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Minnesota

Department of Commerce

*Special Industry Issues Program
January 21, 2010*



Commerce Enforcement Section



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Commerce agents raid FL office, home. Minnesota Department of Commerce agents, with assistance from the Forest Lake Police Department, executed search warrants at the business office of Strand Closing Services and the home of Cindy and Steve Strand in Forest Lake on Wednesday morning. Some 12-14 agents and police officers were involved in the raids of the office at 840 W. Broadway Ave. and the home at 7447 N. 213th St. The search warrants are believed related to a complaint filed with Forest Lake police in October by The RiverBank in Osceola, WI. that alleges the Forest Lake title company is involved with mortgage fraud. Here, commerce agents are outside the Strand home in Forest Lake. More information will be posted as it becomes available.

(Photo By Cliff Buchan)





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Topics

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- Property Maintenance
- Third Party Short Sales and Foreclosure Negotiation Firms
 - Real Estate Broker
 - Mortgage Originator
- Loan Modification Firms





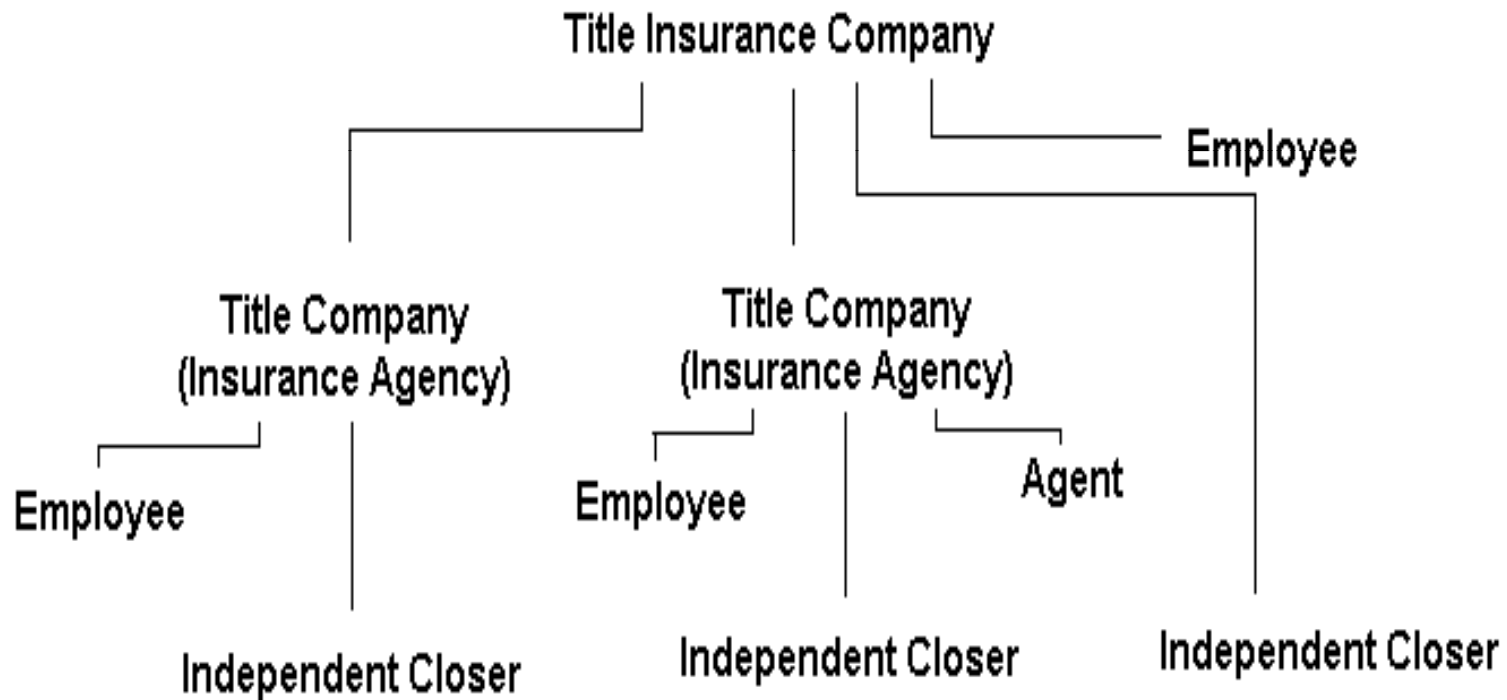
Closers

- **Minn Stat. § 82.17 DEFINITIONS.**
- **Subd. 3. Closing agent; real estate closing agent.**
- "Closing agent" or "real estate closing agent" means any person whether or not acting as an agent for a title company, a licensed attorney, real estate broker, or real estate salesperson, who for another and with or without a commission, fee, or other valuable consideration or with or without the intention or expectation of receiving a commission, fee, or other valuable consideration, directly or indirectly provides closing services incident to the sale, trade, lease, or loan of residential real estate, including drawing or assisting in drawing papers incident to the sale, trade, lease, or loan, or advertises or claims to be engaged in these activities.





Who needs a closer license?





Some Exemptions

- (1) Licensed attorney and their employee(s)
- (2) Licensed real estate broker or salesperson
- (3) A direct employee of a licensed real estate broker
- Note: Funds must be kept in broker's trust account;
- Signing services - Pay close attention to definition of a closing agent





Wednesday, October 28, 2009

Woman Pleads Guilty to Stealing over \$470,000 in Mortgage Fraud Scam

