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## Proceed Cautiously in Entering the Leasing Market - Part I

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As most of you know, the Minnesota Association of REALTORS® ("MNAR") released new forms on September 1, 2010, which help REALTOR® members list properties for lease, represent tenants and offer a comprehensive lease form to clients. An additional form (a revised "Agency Relationships in Real Estate Transactions" form) is being released now, to ensure that REALTORS® have the ability to provide clients and potential clients with a form that more accurately describes the potential agency relationships created in leasing transactions.

As in any areas of practice where you may lack sufficient experience, do not engage in leasing transactions until you have had proper education, training or mentorship. The rental of residential real estate is a unique area of real estate with its own issues, terminology and rules, not unlike commercial real estate purchase and sale, commercial leasing or property management. If you or the agents within your brokerage are not experienced with Minnesota landlord-tenant issues and some of the common considerations and pitfalls, it may be best to have a policy of not engaging in these transactions until you have proper knowledge and experience.

It is important to recognize, in discussing leasing as an option for clients who may be having trouble selling their property, that renting their home may seem like an attractive alternative, particularly if the risks haven't been fully evaluated. However, landlords who have dealt with a nonpaying tenant, a tenant who has damaged the property, or a tenant who has refused to move out upon lease termination can tell you the benefits of leasing can sometimes be overshadowed by the risks.

Not only are there newly released forms that allow you to represent a tenant or list a property for lease, the MNAR has also released a residential lease form which may serve as a tool for you or your clients. It is important to remember not to give your clients legal advice, and to recommend that they speak with their own attorney if they have questions about the lease or want to use a different lease form. Similarly, they should speak with an attorney if they want to understand landlord-tenant law and possible legal pitfalls of listing their property for lease.

Although I will address more unique leasing issues in upcoming articles or the Hotline Q&A, here are a few tips to consider as you familiarize yourself with leasing transactions and the leasing forms.

1. **Leasing is not for everyone.** Not all home owners make good landlords. While lease terms and conditions may vary and the rental rate, deposit and lease term can be whatever is agreed upon between landlord and tenant, some property owners are not

financially or psychologically prepared to deal with a non-paying tenant or one who won't leave the property as required by the lease. Before listing a property for lease, be sure the homeowner has weighed the risks and benefits, and is making a well informed decision.

2. **There is an agency/disclosure gap in Chapter 82.** The real estate licensing law (Chapter 82 of Minnesota Statutes) requires an Agency Relationships in Real Estate Transaction Disclosure upon the first substantive contact with a consumer. MN Statute 82.81 requires any licensee under Chapter 82 to provide an agency disclosure "at the first substantive contact with a *consumer in a residential real property transaction.*" (italics added) However, that section refers to MN Statute 82.67, which identifies the form for the agency disclosure. The language of MN Statute 82.67 refers specifically to the disclosure being required in purchase and sale transactions. Consequently, whether the disclosure applies to leasing is not specifically covered. An argument could be made that the language of 82.67 does not mandate disclosure in a leasing transaction, and that the disclosure information isn't directly applicable in such a transaction. However, the Department of Commerce ("DOC") has indicated to MNAR staff that they expect real estate licensees to provide an agency relationship disclosure in leasing transactions. Consequently, the MNAR has revised and is now releasing an Agency Relationships Disclosure that is more appropriately tailored to cover purchase and sale as well as leasing. While this form varies slightly from the statutory form, it is designed to address the agency relationships in a way that is consistent with the increasing involvement that REALTOR<sup>®</sup> members are having in the Minnesota residential leasing marketplace.

3. **Prohibition on exclusive agreements.** Although it is certainly possible for one brokerage company or one real estate agent to list a property both for sale and for lease (to market the property to buyers and tenants simultaneously), if two competing brokerage companies attempt to list the property (one company listing it for sale and another listing it for lease) problems could arise. MN Statute 82.81, Subd. 9 provides as follows:

"[...] a licensee shall not negotiate the sale, exchange, lease, or listing of any real property directly with the owner or lessor knowing that the owner or lessor has executed a written contract granting exclusive representation or assistance *in connection with the property to another real estate broker [...]*" (emphasis added)

This suggests that once a property is listed with an exclusive agreement either for sale or lease by real estate Brokerage Company A, Brokerage Company B can't offer the competing service in connection with the property. However, the DOC has indicated they do not interpret the language as prohibiting brokerages from competing by offering separate services for the same property (listing for sale v. listing for rent).

Instead, in discussions between the DOC and the MNAR they have indicated they would not see interference with an exclusive representation agreement by a brokerage offering a competing service as a violation. Consequently, this issue is being explored by the MNAR lobbying team this year, to work with the DOC to craft statutory language that reflects this position.

Regardless of the position taken by the DOC, the current language of the statute makes this a potential risk in the event of litigation on this issue. In the interim, if you or your brokerage want to offer a separate but competing service in connection with a property that is already listed with an exclusive representation agreement or in circumstances involving competing exclusive agreements between buyer and tenant, it would be advisable to discuss the issue with your broker or attorney if you have any concerns over the current language, until it can be modified.

4. **Become familiar with leasing resources.** If you are going to be involved in leasing transactions, it is important to learn some of the nuances and considerations in this area of brokerage services. One excellent and balanced resource offering insight on the landlord/tenant relationship is the landlord tenant handbook offered for free by the MN

Attorney General's office. The handbook can be found here: <http://www.ag.state.mn.us/consumer/housing/lt/default.asp>. The handbook is fairly comprehensive, and can serve as a good foundation for understanding landlord-tenant issues. Additionally, while you should not provide legal advice, having general knowledge about Minnesota landlord-tenant law can prove quite helpful. The landlord-tenant Chapter of the Minnesota Statutes is 504B, and can be found here: <https://www.revisor.mn.gov/statutes/?id=504B>. Additionally, the MNAR will publish Part II and any additional installations of this article, which you may wish to review and circulate within your brokerage.

5. **Verify whether CIC or local/municipal ordinance impact rental.** In Minnesota, many Common Interest Community associations have rental policies within their rules and regulations that may prohibit or limit the rental of units. If your potential client's association has such rental limitations, you will want to become familiar with them and discuss them with your potential client before listing the property for rent. Separately, you should verify whether the city/municipality has any rental restrictions or prohibitions, as some cities and municipalities require a rental license in order to rent a property, and others limit the amount of properties that can be rented within a block or geographical area or the number of residents in a unit. Not knowing these rules can waste a considerable amount of time and effort, and may even create liability for you or your client.

Before you or your brokerage begin listing properties for lease or representing tenants, make sure you are comfortable with the issues outlined above. Stay tuned for Part II of this article series.

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## New Agency Relationships in Real Estate Transactions Form

The form mentioned above is now available to download from [www.mnrealtor.com](http://www.mnrealtor.com).

