

SENATE BILL 641

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SB 418/97 - EEA

1998 Regular Session
8r2224

By: **Senators Collins, Craig, Dyson, Hollinger, Sfikas, Stoltzfus, and Teitelbaum**

Introduced and read first time: February 6, 1998
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate Licensing Reform Act**

3 FOR the purpose of providing for the form and content of the written disclosure of
4 representation that is required of real estate licensees in residential real estate
5 transactions; providing when and under what conditions real estate licensees
6 may act as dual agents in residential real estate transactions; establishing
7 standard duties that real estate licensees owe to clients or customers in
8 residential real estate transactions; establishing requirements for brokerage
9 agreements in residential real estate transactions; providing that this Act
10 supersede the common law of the State under certain circumstances;
11 authorizing the Real Estate Commission to adopt regulations to carry out this
12 Act; defining certain terms; providing for a delayed effective date; and generally
13 relating to standards for real estate licensees in residential real estate
14 transactions.

15 BY repealing
16 Article - Business Occupations and Professions
17 Section 17-322(a)
18 Annotated Code of Maryland
19 (1995 Replacement Volume and 1997 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - Business Occupations and Professions
22 Section 17-528 and 17-529
23 Annotated Code of Maryland
24 (1995 Replacement Volume and 1997 Supplement)

25 BY adding to
26 Article - Business Occupations and Professions
27 Section 17-322(a); 17-528 through 17-531 and 17-533 through 17-537 to be
28 under the new part "Part III. Duties of Licensees"
29 Annotated Code of Maryland

1 (1995 Replacement Volume and 1997 Supplement)

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

4 **Article - Business Occupations and Professions**

5 17-322.

6 [(a)] (A) (1) [In this section, "handicap" and "familial status" each have
7 the meanings indicated in the Federal Fair Housing Act.] IN THIS SECTION THE
8 FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

9 (2) "BROKERAGE AGREEMENT" HAS THE MEANING INDICATED IN §
10 17-528 OF THIS TITLE.

11 (3) "FAMILIAL STATUS" HAS THE MEANING INDICATED IN THE FEDERAL
12 FAIR HOUSING ACT.

13 (4) "HANDICAP" HAS THE MEANING INDICATED IN THE FEDERAL FAIR
14 HOUSING ACT.

15 [17-529.] 17-527.1.

16 (a) This section applies to a real estate broker who purchases errors and
17 omissions insurance that provides coverage to the associate real estate brokers and
18 the real estate salespersons who are affiliated with or employed by the real estate
19 broker.

20 (b) A real estate broker shall provide immediate notice of a discontinuance of
21 the broker's errors and omissions insurance to those associate real estate brokers and
22 real estate salespersons who were covered under the broker's policy.

23 **PART III. DUTIES OF LICENSEES.**

24 17-528.

25 (A) IN THIS PART III OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE
26 MEANINGS INDICATED.

27 (B) "AGENCY RELATIONSHIP" MEANS EACH RELATIONSHIP IN WHICH A
28 LICENSEE ACTS FOR OR REPRESENTS ANOTHER PERSON WITH THE PERSON'S
29 AUTHORITY IN A RESIDENTIAL REAL ESTATE TRANSACTION.

30 (C) "BROKER" MEANS A LICENSED REAL ESTATE BROKER, INCLUDING A
31 CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR SOLE
32 PROPRIETORSHIP THROUGH WHICH A LICENSED REAL ESTATE BROKER PROVIDES
33 REAL ESTATE BROKERAGE SERVICES UNDER § 17-321 OF THIS TITLE.

1 (D) "BROKERAGE AGREEMENT" MEANS A WRITTEN AGREEMENT BETWEEN A
2 BROKER AND A CLIENT TO PROVIDE REAL ESTATE BROKERAGE SERVICES UNDER A
3 BROKERAGE RELATIONSHIP.

4 (E) "BROKERAGE RELATIONSHIP" MEANS AN AGENCY RELATIONSHIP UNDER
5 A BROKERAGE AGREEMENT BETWEEN A CLIENT AND A BROKER WHO HAS BEEN
6 ENGAGED BY THE CLIENT TO PROVIDE REAL ESTATE BROKERAGE SERVICES IN A
7 RESIDENTIAL REAL ESTATE TRANSACTION.

