
By: **Senator Pinsky**
Introduced and read first time: February 6, 1998
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate Brokers - Dual Agency - Repeal**

3 FOR the purpose of repealing the authority of a licensed real estate broker to operate
4 as a dual agent; expanding the authority of certain licensed real estate brokers
5 to function as transaction brokers under certain circumstances and for certain
6 purposes; specifying certain responsibilities of licensed real estate brokers
7 functioning as transaction brokers under certain circumstances; making certain
8 stylistic changes; and generally relating to licensed real estate brokers.

9 BY repealing and reenacting, with amendments,
10 Article - Business Occupations and Professions
11 Section 17-528
12 Annotated Code of Maryland
13 (1995 Replacement Volume and 1997 Supplement)

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

16 **Article - Business Occupations and Professions**

17 17-528.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) "Buyer's agent" means a licensed real estate broker, licensed
20 associate real estate broker, or licensed real estate salesperson who represents a
21 prospective buyer or lessee in the acquisition of real estate for sale or for lease.

22 (3) "Cooperating agent" means a licensed real estate broker, licensed
23 associate real estate broker, or licensed real estate salesperson who:

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

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

1 [(4) "Designated dual agent" means a licensed associate real estate
2 broker or licensed real estate salesperson who has been designated by the real estate
3 broker who the associate real estate broker or licensed real estate salesperson is
4 affiliated with to act as a dual agent on behalf of a seller or lessor or buyer or lessee
5 in the purchase, sale, or lease of real estate that is listed with the real estate broker.

6 (5) "Dual agent" means a licensed real estate broker, licensed associate
7 real estate broker, or licensed real estate salesperson who acts as an agent for both
8 the seller and the buyer or the lessor and the lessee in the same real estate
9 transaction.]

10 [(6)] (4) "Seller's agent" means a licensed real estate broker, licensed
11 associate real estate broker, or licensed real estate salesperson who:

12 (i) is affiliated with or acts as the listing broker for real estate; and

13 (ii) assists a prospective buyer or lessee in the acquisition of real
14 estate for sale or for lease.

15 (5) "TRANSACTION BROKER" MEANS A LICENSED REAL ESTATE BROKER
16 WHO PROVIDES LIMITED REPRESENTATION TO A BUYER, A SELLER, OR BOTH IN A
17 REAL ESTATE TRANSACTION, BUT DOES NOT REPRESENT EITHER PARTY IN A
18 FIDUCIARY CAPACITY OR AS A SINGLE AGENT.

19 (b) (1) A licensee who participates in a residential real estate transaction as
20 a seller's agent, buyer's agent, or as a cooperating agent shall disclose in writing that
21 the licensee represents the seller or lessor or the buyer or lessee.

22 (2) The disclosure shall occur not later than the first scheduled
23 face-to-face contact with the seller or lessor or the buyer or lessee.

24 (3) (i) In any residential real estate transaction involving a
25 cooperating agent as defined in this section, it shall be the obligation of the
26 cooperating agent to make the written disclosure to the buyer or lessee required
27 under this section.

28 (ii) In any residential real estate transaction that does not involve a
29 cooperating agent as defined in this section, it shall be the obligation of the seller's
30 agent, as defined in this section, to make the written disclosure to the buyer or lessee
31 required under this section.

32 (4) In any residential real estate transaction involving a buyer's agent, it
33 shall be the obligation of the buyer's agent to make the written disclosure to the seller
34 or lessor or the agent of the seller or lessor as required under this section.

35 (5) The written disclosure shall explain:

36 (i) the differences between a seller's agent, buyer's agent, AND
37 cooperating agent [and dual agent];

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

3 (iii) that unless a licensee agrees to assist a buyer as a buyer's agent
4 [or dual agent], the licensee represents the seller;

5 (iv) that regardless of who a licensee represents in a real estate
6 transaction, the licensee has a duty to treat each party fairly, promptly present each
7 written offer and counteroffer, respond truthfully to each question, disclose all
8 material facts that are known or should be known relating to a property, and offer
9 each property without discrimination;

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

13 (vi) the need for an agreement with a seller's agent, OR buyer's
14 agent, [or dual agent] to be in writing and to include the duties and obligations of the
15 agent, how and by whom the agent will be compensated, and any fee-sharing
16 arrangements with other agents;

17 (vii) the duty of a buyer's agent to assist in the:

18 1. evaluation of a property, including the provision of a
19 market analysis of the property; and

20 2. preparation of an offer on a property and to negotiate in
21 the best interests of the buyer; AND

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

25 [(ix) (VIII) that any complaints concerning a licensee may be filed
26 with the State Real Estate Commission.

27 (C) (1) A TRANSACTION BROKER SHALL PROVIDE A LIMITED FORM OF
28 REPRESENTATION TO A BUYER, A SELLER, OR BOTH IN A REAL ESTATE TRANSACTION
29 BUT DOES NOT REPRESENT EITHER PARTY IN A FIDUCIARY CAPACITY OR AS A
30 SINGLE AGENT.

