a contract for deed does.

Since a purchase financed with a mortgage loan involves the immediate transfer of title to the buyer, the seller must pay the state deed tax (also known as the transfer tax) on the transaction at closing. Also, when a mortgage is given, the borrower must pay the mortgage registry tax.

**MORTGAGE FORECLOSURE AND REDEMPTION RIGHTS**

Foreclosure: lender can force sale of mortgaged property and have debt paid out of the proceeds

Minnesota is a lien theory state (as discussed in *Modern Real Estate Practice*). The mortgage creates a lien that gives the lender the right to foreclose if the borrower defaults on the mortgage: The lender can have the property sold and the debt paid out of the sale proceeds.

**Methods of foreclosure**

Upon default, there are two methods by which a mortgage may be foreclosed: 1) foreclosure by judicial (or legal) action; and 2) foreclosure by advertisement.

Power of sale of clause allows lender to foreclose without first going to court

Most mortgages in Minnesota include a power of sale clause. This is a clause that gives the lender the power to conduct a foreclosure and sell the mortgaged property without taking the matter to court. The power of sale clause in the mortgage allows the lender to pursue foreclosure by advertisement. This is the method most commonly used in Minnesota.

Foreclosure by advertisement is non-judicial foreclosure.

The other method of foreclosure is called judicial foreclosure. If a mortgage does not contain a power of sale clause, it must be foreclosed judicially. Even if there



is a power of sale clause in the mortgage, the lender may still choose judicial foreclosure.

**Foreclosure by advertisement.** When foreclosed under a power of sale clause, the mortgaged property is advertised and then sold to the highest bidder at a public auction held by the county sheriff (often called a sheriff’s sale).

The property must be advertised by publishing a notice in a newspaper or publication of record in the county where the property is located for 6 weeks prior to the sale. At least 4 weeks before the sale, a copy of the notice must be served on the person in possession of the property.

The notice of sale must state all of the following:

- The names of the mortgagor and the mortgagee (and if the mortgage has been assigned, the assignee)
- The original principal amount
- The date of the mortgage and its recording date (or registration date, for Torrens property)
- The amount owed on the mortgage, and any taxes paid by the lender
- The legal description of the mortgaged property
- The time and place the sheriff’s sale will be held
- The redemption period allowed by law

Equity of redemption: the borrower’s right to stop foreclosure and reinstate loan before sheriff’s sale by paying past due amount plus costs

**Reinstatement or redemption.** After the default and up until the time of the sale, the borrower may stop the foreclosure and reinstate the loan by curing the default—that is, by paying all past-due installments and penalties or obtaining a loan modification. This is sometimes called the borrower’s equity of redemption, and the period before the foreclosure sale is sometimes referred to as the equitable redemption period.

Statutory redemption: the borrower’s right to redeem the property after the sheriff’s sale by paying price paid at sale, plus interest

Statutory law in Minnesota also gives the borrower the right to redeem the property even after the auction. This is called statutory redemption. To redeem the property at this point, the borrower usually must pay the price that was bid at the foreclosure sale, plus interest. The statutory redemption period ordinarily lasts for 6 months after the sale.

The period is extended to **12 months** if

- the mortgage was more than one-third paid off;
- the property is more than 40 acres; or
- the property is more than 10 acres and is in agricultural use.

The 12-month redemption period also applies if the property is more than 10 acres and the mortgage was originated before July 1, 1987 (even if the property is not in agricultural use).

Redemption period is 6 or 12 months (or 5 weeks, if property abandoned)

The statutory redemption period may be reduced to only 5 weeks if a court order rules the property has been abandoned. There must be evidence of abandonment, such as boarded up or broken windows or doors; an accumulation of trash, or other sanitation or safety problems; termination of gas, electric, or water service; or 2 or

**TABLE 3.2**  
**Statutory Redemption Periods**

Statutory Redemption Periods	
6 months	Most mortgages
12 months	<ul style="list-style-type: none"> <li>■ Mortgage more than one-third paid off</li> <li>■ Property more than 40 acres</li> <li>■ Property more than 10 acres and in agricultural use</li> <li>■ Property more than 10 acres and mortgage originated before July 1, 1987</li> </ul>
5 weeks	Abandoned property

more police reports of trespassing or vandalism. This five-week redemption rule for abandoned property applies only to residential property of 10 acres or less, with no more than 4 dwelling units.

Foreclosure sale purchaser does not take possession until statutory redemption period expires

The foreclosure sale purchaser is not entitled to possession of the property until the end of the statutory redemption period. The borrower is generally entitled to remain in possession until the redemption period expires. In some cases, a receiver may be appointed to manage the property during the statutory redemption period.

At the sheriff’s sale, the purchaser receives a document called a sheriff’s certificate of sale, which should be recorded. If the property is not redeemed by the end of the statutory redemption period, the recorded certificate becomes a sheriff’s deed, and the purchaser has both title to and possession of the property.

The redemption period makes a foreclosure sale unappealing to many investors who, understandably, do not want to wait so long to gain title to the property. For this reason, bidders at mortgage foreclosure sales are uncommon, and very often the lender acquires title to the property by bidding the amount owed.

If foreclosure sale proceeds are not sufficient to pay off loan, lender may be entitled to a deficiency judgment

**Deficiency judgment.** In some cases, the proceeds of a foreclosure sale do not cover the full amount owed on the loan. Then the lender may want to seek a personal judgment against the debtor for the deficiency.

A deficiency judgment is not allowed after foreclosure by advertisement if the applicable redemption period is either 6 months or 5 weeks. In that situation, the lender’s recovery is limited to the proceeds of the sale. The lender cannot bring any further action against the borrower, even if the sale proceeds do not cover the amount owed on the loan. The lender is only entitled to a deficiency judgment after foreclosure by advertisement in cases where the 12-month redemption period applies (the mortgage was more than one-third paid off, the property is more than 40 acres, and so on). Otherwise, to obtain a deficiency judgment, the lender must foreclose judicially.

Mortgagor receives any surplus from sheriff’s sale

**Surplus.** Occasionally, a property is sold at a foreclosure sale for more than enough to pay off the loan, other liens, and all costs connected with the foreclosure. When there is any surplus left over, it belongs to the borrower who defaulted on the mortgage.

Judicial foreclosure: upon default, lender files lawsuit against borrower; court orders property sold

**Judicial foreclosure.** If a mortgage does not contain a power of sale clause, the mortgage must be foreclosed judicially. Also, in certain cases a lender must foreclose judicially in order to obtain a deficiency judgment.

For judicial foreclosure, the lender files a lawsuit against the borrower in the county where the collateral property is located. The lender’s attorney normally records a lis pendens (a notice of pending legal action), which makes the judgment of the court binding on all persons who acquire liens against or other interests in the property while the foreclosure action is pending.

After the complaint has been heard in court, in the absence of unusual circumstances, the judge will order the property sold to satisfy the debt. The judge will appoint the sheriff or court commissioner to conduct the same type of public auction (a sheriff’s sale) that follows a foreclosure by advertisement. A notice of sale must be posted at the courthouse and published in a newspaper of general circulation in the county. After the sheriff’s sale, the borrower’s statutory redemption rights are essentially the same as they would be if the mortgage had been foreclosed by advertisement instead of judicially.

Foreclosure sale destroys junior liens

**Junior lienholders and foreclosure**

A foreclosure sale destroys not only the borrower’s interest in the property, but also the interests of any junior lienholders (those with liens subordinate to the first mortgage lender’s lien).

A junior lienholder can protect interests by paying the delinquencies on the senior lien—curing the default—and adding the amount of these payments to the balance due on the junior lien, or by purchasing the property at the foreclosure sale. The junior lienholder may then (if necessary) foreclose that lien.

■ **FOR EXAMPLE** Smith borrows \$100,000 from First Bank, secured by a first mortgage. Later, Smith borrows an additional \$20,000 from Second Bank and gives Second Bank another mortgage (a second mortgage). First Bank is the senior lienholder, and Second Bank is the junior lienholder. If Smith defaults on First Bank’s loan, Second Bank can pay off the delinquent amount and thus prevent First Bank from selling the property. The payment is added to the balance owed by Smith on Second Bank’s loan.

**TABLE 3.3**  
**Foreclosure by Advertisement versus Judicial Foreclosure**

Foreclosure by Advertisement	Judicial Foreclosure
Power of sale clause required	Complaint filed Lis pendens recorded Court orders property sold
<ul style="list-style-type: none"> <li>■ Notice of sale published, posted and served on party in possession</li> <li>■ Equitable redemption period until sale (right to reinstate loan)</li> <li>■ Sheriff’s sale</li> <li>■ Certificate of sale issued and recorded</li> <li>■ Statutory redemption period (6 months, 12 months, or 5 weeks)</li> <li>■ Certificate of sale becomes sheriff’s deed and purchaser takes possession</li> </ul>	

Alternatively, a junior lienholder may redeem the property after foreclosure. At the end of the borrower's statutory redemption period, junior lienholders are given 7 days in which they have the right to satisfy all prior indebtedness and take title to the property.

In order to redeem, the junior lienholder must file a notice of intention to redeem, along with evidence of the lien, with the county recorder or registrar 1 week prior to the expiration of the statutory redemption period.

To ensure that the junior lienholder will find out about a default as soon as possible, a junior lienholder may record a request for notice of default. The senior lienholder will then be required to notify the junior lienholder if the borrower defaults on the loan and the junior lienholder can decide what steps to take.

Strict foreclosure: court terminates borrower's rights and gives lender title to property without public auction. Minnesota does not allow in residential transactions.

### Strict foreclosure

You read about strict foreclosure in *Modern Real Estate Practice*. In a strict foreclosure, the property is not sold at auction. Instead, the borrower's rights are terminated and the lender is given title to the property. In Minnesota, a judge may grant strict foreclosure to a mortgagee in special circumstances when it is a just or appropriate remedy. It is not allowed in residential transactions, however.

### Deed in lieu of foreclosure

A borrower may be able to escape foreclosure by giving the lender a deed in lieu of foreclosure. This simply means that the borrower deeds title to the property to the lender, rather than going through the foreclosure process.

Lenders may hesitate to accept a deed in lieu of foreclosure because, unlike a foreclosure sale, this alternative does not wipe out junior liens. Thus, the lender may acquire title subject to other lien rights.

In certain instances, a lender may offer a cash payment to entice a borrower in default to deed in lieu of foreclosure. This is sometimes referred to as *cash for keys*.

### Short sale

A borrower in default on their mortgage will often attempt to sell their property. If market values have fallen, the borrower may enter into a purchase agreement to sell their property for less than is owed on the mortgage. The lender must approve the sale in order for the purchase to be finalized. This is known as a *short sale*. A short sale is an agreement in which the lender accepts less than the full amount owed on the mortgage.