Roseann Wagner, 45, Prior Lake, Minnesota, has pleaded guilty to stealing more than \$470,000 in money designated for payment of title insurance premiums. **Wagner** appeared in federal court in St. Paul, where she pleaded guilty to one count of wire fraud and one count of failure to file a tax return before United States District Court Judge Paul Magnuson. **Wagner** was [charged](#) on October 13, 2009. In her plea agreement, **Wagner** admitted operating a scheme to defraud mortgage lenders, borrowers, and a title insurance underwriter from January 2007 to December 2007. **Wagner**, a licensed insurance agent, owned and operated **Tri-Star Title**, a title insurance agency. **Tri-Star** was the insurance agent for **Stewart Title Guaranty Co.**, a Houston, Texas, title insurance underwriting company.

Wagner accepted more than a total of \$470,000 from lenders at hundreds of closings, knowing the money was to be used to pay closing costs, including title insurance premiums. Instead, however, she used the money for her own benefit. Initially, because of **Wagner's** fraud, the title insurance premiums, title search costs, and recording fees on hundreds of residential mortgage transactions went unpaid. When **Stewart Title Guaranty** discovered **Wagner** had misappropriated the funds, however, it absorbed the losses of all the borrowers and paid the title insurance premiums and other expenses.

This case is the result of an investigation by the Internal Revenue Service-Criminal Investigation Division and the Minnesota Department of Commerce. It is being prosecuted by Assistant U.S. Attorney Tim Rank.

Posted by [Allison Tussey](#) on 10/28/09 at 12:15 AM





Real Estate Teams

Minn. Stat. § 82.22 DISCLOSURE REQUIREMENTS.

Subd. 6. Agent of broker disclosure.

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





Broker Supervision of 'RE Teams'

Minn. Stat. § 82.48 STANDARDS OF CONDUCT

Subd. 3. Responsibilities of brokers.

(a) **Supervision of personnel.** Brokers shall adequately supervise the activities of their salespersons and employees.





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Records





Insurance

Title Company (Insurance Agency) Minn. R. 2795.1400

Time – Six years

Cash receipts

Cash Disbursements

Client transaction file

Insurer

Minn. Stat. § 72A.20, subd. 30

Time – Three years

Homeowners

Title

Mortgage insurance

Note: All underwriting documents, policy forms, and applications from the effective date of the policy





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Real Estate

Real Estate Broker

Minn. Stat. § 82.45

Time – Three years

All listings, buyer representation and facilitator services contracts, deposit receipts, purchase money contracts, canceled checks, trust account records, and such other documents as may reasonably be related to carrying on a real estate brokerage business.

Runs from date of closing or date of document if not consummated.