31 (2) THE DUTIES OF A LICENSED REAL ESTATE BROKER IN THIS LIMITED
32 FORM OF REPRESENTATION INCLUDE:

33 (I) DEALING HONESTLY AND FAIRLY;

34 (II) ACCOUNTING FOR ALL FUNDS;

35 (III) USING CARE, SKILL, AND DILIGENCE IN THE TRANSACTION;

1 (IV) DISCLOSING ALL KNOWN FACTS THAT MATERIALLY AFFECT
2 THE VALUE OF REAL PROPERTY AND ARE NOT READILY OBSERVABLE TO THE BUYER;

3 (V) PRESENTING ALL OFFERS AND COUNTEROFFERS IN A TIMELY
4 MANNER, UNLESS A PARTY HAS PREVIOUSLY DIRECTED A LICENSED REAL ESTATE
5 BROKER OTHERWISE IN WRITING;

6 (VI) LIMITED CONFIDENTIALITY, UNLESS WAIVED IN WRITING BY A
7 PARTY. THIS LIMITED CONFIDENTIALITY WILL PREVENT DISCLOSURE THAT THE
8 SELLER WILL ACCEPT A PRICE LESS THAN THE ASKING OR LISTED PRICE, THAT THE
9 BUYER WILL PAY A PRICE GREATER THAN THE PRICE SUBMITTED IN A WRITTEN
10 OFFER, OF THE MOTIVATION OF ANY PARTY FOR THE BUYING OR SELLING OF
11 PROPERTY, THAT A SELLER OR BUYER WILL AGREE TO FINANCING TERMS OTHER
12 THAN THOSE OFFERED, OR OF ANY OTHER INFORMATION REQUESTED BY A PARTY
13 TO REMAIN CONFIDENTIAL; AND

14 (VII) ANY ADDITIONAL DUTIES THAT ARE MUTUALLY AGREED TO BY
15 THE PARTIES.

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

19 [(d)] (1) (i) If a licensed real estate broker or a designee of the real estate
20 broker obtains the written informed consent of all parties to a real estate transaction,
21 the real estate broker may act as a dual agent in the transaction.

22 (ii) When acting as a dual agent in a real estate transaction, a real
23 estate broker or a designee of the real estate broker shall assign a licensed associate
24 real estate broker or licensed real estate salesperson affiliated with the real estate
25 broker to act as the designated dual agent on behalf of the seller or lessor and another
26 licensed associate real estate broker or licensed real estate salesperson affiliated with
27 the real estate broker to act as the designated dual agent on behalf of the buyer or
28 lessee.

29 (iii) 1. Except as otherwise required by this title and except to the
30 designated dual agent's real estate broker or a designee of the real estate broker, a
31 designated dual agent may not disclose information that a seller or buyer in a real
32 estate transaction requests to remain confidential.

33 2. Except as otherwise required by this title, the real estate
34 broker or the designee of the real estate broker may not disclose confidential
35 information to the buyer or seller or the buyer or seller's dual agent in the same real
36 estate transaction.

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

1 (2) The written consent shall identify each property for which the real
2 estate broker will serve as a dual agent.

3 (3) The written consent shall include a statement that:

4 (i) the real estate broker receives compensation on the sale of a
5 property listed only by the broker;

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

9 (iii) as a dual agent the real estate broker does not owe undivided
10 loyalty to either the seller or the buyer;

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

14 (v) unless authorized by the seller, a dual agent may not tell a
15 buyer that the seller will accept a price lower than the listing price or accept terms
16 other than those contained in the listing agreement or suggest that the seller accept
17 a lower price in the presence of the buyer;

18 (vi) unless authorized by the buyer, a dual agent may not tell a
19 seller that the buyer is willing to pay a price higher than the price the buyer offered
20 or accept terms other than those contained in the offer of the buyer or suggest that
21 the buyer pay a higher price in the presence of the seller;

22 (vii) a dual agent may not disclose the motivation of a buyer or seller
23 or the need or urgency of a seller to sell or a buyer to buy;

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

26 (ix) the buyer or seller does not have to consent to the dual agency;

27 (x) the buyer or seller has voluntarily consented to the dual agency;
28 and

29 (xi) the terms of the dual agency are understood by the buyer or
30 seller.]

31 (e) [(1)] The State Real Estate Commission shall require a licensed real
32 estate broker, licensed associate real estate broker, or licensed real estate salesperson
33 who participates in a residential real estate transaction to utilize a standard
34 disclosure form in each real estate transaction that includes the information specified
35 in subsection (b)(5) of this section.

1 [(2) The Real Estate Commission shall require a licensed real estate
2 broker who acts as a dual agent and a licensed real estate associate broker or licensed
3 real estate salesperson who acts as a designated dual agent in a real estate
4 transaction to utilize a standard consent form that includes the information specified
5 in subsection (d)(3) of this section.]

6 (f) (1) The State Real Estate Commission shall prepare and provide a copy
7 of[:

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

10 (ii) the standard consent form required under subsection (d) of this
11 section to each licensee in this State].

12 (2) The disclosure form and the consent form shall be:

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

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

17 (iii) printed in at least 10 point type.

18 (g) The provisions of this section apply only to residential real estate
19 transactions of 1, 2, 3, or 4 single-family units.

20 (h) This section does not apply to a lease of 125 days or less.

21 (i) The Commission may adopt regulations to implement the provisions of this
22 section.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 1998.