## ■ OTHER LIEN RIGHTS IN MINNESOTA: MECHANICS' LIENS

While the mortgage lien is the most recognizable, it may not be the only lien that exists against a particular property. Furthermore, it is not the only lien that allows

foreclosure. As discussed in *Modern Real Estate Practice*, foreclosure is also the remedy for mechanic's liens.

Mechanic's lien: a statutory specific lien filed by one supplying labor or materials for improvements on property

A mechanic's lien (also called a construction or contractor's lien) arises when someone provides labor, skill, equipment, or materials for improvements on a property. This includes contractors, subcontractors, surveyors, architects, engineers, painters, laborers, and plumbers, among others.

Mechanic's lien rights are authorized by Minnesota statute, making it a statutory lien. Since the lien relates to a particular property, it is a statutory specific lien. Under the statute, a lien attaches when the first item of labor or material is furnished.

Contractor lien notice: notifies property owners that a lien could be enforced if labor or materials are not paid for

### Contractor lien notice

In Minnesota, contractors must provide property owners with a specific written notice informing the owners that a statutory lien exists and could be enforced against the property if those who provided materials or labor are not paid. This notice must be included in the written contract between the parties. If there is no written contract, or if the contract does not include this notice, the contractor must give a written **lien notice** to the owner within **10 days** from the date of their agreement.

Lien notice is required in a written contract or within 10 days of oral agreement

The required notice also warns the property owners that they could be responsible for money owed to subcontractors or others who provided labor or materials, even though the owners had no direct contract with them.

■ **FOR EXAMPLE** A property owner has a written agreement with a contractor to build a house on the property. The contractor hires several subcontractors (such as electricians, plumbers, and painters) to work on the house. The owner pays the contractor, but the contractor fails to pay the subcontractors. The subcontractors have liens against the property, even though the owner had no direct contract or agreement with them.

In the example, the owner could wind up paying double, since he already paid the contractor and is also liable for the subcontractors' liens. To protect against this possible double payment, Minnesota law also requires that the written lien notice inform the owner that he is permitted to withhold from the contractor as much of the contract price as may be necessary to meet the demands of the other lien claimants (such as subcontractors). The owner may pay the subcontractors or laborers directly and then deduct that amount from the contract price paid to the contractor.

Subcontractor's written lien notice must be given within 45 days

### Subcontractor lien notice

Every person who contributes to the improvement of property in such a way that a mechanic's lien could arise must give the owner a written lien notice. This includes anyone who provides labor, skill, or materials. Subcontractors must give this notice to the owner no later than 45 days after the lien claimant first furnishes labor or materials.

■ **FOR EXAMPLE** On February 15, a property owner signs a contract with a general contractor to build a house. The contract includes the required contractor lien notice. On April 12, work actually begins. A power shovel is used to begin excavation for the basement. The owner of the power shovel must give the property owner a subcontractor lien notice within 45 days (by May 27).

### Exceptions

The statute includes some exception situations in which a lien notice is not required. For example, the notice does not have to be given to an owner of a building with more than 4 units, or to owners of certain types of nonresidential property.

### Lien notice requirements

A contractor or subcontractor must deliver written notice of the lien to the property owner in the respective time frames (10 days or 45 days). In addition, that notice must be in 10-point, bold face type. A contractor or subcontractor cannot file (record or perfect) the lien unless proper notice was delivered.

### Enforcing the lien

In Minnesota, a mechanic's lien attaches when labor or materials are first provided, even though no documents have been filed. To preserve and to be able to enforce the lien, the claimant must have given the mandatory lien notice and must perfect the lien by filing a lien statement in the county where the property is located.

Lien statement must be filed within 120 days after the job is finished to perfect the lien

The lien statement must be filed within 120 days after the last item of labor or materials were furnished. If a lien statement is not filed by then, the lien terminates. A mechanic's lien must be enforced within 1 year after completion by filing a foreclosure lawsuit. If no action is taken within a year, the lien is no longer enforceable.

### Notice of non-responsibility

Whenever improvements are made to property, several people may be held responsible, such as the owner, a seller under a contract for deed, the landlord, or a tenant in possession. All of these people may be held to have authorized the improvements so as to subject their interests in the property to a mechanic's lien. An owner who has not authorized an improvement may protect herself from liability by posting a notice of non-responsibility. This notice simply states that the improvement is being made without the owner's authorization.

## ■ PROTECTION FOR PROPERTY OWNERS: STATE LAWS AND STATUTES

Minnesota has laws in place to help protect property owners and their interests in land. The homestead law, the recording process (including the Torrens system of registering property), the Statutory New Home Warranty Law, the Minnesota

Humans Rights Act, the Statute of Frauds, and the Minnesota Landlord-Tenant Act all offer different forms of protection to both property owners and tenants.

## Homestead exemptions

Homestead law: state law that protects the family home from forced sale by creditors

**The homestead law.** The homestead law gives the home of an individual or a family limited protection from forced sale by unpaid creditors. The objective of the homestead law is to keep the family home out of the reach of financial misfortune.

**Requirements.** A homestead is real estate that is owned and occupied by the owner and the owner's family. The homestead must be the owner's principal residence. It may be a single-family house, townhouse, duplex, condominium, cooperative, or even a mobile home. A portion of property that is used primarily for agricultural purposes (such as a family farm) may qualify as a homestead, as long as it includes the owner's home.

Homestead rights can be established regardless of marital status, whether the owner is married or single. If a married couple resides on the homestead property, the homestead is protected from either spouse's creditors, even if the title is held in the name of only one spouse.

If one spouse dies, the homestead exemption still protects the surviving spouse and children if they continue to occupy the homestead property.

**Limitations.** The homestead may include any quantity of land not exceeding **160 acres**. The amount is set by state statute and it is adjusted every 2 years (see lecture notes for current amounts).

How it works: the homestead property's value is protected up to the exemption limit from creditors. If the value of the property exceeds that limit, the excess value does not receive homestead protection from creditors.

**Coverage.** The homestead exemption only applies to certain types of creditors' claims, such as judgment liens (general liens). Under the homestead law, there is no protection against foreclosure of most voluntary or statutory specific liens, such as

- property tax or special assessment liens,
- mechanics' liens,
- mortgage liens, or
- condominium association liens.

Homestead property receives favorable property tax treatment.

**Property tax treatment.** In addition to protection from creditors' claims, Minnesota also provides favorable property tax treatment for homestead property. To qualify for full homestead tax status for the following year, the property must be owned and occupied as a homestead by December 1. In addition, the owner must notify the county assessor of the property's homestead status in writing by December 15.

Under certain circumstances, property owned by a married couple may qualify as a homestead for tax purposes even if only one spouse is living on the property. This is true if the other spouse is absent because the couple is legally separated or in the process of getting a divorce, or because the other spouse is employed in another location or living in a nursing home or other care facility.

Property may even qualify as a homestead for tax purposes when the owner is not living on the property, if a relative of the owner occupies it as his home. The relative must be the owner's parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, niece, or nephew. The relationship may be either by blood or by marriage.

### Recording and fees

The recording process is discussed in *Modern Real Estate Practice*. Here are the requirements, and the legal effect, of recording in Minnesota.

**The race/notice rule.** The Minnesota recording system is known as a race/notice system. In effect, when there are competing interests in a property, there is a race to record. Whoever records deed first wins the race, as long as the winner did not have notice of any previous conveyances.

■ **FOR EXAMPLE** Connelly sells property to O'Donnell and gives him a deed on June 10. O'Donnell fails to record his deed. Then, on August 15, Connelly sells the same property to McMurphy. McMurphy has no knowledge of the sale to O'Donnell. McMurphy records her deed on August 15, the same day she received it. McMurphy would win a lawsuit to determine ownership of the property, even though O'Donnell actually purchased the property first. McMurphy won the race by recording her deed first, and she had no notice of the previous sale.

A subsequent purchaser who has notice of a previous conveyance can never have good title, even if her deed is recorded first. In the example, if McMurphy had been aware of the prior conveyance to O'Donnell, or if O'Donnell had taken possession of the property, McMurphy would not have good title, even though she recorded her deed before O'Donnell recorded his.

**The recording process.** In Minnesota, each county has a public recorder's office, known as the county recorder's office or the registrar of titles office. The person in charge is called the recorder or registrar. To have a document affecting title to real property recorded, the original or a certified copy of the document must be filed at the public recorder's office in the county where the property is located. Documents pertaining to certain federal land may be recorded at the Bureau of Land Management. The date and time a document is received at the recorder's office is noted, since time of filing can affect the priority of interests in a property.

After a document is filed with the recorder, it is copied and placed in the public record. It may be copied by transcription, or by any photographic or photomechanical process (photocopier, microfilm, and so on) that produces a clear, legible, and durable record. Recorded documents are generally numbered in chronological



order, according to the time and date of filing. These recording numbers can later be used to locate a particular document in the public record.

After recording a document, the recorder's office returns the original to the person who filed it for recording, or to someone else specified by that person.

**Reception books.** As required by Minnesota statute, each public recorder keeps 2 books, the grantor's and grantee's reception books, to log in documents that are filed for record. Each county may have a slightly different layout in its reception books, but the books are supposed to show the following, for each recorded document:

- The date of reception (year, day, hour, and minute)
- The grantor's name
- The grantee's name
- Where the property is situated
- To whom the document is to be delivered after recording
- The fees paid
- The book and page where the document is recorded and the type of instrument it is (deed, mortgage, lien, and so on).

The reception books generally list each document in the order it is received. They are used to account for each document number and to help people find documents that have been accepted for recording but have not yet been indexed.

**Indexing.** The recorder indexes deeds and other documents in alphabetical order by the last name of the grantor and by the last name of the grantee. In some states, deeds are indexed according to tract as well. A tract index groups together all recorded documents pertaining to a particular property (i.e., a particular tract).

In Minnesota, tract indexes are maintained by the public recorder in some counties, but they are not considered official. Grantor and grantee indexes are the only official indexes authorized by statute. These indexes serve as the basis for title searches. A search of the grantor index will determine if a seller has already conveyed the interest in question to another party. A search of the grantee index will show the source of the seller's title and trace the ownership of the property back through a chain of title (successive grantors and grantees) that is long enough to ensure the validity of the seller's title.

State deed tax 0.0033  
(0.33 percent) of the sale  
price (paid by seller)

**State deed tax.** Minnesota charges a tax on each deed or other instrument that transfers or conveys property. This is known as the state deed tax or transfer tax. This tax has to be paid before the deed may be recorded.

The amount of the deed tax depends on the purchase price of the property. The deed tax is \$0.0033 (0.33 percent), or **\$3.30 per thousand**, of the price paid for the property, less any assumed mortgage, with a minimum tax of \$1.65.