Broker responsible

Minn. Stat. § 82.48

Mortgage

Mortgage Originator

Minn. Stat. § 58.14

Time – Five Years

Trust account records

Business records





Uniform Electronic Transactions Act

Records

Minn. Stat. § 325L.07

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form
- (c) If a law requires a record to be in writing, an electronic record satisfies the law

Retention

Minn. Stat. § 352L.12

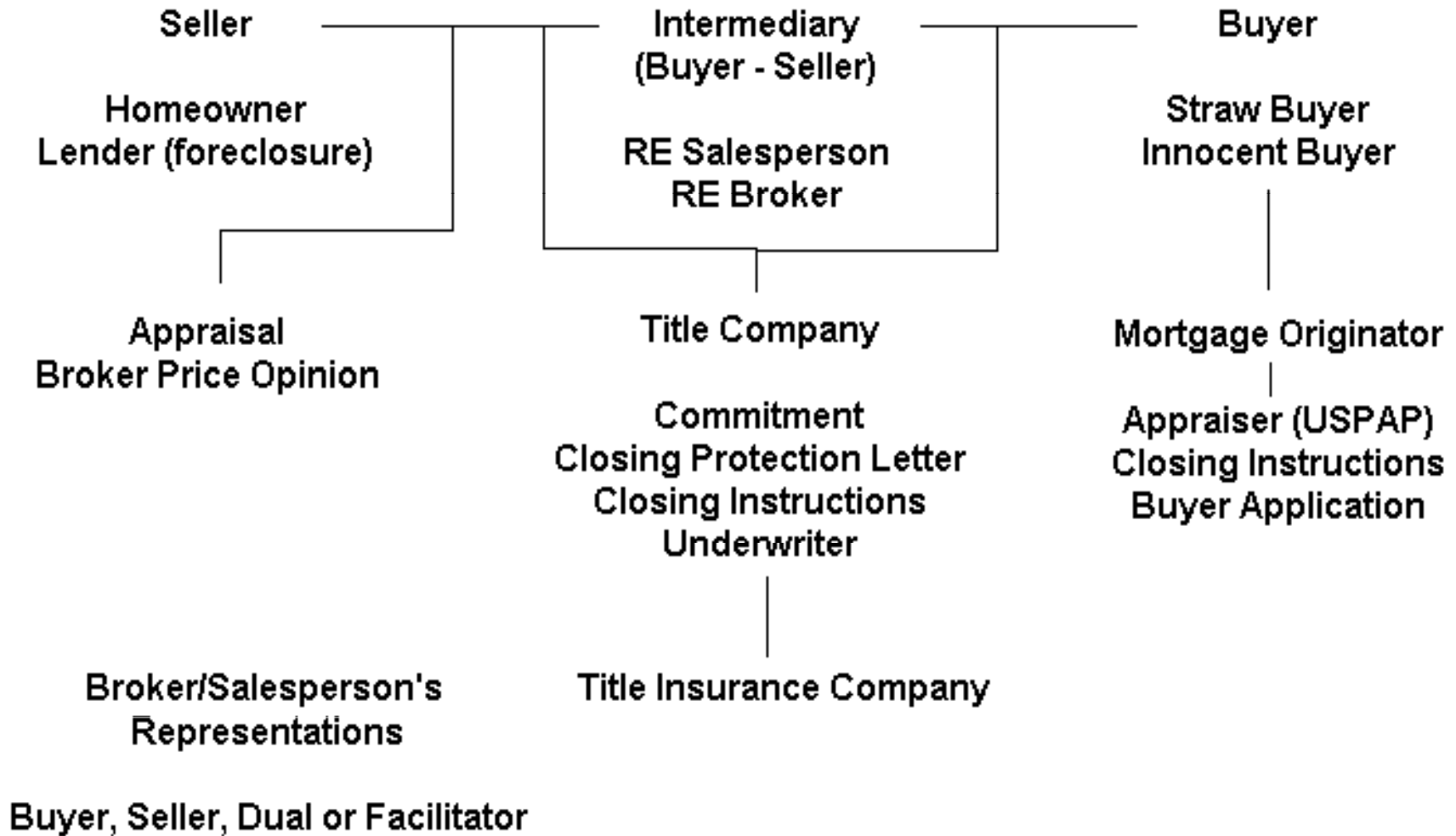
- (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which
 - (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
 - (2) remains accessible for later reference.





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Simultaneous Closings





What is Flipping?

