

HOUSE BILL 626

C2, N1

8lr0990

By: **Delegate Niemann**

Introduced and read first time: February 1, 2008

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2008

CHAPTER _____

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:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 **Article – Business Occupations and Professions**

2 17–530.

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

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

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

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

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

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

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

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

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

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

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

31 (2) The disclosure shall occur not later than the first scheduled
32 face–to–face contact with the seller or lessor or the buyer or lessee.

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

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

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

12 (5) The written disclosure shall explain:

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

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

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

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

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

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

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

36 1. evaluation of a property, including the provision of a
37 market analysis of the property; and

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

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

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

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

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

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

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

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

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

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

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

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

31 (x) the buyer or seller has voluntarily consented to the dual
32 agency; and

33 (xi) the terms of the dual agency are understood by the buyer or
34 seller.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) In this section, “client” includes a prospective buyer or lessee under a
2 presumed buyer’s agency relationship or a presumed lessee’s agency relationship as
3 described in § 17–533 of this subtitle.

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

6 (c) (1) A licensee shall:

7 (i) act in accordance with the terms of the brokerage
8 agreement;

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

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

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

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

17 (iii) disclose to the client all material facts as required under §
18 17–322 of this title;

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

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

22 (vi) exercise reasonable care and diligence; and

23 (vii) comply with all:

24 1. requirements of this title;

25 2. applicable federal, State, and local fair housing laws
26 and regulations; and

27 3. other applicable laws and regulations.

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

1 (3) Unless the client to whom the confidential information relates
2 consents in writing to a disclosure of that confidential information, a licensee who
3 receives confidential information from or about the licensee's own past or present
4 client or a past or present client of the licensee's broker may not disclose that
5 information to:

6 (i) any of the licensee's other clients;

7 (ii) any of the clients of the licensee's broker;

8 (iii) any other party;

9 (iv) any licensee acting as an agent for another party; or

10 (v) any representative of another party.

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

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

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

19 (1) showing other available properties to prospective buyers or lessees;

20 (2) representing other clients who have or are looking for similar
21 properties for sale or lease;

22 (3) representing other sellers or lessors who have similar properties to
23 that sought by the buyer or lessee; and

24 (4) showing the buyer other available properties.

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

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

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

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

1 (1) violate the licensee’s duties to the client, provided that the client
2 has consented in the brokerage agreement to the licensee’s provision of ministerial
3 acts; or

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

6 17-613.

7 (a) ~~A~~ **SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS**
8 **SECTION, A** person who violates any provision of the following sections of this title is
9 guilty of a misdemeanor and on conviction **FOR A FIRST OFFENSE** is subject to a fine
10 not exceeding ~~[\$5,000]~~ **\$25,000** or imprisonment not exceeding ~~[1 year]~~ **3 YEARS** or
11 both:

- 12 (1) § 17-502;
- 13 (2) § 17-525;
- 14 (3) § 17-526;
- 15 (4) § 17-527;
- 16 **(5) § 17-530;**
- 17 **(6) § 17-532;**
- 18 ~~[(5)]~~ **(7)** § 17-601;
- 19 ~~[(6)]~~ **(8)** § 17-602;
- 20 ~~[(7)]~~ **(9)** § 17-603;
- 21 ~~[(8)]~~ **(10)** § 17-604;
- 22 ~~[(9)]~~ **(11)** § 17-605;
- 23 ~~[(10)]~~ **(12)** § 17-606;
- 24 ~~[(11)]~~ **(13)** § 17-607;
- 25 ~~[(12)]~~ **(14)** § 17-608;
- 26 ~~[(13)]~~ **(15)** § 17-609;
- 27 ~~[(14)]~~ **(16)** § 17-610; and

1 [(15)] (17) § 17-611.

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

5 (1) **NOT EXCEEDING \$5,000 FOR A FIRST VIOLATION;**

6 (2) **NOT EXCEEDING \$15,000 FOR A SECOND VIOLATION; AND**

7 (3) **NOT EXCEEDING \$25,000 FOR A THIRD OR SUBSEQUENT**
 8 **VIOLATION.**

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

11 (I) **\$5,000 FOR A FIRST VIOLATION;**

12 (II) **\$15,000 FOR A SECOND VIOLATION; AND**

13 (III) **\$25,000 FOR A THIRD OR SUBSEQUENT VIOLATION.**

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

15 (i) the seriousness of the violation;

16 (ii) the harm caused by the violation;

17 (iii) the good faith of the violator;

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

19 (v) any other relevant factors.

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

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

24 **(D) (1) ANY PERSON FOUND GUILTY OF A SECOND VIOLATION OF ANY**
 25 **PROVISION OF THE SECTIONS LISTED IN SUBSECTION (A) OF THIS SECTION IS**
 26 **SUBJECT TO A FINE NOT EXCEEDING \$15,000 OR 2 YEARS IMPRISONMENT OR**
 27 **BOTH.**

1 **(2) ANY PERSON FOUND GUILTY OF A THIRD OR SUBSEQUENT**
2 **VIOLATION OF ANY PROVISION OF THE SECTIONS LISTED IN SUBSECTION (A) OF**
3 **THIS SECTION IS SUBJECT TO A FINE NOT EXCEEDING \$25,000 OR 3 YEARS**
4 **IMPRISONMENT OR BOTH.**

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.