

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE

In the Matter of the Proposed  
Rules Governing Real Estate  
Licensing and Education

STATEMENT OF NEED  
AND REASONABLENESS  
OF PROPOSED RULES

STATEMENT OF AUTHORITY

Minnesota Statutes 82.28 permits the Commissioner of Commerce to adopt rules to carry out the purposes of Minnesota Statutes 82.17 through 82.34. These rules are proposed pursuant to that authority. The purpose of the rules is to provide direction and clarification to real estate applicants and licensees in the areas of conduct, license requirements, examinations and education. The proposed rules would place the agent conduct rules into a separate chapter. The proposed rules pertaining to license requirements, examinations and education would provide a basis upon which the Commissioner can approve those persons offering courses, the courses and the instructors for prelicense education and continuing education for real estate licensees.

Minnesota laws 1985, Chapter 251, Sections 6, 7, 8, 9 and 10, as well as Minnesota laws 1986, Chapter 358, Sections 7, 10 and 11, altered requirements for real estate applicants and licensees. A number of the changes to the rules being proposed are to assure that the real estate rules are consistent with the current real estate law. Minnesota Statutes §45.023 also gives the Commissioner rulemaking authority in this area.

## FACTS ESTABLISHING NEED AND REASONABLENESS

As more specifically stated below, the proposed rules are necessary to set guidelines which will result in consistent license processing and quality education programs being available for real estate licensees. The proposed changes bring the established procedures into compliance with the changes in the law and current practice.

Part 2800.1300 explains the procedures for application, cancellation and waiver for real estate license applicants.

Subpart 2 Cancellation of salesperson's or broker's license.

This subpart sets the requirements for the handling of a license when the licensee has failed to complete their post-licensing education requirements. The only change to this subpart is the reinstatement period is changed to two years to be in compliance with Minnesota laws Chapter 358, Section 9, which amended the statute to provide for a two year reinstatement period.

Part 2800.1700 Automatic Transfer of Salesperson's License.

Subpart 1 Scope.

This subpart describes the uses of automatic transfer. The changes being proposed clarifies statutory reference to current statutes instead of Session Laws and simplifies the reference to the forms to be used. Due to the expense, time and complexity involved in amending rules it is no longer feasible to make rule forms part of the rules. To do so restricts the departments ability to respond promptly to legislative changes and administrative necessities. Additionally, as the Minnesota Rules are now being supplemented or republished on an annual basis long outdated and superceded forms may

remain part of the rules for more than a year after the rules are amended. Persons using the Minnesota Rules would presume that such forms were still valid. Attempted use of such forms would ultimately lead to confusion, delay and ultimately resentment by persons dealing with the Department. Notice in the rules of the existence of the forms is a satisfactory method of enabling those people dealing with the Department to be able to get the current form from the Department.

Subpart 2 Procedure.

As stated in regard to Subpart 1, the specific forms now reproduced in the rules would be replaced for the reasons enumerated.

Subpart 3. Effective date.

The specific form reference is deleted because the form is being repealed and a reasonable time limitation (45 days) is placed on the usage of an automatic transfer.

Part 2800.1750 Real Estate Salesperson Automatic Transfer.

The reference to the specific form is replaced as noted in regard to part 2800.1700 subpart 1.

Part 2800.1751 Individual Appointment of Attorney for Service of Process.

The service of process form is corrected to refer to the Licensing Unit and the Commissioner of Commerce which are the correct titles.

Part 2800.1900 Failure to Renew License

To conform with Minnesota Laws of 1985, Chapter 251, Section 9, the reinstatement period following failure to renew is extended to a period of two years.

Part 2800.2100 Course Completion Certificates for Salesperson License.

To conform with Minnesota Laws 1986, Chapter 358, Section 10, the reference to completion of Courses I, II and III has been restated to note they must be taken prior to license application, not after.

Part 2800.2150 Course Completion Certificate.

The rule is amended to remove references to specific forms which will be repealed for the reasons set forth in regard to Part 2800.1700 subpart 1.