8 (F) "CLIENT" MEANS A PERSON WHO HAS ENTERED INTO A BROKERAGE
9 AGREEMENT WITH A BROKER UNDER A BROKERAGE RELATIONSHIP.

10 (G) (1) "COMMON SOURCE INFORMATION COMPANY" MEANS ANY PERSON,
11 ENTITY, OR BUSINESS THAT IS A SOURCE, COMPILER, OR SUPPLIER OF INFORMATION
12 REGARDING RESIDENTIAL REAL ESTATE FOR SALE OR LEASE OR OTHER DATA.

13 (2) "COMMON SOURCE INFORMATION COMPANY" INCLUDES A MULTIPLE
14 LISTING SERVICE.

15 (H) "CONFIDENTIAL INFORMATION" INCLUDES INFORMATION THAT:

16 (1) THE SELLER OR LESSOR WILL ACCEPT A PRICE OR RENT LESS THAN
17 THE PRICE OR RENT AS SET FORTH IN THE BROKERAGE AGREEMENT OR WILL
18 ACCEPT TERMS OTHER THAN THOSE CONTAINED IN THE BROKERAGE AGREEMENT;

19 (2) THE BUYER OR LESSEE IS WILLING TO PAY A PRICE OR RENT HIGHER
20 THAN THE PRICE OR RENT THE BUYER OR LESSEE OFFERED OR WILL ACCEPT TERMS
21 OTHER THAN THOSE CONTAINED IN THE OFFER OF THE BUYER OR LESSEE;

22 (3) DISCLOSES THE MOTIVATION OF A BUYER, LESSEE, SELLER, OR
23 LESSOR OR THE NEED OR URGENCY OF A SELLER TO SELL, A BUYER TO BUY, A
24 LESSEE TO LEASE, OR A LESSOR TO LEASE;

25 (4) DISCLOSES ANY FACTS THAT LED THE SELLER TO SELL, THE BUYER
26 TO BUY, THE LESSEE TO LEASE, OR THE LESSOR TO LEASE; OR

27 (5) RELATES TO THE NEGOTIATING STRATEGY OF A CLIENT.

28 (I) "LICENSEE" MEANS A LICENSED REAL ESTATE BROKER, LICENSED
29 ASSOCIATE REAL ESTATE BROKER, OR LICENSED REAL ESTATE SALESPERSON, AS
30 DEFINED IN § 17-101 OF THIS TITLE.

31 (J) "MINISTERIAL ACT" MEANS ACTS WHICH AN AGENT PERFORMS ON
32 BEHALF OF A CLIENT PRIOR TO OR FOLLOWING THE EXECUTION OF A CONTRACT OF
33 SALE OR LEASE THAT ALSO ASSIST ANOTHER PERSON TO COMPLETE OR FULFILL A
34 CONTRACT OF SALE OR LEASE WITH THE AGENT'S CLIENT AND WHICH DO NOT
35 INVOLVE DISCRETION OR THE EXERCISE OF THE AGENT'S OWN JUDGMENT.

1 (K) "STANDARD DUTY" MEANS A DUTY OR OBLIGATION OF A LICENSEE WHO
2 ACTS FOR OR REPRESENTS A CLIENT IN AN AGENCY RELATIONSHIP AS PROVIDED IN
3 THIS PART III OF THIS SUBTITLE.

4 (L) "SUBAGENT" INCLUDES A COOPERATING AGENT WHO ACTS ON BEHALF OF
5 A CLIENT OF ANOTHER BROKER.

6 (M) "TIMELY" MEANS A REASONABLE TIME UNDER THE PARTICULAR FACTS
7 AND CIRCUMSTANCES.

8 17-529.

9 (A) THIS PART III OF THIS SUBTITLE APPLIES ONLY TO:

10 (1) THE SALE OR LEASE OF REAL PROPERTY IMPROVED BY ONE, TWO,
11 THREE, OR FOUR SINGLE-FAMILY UNITS; AND

12 (2) UNIMPROVED REAL PROPERTY ZONED FOR RESIDENTIAL USE BY
13 THE LOCAL ZONING AUTHORITY OF THE COUNTY OR MUNICIPALITY IN WHICH THE
14 REAL PROPERTY IS LOCATED.

