

Chapter 311

(House Bill 1469)

AN ACT concerning

Real Estate Brokers – Agency Relationships in Residential Real Estate Transactions – Disclosure and Consent Requirements

FOR the purpose of altering the requirements for a certain disclosure that a licensee of the State Real Estate Commission must make under certain circumstances; establishing a certain exception to a certain disclosure requirement; establishing ~~a certain exception~~ exceptions to the time when a certain disclosure must occur; requiring the Commission to prepare and provide a certain required notice; requiring a subagent to make a certain required disclosure under certain circumstances; requiring a seller's agent to make a certain required disclosure under certain circumstances; requiring a buyer's agent to make a certain required disclosure under certain circumstances; altering the contents of a certain required disclosure; altering a certain exception to a certain prohibition on certain licensees acting as a dual agent; altering a certain prohibition on an intra-company agent disclosing certain confidential information; requiring a certain intra-company agent to provide certain services to a client under certain circumstances; prohibiting a dual agent from also acting as an intra-company agent under certain circumstances; prohibiting an intra-company agent from also acting as a dual agent under certain circumstances; altering the contents of a certain consent for dual agency; altering who may withdraw from representing a certain client under certain circumstances and the effect of the withdrawal; requiring certain licensees to use a certain standard disclosure form under certain circumstances; requiring a certain licensee or branch office manager to use a certain standard consent form under certain circumstances; repealing certain provisions of law regarding a presumed buyer's or lessee's agency relationship; altering certain definitions; repealing a certain definition; making stylistic and conforming changes; and generally relating to agency relationships of licensees of the State Real Estate Commission in residential real estate transactions.

BY repealing and reenacting, with amendments,
 Article – Business Occupations and Professions
 Section 17-528 and 17-530
 Annotated Code of Maryland
 (2010 Replacement Volume and 2015 Supplement)

BY repealing
 Article – Business Occupations and Professions
 Section 17-533
 Annotated Code of Maryland
 (2010 Replacement Volume and 2015 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Business Occupations and Professions

17–528.

(a) In this Part III of this subtitle the following words have the meanings indicated.

(b) “Agency relationship” means each relationship in which a licensee acts for or represents another person with the person’s authority in a residential real estate transaction.

(c) “Broker” means a licensed real estate broker, including a corporation, limited liability company, partnership, or sole proprietorship through which a licensed real estate broker provides real estate brokerage services under § 17–321 of this title.

(d) “Brokerage agreement” means a written agreement between a broker and a client to provide real estate brokerage services under a brokerage relationship.

(e) “Brokerage relationship” means an agency relationship under a brokerage agreement between a client and a broker who has been engaged by the client to provide real estate brokerage services in a residential real estate transaction.

(F) “BUYER’S AGENT” MEANS A LICENSED REAL ESTATE BROKER, LICENSED ASSOCIATE REAL ESTATE BROKER, OR LICENSED REAL ESTATE SALESPERSON WHO, IN ACCORDANCE WITH A WRITTEN BROKERAGE AGREEMENT, REPRESENTS A PROSPECTIVE BUYER OR LESSEE IN THE ACQUISITION OF REAL ESTATE FOR SALE OR FOR LEASE.

[(f)] (G) “Client” means a person who has entered into a brokerage agreement with a broker under a brokerage relationship.

[(g)] (H) (1) “Common source information company” means any person that is a source, compiler, or supplier of information regarding residential real estate for sale or lease or other data.

(2) “Common source information company” includes a multiple listing service.

[(h)] (I) “Confidential information” includes information that:

(1) the seller or lessor will accept a price or rent less than the price or rent as set forth in the brokerage agreement or will accept terms other than those contained in the brokerage agreement;

(2) the buyer or lessee is willing to pay a price or rent higher than the price or rent the buyer or lessee offered or will accept terms other than those contained in the offer of the buyer or lessee;

(3) discloses the motivation of a buyer, lessee, seller, or lessor or the need or urgency of a seller to sell, a buyer to buy, a lessee to lease, or a lessor to lease;

(4) discloses any facts that led the seller to sell, the buyer to buy, the lessee to lease, or the lessor to lease; or

(5) relates to the negotiating strategy of a client.

(J) “DUAL AGENT” MEANS A LICENSED REAL ESTATE BROKER WHO ACTS AS, OR A BRANCH OFFICE MANAGER DESCRIBED IN § 17–518(D) OF THIS SUBTITLE WHO HAS BEEN DESIGNATED BY THE LICENSED REAL ESTATE BROKER TO ACT AS, AN AGENT FOR BOTH THE SELLER AND THE BUYER OR THE LESSOR AND THE LESSEE IN THE SAME REAL ESTATE TRANSACTION.