Part 2800.2175 Course II and III Record of Completion.

Minnesota Laws 1986, Chapter 358, Section 9, removed Courses II and III as prelicense requirements. The record of completion is no longer required.

Part 2800.4200 Negotiations.

The new language extends the protection to buyer agreements that is now afforded to seller agreements in accordance with Minnesota laws 1985, Chapter 251, Section 7, codified as Minnesota Statutes §82.19 which allows buyer or seller representation.

Subpart 7 Prohibition Against Interference With Contractual Relationships With Others.

This change will prohibit interference with buyer agreements on an equal basis with seller agreements in accordance with the representation of buyer or seller now allowed by Section 7 of Minnesota Laws 1985, Chapter 251, codified as Minnesota Statutes §82.19.

Part 2800.5100 Prelicense Education.

Minor grammatical changes are made for purposes of clarity. "Prelicense" is used instead of "Initial" because it is more descriptive and reflects the legislative changes.

Part 2800.5200 Salesperson's Examination.

The proposed change eliminates ambiguity regarding the time requirements for completing all portions of the examination prior to application.

Part 2800.5300 Application for Salesperson's License.

The proposed change reduces ambiguity regarding the time requirement for completing all portions of the licensing examination and includes completion of Courses II and III in the prelicense requirements in accordance with Section 10 of Minnesota laws 1986, Chapter 358.

Part 2800.5400 Post Licensing Education.

In accordance with Minnesota laws 1986, Chapter 358, Section 10, the post license requirements are changed from Courses II and III to thirty hours of approved continuing education.

Part 2800.5500 Alternative Means of Completing Initial Education.

As Minnesota laws 1986, Chapter 358, Section 10 has required Courses II and III prior to application, this section no longer has relevance and is proposed for deletion.

Part 2800.5600 Limitations on Course Substitutions.

The six months prior submission requirement has proved unworkable and the proposed change would substitute a thirty day prior submission requirement.

There is no public protection function in requiring substitution courses can only be completed outside of Minnesota. The proposed change deletes this restriction.

Part 2800.6800 Continuing Education.

Subpart 2 Attendance.

The requirement for attendance for the entirety of a course has created undue hardship for schools and students where illness or other legitimate reason for partial attendance occurs. The change will allow partial credit for partial attendance.

Subpart 3 Credit Approved.

The requirement for whole hour segments was originally made for the convenience of computer entry. Since education is not reported in less than whole hour blocks, this requirement makes no sense and the change would allow fractional hour credit.

Subpart 10 Professional Designations.

This list of professional designations was recommended by the Real Estate Continuing Education Task Force as representing some of the more serious and scholarly coursework available to licensees.

Part 2800.7150 Application for Course Approval for Courses I, II and III.

The specific form referenced in the rules is replaced in the manner and for the reasons set forth in regard to Part 2800.1700 subpart 1.

Part 2800.7175 Application for Course Approval for Continuing Education.

The specific form referenced is replaced in the form as prescribed by the Commissioner.

Part 2800.7200 Course Approval.

Subpart 3 Limitation on Advertising.

The prohibition of prior advertising has proven unworkable given the short time frame in which many courses are developed and offered. This change would provide for disclosure of the pending status of unapproved courses which will adequately protect the public and not restrict course availability.

Subpart 5 Application Forms.

The specific forms referenced in the rules would be replaced in the form as prescribed by the Commissioner.

Subpart 6 Subsequent Offering of Courses.

The specific form referenced in the rule would be replaced in the form as prescribed by the Commissioner.

Part 2800.7250 Notice of Subsequent Offerings of Continuing Education Courses.

The specific form referenced in the rule would be replaced in the form as prescribed by the Commissioner.

Part 2800.7400 Course Coordinator.

Subpart 3 Form for Coordinator Approval.

The specific form printed in the rules would be replaced in the form as prescribed by the Commissioner.

Subpart 4 Responsibilities. I.

