

HOUSE BILL 626

C2, N1

8lr0990

By: **Delegate Niemann**

Introduced and read first time: February 1, 2008

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Maryland Real Estate Brokers Act – Violations and**
3 **Penalties**

4 FOR the purpose of altering the maximum penalties that may be imposed by a court or
5 the State Real Estate Commission for certain violations of the Maryland Real
6 Estate Brokers Act; altering the provisions of the Maryland Real Estate Brokers
7 Act, a violation of which is subject to certain criminal penalties; providing that a
8 person who violates the Maryland Real Estate Brokers Act is subject to certain
9 provisions regarding statute of limitations and in banc review; and generally
10 relating to violations and penalties under the Maryland Real Estate Brokers
11 Act.

12 BY repealing and reenacting, without amendments,
13 Article – Business Occupations and Professions
14 Section 17–530 and 17–532
15 Annotated Code of Maryland
16 (2004 Replacement Volume and 2007 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Business Occupations and Professions
19 Section 17–613
20 Annotated Code of Maryland
21 (2004 Replacement Volume and 2007 Supplement)

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

24 **Article – Business Occupations and Professions**

25 17–530.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

26 (b) (1) A licensee who participates in a residential real estate transaction
27 as a seller’s agent, buyer’s agent, or as a cooperating agent shall disclose in writing
28 that the licensee represents the seller or lessor or the buyer or lessee.

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

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

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

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

8 (5) The written disclosure shall explain:

9 (i) the differences between a seller's agent, buyer's agent,
10 cooperating agent, dual agent, and intra-company agent;

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

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

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

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

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

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

32 1. evaluation of a property, including the provision of a
33 market analysis of the property; and

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

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

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

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

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

12 (ii) When acting as a dual agent in a real estate transaction, a
13 real estate broker or a designee of the real estate broker shall assign a licensed
14 associate real estate broker or licensed real estate salesperson affiliated with the real
15 estate broker to act as the intra-company agent on behalf of the seller or lessor and
16 another licensed associate real estate broker or licensed real estate salesperson
17 affiliated with the real estate broker to act as the intra-company agent on behalf of
18 the buyer or lessee.

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

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

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

31 (v) An intra-company agent representing the seller or buyer
32 may provide the same services to the client as an exclusive agent for the seller or
33 buyer, including advising the client as to price and negotiation strategy, provided that
34 the intra-company agent has made the appropriate disclosures to the client and the
35 client has consented, as required by this section, to dual agency representation.

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

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
7 seller 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
10 undivided loyalty to either the seller or the buyer;

11 (iv) except as otherwise required by this title, a dual agent may
12 not 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 a
17 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 or
20 accept terms other than those contained in the offer of the buyer or suggest that the
21 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
23 seller 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
25 is 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
27 agency;

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

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

32 (4) (i) A cause of action may not arise against a licensee for
33 disclosure of the dual agency relationship as provided by this section.

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

3 (5) (i) In any residential real estate transaction, a licensee may
4 withdraw from representing a client who refuses to consent to a disclosed dual agency
5 and to terminate the brokerage relationship with the client.

6 (ii) The withdrawal may not prejudice the ability of the licensee
7 to continue to represent the other client in the transaction, nor to limit the licensee
8 from representing the client who refused the dual agency in other transactions not
9 involving dual agency.

10 (e) (1) The State Real Estate Commission shall require a licensed real
11 estate broker, licensed associate real estate broker, or licensed real estate salesperson
12 who participates in a residential real estate transaction to utilize a standard
13 disclosure form in each real estate transaction that includes the information specified
14 in subsection (b)(5) of this section.

15 (2) The State Real Estate Commission shall require a licensed real
16 estate broker who acts as a dual agent and a licensed real estate associate broker or
17 licensed real estate salesperson who acts as an intra-company agent in a real estate
18 transaction to utilize a standard consent form that includes the information specified
19 in subsection (d)(3) of this section.

20 (f) (1) The State Real Estate Commission shall prepare and provide a
21 copy of:

22 (i) the standard disclosure form required under subsection (b)
23 of this section to each licensee in this State; and

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

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

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

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

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

32 17-532.

33 (a) In this section, "client" includes a prospective buyer or lessee under a
34 presumed buyer's agency relationship or a presumed lessee's agency relationship as
35 described in § 17-533 of this subtitle.

1 (b) A licensee shall comply with the provisions of this section when providing
2 real estate brokerage services.