(K) “INTRA–COMPANY AGENT” MEANS A LICENSED ASSOCIATE REAL ESTATE BROKER OR LICENSED REAL ESTATE SALESPERSON WHO HAS BEEN DESIGNATED BY A DUAL AGENT TO ACT ON BEHALF OF A SELLER OR LESSOR OR BUYER OR LESSEE IN THE PURCHASE, SALE, OR LEASE OF REAL ESTATE.

[(i)] (L) “Ministerial act” means an act that:

(1) a licensee performs on behalf of a client before and after the execution of a contract of sale or lease;

(2) assists another person to complete or fulfill a contract of sale or lease with the client of the licensee; and

(3) does not involve discretion or the exercise of the licensee’s own judgment.

(M) “SELLER’S AGENT” MEANS A LICENSED REAL ESTATE BROKER WHO, IN ACCORDANCE WITH A WRITTEN BROKERAGE AGREEMENT, ACTS AS THE LISTING BROKER FOR REAL ESTATE, OR A LICENSED ASSOCIATE REAL ESTATE BROKER OR LICENSED REAL ESTATE SALESPERSON WHO IS AFFILIATED WITH THE LISTING BROKER.

[(j)] (N) “Subagent” [includes a cooperating agent who acts on behalf of a client of another broker] **MEANS A LICENSED REAL ESTATE BROKER, LICENSED ASSOCIATE REAL ESTATE BROKER, OR LICENSED REAL ESTATE SALESPERSON WHO:**

(1) IS NOT AFFILIATED WITH OR ACTING AS THE LISTING REAL ESTATE BROKER FOR A PROPERTY;

(2) IS NOT A BUYER’S AGENT;

(3) HAS AN AGENCY RELATIONSHIP WITH THE SELLER OR LESSOR;

AND

(4) ASSISTS A PROSPECTIVE BUYER OR LESSEE IN THE ACQUISITION OF REAL ESTATE FOR SALE OR FOR LEASE IN A NONAGENCY CAPACITY.

[(k)] (O) “Timely” means a reasonable time under the particular facts and circumstances.

17-530.

(a) **[(1)]** In this section the following words have the meanings indicated.

(2) “Buyer’s agent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who represents a prospective buyer or lessee in the acquisition of real estate for sale or for lease.

(3) “Cooperating agent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who:

(i) is not affiliated with or is not acting as the listing real estate broker for a property; and

(ii) assists a prospective buyer or lessee as a subagent of the listing real estate broker, in the acquisition of real estate for sale or for lease.

(4) “Intra-company agent” means a licensed associate real estate broker or licensed real estate salesperson who has been designated by the real estate broker who the associate real estate broker or licensed real estate salesperson is affiliated with to act as a dual agent on behalf of a seller or lessor or buyer or lessee in the purchase, sale, or lease of real estate that is listed with the real estate broker.

(5) “Dual agent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who acts as an agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction.

(6) “Seller’s agent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who:

- (i) is affiliated with or acts as the listing broker for real estate; and
- (ii) assists a prospective buyer or lessee in the acquisition of real estate for sale or for lease.

(b) (1) **[A] EXCEPT AS PROVIDED IN ~~PARAGRAPH (2)~~ PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A licensee who participates in a residential real estate transaction as a seller’s agent, buyer’s agent, or [as a cooperating agent] A SUBAGENT shall disclose in writing that the licensee represents the seller or lessor or the buyer or lessee AS PROVIDED IN THIS SECTION.**

(2) THE DISCLOSURE REQUIRED UNDER THIS SECTION DOES NOT APPLY TO A SELLER, LESSOR, BUYER, OR LESSEE WITH WHOM A BROKER HAS ENTERED INTO A WRITTEN BROKERAGE AGREEMENT.

(3) IN ADDITION TO THE WRITTEN DISCLOSURE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION:

(I) IF THE FIRST CONTACT BETWEEN A SELLER’S AGENT AND A PROSPECTIVE BUYER OR LESSOR IS NOT A FACE-TO-FACE CONTACT, THE SELLER’S AGENT SHALL DISCLOSE, THROUGH THE MEDIUM IN WHICH THE CONTACT OCCURS, THAT THE SELLER’S AGENT REPRESENTS THE SELLER OR LESSOR; AND

(II) IF THE FIRST CONTACT BETWEEN A BUYER’S AGENT AND A PROSPECTIVE SELLER OR LESSEE IS NOT A FACE-TO-FACE CONTACT, THE BUYER’S AGENT SHALL DISCLOSE, THROUGH THE MEDIUM IN WHICH THE CONTACT OCCURS, THAT THE BUYER’S AGENT REPRESENTS THE BUYER OR LESSEE.