The changes of Minnesota laws 1986, Chapter 358, Section 10, removed the completion of Courses II and III from post license requirements and the reporting of these courses would be removed by the deletion of this paragraph. The specific form referenced in the rules would be replaced in the form as prescribed by the Commissioner.

Part 2800.7450 Application for Coordinator Approval.

The specific form in the rule would be replaced in the form as prescribed by the Commissioner.

Instructors.

Subpart 2 Qualifications. A.

The specific form printed in the rules would be replaced in the form as prescribed by the Commissioner.

Subpart 2 B.

The 70 point system used for qualifying Course I, II and III instructors has proved to be frustrating and time consuming for instructor applicants and Department staff. The change outlines specific education and/or experience combinations that formally added up to the 70 points previously required but in a more readily ascertainable manner. The suggested changes in 2800.9905 provide further specifics.

Part 2800.7550 Application for Instructor Approval for Courses I, II and III.

The specific forms printed in the rules are replaced in the form as prescribed by the Commissioner.

Part 2800.7575 Application for Instructor Approval for Continuing Education.

The specific form printed in the rules is replaced in the form as prescribed by the Commissioner.

Part 2800.8100 Conflict of Interest.

The Department has interpreted the word offered in this paragraph to mean sponsored and the change in wording will clarify the intent of the section.

Part 2800.8300 Advertising Courses.

Subpart 2 Approval Statement.

The rather long statement previously required has proven difficult for many sponsors to include in their often brief advertising copy. The abbreviated statement of approval by the Commissioner will still disclose what authority is used and provide for the protection of the interests of all parties.

Part 2800.8400 Notice to Students.

With the offering and completion of many real estate continuing education courses, the formal reading of the disclosure notice at every course has become burdensome. This alteration would allow the disclosure to be presented in written form.

Part 2800.8700 Reports to Commissioner.

The specific forms printed in the rules would be replaced in the manner and for the reasons set forth in regard to part 2800.1700 subpart 1. The continuing education requirements changed by Minnesota Laws 1986 Chapter 358, Section 11, are reflected by changing the forty-five (45) required hours for three years to fifteen hours annually. The correct identification of the Licensing Unit would be shown as well.

Part 2800.8750 Continuing Education Course Verification.

The form printed in the rules would be replaced in the manner and for the reasons set forth in regard to part 2800.1700 subpart 1.

Part 2800.9905 Qualifications for instructors.

The cumbersome seventy (70) point approval scheme would be replaced by equivalent education and/or experience combinations. The experience/education combinations are equivalent to seventy (70) points under the prior system but much more understandable.

Part 2805.0100 Definitions.

The real estate rules regarding licensing, conduct and education have been in a single chapter until now. Because the licensing and conduct apply to all licensees and the education rules apply to a select population of schools and instructors, it is proposed that the conduct rules be separated into a separate chapter (2805).

The definitions proposed in this section are extracted in their entirety from the definitions formerly contained in 2800.0100.

Part 2805.0300 Computation of time.

The proposed section is taken in its entirety from 2800.0300, computation of time section.

Part 2805.0400 Notice to Commissioner.

This section is reproduced in its entirety from 2800.0400 for the identical requirement to appear regarding educators.

2800.9910; 2800.9915; 2800.9920; 2800.9925; 2800.9930; 2800.9935; 2800.9940; 2800.9945; 2800.9950 and 2800.9955 are repealed.

The specific departmental forms reproduced in the rules are all subject to change on short notice. The provision for the Commissioner to prescribe the forms is more realistic and would avoid the technical violation of our own rules when a form must be altered. Forms are already subject to state law requirements as to form and content.

Small Business Consideration

Minnesota Statutes §14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

The Departemnt considered whether the provisions of the rule might be modified to accomodate the interests of small businesses.

Each of the methods described at Minnesota Statutes §14.115, subdivision 2 (a) - (e) was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative purposes.

It was determined that in all likelihood everyone affected by these rules would be a small business; therefore, the impact on small businesses was part of the entire rulemaking process.