3 (c) (1) A licensee shall:

4 (i) act in accordance with the terms of the brokerage
5 agreement;

6 (ii) promote the interests of the client by:

7 1. seeking a sale or lease of real estate at a price or rent
8 specified in the brokerage agreement or at a price or rent acceptable to the client;

9 2. seeking a sale or lease of real estate on terms
10 specified in the brokerage agreement or on terms acceptable to the client; and

11 3. unless otherwise specified in the brokerage
12 agreement, presenting in a timely manner all written offers or counteroffers to and
13 from the client, even if the real estate is subject to an existing contract of sale or lease;

14 (iii) disclose to the client all material facts as required under §
15 17-322 of this title;

16 (iv) treat all parties to the transaction honestly and fairly and
17 answer all questions truthfully;

18 (v) in a timely manner account for all trust money received;

19 (vi) exercise reasonable care and diligence; and

20 (vii) comply with all:

21 1. requirements of this title;

22 2. applicable federal, State, and local fair housing laws
23 and regulations; and

24 3. other applicable laws and regulations.

25 (2) Unless the client consents in writing to the disclosure, a licensee
26 may not disclose confidential information received from or about a client to any other
27 party or licensee acting as the agent of that party or other representative of that party.

28 (3) Unless the client to whom the confidential information relates
29 consents in writing to a disclosure of that confidential information, a licensee who
30 receives confidential information from or about the licensee's own past or present

1 client or a past or present client of the licensee's broker may not disclose that
2 information to:

- 3 (i) any of the licensee's other clients;
- 4 (ii) any of the clients of the licensee's broker;
- 5 (iii) any other party;
- 6 (iv) any licensee acting as an agent for another party; or
- 7 (v) any representative of another party.

8 (4) Unless otherwise specified in the brokerage agreement, a licensee
9 is not required to seek additional offers to purchase or lease real estate while the real
10 estate is subject to an existing contract of sale or lease.

11 (5) An intra-company agent may disclose confidential information to
12 the broker or dual agent for whom the intra-company agent works but the broker or
13 dual agent may not disclose that confidential information to the other party or the
14 intra-company agent for the other party, as provided in § 17-530(d).

15 (d) A licensee does not breach any duty or obligation to the client by:

- 16 (1) showing other available properties to prospective buyers or lessees;
- 17 (2) representing other clients who have or are looking for similar
18 properties for sale or lease;
- 19 (3) representing other sellers or lessors who have similar properties to
20 that sought by the buyer or lessee; and
- 21 (4) showing the buyer other available properties.

22 (e) This title does not limit the applicability of § 10-702 of the Real Property
23 Article.

24 (f) The requirements of this section are in addition to any other duties
25 required of the agent by law that are not inconsistent with these duties.

26 (g) The duties specified in this section may not be waived or modified.

27 (h) A licensee who performs ministerial acts for a person may not be
28 construed to:

- 29 (1) violate the licensee's duties to the client, provided that the client
30 has consented in the brokerage agreement to the licensee's provision of ministerial
31 acts; or

1 (2) form an agency relationship between the licensee and the person
2 for whom the ministerial acts are performed.

3 17-613.

4 (a) A person who violates any provision of the following sections of this title
5 is guilty of a misdemeanor and on conviction is subject to a fine not exceeding [\$5,000]
6 **\$25,000** or imprisonment not exceeding [1 year] **3 YEARS** or both:

7 (1) § 17-502;

8 (2) § 17-525;

9 (3) § 17-526;

10 (4) § 17-527;

11 **(5) § 17-530;**

12 **(6) § 17-532;**

13 ~~[(5)]~~ **(7)** § 17-601;

14 ~~[(6)]~~ **(8)** § 17-602;

15 ~~[(7)]~~ **(9)** § 17-603;

16 ~~[(8)]~~ **(10)** § 17-604;

17 ~~[(9)]~~ **(11)** § 17-605;

18 ~~[(10)]~~ **(12)** § 17-606;

19 ~~[(11)]~~ **(13)** § 17-607;

20 ~~[(12)]~~ **(14)** § 17-608;

21 ~~[(13)]~~ **(15)** § 17-609;

22 ~~[(14)]~~ **(16)** § 17-610; and

23 ~~[(15)]~~ **(17)** § 17-611.

1 (b) A corporation, partnership, or other association that violates § 17-612 of
2 this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not
3 exceeding [~~\$5,000~~] **\$25,000**.

4 (c) (1) The Commission may impose on a person who violates any
5 provision of this title a penalty not exceeding [~~\$5,000~~] **\$25,000** for each violation.

6 (2) In setting the amount of the penalty, the Board shall consider:

7 (i) the seriousness of the violation;

8 (ii) the harm caused by the violation;

9 (iii) the good faith of the violator;

10 (iv) any history of previous violations by the violator; and

11 (v) any other relevant factors.

12 (3) The Board shall pay any penalty collected under this subsection
13 into the General Fund of the State.

14 **(D) A PERSON WHO VIOLATES ANY PROVISION OF THIS TITLE IS**
15 **SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2008.