15 (B) THIS PART III OF THIS SUBTITLE DOES NOT APPLY TO A LEASE OF 125
16 DAYS OR LESS.

17 17-530.

18 IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS TITLE SHALL
19 ABROGATE AND SUPERSEDE THE COMMON LAW OF THE STATE ONLY TO THE EXTENT
20 THAT THEY ARE INCONSISTENT.

21 17-531.

22 THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THIS PART III OF
23 THIS SUBTITLE.

24 [17-528.] 17-532.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (5) The written disclosure shall explain:

33 (i) the differences between a seller's agent, buyer's agent,
34 cooperating agent, [and] dual agent, AND INTRA-COMPANY AGENT;

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

1 (iii) [that unless a licensee agrees to assist a buyer as a buyer's
2 agent or, dual agent, the licensee represents the seller] THAT AN AGENT WHO (1)
3 ASSISTS A BUYER OR LESSEE IN LOCATING RESIDENTIAL REAL ESTATE FOR
4 PURCHASE OR LEASE AND (2) IS NOT AFFILIATED WITH OR IS NOT ACTING AS THE
5 LISTING REAL ESTATE BROKER FOR ANY REAL ESTATE SHOWN OR LOCATED, IS
6 PRESUMED TO BE ACTING AS A BUYER'S AGENT ON BEHALF OF THE PROSPECTIVE
7 BUYER OR LESSEE, UNLESS EITHER THE AGENT OR THE PROSPECTIVE BUYER OR
8 LESSEE EXPRESSLY DECLINES TO HAVE THE AGENT ACT AS A BUYER'S AGENT;

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

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

17 (vi) the need for an agreement with a seller's agent, buyer's agent,
18 or dual agent to be in writing and to include the duties and obligations of the agent,
19 how and by whom the agent will be compensated, and any fee-sharing arrangements
20 with other agents;

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

22 1. evaluation of a property, including the provision of a
23 market analysis of the property; and

24 2. preparation of an offer on a property and to negotiate in
25 the best interests of the buyer;

26 (viii) the possibility that a dual agency may arise in a real estate
27 transaction and the options that would become available to the buyer and seller or
28 lessee and lessor; and

29 (ix) that any complaints concerning a licensee may be filed with the
30 State Real Estate Commission.

31 (c) Except as otherwise provided in subsection (d) of this section, a licensed
32 real estate broker, licensed associate real estate broker, or licensed real estate
33 salesperson may not act as a dual agent in this State.

34 (d) (1) (i) If a licensed real estate broker or a designee of the real estate
35 broker obtains the written informed consent of all parties to a real estate transaction,
36 the real estate broker may act as a dual agent in the transaction.

37 (ii) When acting as a dual agent in a real estate transaction, a real
38 estate broker or a designee of the real estate broker shall assign a licensed associate
39 real estate broker or licensed real estate salesperson affiliated with the real estate

1 broker to act as the [designated dual] INTRA-COMPANY agent on behalf of the seller
2 or lessor and another licensed associate real estate broker or licensed real estate
3 salesperson affiliated with the real estate broker to act as the [designated dual]
4 INTRA-COMPANY agent on behalf of the buyer or lessee.

5 (iii) 1. Except as otherwise required by this title and except to the
6 [designated dual] INTRA-COMPANY agent's real estate broker or a designee of the
7 real estate broker, [a designated dual] AN INTRA-COMPANY agent may not disclose
8 information that a seller or buyer in a real estate transaction requests to remain
9 confidential.

10 2. Except as otherwise required by this title, the real estate
11 broker or the designee of the real estate broker ACTING AS THE DUAL AGENT may not
12 disclose confidential information to the buyer or seller or the [buyer] BUYER'S or
13 seller's [dual] INTRA-COMPANY agent in the same real estate transaction.