■ **FOR EXAMPLE** The Glovers sold their home for \$123,000. Since the deed tax is \$0.0033 per \$1, multiply \$0.0033 by \$123,000 to determine the amount of the tax.  $\$0.0033 \times \$123,000 = \$405.90$ . The deed tax for this transaction is \$405.90.

If the buyer assumes the seller's mortgage or another lien, the state deed tax is only charged on the difference between the total price and the amount of the assumed mortgage. In the example, if the buyers were assuming the Glover's \$78,000 mortgage balance, the deed tax would be calculated on the difference between \$123,000 and \$78,000, which is \$45,000 ( $\$0.0033 \times \$45,000 = \$148.50$ ). The deed tax for this transaction is \$148.50.

Mortgage registry tax  
0.0023 (0.23 percent)  
of the mortgage amount  
(paid by buyer)

**Mortgage registry tax.** Minnesota also charges a mortgage registry tax on all new mortgages of real property. This tax must be paid before a mortgage may be recorded. The mortgage registry tax is \$0.0023 (**0.23 percent**) of the mortgage amount.

■ **FOR EXAMPLE** For a \$90,000 mortgage loan, the tax would be \$207 ( $\$0.0023 \times 90,000 = \$207$ ).

Because of the volume of real estate transactions in certain counties, the Minnesota legislature recently authorized those counties to charge an additional tax for documents recorded there.

**Contract for deed.** With a contract for deed, the deed does not change hands at closing. As a result, the state deed tax does not have to be paid on a sale under a contract for deed until it has been fully performed and title actually transfers. Because there is no mortgage, there is also no mortgage registry tax on a contract for deed.

**Torrens system.** Along with the public recording system, Minnesota also uses a method of title registration called the Torrens system. Under the Torrens system, a property owner may apply to the district court for registration of title.

A registered land survey  
(RLS) is used in Torrens  
property

**Registration.** An application for Torrens registration is generally filed with the court administrator, and a copy is then filed with the registrar of titles (or the county recorder). A **registered land survey** (RLS) may be required to complete the application. A court hearing is held to determine title. Anyone named in the abstract and anyone else claiming a right or interest in the property may attend the hearing and present proof of their claims.

Torrens system of title  
registration: registrar  
prepares certificate of title  
and places in register of  
titles

Based on the outcome of the hearing, the registrar prepares a **certificate of title**, naming the legally recognized title holder and listing any legally recognized encumbrances, such as mortgages or easements. The registrar places the original certificate in the register of titles. It is at this point that title is considered **registered**.

In the past, an owner's duplicate certificate of title was issued. To eliminate needless paperwork, this requirement was recently discontinued.

**Transferring ownership.** An owner of Torrens-registered property who wants to sell or convey the property has an abstracter prepare a registered property abstract (RPA). This abstract summarizes the information on the certificate of title and reports any unpaid taxes or other liens on the property. The buyer has an attorney examine the RPA to see if the condition of title is acceptable, or obtains a

preliminary title report from a title insurance company. If the buyer decides to proceed with the transaction, an executed deed granting title to the buyer is filed with the registrar of titles.

Torrens property title transfers upon registration of the certificate of title

The registrar then cancels the seller's certificate of title and files a new certificate in the name of the buyer. Any liens or other encumbrances that have not been removed are carried over onto the new certificate. Any new encumbrances, such as a new mortgage, are noted on the new certificate. The registrar keeps the original in the Register of Titles. Legally in Minnesota, title to Torrens property transfers upon registration of the certificate of title.

**Effect on a mechanic's lien.** If property is registered under the Torrens system, a mechanic's lien must be recorded on the certificate of title in order to be an encumbrance on the property. This is true of all liens against a property, including mortgage liens.

Statutory New Home Warranty Law: establishes warranties for new dwellings. Warranty does not cover damage.

### Statutory New Home Warranty Law

The Statutory New Home Warranty Law establishes that certain warranties are implied in every sale of a newly completed dwelling, and in every contract for the sale of a dwelling to be completed.

Under this statute, the builder warrants or promises that

- during the 1-year period after the warranty date, the dwelling will be free from **defects** caused by faulty workmanship and defective materials due to noncompliance with building standards;
- during the 2-year period after the warranty date, the dwelling will be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems; and
- during the ten-year period after the warranty date, the dwelling will be free from major construction defects due to noncompliance with building standards.

Statutory warranties begin at first legal occupancy or passage of title to initial buyer

Statutory warranties begin on the date of the initial buyer's first legal occupancy or the date the initial buyer takes legal or equitable title (**closing**), whichever occurs first. Statutory warranties survive the passing of title. In other words, if the original purchaser later sells to a second purchaser, the warranties still apply.

■ **FOR EXAMPLE** In 1993, Addington bought a new house and took legal occupancy. In 1998, he sold to Barton and in 2000, Barton sold to Carlyle. In 2001, Carlyle discovered cracks and buckling in the foundation and learned that the foundation had not been adequately reinforced when the house was built. This would be considered a major construction defect. It would be covered by the statutory new home warranty, since it is less than 10 years since the home was first occupied.

In the event the homeowner discovers a defect with new construction, there are statutory remedies. First, the homeowner must send a written notice to the contractor within 6 months of discovering the defect. After receiving the written notice, the contractor must inspect the home and the defect within 30 days.

Once the contractor has completed the inspection, they must provide the owner with a written offer to repair within 15 days of the inspection. The written offer must provide the scope of work and an estimate. Finally, any action (lawsuit) the homeowner may take to recover damages or force the contractor to perform must occur within 180 days of the homeowner notifying the contractor of the defect.

Minnesota Human Rights Act prohibits discrimination on the basis of

- race,
- religion,
- color,
- sex,
- national origin,
- familial status,
- disability,
- marital status,
- public assistance, or
- sexual orientation.

## Minnesota Human Rights Act

In addition to complying with federal laws, agents, sellers, and landlords must also comply with state laws prohibiting discrimination. The state law in Minnesota that prohibits discrimination is the Minnesota Human Rights Act.

**Protected classifications.** The Minnesota Human Rights Act states that it is an unfair discriminatory practice for anyone having the right to sell, rent, or lease real property (or their agents), to refuse to sell, rent, or lease because of

- race,
- religion,
- color,
- sex,
- national origin,
- familial status,
- disability,
- **marital status**,
- status with regard to public assistance, or
- sexual orientation.

**Prohibitions.** Under the Human Rights Act, it is unlawful to refuse to sell, rent, or lease based on any of the factors listed above. It is also unlawful to discriminate in the terms or conditions of a sale or lease, or in furnishing facilities or services. It is also unlawful to express any discriminatory limitation or specification in advertising, or for banks or other financial institutions to discriminate in any lending practices. Like the Federal Fair Housing Act, Minnesota law prohibits redlining and blockbusting.

Minnesota law also has a section making it unlawful to deny a handicapped person with a service dog (such as a Seeing Eye dog) equal access to real property. The person may not be required to pay any extra compensation for the service dog, but is liable for damage done to the premises by the dog.

Exemptions from the Human Rights Act are limited to nonprofit residences and the rental of rooms in private, owner-occupied homes.

**Exemptions.** There are certain limited exemptions from the Minnesota Human Rights Act. It is not a violation of the act to discriminate in the following situations:

- Gender discrimination in nonprofit residence homes.
- **FOR EXAMPLE** It is not a violation of the Minnesota Human Rights Act when a nonprofit residence home for women refuses residence to men.
- If the resident owner of a single-family home is renting a room within the home, it is not unlawful to discriminate based on gender, marital status, sexual orientation, status with regard to public assistance, or disability.

■ **FOR EXAMPLE** The Carlsons have a large house and decide to rent out a basement room to make some extra money. The Carlsons are allowed to refuse to rent the room to Smith because he requires a wheelchair ramp.

■ If a resident owner of a dwelling with no more than 2 units is renting one of the units, it is not unlawful to discriminate based on sexual orientation.

■ **FOR EXAMPLE** Walters owns a duplex and lives in one of the units. She is permitted to refuse to rent the other unit to Baker because of his sexual orientation.

■ The resident owner of a dwelling with 4 units or less is permitted to discriminate based on familial status (that is, to exclude families with children). Discrimination based on familial status is also generally allowed in retirement communities and other housing for the elderly, with a permit from the Department of Human Rights.

■ **FOR EXAMPLE** The Broadmoor Arms, a 30-unit apartment building, has received a permit from the Commissioner of Human Rights to rent exclusively to elderly tenants. The landlord can refuse to rent to someone who has young children.

#### Housing for elderly persons means housing

- provided under any state or federal program that the commissioner determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
- intended for, and solely occupied by, persons 62 years of age or older; or
- intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit, and there is publication of, and adherence to, policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Note that these exemptions generally do not apply if a real estate agent's services are used in the transaction.

There is one exception, however: a real estate agent is allowed to advertise that a dwelling unit is available to *adults only*, as long as the agent reasonably believes that the exemption concerning familial status (on the list of exemptions above) applies to the transaction. That means yes, an agent can help a client with the purchase or sale of senior housing.

Violation of the Human Rights Act by a real estate licensee may result in license suspension or revocation, censure, monetary damages, and injunction.

**Enforcement and penalties.** A person claiming a violation of the Minnesota Human Rights Act may file a charge with the Department of Human Rights. The charge must be filed within 1 year of the discriminatory conduct. Once a charge is filed, the department investigates the claim to see if there is probable cause to support the charge. If probable cause is found, the Commissioner of Human Rights may attempt to have the parties reconcile their differences through negotiation, or a formal hearing may be ordered.

If a hearing is ordered, a hearing examiner will listen to testimony and receive evidence. The examiner will then make a decision on the claim. If a finding of unlawful discrimination is made, the examiner may order the payment of compensatory

damages and may also impose punitive damages of up to \$8,500. In addition, the examiner may order the violator to pay a civil penalty to the state. The hearing examiner could also issue an injunction prohibiting sale or lease of the property to anyone else and order the sale or rental of the property to the complainant. Imprisonment is not authorized by the Minnesota Human Rights Act, however. The hearing examiner's decision is subject to review by a judge.

If a real estate broker or salesperson is found to have participated in any unlawful discrimination, it could result in license suspension, revocation, or censure, in addition to the penalties described above.

Statute of Frauds: requires certain contracts, such as those relating to real estate transactions, to be in writing

### The Statute of Frauds

Most of the contracts that real estate agents encounter in their work must be in writing and signed in order to be enforceable. The state law that requires certain types of contracts to be in writing and signed is called the **Statute of Frauds**. As the name suggests, the Statute of Frauds is intended to prevent fraudulent claims in contract disputes. The parties to an unwritten contract are likely to later disagree about exactly what each of them agreed to do. Putting a contract in writing helps eliminate disputes, because the document is solid evidence of the existence of an agreement and its essential terms.

As a general rule, only those types of contracts that are covered by the Statute of Frauds have to be in writing to be enforceable. Other contracts may be oral.