[(2)] (B) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE disclosure shall occur not later than the first scheduled face-to-face contact with the seller or lessor or the buyer or lessee.

(2) (I) IF A LICENSEE IS HOLDING A PROPERTY OPEN TO THE PUBLIC, THE LICENSEE COMPLIES WITH THE DISCLOSURE REQUIREMENTS OF THIS SECTION IF THE LICENSEE DISPLAYS, IN A CONSPICUOUS MANNER, A NOTICE TO PROSPECTIVE BUYERS OR LESSEES THAT THE LICENSEE PRESENT ON THE PROPERTY REPRESENTS THE SELLER OR LESSOR.

(II) THE COMMISSION SHALL PREPARE AND PROVIDE THE NOTICE REQUIRED UNDER THIS PARAGRAPH.

[(3)] (C) [(i)] In any residential real estate transaction involving a [cooperating agent as defined in this section, it shall be the obligation of the cooperating agent to make the written disclosure] **SUBAGENT, THE SUBAGENT SHALL DISCLOSE IN WRITING** to the buyer or lessee **AS** required under this section **THAT THE SUBAGENT REPRESENTS THE SELLER OR LESSOR.**

[(ii)] (D) In any residential real estate transaction that does not involve a [cooperating agent as defined in this section, it shall be the obligation of the seller's agent, as defined in this section, to] **SUBAGENT OR BUYER'S AGENT, THE SELLER'S AGENT SHALL** make the written disclosure to the buyer or lessee required under this section **THAT THE SELLER'S AGENT REPRESENTS THE SELLER OR LESSOR.**

[(4)] (E) In any residential real estate transaction [involving a buyer's agent, it shall be the obligation of the buyer's agent to] **THAT DOES NOT INVOLVE A SELLER'S AGENT, THE BUYER'S AGENT SHALL** make the written disclosure to the seller or lessor [or the agent of the seller or lessor as] required under this section **THAT THE BUYER'S AGENT REPRESENTS THE BUYER OR LESSEE.**

[(5)] (F) The written disclosure shall explain:

[(i)] (1) the differences between a seller's agent, buyer's agent, [cooperating agent] **SUBAGENT**, dual agent, and intra-company agent;

[(ii)] (2) the duties of a licensee to exercise reasonable care and diligence and maintain confidentiality;

[(iii)] that a licensee who assists a buyer or lessee in locating residential real estate for purchase or lease and is neither affiliated with nor acting as the listing real estate broker for any real estate shown or located, is presumed to be acting as a buyer's agent on behalf of the prospective buyer or lessee, unless either the licensee or the prospective buyer or lessee expressly declines to have the licensee act as a buyer's agent;

(iv)] (3) that regardless of whom a licensee represents in a real estate transaction, the licensee has a duty to treat each party fairly **AND HONESTLY**, promptly present each written offer and counteroffer, respond truthfully to each question, disclose all material facts that are known or should be known relating to a property, and offer each property without discrimination;

[(v)] (4) that a licensee is qualified to advise only on real estate matters and that legal or tax advice should be obtained from a licensed attorney or accountant;

[(vi)] (5) the need for an agreement with a seller's agent, buyer's agent, or dual agent to be in writing and to include the duties and obligations of the agent,

how and by whom the agent will be compensated, and any fee-sharing arrangements with other agents;

[(vii)] **(6)** the duty of a buyer's agent to assist in the:

[1.] **(I)** evaluation of a property, including the provision of a market analysis of the property; and

[2.] **(II)** preparation of an offer on a property and to negotiate in the best interests of the buyer;

[(viii)] **(7)** the possibility that a dual agency may arise in a real estate transaction and the options that would become available to the buyer and seller or lessee and lessor; and

[(ix)] **(8)** that any complaints concerning a licensee may be filed with the [State Real Estate] Commission.

17-530.1.

[(c)] **(A)** Except as otherwise provided in subsection [(d)] **(B)** of this section, a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson may not act as a dual agent in this State.

[(d)] **(B)** (1) (i) If a licensed real estate broker [or a designee of the real estate broker] obtains the written informed consent of all parties to a real estate transaction, the real estate broker, **OR A BRANCH OFFICE MANAGER DESCRIBED IN § 17-518(D) OF THIS SUBTITLE WHO HAS BEEN DESIGNATED BY THE LICENSED REAL ESTATE BROKER**, may act as a dual agent [in the transaction] **FOR BOTH THE SELLER AND THE BUYER OR THE LESSOR AND THE LESSEE IN THE SAME REAL ESTATE TRANSACTION.**

(ii) [When acting as a] **THE** dual agent in a real estate transaction[, a real estate broker or a designee of the real estate broker] shall assign a licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the seller or lessor and another licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the buyer or lessee.