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

18 (V) AN INTRA-COMPANY AGENT REPRESENTING THE SELLER OR
19 BUYER MAY PROVIDE THE SAME SERVICES TO THE CLIENT AS AN EXCLUSIVE AGENT
20 FOR THE SELLER OR BUYER, INCLUDING ADVISING THE CLIENT AS TO PRICE AND
21 NEGOTIATION STRATEGY, PROVIDED THAT THE INTRA-COMPANY AGENT HAS MADE
22 THE APPROPRIATE DISCLOSURES TO THE CLIENT AND THE CLIENT HAS CONSENTED
23 TO DUAL AGENCY REPRESENTATION AS REQUIRED IN THIS SECTION.

24 (VI) THE PROVISIONS OF THE SERVICES SPECIFIED IN THIS
25 SUBSECTION MAY NOT BE CONSTRUED TO BE A BREACH OF DUTY OF THE AGENT,
26 PROVIDED THAT THE AGENT HAS COMPLIED WITH THE DUTIES SPECIFIED IN §
27 17-534 OF THIS SUBTITLE.

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

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

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

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

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

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

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

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

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

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

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

17 (x) the buyer or seller has voluntarily consented to the dual agency;
18 and

19 (xi) the terms of the dual agency are understood by the buyer or
20 seller.

21 (4) (I) A CAUSE OF ACTION MAY NOT ARISE AGAINST A LICENSEE FOR
22 DISCLOSURE OF THE DUAL AGENCY RELATIONSHIP AS PROVIDED BY THIS SECTION.

23 (II) A DUAL AGENT DOES NOT TERMINATE ANY BROKERAGE
24 RELATIONSHIP BY MAKING ANY REQUIRED DISCLOSURE OF DUAL AGENCY.

25 (5) (I) IN ANY RESIDENTIAL REAL ESTATE TRANSACTION, A LICENSEE
26 MAY WITHDRAW FROM REPRESENTING A CLIENT WHO REFUSES TO CONSENT TO A
27 DISCLOSED DUAL AGENCY AND TO TERMINATE THE BROKERAGE RELATIONSHIP
28 WITH THE CLIENT.

29 (II) THE WITHDRAWAL MAY NOT PREJUDICE THE ABILITY OF THE
30 LICENSEE TO CONTINUE TO REPRESENT THE OTHER CLIENT IN THE TRANSACTION,
31 NOR TO LIMIT THE LICENSEE FROM REPRESENTING THE CLIENT WHO REFUSED THE
32 DUAL AGENCY IN OTHER TRANSACTIONS NOT INVOLVING DUAL AGENCY.

33 (e) (1) The State Real Estate Commission shall require a licensed real
34 estate broker, licensed associate real estate broker, or licensed real estate salesperson
35 who participates in a residential real estate transaction to utilize a standard
36 disclosure form in each real estate transaction that includes the information specified
37 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] AN INTRA-COMPANY agent in
4 a real estate transaction to utilize a standard consent form that includes the
5 information specified 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 17-533.

24 (A) A LICENSEE PROVIDING REAL ESTATE BROKERAGE SERVICES IN AN
25 AGENCY RELATIONSHIP SHALL HAVE THE STANDARD DUTIES PROVIDED IN § 17-534
26 OF THIS SUBTITLE.

27 (B) THIS PART III OF THIS SUBTITLE DOES NOT PROHIBIT A LICENSEE AND A
28 CLIENT FROM AGREEING IN WRITING TO A BROKERAGE RELATIONSHIP THAT
29 IMPOSES ON A LICENSEE DUTIES AND OBLIGATIONS IN ADDITION TO THE STANDARD
30 DUTIES PROVIDED IN § 17-534 OF THIS SUBTITLE.

31 17-534.

32 (A) ALL REAL ESTATE AGENTS, INCLUDING SELLERS' AGENTS, BUYERS'
33 AGENTS, COOPERATING AGENTS, DUAL AGENTS, AND INTRA-COMPANY AGENTS,
34 OWE THE FOLLOWING STANDARD DUTIES TO THEIR CLIENTS:

1 (1) AN AGENT SHALL PERFORM IN ACCORDANCE WITH THE TERMS OF
2 THE AGENCY AGREEMENT;

3 (2) AN AGENT SHALL PROMOTE THE INTERESTS OF THE CLIENT BY:

4 (I) SEEKING A SALE OR LEASE OF REAL ESTATE AT A PRICE OR
5 RENT AND ON TERMS AGREED ON IN THE AGENCY AGREEMENT OR AT A PRICE OR
6 RENT AND ON TERMS ACCEPTABLE TO THE CLIENT;