All leases longer than 1 year and all sales contracts must be in writing.

In Minnesota, almost all contracts relating to real estate transactions are covered by the Statute of Frauds and are required to be in writing. This includes any agreement creating, granting, assigning, surrendering, or declaring an estate or interest in land.

Landlord-Tenant Act requires all leases in residential buildings with 12 or more units be in writing, regardless of length.

There is an exception to this requirement, concerning leases. The Statute of Frauds does not require a lease with a term of 1 year or less to be in writing. However, a provision of the Minnesota Landlord-Tenant Act requires any lease—no matter how short its duration—to be in writing if the leased property is a unit in a residential building with 12 or more dwelling units.

Leases for 1 year or less do not have to be in writing, unless property is residential building with 12 units or more

### Minnesota Landlord-Tenant Act

The relationship between landlord and tenant is governed by the terms of their lease. In addition, Minnesota (like most other states) has a Landlord-Tenant Act. The intent of the law is to strike a balance of rights and responsibilities between landlord and tenant.

Landlord-Tenant Act: establishes rights and responsibilities of landlords and tenants, especially in residential tenancies

Many of the provisions of the Landlord-Tenant Act apply only to residential tenancies. The Minnesota Landlord-Tenant Act requires the Attorney General to publish a summary of the legal rights and duties of residential landlords and tenants. A booklet titled *Landlords and Tenants Rights and Responsibilities* is available free of charge. Landlords are required to post a notice in residential buildings informing tenants that they can obtain a copy of this summary from the Attorney General's office.

In addition to the rules concerning notice of termination and automatic renewal that were discussed earlier, the Landlord-Tenant Act establishes rules concerning

- written leases,
- security deposits,
- habitability, and
- privacy rights.

Minnesota law always requires a written lease for residential property with 12 or more units.

**Written leases.** The Landlord-Tenant Act requires the lease of a residential unit in a building with 12 or more residential units to be in writing, no matter how short or long the term of the lease. (Other leases only have to be in writing if the lease term is longer than 1 year. See the discussion of the Statute of Frauds.)

**Automatic renewal.** When a lease is expiring, or near its expiration date, the landlord and tenant may decide to renew the lease. Upon renewal, the terms of the lease may be renegotiated. Old provisions may be deleted and new provisions added, and the amount of the rent may be increased or decreased.

Some leases have an automatic renewal clause, providing that the lease will be renewed unless the tenant notifies the landlord of intent to move out at the end of the original term. In Minnesota, when a residential lease with an original term of 2 months or more has an automatic renewal clause, the landlord must give the tenant a written reminder of the renewal clause. The reminder must be given at least 15 days (but no more than 30 days) prior to when the tenant would have to notify the landlord that he intends to move out.

Security deposit: given to landlord to secure performance of residential lease

**Security deposits.** Landlords often require a tenant to provide a security deposit at the beginning of the lease term, in case the tenant fails to pay rent or damages the property in some way. The amount of the deposit is usually up to the landlord. The Landlord-Tenant Act has some rules concerning security deposits in residential tenancies.

The act defines a security deposit as any deposit of money, the function of which is to secure the performance of a residential rental agreement. This does not include a deposit that is exclusively an advance payment of rent.

■ **FOR EXAMPLE** Some landlords require a payment of the last month's rent at the time the lease is signed. This amount is still considered rent and is not part of the security deposit.

When the lease is terminated and the tenant moves out, the landlord may only retain as much of the security deposit as is necessary to cover unpaid rent or damage caused by the tenant. A security deposit may not be retained to pay for normal wear and tear resulting from ordinary use of the premises.

**Time limit.** If, after paying for damage or covering unpaid rent, part (or all) of the security deposit is left over, it must be returned to the tenant. The Landlord-Tenant Act requires that a security deposit be returned to the tenant within 3 weeks (**21 days**) after termination of a residential tenancy.

Deposit must be returned within 3 weeks, with 3 percent interest until August 1, 2003, then 1 percent thereafter, unless withheld to pay for damage or cover unpaid rent

When returning the deposit, the landlord must also pay the tenant 3 percent simple, non-compounded interest on the deposit for the lease period until August 1, 2003, then 1 percent thereafter. If the landlord is not returning all or part of the deposit, the landlord must give the tenant a written statement explaining why. If the landlord keeps the deposit unlawfully, the landlord may be liable to the tenant for the amount withheld, plus damages.

However, if the tenant does not leave a forwarding address or come back to claim the security deposit, the landlord is released from the duty of returning the deposit to the tenant.

If a tenant has caused severe damage and the cost of repairs is greater than the amount of the security deposit, the landlord may sue the former tenant for the amount exceeding the deposit. The fact that a security deposit was paid does not protect the tenant from liability for additional damages.

If a landlord sells the leased property, he required to transfer 100 percent of the tenants' security deposits to the new owner. Transfer of ownership does not affect the lease.

Habitability: landlord has duty to keep residential property fit for human habitation

**Habitability.** In all rental agreements for residential property, there is an implied warranty of habitability. The warranty of habitability imposes a duty on the landlord to keep the premises fit for human habitation at all times during the tenancy.

The landlord must keep the dwelling units and common areas in reasonable repair and in compliance with applicable health and safety laws. A lease provision in which the tenant waives this requirement will not be enforced by the courts.

■ **FOR EXAMPLE** Loper owns a dilapidated old apartment building that has serious plumbing problems and does not meet the fire code. Several of the apartments have no heat. Rather than spend any money to fix up the building, Loper simply charges very low rent and tells the tenants that they can take it or leave it.

Loper is breaching the implied warranty of habitability and violating the Landlord-Tenant Act. Even though the tenants have essentially agreed to accept the problems in return for low rent, Loper's actions are against public policy. He can be required to make certain essential repairs.

A breach of the implied warranty of habitability by the landlord may relieve the tenant from the obligation to pay rent until the premises are made habitable. The tenant is not required to pay rent if the property is damaged so severely that it is uninhabitable.

**Foreclosed property.** An owner who has received notice of a foreclosure sale or cancellation of a contract for deed may not enter into a long-term lease. The owner may only enter into a periodic lease (estate at will) for 2 months or the time remaining until the foreclosure sale or contract for deed cancellation, whichever is less, or a term lease (estate for years) with an expiration date not extending beyond the cancellation date of the contract for deed or the mortgage redemption period.



Residential landlord may only enter unit for reasonable business purpose after reasonable notice or in emergency

**Privacy rights.** The Landlord-Tenant Act provides that a landlord may enter a leased unit during the lease term only for a reasonable business purpose and only after making a good-faith effort to give the tenant reasonable notice of the planned entry. A tenant cannot waive the right to receive reasonable notice.

The act lists all of the following as reasonable business purposes that justify a landlord's entry, if reasonable notice is given:

- Maintenance work
- Health and safety inspections by government officials
- Showing the leased unit to prospective tenants after the current tenant has given notice
- Showing the unit to prospective buyers or to insurance company representatives
- Stopping a violation of the lease or a disturbance caused by the tenant within the unit
- Stopping an unauthorized person from occupying the unit
- Performing housekeeping work in a senior housing facility

The landlord may also enter the leased unit if the tenant has moved out before the end of the lease.

Notice of entry not required if an emergency; tenant may not be safe; or law enforcement orders entry

Prior notice of entry is not required in emergencies. A landlord may enter a tenant's unit immediately and without notice in order to prevent injury, to see whether the tenant is safe, or to comply with local ordinances or law enforcement officials regarding illegal activity in the unit.

If a landlord violates a tenant's privacy rights, the tenant can take the landlord to court and may be entitled to claim a rent reduction or terminate the lease.

**Abandoned property.** Upon termination of the lease, the tenant may vacate the property and remove all items of personal property. However, there are circumstances that prevent the tenant from removing personal items from the property, or the tenant may abandon their personal property. In those cases, the landlord is required to store and care for the tenant's personal items.

According to Minnesota law, the landlord may sell or otherwise dispose of the property **28 days** after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last.

The landlord can charge the tenant for all moving and storage costs; however, the tenant may retrieve the property before paying these costs. In the event the landlord chooses to sell or otherwise dispose of the items, the landlord is required to serve notice to the tenant at least 14 days in advance.

When a tenant is legally evicted from a property via a law enforcement agency, the tenant is required to remove personal belongings within 24 hours. If the personal property is not removed, the law enforcement agency will remove and store the property at the landlord's expense. It must be stored for up to 60 days. The tenant must pay this expense to the landlord immediately.

If the tenant fails or refuses to do so, the landlord has a lien on all the personal property for the reasonable costs and expenses incurred in removing, caring for, storing, and transporting it to a suitable storage place. The landlord may enforce the lien by detaining the personal property until paid. If no payment has been made for 60 days after the execution of the order to vacate, the plaintiff may hold a public sale as provided in Minnesota statutes chapter 504B.

**Tenant's remedies.** The Landlord-Tenant Act provides legal remedies for tenants facing hardship due to acts or failures to act by the landlord. Tenants have the right to sue the landlord for a health or housing code violation, failure to keep the unit in reasonable repair, or a violation of the rental agreement. Tenants or their neighborhood organization also have the right to recover reasonable attorney's fees (not to exceed \$500) for help in defending their legal rights. In addition, tenants may not be required to pay rent if the rental property is damaged or deemed uninhabitable.

**Tenant 3-day notice during winter.** Tenants who are going to be permanently leaving their units, prior to expiration, between November 15 and April 15 must tell their landlord at least 3 days before they move. This allows the landlord time to take steps to make sure the pipes don't freeze. A tenant's failure to notify the landlord is a misdemeanor.

## UNIT 3 LECTURE OUTLINE AND NOTES

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### I. FINANCING INSTRUMENTS

#### A. Mortgage review

1. The buyer holds legal title, and the lender is given a lien against the property.
2. Parties include the following:
  - a) Borrower is the \_\_\_\_\_.
  - b) Lender is the \_\_\_\_\_.

#### B. Contract for deed in Minnesota: also known as land contract or installment land contract

1. Form of seller financing. The buyer makes installment payments to the seller and receives deed upon final payment.
2. Parties include the following:
  - a) Seller is vendor.
  - b) Buyer is vendee.
3. Legal effect includes the following:
  - a) Seller has legal title and \_\_\_\_\_.
  - b) Buyer has \_\_\_\_\_.
4. Sale of contract by seller requires assignment of contract and deed to new fee owner.
5. All contracts for deed must be recorded by the buyer within 4 months of the agreement.
6. A buyer who fails to record a contract for deed is subject to a civil penalty, equal to 2 percent of the principal amount.
7. Remedy for default is \_\_\_\_\_.
  - a) Seller terminates contract to \_\_\_\_\_.

- b) Seller must serve notice of default. Buyer cannot waive right to notice.
- c) Equitable redemption period is 60 days from receipt of notice.