(iii) 1. Except as otherwise required by this title and except to the [intra-company agent's real estate broker or a designee of the real estate broker] **DUAL AGENT**, an intra-company agent may not disclose **CONFIDENTIAL** information [that a seller or buyer in a real estate transaction requests to remain confidential].

2. Except as otherwise required by this title, [the real estate broker or the designee of the real estate broker acting as] the dual agent may not disclose confidential information to the buyer or seller or the buyer's or seller's intra-company agent in the same real estate transaction.

(iv) If a real estate broker offers any financial bonuses to licensees affiliated with the broker for the sale or lease of real property listed with the real estate broker, the real estate broker shall provide to each party to a real estate transaction a statement that discloses that financial bonuses are offered.

(v) An intra-company agent representing the seller or buyer [may] **SHALL** provide the same services to the client as an [exclusive] agent for the seller or buyer **WOULD PROVIDE IN A REAL ESTATE TRANSACTION THAT DOES NOT INVOLVE DUAL AGENCY**, including advising the client as to price and negotiation strategy, provided that the intra-company agent has made the appropriate disclosures to the client and the client has consented, as required by this section, to dual agency representation.

(vi) The provisions of the services specified in this subsection may not be construed to be a breach of duty of the licensee, provided that the licensee has complied with the duties specified in § 17-522 of this subtitle.

(VII) 1. A DUAL AGENT MAY NOT ALSO ACT AS AN INTRA-COMPANY AGENT IN THE SAME REAL ESTATE TRANSACTION.

2. AN INTRA-COMPANY AGENT MAY NOT ALSO ACT AS A DUAL AGENT IN THE SAME REAL ESTATE TRANSACTION.

(2) The written consent **FOR DUAL AGENCY** shall ~~identify~~ **INCLUDE AN AFFIRMATION THAT IDENTIFIES** [each property for which the real estate broker will serve as a dual agent] **THE PROPERTY AND ~~THE IDENTITY OF THE BUYER WHEN THE REAL ESTATE BROKER OR BRANCH OFFICE MANAGER IS SERVING AS A DUAL AGENT AND THE BUYER AND SELLER OR LESSEE AND LESSOR ENTER INTO A WRITTEN CONTRACT FOR SALE OR FOR A LEASE, RESPECTIVELY.~~**

[(3)] (C) The written consent **FOR DUAL AGENCY** shall include a statement that:

[(i)] (1) the real estate broker receives compensation on the sale of a property listed only by the broker;

[(ii)] (2) as a dual agent the real estate broker represents both the seller and the buyer and there may be a conflict of interest because the interests of the seller and the buyer may be different or adverse;

[(iii)] **(3)** as a dual agent the real estate broker does not owe undivided loyalty to either the seller or the buyer;

[(iv)] **(4)** except as otherwise required by this title, a dual agent may not disclose **CONFIDENTIAL** information [that a seller or buyer in a real estate transaction requests to remain confidential] to the buyer or seller in the same real estate transaction;

[(v)] **(5)** unless authorized by the seller, **NEITHER AN INTRA-COMPANY AGENT NOR** a dual agent may ~~not~~ tell a buyer that the seller will accept a price lower than the listing price or accept terms other than those contained in the listing agreement ~~for suggest that the seller accept a lower price in the presence of the buyer~~;

[(vi)] **(6)** unless authorized by the buyer, **NEITHER AN INTRA-COMPANY AGENT NOR** a dual agent may ~~not~~ tell a seller that the buyer is willing to pay a price higher than the price the buyer offered or accept terms other than those contained in the offer of the buyer ~~for suggest that the buyer pay a higher price in the presence of the seller~~;

[(vii)] **(7)** a dual agent may not disclose the motivation of a buyer or seller or the need or urgency of a seller to sell or a buyer to buy;

[(viii)] **(8)** except as otherwise required by this title, if the information is confidential, a dual agent may not disclose any facts that lead the seller to sell;

[(ix)] **(9)** the buyer or seller does not have to consent to the dual agency;

[(x)] **(10)** the buyer or seller has voluntarily consented to the dual agency; and

[(xi)] **(11)** the terms of the dual agency are understood by the buyer or seller.

[(4) (i)] **(D) (1)** A cause of action may not arise against a licensee for disclosure of the dual agency relationship as provided by this section.