7 (II) PRESENTING IN A TIMELY MANNER ALL WRITTEN OFFERS OR
8 COUNTEROFFERS TO AND FROM THE CLIENT, EVEN WHEN THE REAL ESTATE IS
9 SUBJECT TO AN EXISTING CONTRACT OF SALE OR LEASE, UNLESS OTHERWISE
10 AGREED UPON IN THE AGENCY AGREEMENT;

11 (3) AN AGENT IS NOT REQUIRED TO SEEK ADDITIONAL OFFERS TO
12 PURCHASE OR LEASE REAL ESTATE WHILE THE REAL ESTATE IS SUBJECT TO AN
13 EXISTING CONTRACT OF SALE OR LEASE, UNLESS OTHERWISE AGREED ON IN THE
14 AGENCY AGREEMENT;

15 (4) AN AGENT SHALL DISCLOSE TO THE CLIENT ALL MATERIAL FACTS
16 AS REQUIRED UNDER § 17-322 OF THIS SUBTITLE;

17 (5) AN AGENT MAY NOT DISCLOSE CONFIDENTIAL INFORMATION
18 RECEIVED FROM OR ABOUT THE CLIENT TO ANY OTHER PARTY OR THAT PARTY'S
19 AGENT, UNLESS THE CLIENT CONSENTS IN WRITING TO THE DISCLOSURE OF THE
20 CONFIDENTIAL INFORMATION;

21 (6) AN AGENT WHO RECEIVES CONFIDENTIAL INFORMATION FROM OR
22 ABOUT ANOTHER PAST OR PRESENT CLIENT OF THE AGENT OR OF THE AGENT'S
23 BROKER MAY NOT DISCLOSE THAT CONFIDENTIAL INFORMATION TO ANY OTHER
24 CLIENT OF THE AGENT OR BROKER, OR TO ANY OTHER PARTY OR THE OTHER PARTY'S
25 AGENT, UNLESS THE CLIENT TO WHOM THE CONFIDENTIAL INFORMATION RELATES
26 CONSENTS IN WRITING TO THE DISCLOSURE OF THE CONFIDENTIAL INFORMATION;

27 (7) AN INTRA-COMPANY AGENT MAY DISCLOSE CONFIDENTIAL
28 INFORMATION TO THE BROKER OR DUAL AGENT UNDER WHOM THE
29 INTRA-COMPANY AGENT WORKS, BUT THE BROKER OR DUAL AGENT MAY NOT
30 DISCLOSE THAT CONFIDENTIAL INFORMATION TO THE OTHER PARTY OR THE
31 INTRA-COMPANY AGENT FOR THE OTHER PARTY, AS PROVIDED IN § 17-532(D) OF
32 THIS SUBTITLE;

33 (8) AN AGENT SHALL TREAT ALL PARTIES TO THE TRANSACTION
34 HONESTLY AND FAIRLY AND ANSWER ALL QUESTIONS TRUTHFULLY;

35 (9) AN AGENT SHALL ACCOUNT FOR IN A TIMELY MANNER ALL TRUST
36 MONEY RECEIVED;

37 (10) AN AGENT SHALL EXERCISE REASONABLE CARE AND DILIGENCE;

38 (11) AN AGENT SHALL COMPLY WITH:

- 1 (I) ALL REQUIREMENTS OF THIS TITLE;
- 2 (II) ALL APPLICABLE FEDERAL, STATE, AND LOCAL FAIR HOUSING
3 LAWS AND REGULATIONS; AND
- 4 (III) ALL OTHER APPLICABLE LAWS AND REGULATIONS;
- 5 (12) AN AGENT DOES NOT BREACH ANY DUTY OR OBLIGATION TO THE
6 CLIENT BY:
- 7 (I) SHOWING OTHER AVAILABLE PROPERTIES TO PROSPECTIVE
8 BUYERS OR LESSEES;
- 9 (II) REPRESENTING OTHER CLIENTS WHO HAVE OR ARE LOOKING
10 FOR SIMILAR PROPERTIES FOR SALE OR LEASE;
- 11 (III) REPRESENTING OTHER SELLERS OR LESSORS WHO HAVE
12 SIMILAR PROPERTIES TO THAT SOUGHT BY THE BUYER OR LESSEE; AND
- 13 (IV) SHOWING THE BUYER OTHER AVAILABLE PROPERTIES.
- 14 (B) THIS TITLE DOES NOT LIMIT IN ANY WAY THE PROVISIONS OF THE
15 MARYLAND RESIDENTIAL PROPERTY DISCLOSURE ACT UNDER § 10-702 OF THE REAL
16 PROPERTY ARTICLE.
- 17 (C) THE STANDARD DUTIES SPECIFIED IN THIS SECTION ARE IN ADDITION TO
18 ANY OTHER DUTIES REQUIRED OF THE AGENT BY LAW THAT ARE NOT
19 INCONSISTENT WITH THESE DUTIES.
- 20 (D) THE STANDARD DUTIES SPECIFIED IN THIS SECTION MAY NOT BE WAIVED
21 OR MODIFIED.
- 22 (E) A LICENSEE WHO PERFORMS MINISTERIAL ACTS FOR A PERSON MAY NOT
23 BE CONSTRUED TO:
- 24 (1) VIOLATE THE LICENSEE'S DUTIES TO THE CLIENT, PROVIDED THAT
25 THE CLIENT HAS CONSENTED IN THE BROKERAGE AGREEMENT TO THE LICENSEE'S
26 PROVISION OF MINISTERIAL ACTS; OR
- 27 (2) FORM AN AGENCY RELATIONSHIP BETWEEN THE LICENSEE AND
28 THE OTHER PERSON.
- 29 17-535.

30 (A) AN AGENT WHO (1) ASSISTS A PROSPECTIVE BUYER OR LESSEE IN
31 LOCATING RESIDENTIAL REAL ESTATE FOR PURCHASE OR LEASE AND (2) IS NOT
32 AFFILIATED WITH OR IS NOT ACTING AS THE LISTING REAL ESTATE BROKER FOR
33 ANY REAL ESTATE SHOWN OR LOCATED, IS PRESUMED TO BE ACTING AS THE
34 BUYER'S OR LESSEE'S AGENT REPRESENTING THE BUYER OR LESSEE UNLESS
35 EITHER THE AGENT OR THE BUYER OR LESSEE EXPRESSLY DECLINES TO HAVE THE
36 AGENT ACT AS A BUYER'S OR LESSEE'S AGENT.

1 (B) A PRESUMED BUYER'S OR LESSEE'S AGENCY RELATIONSHIP SHALL BE
2 TERMINATED IF:

3 (1) EITHER THE BUYER/LESSEE OR AGENT EXPRESSLY STATES THAT
4 THEY WISH TO TERMINATE THE PRESUMED AGENCY RELATIONSHIP; OR

5 (2) THE BUYER/LESSEE AND THE AGENT ENTER INTO A WRITTEN
6 AGENCY AGREEMENT.

7 (C) THE BUYER OR LESSEE MAY NOT HAVE AN OBLIGATION TO CONTINUE TO
8 WORK WITH THE AGENT OR TO PAY THE AGENT WHILE ACTING UNDER A PRESUMED
9 BUYER'S AGENCY RELATIONSHIP.

10 (D) A PRESUMED BUYER'S OR LESSEE'S AGENT MAY SHOW AND ASSIST THE
11 BUYER ONLY ON REAL ESTATE THAT IS NOT LISTED BY THE AGENT'S BROKER.

12 (E) BEFORE THE AGENT MAY SHOW OR ASSIST THE BUYER OR LESSEE IN
13 LOCATING REAL ESTATE LISTED FOR SALE BY THE BROKER WITH WHOM THE AGENT
14 IS AFFILIATED, THE AGENT SHALL DISCLOSE TO THE PROSPECTIVE BUYER OR
15 LESSEE THAT THE AGENT REPRESENTS THE SELLER OR LESSOR FOR THAT REAL
16 ESTATE AS PROVIDED IN § 17-532(B) OF THIS SUBTITLE.