**II. MORTGAGE FORECLOSURES AND MINNESOTA REDEMPTION RIGHTS**

■ Note: Minnesota is a lien theory state.

**A. Methods of foreclosure**

1. Foreclosure by judicial (legal) action
  - a) Lawsuit to obtain the power to sell from court
  - b) Lis pendens filed with county recorder
  - c) Used when no *power of sale* clause in mortgage
    - Power of sale clause gives the lender the right to foreclose without going to court.
  
2. Foreclosure by \_\_\_\_\_
  - a) No lawsuit necessary
  - b) Used to foreclose a mortgage that contains a power of sale clause
  - c) Also used to foreclose homeowners' association \_\_\_\_\_
  - d) Requires
    - (1) \_\_\_\_\_ published notice, must be consecutive weeks; and
    - (2) \_\_\_\_\_ prior personal delivery of notice to borrower
  - e) Notice includes the following:
    - (1) Names of mortgagor and mortgagee
    - (2) Original principal amount
    - (3) Date of mortgage

(4) Amount due and taxes paid

(5) Legal description

(6) Time and place of sale

(7) Redemption period

■ Note: would not include the cause of default

3. Strict foreclosure

- a) Court orders direct transfer of property from mortgagor to mortgagee, without public auction.
- b) There is no statutory redemption period.
- c) Minnesota prohibits strict foreclosure in residential transactions.

**B. Foreclosure process**

1. Equitable redemption period/equity of redemption is the mortgagor's right to reinstate the mortgage in good standing before the sale.

a) Cure default and stop foreclosure

■ Cure by bringing loan current and paying all fees

b) Time period: \_\_\_\_\_

2. Sheriff's foreclosure sale

a) Property sold at public auction

b) Highest bidder given sheriff's certificate of sale (sheriff's deed)

3. Statutory redemption period is the mortgagor's right to redeem after the foreclosure sale.

a) Mortgagor may redeem by paying foreclosure sale price, which is typically principal, interest, and all fees owed.

b) Time period

(1) \_\_\_\_\_ for the majority of property

- (2) \_\_\_\_\_, if
  - (a) the mortgage is \_\_\_\_\_,
  - (b) the property is \_\_\_\_\_, or
  - (c) the property is \_\_\_\_\_.
  
- (3) \_\_\_\_\_ if the property is abandoned, as evidenced by
  - (a) broken windows;
  - (b) doors broken or off hinges;
  - (c) gas, electric, or water service terminated;
    - Not disconnected telephone or cable
  - (d) garbage or sanitary problems;
  - (e) \_\_\_\_\_ police reports of trespassing; or
  - (f) the premises are below minimum community standards for public safety and sanitation.
  
- c) The excess sale proceeds belong to mortgagor.
- d) Insufficient sale proceeds may result in personal judgment called a deficiency \_\_\_\_\_ judgment.
  - (1) Deficiency judgments are allowed to be filed only in 12-month redemption periods or under judicial foreclosure.
  
- 4. Junior liens have redemption rights if the mortgagor does not redeem.
  - a) Junior lienholders must redeem to the highest bidder at the sheriff's sale.
  - b) They may file a request for notice of default.
  
- 5. \_\_\_\_\_ to manage property during the statutory redemption period.
  
- 6. Holder of sheriff's certificate may
  - a) inspect the property;

- b) secure the property, if necessary; and
  - c) hire a management company.
7. Holder may not immediately remove tenant's abandoned property.

### III. OTHER LIEN RIGHTS IN MINNESOTA

#### A. Mechanic's or construction lien (statutory specific lien)

- "Whoever performs engineering, surveying, or architectural services, or contributes labor, skills, materials, or machinery FOR THE IMPROVEMENT OF REAL ESTATE, shall have a lien upon the land on which the improvement is located."  
*MN Statute 514*

1. Lien rights apply to
  - a) \_\_\_\_\_,
  - b) \_\_\_\_\_,
  - c) \_\_\_\_\_,
  - d) general contractors,
  - e) sub-contractors, and
  - f) material suppliers.
2. Lien rights attach as soon as labor, skill, or materials are furnished.
3. To sustain rights, a \_\_\_\_\_ must be given to the property owner.
  - a) Must be in 10-point bold type
  - b) Must be worded exactly as stated in state statute
4. Written lien notice must be included in any written contract.
5. If no written contract, for example a verbal agreement, lien notice must be delivered to the property owner.
6. Time requirements include the following:
  - a) General contractor has \_\_\_\_\_ from verbal agreement to deliver written notice.

- b) Notice must be delivered \_\_\_\_\_.
  - c) General contractor has 10 days to respond to sub-contractor's request for owner information.
  - d) Subcontractor must give notice \_\_\_\_\_.
  - e) To enforce, the lien must be recorded (perfected) within \_\_\_\_\_ after work is completed.
7. Cannot file (record/perfect) the lien unless \_\_\_\_\_ was delivered.

**IV. PROTECTION FOR PROPERTY OWNERS: STATE LAWS AND STATUTES**

**A. Homestead exemptions**

1. Homestead status
  - a) Protects homeowners from the forced sale of their \_\_\_\_\_ by unpaid creditors holding judgments
  - b) Applies to single-family homes and condos, town houses, co-ops, mobile homes, and homestead agricultural property
    - Acreage may not exceed \_\_\_\_\_.
  - c) Homeowner may be single or married
    - (1) Property is protected from creditors of both spouses, even if only one spouse holds title.
    - (2) After the owner's death, exemption still protects surviving spouse and children if they continue to occupy the property as a homestead.
  - d) Limits on value (exemption amounts)
    - (1) \_\_\_\_\_ for most homestead property
    - (2) \_\_\_\_\_ for agricultural homesteads
  - e) No homestead protection against the following specific liens:
    - (1) Property tax or special assessment liens



- (2) Mechanics' liens
  - (3) Mortgage liens
  - (4) Common interest community association liens
2. Homestead tax status
- a) Homestead property receives favorable property tax treatment.
  - b) Requirements include the following:
    - (1) Property must be occupied by owner—or owner's relative—as primary residence
    - (2) Must own and occupy by December 1 and file by December 15 to receive full credit for the following year
    - (3) Qualifying relatives include the owner's
      - (a) parent-stepparent,
      - (b) child-stepchild,
      - (c) grandparent-grandchild,
      - (d) brother-sister,
      - (e) uncle-aunt, and
      - (f) nieces-nephews

## B. Recording and fee

1. Recording process
  - a) \_\_\_\_\_ establish recording procedures.
  - b) In Minnesota, each county has a county recorder who is responsible for organizing and maintaining recorded documents.
2. Requirements in Minnesota for recording
  - a) State deed tax (transfer tax) paid to county treasurer
    - (1) \_\_\_\_\_ when deed recorded

(2) \_\_\_\_\_  
of the net sales price or \_\_\_\_\_ or  
\_\_\_\_\_

■ Note: net sales price is the sales price less any assumed mortgage

(3) Minimum tax: \$1.65

(4) Purchaser of tax-forfeited property pays

b) Mortgage registry tax

(1) Paid by the \_\_\_\_\_ before the mortgage is recorded

(2) \_\_\_\_\_  
of the mortgage amount or \_\_\_\_\_  
\_\_\_\_\_

**C. Torrens title system**

1. Registration process

a) A property owner applies to the district court to register the land and obtain a \_\_\_\_\_.

b) A \_\_\_\_\_ may be required to create or subdivide a Torrens property.

c) The court hears and judges the validity of all claims.

d) *Certificate of Title* is issued by the court and placed in the Register of Titles as evidence of ownership.

(1) Original certificate are held by Registrar of Titles.

(2) All interests are listed on *Certificate of Title*.

2. Transferring ownership

a) Seller provides registered property abstract (RPA); RPA search includes property taxes, judgments, and special assessments.

b) Seller gives deed to the buyer.

c) Buyer presents deed to the Registrar of Titles.

- d) Registrar records deed and transfers current interests to new *Certificate of Title*.
- e) \_\_\_\_\_ new *Certificate of Title* in Register of Titles.
- f) Title transfers \_\_\_\_\_ of the *Certificate of Title*.

**D. Statutory New Home Warranty Law**

1. Implied warranties on new homes and home improvements, covers \_\_\_\_\_ caused by noncompliance with building standards.
  - a) 1-year coverage of defective materials and faulty workmanship
  - b) \_\_\_\_\_ coverage of defects caused by faulty installation of plumbing, electrical, heating, ventilation, and cooling systems
  - c) \_\_\_\_\_ coverage for major structural defects
    - Note: covers structural \_\_\_\_\_
2. Warranty is effective at date of initial buyer’s first legal occupancy, or closing, which ever occurs first.
3. Warranties transfer to subsequent owners.
4. Remedies for defects include the following:
  - a) The homeowner must provide a written notice of the defect to the contractor within 6 months of discovery.
  - b) The contractor must inspect the home within 30 days of receipt of notice.
  - c) The contractor must provide an offer to repair within 15 days of completion of the inspection.
5. Statute of limitations
  - a) A lawsuit must be filed
    - (1) within 180 days of the homeowner notifying the contractor, or

(2) by completion of the home warranty dispute resolution process,

(3) whichever occurs last.

**V. MINNESOTA HUMAN RIGHTS ACT**

**A. Federal protected classifications (FReSH CoRN)**

1. Race
2. Religion
3. Color
4. Sex
5. National origin
6. Familial status
7. Handicap/disability

**B. Minnesota protected classifications (MSP)**

1. \_\_\_\_\_ – Minnesota specific
2. \_\_\_\_\_ – Minnesota specific
3. \_\_\_\_\_ – Minnesota specific

**C. Minnesota prohibitions follow federal fair housing**

**D. Exemptions**

1. They belong to the person, not the property.
2. A real estate licensee has no exemptions.
3. Exemptions never apply when using a real estate licensee’s services.
4. It is not a violation to discriminate against protected classifications in the following situations:
  - a) Sex discrimination in nonprofit residence homes (e.g., YWCA)

- b) Owner-occupant of single-family home, when renting a room
  - (1) May not discriminate based on race, religion, color, or national origin
  - (2) May discriminate on the basis of sex, familial status, handicap/disability, marital status, sexual orientation, or receipt of public assistance
- 5. Discrimination based on familial status in
  - a) owner-occupied buildings with 4 units or less, and
  - b) buildings exempted by Commissioner of Human Rights (senior housing).

**E. Complaints**

- 1. Complaints must be filed with the Commissioner of Human Rights within 1 year. Penalties for violations include the following:
  - a) License denial, suspension, revocation, or censure
  - b) Cease and desist order, injunction, and damages
  - c) No fines, no imprisonment

**VI. MINNESOTA STATUTE OF FRAUDS**

**A. The Statute of Frauds requires that for the transfer of any interest in real property to be enforceable, there must be a written contract signed by those who must perform.**

**B. Exceptions**

- 1. Leases for 12 months or less—

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  - For example, a 1-year commercial lease would not have to be in writing.
- 2. Residential leases of 12 months or less, only in buildings with 

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  - A lease of any length in an apartment building with 12 or more units must be in writing. This is Minnesota’s exception to the national exception.

