

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE
Revised

Senate Bill 641 (Senator Collins. *et al.*)

Economic and Environmental Affairs

Real Estate Licensing Reform Act

This bill identifies the standard duties of a real estate agent in a brokerage relationship, including standards of care, disclosure of material facts, timely presentation of all offers, maintenance of confidentiality, and disclosure of brokerage relationships. The bill changes the presumption that an agent represents the seller to a presumption that an agent represents the buyer as long as the agent is not acting as the listing real estate broker. The bill provides when a brokerage agency relationship generally begins, how it is terminated, and the terms which must be included in the brokerage agreement. The bill specifies when a presumed buyer agency relationship begins and how it is terminated.

The bill provides that an “intra-company agent” representing the seller or buyer may provide the same services to the client as an exclusive agent for the seller or buyer, 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 to dual agency representation. An intra-company agent may disclose confidential information to the broker or dual agent, but the broker or dual agent may not disclose that confidential information to the other party or the intra-company agent for the other party.

The bill provides that a licensee is not deemed to be an agent of a common source carrier solely by reason of a licensee’s use of that company and that a common source information company may not discriminate against a licensee based on the size or type of license.

The bill will take effect in part on July 1, 1998, in part on January 1, 1999, and in part on July 1, 1999.

Fiscal Summary

State Effect: This bill would not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: Potential meaningful impact.

Fiscal Analysis

State Effect: None. This bill would not materially affect the workload of the Real Estate Commission or the Office of Administrative Hearings. The Office of Administrative Hearings heard a total of 76 real estate cases last year. Any decrease in workload resulting from this bill would be minimal and would be absorbed within normal caseload fluctuations in other areas.

Small Business Effect: There are approximately 37,000 licensed real estate agents in the State, the majority of which are small businesses. There are two provisions which could affect small businesses: (1) intra-company agents representing the seller and the buyer may provide a full range of services to the client; and (2) an agent for residential real estate is presumed to represent the buyer unless the buyer objects.

(1) Intra-company agents representing the seller and the buyer may provide a full range of services to the client. Under current law, dual agency arises when a seller's agent and a buyer's agent work for the same real estate firm, and the buyer is interested in property listed by that firm. Before a firm may operate as a dual agent, both buyer and seller must sign a Consent For Dual Agency form. If either party does not agree to dual agency, the seller continues to be represented by the seller's agent, and the buyer may enter into a buyer agency agreement with another firm, or proceed without representation.

Because buyers and sellers have contrary objectives with regard to price and negotiating strategy, dual agency creates an inherent conflict of interest. As a consequence of this conflict of interest, real estate brokers acting as dual agents are currently unable to fully serve their clients. This bill permits "intra-company agents" to provide the full range of services to their clients, including price and negotiation advice, that exclusive agents could provide.

Over the past five years, consumer demand for buyer brokers has increased. This bill expands the circumstances under which a real estate firm can act in the role as a dual agent. To the extent that this bill encourages buyers and sellers to remain in one real estate

brokerage firm, this bill could have a meaningful effect on small businesses.

(2) An agent for residential real estate is presumed to represent the buyer unless the buyer objects. The bill alters the presumption concerning who a licensee represents during real estate transactions. This change may affect real estate agents that currently specialize as buyer agents because it affects their ability to market their company's representation of buyers in a real estate transaction as a specialty service.

Information Sources: Office of Administrative Hearings; Department of Labor, Licensing, and Regulation

Fiscal Note History: First Reader - March 3, 1998
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