Two Minnesota Men Plead Guilty In \$35 Million Mortgage Flipping Scheme

- Two Roseville, Minnesota men entered guilty pleas in Minneapolis on Thursday before US District Judge Joan Ericksen in connection with a mortgage flipping scheme that involved 162 properties and approximately \$35 million in fraudulently obtained mortgage funds. Jonathan E. Helgason and Thomas J. Balko , co-owners of TJ Waconia, pleaded guilty to charges of real estate and mortgage fraud. From 2005 to 2007, they bought the properties, many of them in a three-block area in north Minneapolis, and quickly flipped them for \$20,000 to \$60,000 more to straw “investors” who were lending their name and credit in exchange for kickbacks and a promise to pay the mortgages. The scheme collapsed in 2007, the investors were left upside down and most of the properties are in foreclosure. Sentencing has not been scheduled. Each man could receive up to 20 years in prison but Helgason faces a recommended sentence of about 12 1/2 years and Balko faces a sentence of about 10 years ([Star Tribune](#), [DOJ](#)).





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- **The Intermediary and ‘Realtor**

Flipping involves the purchase and quick resale of homes at a huge price mark-up, often accompanied by little (or only cosmetic) work to improve the properties, in order to create the false illusion of a robust real estate market through the use of phony paperwork and deceptive sales pitches. Flipping poses significant risks to low-income, first-time home buyers, and may affect the overall stability of local neighborhoods. In a typical “flipped” transaction, an investor purchases a dilapidated house in a marginal neighborhood. This investor then makes cosmetic and temporary improvements to the house, such as carpeting over rotting wood floors or painting over termite damage. At this point, the investor teams up with a realtor who markets the house as a “total rehab” property—as, at first glance it may appear to be—to a first-time, unsophisticated, low-income home buyer.





- **The Appraiser**

The realtor persuades the buyer to trust him by repeatedly assuring the buyer that he will handle all aspects of the sale on the buyer's behalf and may persuade the buyer to save money by declining to obtain a home inspection, to retain counsel, or otherwise to protect himself. If the buyer questions the value of the house, the investor and realtor can simply point to a deliberately inflated appraisal apparently showing that the house indeed was worth the asking price.





- **The Lender (Loan Broker) and Title Company**

Having gained the trust of the purchaser with the help of such misrepresentations, the realtor then steers the buyer towards a lender with whom the realtor also has “an arrangement.” This lender arranges for the buyer to obtain a mortgage loan—sometimes through manipulation of the buyer’s financial information or the acceptance of phony gift letters documenting non-existent down payments. Finally, the investor and realtor may themselves retain an attorney to represent the buyer at the closing. Instead of protecting the buyer’s interest, however, this attorney’s function is to reassure the buyer of the legitimacy of the transaction, and convince him to sign all of the closing documents.





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- **The Result**

The end result for the buyer is often default and, ultimately, the loss of his home through foreclosure. In the end, the buyer is left with no house and a tarnished credit rating, while the neighborhood is left with a vacant, deteriorating house. The flippers, by contrast, collect the profit from the sale of the house at an unjustifiably inflated price after having made only a modest or nominal investment. Although the purchase and quick resale of a house at an increased price is not itself unlawful, the above scenario illustrates how this practice can cross the line into illegality when documents are falsified and misrepresentations made in order to lure buyers and lenders into investing more money in a house than it is actually worth.





Simultaneous Closings – Part 2

Minn. Stat. § 82.22 DISCLOSURE REQUIREMENTS

Subdivision 1. Advertising.

- Identify themselves as a broker or salesperson in any advertising for the purchase, sale, lease, exchange, mortgaging, transfer, or other disposition of real property,
- Includes the licensee's own property or the property of others.

Subd. 2. Agency disclosure.

- At first substantive contact with the consumer
- Provide and agency disclosure form
- Provides a description of available options for agency and facilitator relationships.

Subd. 6. Agent of broker disclosure.

- A salesperson shall only conduct business under the licensed name of and on behalf of the broker to whom the salesperson is licensed.
- Affirmatively disclose before the negotiation the licensed name of the broker under whom the licensee is authorized.