## VII. MINNESOTA LANDLORD-TENANT ACT

1. Minnesota attorney general publishes a booklet of legal rights called Landlords and Tenants Rights and Responsibilities.  
([www.ag.state.mn.us/consumer/housing/lt/default.asp](http://www.ag.state.mn.us/consumer/housing/lt/default.asp))
2. Written lease is required for the following:
  - a) Apartment buildings with 12 or more units
  - b) Any lease exceeding 12 months
3. Law implies a warranty of habitability in every residential lease, which means the property, is fit for habitation.
4. Automatic renewal clause: If used, the landlord must send the tenant a reminder 15 to 30 days before lease notice date.
  - Allows tenant to terminate or allow the lease to renew
5. Security deposit must be returned within \_\_\_\_\_ with payment of \_\_\_\_\_ (non-compounding) interest.
  - a) Interest accrues from \_\_\_\_\_ the landlord receives the money.
  - b) All or part may be retained by the landlord if no new address is given, if money is owed, or if there is damage.
  - c) The landlord must include a statement explaining why all/ some of the deposit is retained (charges to the tenant).
    - \_\_\_\_\_
  - d) If a property is sold, security deposits transfer in full to the new owner.
6. Abandoned property by tenant
  - a) After lease termination or tenant abandons a rental, the landlord must store and care for tenant's abandoned property.
  - b) Landlord may sell or dispose of the abandoned property \_\_\_\_\_.
  - c) The landlord must provide tenant notice at least \_\_\_\_\_ before disposal or sale of personal property.

## 7. Foreclosed property

- a) An owner cannot enter into a long-term lease.
- b) An owner can only enter into
  - (1) an estate at will for 2 months, or the time remaining until the sheriff's sale, whichever is less; or
  - (2) an estate for years with an expiration date not to extend beyond the mortgage redemption period.
- c) Holder of the sheriff's certificate may not immediately remove tenant's abandoned property.

## 8. Tenant's remedies

- a) Tenant may sue for a health or housing code violation, failure to keep the unit in reasonable repair, or a violation of the rental agreement.
- b) Tenant or neighborhood organization may get a ruling against the owner/landlord for damages plus reasonable attorney's fees (fees not to exceed \$500).
- c) No rent is required if property is damaged/uninhabitable.

## 9. Landlord entry notice required, except in the following instances:

- a) \_\_\_\_\_
- b) To determine a tenant's safety
- c) To comply with law enforcement

## 10. Tenant 3-day notice in winter

- Tenants who vacate, prior to expiration, between November 15 and April 15, must give \_\_\_\_\_.

# UNIT 3 GLOSSARY REVIEW

0.23 percent	\$3.30 per thousand	registered land survey
10 days	Certificate of Title	registration
12 months	closing	Statute of Frauds
160 acres	defects	termination
21 days	foreclosure by advertisement	written lien notice
28 days	marital status	

1. The statutory redemption period for mortgages one-third paid, parcels over 40 acres, and agricultural properties over 10 acres is \_\_\_\_\_.
2. The Minnesota Mortgage Registry Tax is computed as \_\_\_\_\_ of the mortgage amount.
3. The Minnesota State Deed tax is computed as \_\_\_\_\_ of the net sales price.
4. If a buyer defaults on a contract for deed, the process the seller would undertake to regain equitable title is called \_\_\_\_\_.
5. Surveyors, engineers, material suppliers, contractors, and subcontractors have lien rights only if they provide a \_\_\_\_\_ in their contract.
6. In a verbal agreement, a contractor may *NOT* file a lien unless they provided the property owner with the written lien notice within \_\_\_\_\_ of the verbal agreement.
7. Landlords are required to store and care for a tenant's abandoned property for a minimum of \_\_\_\_\_ and provide a 14-day notice prior to disposal.
8. A landlord must provide the tenant with a written notice explaining any amounts withheld from a security deposit within \_\_\_\_\_ of lease termination.
9. An owner of Torrens-registered property who wants to subdivide the parcel would order a \_\_\_\_\_.
10. Title to Torrens property transfers upon \_\_\_\_\_ of the \_\_\_\_\_.
11. A rural property under Homestead protection may include up to \_\_\_\_\_.
12. In Minnesota, nonjudicial foreclosure is known as \_\_\_\_\_.
13. A classification protected under the Minnesota Human Rights Act but *NOT* under Federal Fair Housing Act is \_\_\_\_\_.
14. Statutory new home warranties begin at first legal occupancy or \_\_\_\_\_, whichever occurs first.
15. The Statutory New Home Warranty covers \_\_\_\_\_ caused by substandard workmanship and faulty installation of electrical, plumbing, and HVAC systems.



# UNIT 3 QUIZ

1. A buyer with a contract for deed on a residential property is in default. The process the seller would use to gain equitable title to the property is
  - a. judicial foreclosure.
  - b. foreclosure by advertisement.
  - c. cancellation.
  - d. termination.
2. A homeowner has entered into a verbal contract for remodeling. The remodeling was completed 30 days ago, and the general contractor has not been paid. Which of the following is *TRUE*?
  - a. There are no lien rights allowed with verbal contracts.
  - b. The contractor cannot file a lien unless the project cost exceeds state small claims court minimum requirement.
  - c. The contractor cannot file a lien unless he delivered the required notice within 10 days after the remodel was agreed upon.
  - d. The contractor has the right to serve notice and file a lien up to 120 days after completion of the remodel.
3. A homeowner hires an architect to draw plans for a new home. Upon completion of the plans, the homeowner does not pay. The architect could record a lien against the property
  - a. only if there was a written contract.
  - b. within 1 year of a final adverse judgment against the property owner.
  - c. within 120 days, if proper lien notice was provided to the property owner.
  - d. within 120 days regardless of whether notice was provided.
4. If there is a verbal agreement to perform improvements to real property, the mechanic's lien notice must be delivered by
  - a. certified mail or personal delivery.
  - b. posting the notice at the jobsite.
  - c. sending the notice via e-mail.
  - d. including the notice on the project estimate.
5. At the end of the lease, how long does a landlord have to either return a tenant's security deposit or provide a written explanation for any amounts that have been withheld?
  - a. 15 to 25 days, depending on the date stamp of the notice
  - b. No longer than 3 months after tenant's lease terminates
  - c. 30 days after the tenant vacates
  - d. 21 days from the expiration of the lease
6. According to Landlord-Tenant law, if a tenant leaves behind personal property after a lease termination, the landlord must store and reasonably care for the property a minimum of
  - a. 10 days.
  - b. 21 days.
  - c. 28 days.
  - d. 60 days.
7. A residential property owner is in default on a mortgage loan. If the lender forecloses, typically how long will the statutory redemption period be?
  - a. 5 weeks
  - b. 6 weeks
  - c. 6 months
  - d. 12 months
8. The Minnesota State Deed Tax is computed as
  - a. \$3.30 per thousand of the net sales price.
  - b. 3.30 percent of the net sales prices.
  - c. \$2.30 per thousand of the net sales price.
  - d. 0.23 percent of the gross sales price.
9. How many acres may be included in a rural homestead?
  - a. 40
  - b. 80
  - c. 160
  - d. 640
10. A registered land survey would be used in
  - a. abstract property.
  - b. Torrens property.
  - c. personal property.
  - d. general property.

11. Tenants who are going to be vacating the premises during the winter months, other than on the lease termination date, must notify the landlord
- 30 days in advance.
  - 3 days in advance.
  - 3 days after vacating.
  - 30 days after vacating.
12. The owner of which of the following properties, if foreclosed upon, would have a 12-month statutory redemption period?
- 30 percent of the original mortgage balance has been paid
  - 45-acre parcel of land
  - 7-acre residential hobby farm
  - 6 acres in agricultural use
13. First National Savings and Loan has begun a judicial foreclosure on a defaulted mortgage. The lender had to foreclose in this way because the mortgage did *NOT* include
- an acceleration clause.
  - an alienation clause.
  - a defeasance clause.
  - a power of sale clause.
14. A five-week statutory redemption period may be granted under all of the following conditions *EXCEPT*
- a report of trespassing.
  - disconnected utilities.
  - broken windows.
  - below-standard sanitation.
15. A mortgagor has defaulted on a loan secured by a mortgage containing a *Power of Sale* clause. In order to force a sheriff's sale, the lender must
- record the notice 6 weeks prior to the sheriff's sale and deliver personal notice to the property owner 5 weeks prior to the sheriff's sale.
  - publish a notice of foreclosure 6 consecutive weeks prior to the sheriff's sale and deliver personal notice to the property occupant 4 weeks prior to the sheriff's sale.
  - serve personal notice to the homeowner 45 days prior to the foreclosure sale and publish the notice 4 weeks prior to the sale.
  - publish the notice of foreclosure 6 consecutive weeks prior to foreclosure and deliver personal notice to the property occupant 4 weeks prior to eviction.
16. All of the following would be a violation of the Minnesota Human Rights Act *EXCEPT*
- refusing to rent to a welfare recipient.
  - advertising units in a housing project for same sex couples.
  - refusing to rent a small studio apartment to a married couple.
  - offering different rental terms to an addict with a felony conviction
17. All of the following classifications are protected under Minnesota Human Rights Act *EXCEPT*
- sexual orientation.
  - age.
  - marital status.
  - religion.
18. In order to force the contractor to make repairs covered under the Statutory New Home Warranty, a homeowner who discovers a defect must notify the contractor within
- 21 days.
  - 120 days.
  - 6 months.
  - 1 year.