[(ii)] **(2)** A dual agent does not terminate any brokerage relationship by making any required disclosure of dual agency.

[(5) (i)] **(E) (1)** In any residential real estate transaction, a [licensee] **LICENSED REAL ESTATE BROKER** may withdraw from representing a client who refuses to consent to a disclosed dual agency and to terminate the brokerage relationship with the client.

[(ii)] **(2)** The withdrawal may not prejudice the ability of the [licensee] **LICENSED REAL ESTATE BROKER** to continue to represent the other client in the transaction, nor to limit the [licensee] **LICENSED REAL ESTATE BROKER** from representing the client who refused the dual agency in other transactions not involving dual agency.

17-530.2.

[(e)] **(A)** (1) [The State Real Estate Commission shall require a] **A** licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who participates in a residential real estate transaction [to] **SHALL** utilize a standard disclosure form in each real estate transaction that includes the information specified in [subsection (b)(5) of this section] **§ 17-530(F) OF THIS SUBTITLE.**

(2) [The State Real Estate Commission shall require a] **A** licensed real estate broker **OR BRANCH OFFICE MANAGER** who acts as a dual agent and a licensed real estate associate broker or licensed real estate salesperson who acts as an intra-company agent in a real estate transaction [to] **SHALL** utilize a standard consent form that includes the information specified in [subsection (d)(3) of this section] **§ 17-530.1(C) OF THIS SUBTITLE.**

[(f)] **(B)** (1) The [State Real Estate] Commission shall prepare and provide [a copy of]:

(i) the standard disclosure form required under subsection [(b)] **(A)(1)** of this section to each licensee in this State; and

(ii) the standard consent form **FOR DUAL AGENCY** required under subsection [(d)] **(A)(2)** of this section to each licensee in this State.

(2) The **STANDARD** disclosure form and the **STANDARD** consent form **FOR DUAL AGENCY** shall be:

(i) written in a clear and coherent manner using words with common and everyday meanings;

(ii) appropriately divided and captioned by their various sections;
and

(iii) printed in at least 10 point type.

[17-533.

(a) A licensee who assists a prospective buyer or lessee in locating residential real estate for purchase or lease and is neither affiliated with nor acting as the listing real estate broker for any real estate shown or located, is presumed to be acting as the buyer's or lessee's agent representing the buyer or lessee unless either the licensee or the buyer or lessee expressly declines to have the licensee act as a buyer's or lessee's agent.

(b) A presumed buyer's or lessee's agency relationship shall be terminated if:

(1) either the buyer, lessee, or licensee expressly states a wish to terminate the presumed agency relationship; or

(2) the licensee and either the buyer or the lessee enter into a brokerage agreement.

(c) The buyer or lessee does not have an obligation to continue to work with the licensee or to pay the licensee while acting under a presumed agency relationship.

(d) A licensee who is acting as a presumed buyer's or lessee's agent may show and assist the buyer or lessee only on real estate that is not listed by the broker of that licensee.

(e) Before the licensee may show or assist the buyer or lessee in locating real estate listed for sale by the broker with whom the licensee is affiliated, the licensee shall disclose to the prospective buyer or lessee that the licensee represents the seller or lessor for that real estate as provided in § 17-530(b) of this subtitle.

(f) A licensee may represent the prospective buyer or lessee for such real estate as an intra-company agent provided that:

(1) the licensee has executed a written consent for dual agency agreement; and

(2) the licensee has made the necessary disclosure and obtained consent as required by § 17-530(d).

(g) Before the licensee may present an offer to purchase or lease or negotiate the purchase or lease of real estate, the presumed buyer's or lessee's agency must be terminated and the buyer or lessee and the licensee shall enter into a brokerage agreement for that licensee to act as an exclusive buyer's or lessee's agent or as an intra-company agent for the buyer or lessee.

(h) The licensee acting as the presumed buyer's or lessee's agent shall comply with § 17-532 of this subtitle and has the duties stated in the required disclosure form under § 17-530 of this subtitle.

(i) At the first meeting of the licensee and the buyer or lessee, the licensee shall:

(1) orally advise the prospective buyer or lessee that the licensee will act as the buyer's or lessee's agent in locating residential real estate unless the buyer or lessee declines the agency; and

(2) provide the prospective buyer or lessee with a copy of the disclosure form required by § 17-530 of this subtitle, but the licensee is not required to obtain the signature of the buyer or lessee before or during the presumed agency relationship.

(j) A licensee acting as a presumed buyer's agent shall orally disclose that fact to the seller or lessor or the licensee acting as the agent of the seller or lessor at their first contact.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.

Approved by the Governor, April 26, 2016.