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Subd. 7. **Financial interests disclosure; licensee.**

- Affirmatively disclose to the owner of real property that
 - a. the licensee is a real estate broker or agent salesperson,
 - b. what capacity the licensee is acting,
 - c. Whether the licensee directly, or indirectly acquires, or intends to acquire, any interest in, the owner's property.
- When a principal in the transaction is a licensee or a relative or business associate of the licensee, that fact must be disclosed in writing.

Minn. Stat. § 82.41 PROHIBITIONS.

Subd. 9. **Closing services.**

- No real estate broker, salesperson, or closing agent shall require a person to use any particular lender, licensed attorney, real estate broker, real estate salesperson, real estate closing agent, or title company in connection with a residential real estate closing.





Property Management

Minn. Stat. § 82.17 DEFINITIONS.

Subd. 18. Real estate broker; broker.

"Real estate broker" or "broker" means any person who:

- Includes “rents, manages”
- Includes offering to rent
- Either an “interest in real estate” or a “business opportunity.”
- Includes advising a buyer or seller regarding leasing or rental

Subd. 20. Rental service.

- Gathers information concerning apartments or other units of real estate available for rent, and who, for a fee, provides information intended to meet the individual needs of specifically identified lessors or prospective lessees.

Minn. Stat. § 82.46 RENTAL SERVICES

Subdivision 1. License.

- Rental service must obtain a real estate broker's license
- Rental service salesperson must obtaining a real estate salesperson's license.

Subd. 2. Dissemination of unit information.

- Must be authorized by the owner of the unit.

Subd. 3. Advertising.

- Shall not advertise in a manner that is misleading.





Property Management Trust Accounts

Trust Accounts Minn. Stat. § 82.17

Subd. 24. **Trust funds.**

- Funds received by a broker, salesperson, or closing agent in a fiduciary capacity as a part of a real estate or business opportunity transaction, pending the consummation or termination of a transaction, and includes all down payments, earnest money deposits, rents for clients, tax and insurance escrow payments, damage deposits, and any funds received on behalf of any person.

Trust Account Requirements Minn. Stat. § 82.50

Subdivision 1. **Generally.**

- All trust funds shall be deposited in a trust account maintained by the broker.





Subd. 2. Licensee acting as principal.

- A licensee acting in the capacity of principal in a real estate transaction where the seller retains any liability, contingent or otherwise, for the payment of an obligation on the property shall deposit in a trust account, those parts of all payments received on contracts that are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, and reserve for taxes and insurance or any other encumbrance on the receipts. The provisions of this subdivision relating to rental of interests in real estate apply only to residential property.

504B.178 INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES; LIMIT ON WITHHOLDING LAST MONTH'S RENT.

Subd. 11. Trust account records.

- Broker shall keep a record of all trust funds received,
- Cash Receipts
- Cash Disbursements
- Transaction records





Property Management - Disclosures

Disclosure Requirement Minn. Stat. § 82.22

Subdivision 1. **Advertising.**

- Licensee must identify themselves as either a broker or salesperson
- Applies to licensee's own property or the property of others.

Subd. 6. **Agent of broker disclosure.**

- Salesperson must use licensed name of their broker.
- Licensee must disclose licensed name of broker before the negotiation or consummation of any transaction

Minn. Stat. § 82.18 CIVIL ACTIONS.

Subd 1 Must be licensed to receive compensation

Subd 2 Written agreement for leases

Subd 3 Disclosure of agency to parties





Property Management - Other Provisions

Minn. Stat, § 82.19 COMPENSATION

Subdivision 1. Licensee to receive only from broker.

- Licensee must be paid by their broker.

Subd. 2. Undisclosed compensation.

- Licensee must not benefit from undisclosed compensation on an expenditure made for a principal.

Minn. Stat, § 82.37 NEGOTIATIONS

Subdivision 1. Written offers.

- All written offers to lease shall be promptly submitted to the lessor.

Minn Stat. § 82.48 STANDARDS OF CONDUCT

Subd. 3. Responsibilities of brokers.

- Brokers must supervise the activities of their salespersons and employees.





Minn. Stat. § 82.41 PROHIBITIONS.

Subd. 5. Self-serving provision prohibited.

- No contract for the rental or lease of real property may contain any hold harmless clause or arbitration clause which addresses the rights or liabilities of persons required to be licensed pursuant to this chapter unless the person required to be licensed is a principal in the transaction.