19. A holder of Torrens title will receive
- a certificate of title.
  - an abstract of title.
  - a registration of title.
  - a commitment for title.
20. The current interest rate landlords are required to pay on funds held as security deposits is
- 1 percent simple interest.
  - 2 percent compound interest.
  - 3 percent simple interest.
  - the current bank savings rate.
21. The Statutory New Home Warranty is effective on the date of
- the purchase agreement.
  - closing.
  - certificate of occupancy.
  - the warranty documents.
22. A landlord must provide a tenant with a reasonable entry notice under which of the following circumstances?
- Emergency
  - To determine a tenant's safety
  - To repair a heating system
  - To comply with law enforcement
23. Which of the following is *NOT* covered by Minnesota statutory warranties?
- Faulty workmanship
  - Defective materials
  - Structural damage
  - Defective air conditioning
24. The mortgage registry tax is computed as
- 0.23 percent.
  - 2.3 percent.
  - 3.3 percent.
  - 0.33 percent.
25. When does legal title transfer with Torrens property?
- When the deed is delivered to and accepted by the grantee
  - When the purchase agreement is signed by the offeror and the offeree
  - At the end of the statutory redemption period
  - Upon registration of the Certificate of Title

# UNIT 3 QUIZ ANSWERS

1. **d** The seller must terminate the contract for deed. Contract for deed is a form of seller financing where the seller retains legal title (holds the deed), and the buyer has equitable title. Foreclosure pertains only to properties financed using mortgage.
2. **c** The lien notice must be provided within 10 days of any verbal agreement. Failure to do so results in a waiver of the contractor's lien rights.
3. **c** Mechanic's liens must be filed (recorded) within 120 days after completion of the project, provided a lien notice was given.
4. **a** In the event of a verbal agreement, in order to file for a mechanic's lien, the notice must be delivered personally or via certified mail.
5. **d** The landlord pays 1 percent simple interest and must return security deposits within 21 days after lease termination. If any amount is withheld, a written explanation of why any funds were withheld must be provided.
6. **c** Landlords must store and care for a tenant's abandoned property for at least 28 days.
7. **c** The majority of properties have a 6-month statutory redemption period.
8. **a** State deed tax is  $0.0033 \times$  the net sales price, equivalent to \$3.30 per thousand of the sale price less any assumed mortgage.
9. **c** A homeowner may file for homestead protection on up to 160 acres.
10. **b** Many counties require a registered land survey (RLS) to create or subdivide a Torrens property.
11. **b** Tenants vacating the premises in winter must tell the landlord at least 3 days before they move.
12. **b** The statutory redemption period is 12 months in this case, because the property has more than 40 acres.
13. **d** The power of sale clause allows the lender to use foreclosure by advertisement and not have to go through the court.
14. **a** The law requires 2 reports of trespassing as evidence of abandonment.
15. **b** Foreclosure by advertisement requires 6 consecutive weeks of published notices preceding the sheriff's sale to create interest in the sale. Personal notice must be delivered to the property occupants at least 4 weeks prior to the sale.
16. **d** The Minnesota Human Rights Act does not include criminal background/history as a protected classification.
17. **b** Age is not a protected classification under the Federal Fair Housing Act or the Minnesota Human Rights Act.
18. **c** The Statutory New Home Warranty Law does, in fact, cover home improvements.
19. **a** The act of registration is the operative act to transfer title.
20. **a** Landlords must pay 1 percent simple, non-compounding interest on security deposits.
21. **b** The Statutory New Home Warranty is effective at title transfer or first legal occupancy, whichever comes first.
22. **c** Landlords must provide tenants with a reasonable entry notice except in emergencies, safety issues, or to comply with law enforcement.
23. **c** Structural damage from storms, floods, fire, and so on is not covered. Only defects are covered.
24. **a** The mortgage registry tax is  $0.0023 \times$  the mortgage amount, equivalent to 0.23 percent.
25. **d** With Torrens property, legal title doesn't transfer until the Certificate of Title is registered in the Register of Titles.

# Minnesota Real Estate by the Numbers

## ■ LICENSE LAW

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### Department of Commerce is regulatory authority

- Legislation is **Chapter 82**, Minnesota License Law Act
- Civil fines up to **\$10,000**

### Notice

- Notice to Commissioner, within **10 days**, in writing; license infractions, closing trust account, moving office, etc.

### Miscellaneous

- Maintain trust account records for **6 years**.
- A licensee may receive **100%** direct expense reimbursements.

### Override – broker protection

- Override may not exceed **6 months** unless sale of business, then up to **2 years**.
- Must give protective list within **72 hours** of expiration

### No license needed if

- sell **4 or fewer properties in a 1 year**; or
- construction for resale, sell **25 or fewer properties in 1 year**.

### Apply for a license

- Must be **18**
- Take **90 hours** of course work (**3 courses, 30 hours** each)
- Pass the test
- Apply for license within **1 year** of passing test
- Broker experience requirement: **3 of last 5 years** as salesperson
- 30-hour broker course

### Temporary broker permit in case broker dies or incapacitated

- Given to qualified salesperson for **45 days**

### Licenses expiration

- License period is **24 months**
- License expires on **June 30**
- **Timely renew on June 15**
  - Primary broker renews for salesperson
- Must reactivate inactive license within **2 years**

### Continuing education

- **30 hours** of CE first license (from activation to second June 30)
- **30 hours** of CE every **2 years (24 months)** thereafter
  - **15 hours** must occur in first 12 months of licensing period

### Required education for residential agents

- **1-hour** agency and **1-hour** fair housing every **2 years**
- **3.75- or 7.5-hour** module of Commissioner-determined content annually

### Commercial loan brokers; must be a licensed real estate broker

- Fees deposited in **escrow account** within **48 hours** after receipt
- Client has **3 business days** to cancel contract for loan services

## ■ REAL ESTATE EDUCATION, RESEARCH, AND RECOVERY FUND (REERRF)

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### Recovery maximums

- **\$150,000** per transaction
- **\$250,000** total per licensee, regardless of the number of claims

### Remedies against licensee

- Suspension of license
- Repay twice the amount + **12 percent interest** + **\$40,000 bond**
- Application must be **within 1 year** after final judgment against licensee

## ■ SUBDIVIDED LANDS ACT

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- Buyer has a **5-day** right to rescind a copy of the signed purchase agreement

## ■ PROPERTY TAXES

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- Due on **May 15** and **October 15**

## ■ OWNERSHIP

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- 1 to buy, 2 to sell.

## ■ COMMON INTEREST COMMUNITIES

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- 10-day right of rescission after receiving association documents
- Conversion requires 120-day notice to vacate
- Occupant has 60-day option to purchase unit after receipt of notice

## ■ MINNESOTA LANDLORD-TENANT ACT

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### Statute of Frauds

- Written lease is required;
  - Apartment buildings with 12 or more units—any length lease
  - All leases over 12 months—any property type

### Automatic renewal clause

- Landlord must remind tenant 15 to 30 days before lease renewal notice date

### Damage deposit return

- Security deposit must be returned within 3 weeks (21 days)
- Must include 1 percent simple interest from first month landlord received the deposit
- May not withhold for normal wear and tear

### Abandoned property

- Landlord must give tenant 14 days notice to dispose of abandoned property
- Landlord may sell or dispose of the abandoned property after 28 days
- Tenant vacating in winter, November 15 to April 15, must give 3-day notice to landlord

## ■ STATE DEED TAX (TRANSFER TAX)

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- Paid by seller on net sales price (Sale price – assumed mortgage = net sales price)
- 0.33 percent (0.0033), \$3.30 per thousand, or \$1.65 per \$500
- Remember: Deed and seller and thirty-three (33) all have 2 ee's

## ■ MORTGAGE REGISTRY TAX

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- Paid by the mortgagor/borrower
- 0.23 percent (0.0023), \$2.30 per thousand of the new mortgage amount

## ■ STATUTORY NEW HOME WARRANTY LAW

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- Warranty takes affect at first legal occupancy and covers structural defects not structural damage
- Coverage
  - 1 year materials and workmanship
  - 2 years plumbing, electrical, heating, ventilation, and cooling systems
  - 10 years major structural defects
- Homeowner must notify builder within 6 months of discovering defect
- Homeowner must bring legal action within 180 days of notice

## ■ MINNESOTA HUMAN RIGHTS ACT

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- Federal protected classifications (FReSH CoRN)
- Minnesota protected classifications (Margarine, Salt, and Pepper)

## ■ SELLER DISCLOSURES

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- A seller is liable for 2 years after closing for failure to disclose known material facts

## ■ WELL AND SEPTIC

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- All wells and septic, even capped and closed wells and systems, must be disclosed
  - Seller liable for inaccurate well disclosure for 6 years
  - Seller liable for inaccurate septic disclosure for 2 years
- Septic systems—seller does not need new certificate but must supply copy of old one in seller's possession
- Sellers with an existing septic system: Certificate of Compliance is valid for 3 years
- Seller with a new septic system: Certificate of Compliance is valid for 5 years
  - Addition of a bedroom requires a new Certificate of Compliance

## ■ STORAGE TANKS

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### Existence of aboveground and underground storage tanks must be disclosed

- Commercial storage tank must comply with the Pollution Control Agency (PCA) disclosure and registration requirements
- If leaking storage tank, an affidavit must be recorded with the county recorder before transfer
- Exemptions: for commercial tanks, not to residential
  - Motor fuel tanks 1,100 gallons or less
  - Heating oil tanks 1,100 gallons or less
  - Heating fuel tanks on or above basement floor



- **10-day notice** before installation or removal of storage tank must be given to the Pollution Control Agency (PCA)
- Within **30 days after installation** or removal, owner must fill out required PCA forms for storage tanks

## ■ FORECLOSURE

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### Foreclosure by advertisement—no lawsuit necessary

- Used to foreclose
  - A unit owner's association assessment lien
  - Mortgage that contains *power of sale* clause

### Required notices

- **6 consecutive weeks** prior published notice; and
- **4 weeks** prior personal delivery of notice to borrower

### Statutory redemption period—the mortgagor's right to redeem after foreclosure sale

- Mortgagor may redeem by paying foreclosure sale price
- Time period
  - **5 weeks**, if the property is abandoned
  - **6 months** for most properties
  - **12 months**, if
    - the mortgage is more than one-third (33.33%) paid off; and
    - the property is more than **40 acres or 10 acres** of agricultural use
- **5 weeks or 6 months** redemption with no deficiency judgments
- **12-month** redemption period or judicial foreclosure lender may file for deficiency judgment

## ■ CONTRACT FOR DEED

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- Remedy for default is termination
- **30-day** notice of default
- **60-day** equitable redemption
- Buyer must record CD within **4 months**
- **2 percent** penalty for failure to record

## ■ MECHANIC'S OR CONSTRUCTION LIEN

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- Architects, engineers, surveyors, material suppliers, and contractors
- Lien rights attach as soon as labor, skill, or materials are furnished
- To sustain rights, a written lien notice must be given to the property owner
  - Must be in **10-point** bold type
  - Must be worded exactly as stated in state statute
  - Written lien notice must be included in any written contract

- If no written contract, lien notice must be delivered to property owner
- Time requirements: **Remember: 10-10-45-120**
  - Contractor has **10 days** from verbal agreement to deliver written lien notice
    - Notice must be delivered personally or by certified mail
  - General contractor has **10 days** to respond to sub-contractor's request for owner information
  - Subcontractor must give lien notice **45 days** from starting work
- Lien must be recorded within **120 days** after completion of the project

### Homestead status

- Protects homeowners from the forced sale of their **primary residence** by unpaid creditors holding judgments
- Acreage may not exceed **160 acres**
- Limits on value (exemption amounts)
  - **\$300,000** for most homestead property
  - **\$750,000** for agricultural homesteads
- Homestead tax status requirements
  - Property must be occupied by owner—or owner's relative—as primary residence
  - Must own and occupy by **December 1**; file by **December 15** to receive full credit for the following year

# APPENDIX 2

## Licensing and Testing Information

### ■ LICENSING INFORMATION

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1. **Qualifications.** To apply for a Minnesota real estate salesperson's license, you must
  - a) successfully complete 90 hours of prelicense real estate education, consisting of three 30-hour approved courses (Courses I, II, and III). Course I must be completed before taking the examination. Candidates must present a Course I Certificate of Completion at the test site in order to take the exam; and
  - b) pass both portions of the real estate salesperson's examination. Courses II and III may be completed either before or after the examination, but must be completed before submitting a license application and within 1 year of the taking the exam.
2. **License Application.** Application for the salesperson's license must be made after passing both portions of the examination. License application forms may be obtained from the Licensing Unit. The applicant must be affiliated with a broker to obtain a salesperson's license.
  - a) Unless there is a reason for denial, applicants who furnish properly completed applications with the correct fees, course completion certificates, and test results can expect to receive evidence of licensure within 10 days. Applicants may not engage in the real estate business until their license has been received by their broker.
  - b) Incomplete or incorrectly submitted applications will be returned to the applicant at the business address of the applicant's broker.