17 (F) AN AGENT MAY REPRESENT THE PROSPECTIVE BUYER OR LESSEE FOR
18 SUCH REAL ESTATE AS AN INTRA-COMPANY AGENT PROVIDED THAT:

19 (1) THE AGENT HAS EXECUTED A WRITTEN CONSENT FOR DUAL
20 AGENCY AGREEMENT; AND

21 (2) THE AGENT HAS MADE THE NECESSARY DISCLOSURE AND
22 OBTAINED CONSENT AS REQUIRED BY § 17-532(D).

23 (G) BEFORE THE AGENT MAY PRESENT AN OFFER TO PURCHASE OR LEASE OR
24 NEGOTIATE THE PURCHASE OR LEASE OF REAL ESTATE, THE PRESUMED BUYER'S OR
25 LESSEE'S AGENCY MUST BE TERMINATED AND THE BUYER OR LESSEE AND THE
26 AGENT SHALL ENTER INTO A WRITTEN AGENCY AGREEMENT TO HAVE THAT AGENT
27 ACT AS AN EXCLUSIVE BUYER'S OR LESSEE'S AGENT OR AS AN INTRA-COMPANY
28 AGENT FOR THE BUYER OR LESSEE.

29 (H) THE PRESUMED BUYER'S OR LESSEE'S AGENT HAS THE STANDARD DUTIES
30 OF A BUYER'S OR LESSEE'S AGENT, AS REQUIRED BY § 17-534 OF THIS SUBTITLE AND
31 AS STATED IN THE REQUIRED DISCLOSURE FORM UNDER § 17-532 OF THIS SUBTITLE.

32 (I) AT THE FIRST MEETING OF THE AGENT AND THE BUYER OR LESSEE, THE
33 AGENT SHALL:

34 (1) ORALLY ADVISE THE PROSPECTIVE BUYER OR LESSEE THAT THE
35 AGENT WILL ACT AS THE BUYER'S OR LESSEE'S AGENT IN LOCATING RESIDENTIAL
36 REAL ESTATE UNLESS THE BUYER OR LESSEE DECLINES THE AGENCY; AND

1 (2) PROVIDE THE PROSPECTIVE BUYER OR LESSEE WITH A COPY OF THE
2 DISCLOSURE FORM REQUIRED BY § 17-532 OF THIS SUBTITLE, BUT THE AGENT IS
3 NOT REQUIRED TO OBTAIN THE SIGNATURE OF THE BUYER OR LESSEE BEFORE OR
4 DURING THE PRESUMED AGENCY RELATIONSHIP.

5 (J) AN AGENT ACTING AS A PRESUMED BUYER'S AGENT SHALL ORALLY
6 DISCLOSE THAT FACT TO THE SELLER OR LESSOR OR THE AGENT OF THE SELLER OR
7 LESSOR AT THEIR FIRST CONTACT.

8 17-536.

9 (A) EXCEPT AS PROVIDED IN § 17-535 OF THIS SUBTITLE, A BROKERAGE
10 RELATIONSHIP COMMENCES AT THE TIME THAT A CLIENT ENTERS INTO A
11 BROKERAGE AGREEMENT AND SHALL CONTINUE UNTIL:

12 (1) THE COMPLETION OF PERFORMANCE IN ACCORDANCE WITH THE
13 BROKERAGE AGREEMENT; OR

14 (2) THE EARLIER OF:

15 (I) ANY DATE OF EXPIRATION AS AGREED ON BY THE PARTIES IN
16 THE BROKERAGE AGREEMENT OR IN ANY AMENDMENTS TO THE BROKERAGE
17 AGREEMENT;

18 (II) ANY MUTUALLY AGREED ON TERMINATION OF THE
19 BROKERAGE RELATIONSHIP;

20 (III) A DEFAULT BY ANY PARTY UNDER THE TERMS OF THE
21 BROKERAGE AGREEMENT; OR

22 (IV) A TERMINATION UNDER § 17-532 OF THIS SUBTITLE.