Property Management and Property Maintenance

Lender knows?
Lender wants?

Lender
(or loan servicer)

Home #1
REO

Home #2
REO

Competitive Bids

Broker
Listing for lender

RE Salesperson

Independent
Maintenance
Vendor

Captive
Maintenance
Vendor



Third Party Short Sale and Foreclosure Negotiation Firms Real Estate Broker

Minn. Stat. § 82.17 DEFINITIONS.

Subd. 10. Loan broker.

"Loan broker" means a licensed real estate broker or salesperson who for another

- For an advance fee
- Directly or indirectly,
- Negotiates or offers or attempts to negotiate a loan secured by a mortgage

Subd. 18. Real estate broker; broker.

"Real estate broker" means any person who:

- For compensation;
- Directly or indirectly;
- Lists, sells, exchanges, buys or rents, manages, or offers;
- Attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate or any business opportunity; or
- Advertises or holds out as engaged in these activities;





Third Party Short Sale and Foreclosure Negotiation Firms Residential Mortgage Originator

58.04 LICENSING REQUIREMENT

Subdivision 1. Residential mortgage originator licensing requirements.

- License is required

58.02 DEFINITIONS.

Subd. 19. Residential mortgage originator.

- "Residential mortgage originator" means a broker as defined in subdivision 13.

Subd. 13. Mortgage broker; broker.

- "Mortgage broker" or "broker" means a person who performs the activities described in subdivisions 14 and 23.

Subd. 14. Mortgage brokering; brokering.

- Mortgage brokering or brokering includes, but is not limited to, soliciting, placing, or negotiating a residential mortgage loan.

Subd. 23. Soliciting, placing, or negotiating a residential mortgage loan.

- "Soliciting, placing, or negotiating a residential mortgage loan" means or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower.





Minn. Stat. § 82.36 LOAN BROKERS

Subdivision 1. Compliance.

- Loan brokers shall comply with the requirements of subdivisions 2 to 7.

Minn. Stat. § 82.23 EXCEPTIONS

- Real estate broker does not include a licensed practicing attorney if the attorney complies in all respects with the trust account provisions of this chapter;
- No exception for out of state





Loan Modification Companies

For Immediate Release: December 10, 2008 Contact: Bill Walsh (651) 296-7531

Department of Commerce advises consumers to work with their loan servicer or the Minnesota Home Ownership Center before paying fees for loan modification

(St. Paul, MN...) The Minnesota Department of Commerce today urged consumers to check the license status of any company offering mortgage loan modification services in Minnesota. More importantly, before paying an upfront or advance fee for such services, consumers should first consider working directly with their loan servicer or contacting the Minnesota Homeownership Center to take advantage of their free loan modification service.

A growing number of consumers are being contacted by companies or individuals offering loan modifications. A loan modification is an agreement between the homeowner and the mortgage servicer to permanently change one or more of the terms of the mortgage contract to make payments more manageable. Modifications can include lowering the interest rate, extending the term of the loan, or adding missed payments to the loan balance.

The Department of Commerce requires persons who engage in loan modifications to have a residential mortgage originator license pursuant to Minnesota Statutes Chapter 58. Individuals offering or negotiating loan modifications are indirectly acting as mortgage originators. In addition to licensing requirements, all individuals who directly or indirectly negotiate loan modifications for consumers are required to comply with certain standards of conduct outlined in state law.

The loan modification company may propose to communicate directly with the homeowner and the homeowner's lender in order to negotiate the terms of a loan. Some loan modification companies will charge a homeowner an upfront or "advance fee" prior to negotiating the terms of a loan on the homeowner's behalf. Some loan modification companies are also inappropriately advising homeowners to cease making their mortgage payment(s) until the loan modification has been completed.

The [Minnesota Homeownership Center](#) offers loan modification services free of charge through their state-wide network of non-profit providers. The providers can also assist homeowners with foreclosure issues. A consumer looking to modify their current mortgage loan may contact the Minnesota Homeownership Center by calling 651-659-9336 or 1-866-462-6466. To check the license status of a loan modification company, contact the Minnesota Department of Commerce at www.commerce.state.mn.us or call 651-296-2135 or 1-800-657-3602.