3. **Nonresident License Requirements.** Salespersons or brokers who intend to apply for a Minnesota license while they hold an active license in another state may do so by taking only the Minnesota State-Specific exam. You will be required to accompany your license application with an original certification of licensure (not a copy of your license) no more than 90 days old.
4. **License Renewal.** A Minnesota real estate license may not remain inactive for more than 2 years. If a license is not renewed during this period, the former licensee must retake and pass the exam before a new license will be issued. The Department of Commerce has further information about license renewal.

## ■ TESTING INFORMATION

PSI Services, LLC is the vendor chosen by the Minnesota Department of Commerce to give licensing examinations. Below is information about PSI testing. For complete information, please visit [www.psiexams.com](http://www.psiexams.com) and download the Candidate Information Bulletin.

### Exam Registration

Go to [www.psiexams.com](http://www.psiexams.com) to register for the examination of your choice. If you do not have Internet access, you may call PSI using a touch-tone phone at 800-733-9267, 24 hours per day. You may also speak with a registrar at 800-733-9267, Monday–Friday, 6:30 AM–7:00 PM and Saturday, 10:00 AM–4:00 PM. Before calling, candidates should have the following:

- Legal name, address, Social Security number, daytime telephone number, and date of birth
- The name of the examination(s)
- The preferred examination date and test center location
- School code is 244

### Paying for the Exam

Examination fees are as follows:

- Real Estate Salesperson (General or State portion only): \$45.00
- Real Estate Salesperson Combo (General and State taken at the same time): \$75.00

The examination fee must be paid at the time of reservation by credit card, debit card, money order, or cashier's check. Payment will not be accepted at the test center. Examination fees are non-refundable and non-transferable except as detailed in the Change/Cancel Policy.

### Change/Cancel Policy

You may cancel and reschedule an examination appointment without forfeiting your fee if your cancellation notice is received 2 days prior to the scheduled examination date. For example, for a Monday appointment, the cancellation notice would need to be received on the previous Saturday. You may call PSI at 800-733-9267. Please note that you may also use the automated system 24 hours a day in order to cancel and reschedule your appointment.

**Note:** A voice mail message is not an acceptable form of cancellation. Please use the Internet, automated telephone system, or call PSI and speak to a Customer Service Representative.

### Missed Appointment or Late Cancellation

If you miss your appointment, you will not be able to take the examination as scheduled. You will forfeit your examination fee, if you: do not cancel your appointment 2 days before the scheduled examination date; do not appear for your

examination appointment; arrive after examination start time; or do not present proper identification when you arrive for the examination.

### **Weather Delays and Cancellations**

In the event that severe weather or another emergency forces the closure of an examination site, your examination will be rescheduled. PSI personnel will attempt to contact you in this situation. However, you may check the status of your examination schedule by calling 800-733-9267.

### **Special Exam Requests and Services**

All examination centers are equipped to provide access in accordance with the Americans with Disabilities Act (ADA) of 1990, and every reasonable accommodation will be made in meeting a candidate's needs. Applicants with disabilities or those who would otherwise have difficulty taking the examination must complete the proper forms. Contact PSI for more information.

### **What to Bring to the Test Center**

Candidates should plan on arriving at least 30 minutes prior to their scheduled appointment and must bring the following to the testing center on test day:

1. Two forms of identification—one must be a valid government-issued ID with your signature and photo, and the second must have your signature and preprinted legal name
2. Proof of education (Course I Certificate of Completion)

Only non-programmable calculators are allowed into the testing center.

**Note:** If you are retaking your exam, you must bring proof of education or your failed test report.

### **Test Center Locations**

Candidates can take any Minnesota exam at the locations listed below. The dates and times the examinations are available will vary at each location. Addresses and directions for each test center are listed on the next page.

- Duluth
- Edina
- Lake Elmo
- Mankato
- Moorhead
- Rochester
- St. Cloud
- Thief River Falls
- Winona
- Woodbury

## ■ TEST CENTER ADDRESSES AND DIRECTIONS

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### **Duluth**

416 West Superior Street  
Duluth, MN 55802

Going south on Mesaba, turn left on First St. Turn right at N 6th Ave. Turn left on Superior St. PSI is located on the right-hand side on the second block. It is half a block down from the Duluth Public Library.

### **Edina**

6550 York Ave, Suite 317  
Edina, MN 55435

From MN-62 (Crosstown Highway) exit Xerxes Avenue and travel south. Just past W 65th Street, turn right into the office complex. 6550 is a tall white building at the northwest corner of Xerxes and 66th Street.

### **Lake Elmo**

3275 Manning Ave N (Lake Elmo Airport)  
Lake Elmo, MN 55042

From I-94, exit on Manning Avenue/County Rd 15 (exit 253). Travel north on Manning Avenue for approximately 3.6 miles. Turn east into the airport at Gate A – North Entrance. Follow the north entrance; turn right at the first street off the entrance road. PSI is in the brown Valters Aviation building.

### **Mankato**

3030 Airport Rd. (Mankato Regional Airport)  
Mankato, MN 56001

From Mankato, head north on MN-22 for 2 miles. Turn right at 227th St./County Hwy. 12. Follow Hwy. 12 for 2.7 miles, then turn right at Airport Road.

### **Moorhead**

819 30th Ave South, Suite 108  
Moorhead, MN 56560

From I-494 W, merge onto I-94 W/US-52 N toward St. Cloud (keep left). Take the US-75 exit toward Moorhead. Turn left onto S 8th St. Turn left onto S 30th Ave.

### Rochester

3155 Superior Drive NW  
Rochester, MN 55901

From Highway 14, go north on Highway 52, exit at 55th Street NW to go west. 55th Street NW/County Road 22/West Circle Drive will veer slightly left turning into 41st Avenue NW/County Road 22/West Circle Drive. When you have gone 2.2 miles from 52 you will come to a traffic light at Valleyhigh Road NW. Turn right, then take the first, almost immediate left onto Superior Drive NW. Take the first right into the parking lot. Then take the second right so you are behind the units that are facing Superior Drive. PSI will be the second-to-last unit on your left.

### St. Cloud

1542 45th Ave SE (St. Cloud Airport)  
St. Cloud, MN 56304

From North: Enter US-10 east. Follow US-10 1.5 miles south onto MN-23. Turn left on Deltone Rd/Co. 7 for 3 miles. From East: Enter MN-23 westbound until reaching the intersection with US-10. Enter US-10 east for 1.5 miles. Turn left on Deltone Rd/Co. 7 for 3 miles. From South: Enter US-10 West. Follow US-10 to Deltone Rd/Co. 7. Turn right onto Deltone Rd/Co. 7 for 3 miles. From West: Enter MN-23 eastbound. Follow MN-23 through the city of St. Cloud to the intersection with US-10. Enter US-10 east and follow for 1.5 miles. Turn left on Deltone Rd/Co. 7 for 3 miles. As you come into the airport, you will come around a corner and the main terminal will be a yellow building that says flight training and pilot shop. This is the building the testing center is located in. You can park in the mail terminal or general aviation lot and walk to the yellow building.

### Thief River Falls

13892 Airport Dr. (Thief River Falls Regional Airport)  
Thief River Falls, MN 56701

Take County Road #17 and go south of Thief River Falls 3 miles to the Thief River Falls Regional Airport. Take a right into the airport and proceed to the first building on the right. A sign out front identifies the building. When entering the building, proceed to the office area.

### Winona

100 Galewski Dr. (Winona Airport)  
Winona, MN 55987

On CR-17 – go 6.7 mi – Turn left on Homer Rd. – go 0.7 mi – Bear left on Highway 14 (US-14 W) – go 1.5 mi – Continue to follow US-14 W – go 2.4 mi – Continue on the Great River Rd. (US-61 N) – go 1.4 mi – Turn right on 54th Ave. – go 0.4 mi – Bear left on 54th Ave. – Turn right on Theurer Blvd. – go 0.1 mi – Turn left on Galewski Dr. – Arrive at 106 Galewski Dr. on the right.



## **Woodbury**

6053 Hudson Rd, Suite 210  
Woodbury, MN 55125

From I-94, exit Century Avenue and travel south. Turn left on Hudson Road (frontage road entrance to the Country Inn). At the “T” turn left (signage marked as Sherrie Road), then turn right into the entrance between Sinclair and Green Mill. 6053 is the 3-story building directly ahead. Veer right around the south side of the building. The PSI entrance is on the east side of the building, marked as 6053 – East Entrance.

Note: On Saturdays, use the West Entrance to the 6053 building. The entrance is on the 2nd floor. Suite 210 is down the corridor to the right.

## ■ CONTENTS OF THE STATE-SPECIFIC PORTION

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*40 questions, no math items – 1.5-hour time limit*

### **Real Estate Brokerage License Law Statutory References (20 Questions)**

Topics include definitions, licensing, trust accounts, standards of conduct, commissioner's authority, real estate education, research, and recovery fund, agency, and disclosure.

### **Interests in Real Property (8 Questions)**

Topics include ownership (including spousal interest, Subdivided Land Act, common interest ownership, and real estate taxes and special assessments) and landlords and tenants.

### **Conveyance Procedures and Protection of Parties (8 Questions)**

Topics include recording and fees, statutory home warranties, Minnesota Human Rights Act, Minnesota statute of frauds, spousal conveyance, and environmental issues (including septic systems, wells, lead-based paint, and leaking underground storage tanks).

### **Financial Instruments: Obligations, Rights, and Remedies (4 Questions)**

Topics include mortgages/contracts for deed (including foreclosures/cancellation and redemption rights, and homestead exemptions) and liens.

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