23 (B) THE BROKERAGE AGREEMENT SHALL:

24 (1) HAVE A DEFINITE TERMINATION DATE THAT IS EFFECTIVE
25 AUTOMATICALLY WITHOUT NOTICE FROM THE CLIENT;

26 (2) STATE THE AMOUNT OF COMPENSATION TO BE PAID TO THE BROKER
27 AND WHETHER THE BROKER IS AUTHORIZED TO RECEIVE THE COMPENSATION
28 FROM A PERSON OTHER THAN THE CLIENT;

29 (3) STATE WHETHER THE BROKER IS AUTHORIZED TO COOPERATE WITH
30 OTHER BROKERS AND SHARE COMPENSATION WITH THE OTHER BROKERS AND THE
31 AMOUNT OF THE COMPENSATION;

32 (4) EXPLAIN THE EVENTS OR CONDITIONS THAT WILL ENTITLE THE
33 BROKER TO A COMMISSION OR OTHER COMPENSATION; AND

34 (5) CONTAIN A PROVISION FOR THE CANCELLATION OF THE
35 BROKERAGE RELATIONSHIP BY EITHER THE CLIENT OR THE BROKER.

1 (C) EXCEPT AS OTHERWISE PROVIDED IN THE BROKERAGE AGREEMENT, A
2 LICENSEE SHALL HAVE NO FURTHER DUTIES OR OBLIGATIONS TO A CLIENT AFTER
3 THE TERMINATION, EXPIRATION, OR COMPLETION OF PERFORMANCE OF THE
4 BROKERAGE RELATIONSHIP, EXCEPT TO:

5 (1) ACCOUNT FOR ALL TRUST MONEY IN THE LICENSEE'S POSSESSION
6 IN ACCORDANCE WITH THIS TITLE; AND

7 (2) EXCEPT AS OTHERWISE PROVIDED BY THIS TITLE OR ANOTHER LAW,
8 KEEP CONFIDENTIAL ALL PERSONAL AND FINANCIAL INFORMATION RECEIVED
9 FROM THE CLIENT DURING THE COURSE OF THE BROKERAGE RELATIONSHIP AND
10 ANY OTHER INFORMATION THAT THE CLIENT REQUESTS DURING THE BROKERAGE
11 RELATIONSHIP TO BE KEPT CONFIDENTIAL, UNLESS:

12 (I) THE CLIENT CONSENTS IN WRITING TO THE DISCLOSURE OF
13 THE INFORMATION; OR

14 (II) THE INFORMATION BECOMES PUBLIC FROM A SOURCE OTHER
15 THAN THE LICENSEE.

16 (D) THE PAYMENT OR PROMISE OF PAYMENT OF COMPENSATION TO A
17 LICENSED REAL ESTATE BROKER BY A SELLER, LESSOR, BUYER, OR LESSEE, OR BY A
18 LICENSEE ACTING FOR A SELLER, LESSOR, BUYER, OR LESSEE:

19 (1) IS NOT DETERMINATIVE OF WHETHER A BROKERAGE RELATIONSHIP
20 HAS BEEN CREATED OR EXISTS; AND

21 (2) DOES NOT CREATE OR DETERMINE THE EXISTENCE OF A
22 BROKERAGE RELATIONSHIP BETWEEN A BROKER AND A SELLER, LESSOR, BUYER,
23 LESSEE, OR LICENSEE.

24 17-537.

25 (A) EXCEPT AS OTHERWISE PROVIDED IN THE BROKERAGE AGREEMENT, A
26 LICENSEE MAY NOT BE DEEMED TO BE AN AGENT OR SUBAGENT OF OR TO HAVE AN
27 AGENCY RELATIONSHIP WITH A COMMON SOURCE INFORMATION COMPANY.

28 (B) A LICENSEE MAY NOT BE DEEMED TO BE AN AGENT OR SUBAGENT OF ANY
29 CLIENT OF ANOTHER BROKER SOLELY BY REASON OF A LICENSEE'S PARTICIPATION
30 IN OR USE OF A COMMON SOURCE INFORMATION COMPANY.

31 SECTION 2. AND BE IT FURTHER ENACTED, That the regulations and code
32 of ethics adopted by the Real Estate Commission shall be consistent with this Act. If
33 any provision of the regulations or code of ethics conflicts with this Act as of the
34 effective date of this Act, the Commission shall amend the provision of the regulations
35 or code of ethics to comply with this Act.

36 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 January 1, 1999 except that the provisions of § 17-531 of the Business Occupations
38 and Professions of this Act shall take effect on July 1, 1999.

