

SENATE BILL 644

C2

2lr1276

By: **Senators Ramirez and Muse**

Introduced and read first time: February 3, 2012

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Real Estate Commission – Licensees – Inspection of Records and**
3 **Agency Disclosure Requirements**

4 FOR the purpose of requiring certain licensees of the State Real Estate Commission to
5 keep copies of certain documents; requiring certain inspections to include audits
6 of certain records; altering the services an intra–company agent may provide to
7 a client under certain circumstances; requiring the Commission to explain
8 certain information in a certain uniform written disclosure form; requiring a
9 certain written consent to include a certain statement; altering certain
10 definitions; defining certain terms; and generally relating to inspections of
11 records and agency disclosure requirements for licensees of the State Real
12 Estate Commission.

13 BY repealing and reenacting, with amendments,
14 Article – Business Occupations and Professions
15 Section 17–101(b), (h), (i), and (j), 17–507, and 17–530
16 Annotated Code of Maryland
17 (2010 Replacement Volume and 2011 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Business Occupations and Professions
20 Section 17–613(a)(5) and (d)
21 Annotated Code of Maryland
22 (2010 Replacement Volume and 2011 Supplement)

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

25 **Article – Business Occupations and Professions**

26 17–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) “Affiliate” means[, unless the context requires otherwise,] to establish
2 between an individual and a real estate broker an employment or other contractual
3 relationship under which the individual is authorized to provide real estate brokerage
4 services on behalf of the real estate broker.

5 (h) “Licensed associate real estate broker” means[, unless the context
6 requires otherwise,] an associate real estate broker who is licensed by the Commission
7 to provide real estate brokerage services on behalf of a licensed real estate broker with
8 whom the associate real estate broker is affiliated.

9 (i) “Licensed real estate broker” means[, unless the context requires
10 otherwise,] a real estate broker who is licensed by the Commission to provide real
11 estate brokerage services.

12 (j) “Licensed real estate salesperson” means[, unless the context requires
13 otherwise,] a real estate salesperson who is licensed by the Commission to provide real
14 estate brokerage services on behalf of a licensed real estate broker with whom the real
15 estate salesperson is affiliated.

16 17–507.

17 (a) Each real estate broker shall maintain all records of trust money in a
18 secured area within the office of the broker.

19 (b) (1) Each licensee shall keep copies of:

20 (i) listings; and

21 (ii) any other document executed or obtained by the licensee in
22 connection with a transaction involving the provision of real estate brokerage services,
23 including **THE AGENCY DISCLOSURE REQUIREMENTS OF THIS SUBTITLE AND** any
24 electronic signature contained on a document.

25 (2) (i) A licensee shall keep the records required by this section for
26 5 years, starting on the date of the closing of a real estate transaction, or, if the
27 transaction is not closed, 5 years after the date of the listing.

28 (ii) A licensee providing property management services shall
29 keep the records required by this section for 5 years after the termination of the
30 management agreement.

31 (c) For any record required to be kept under subsections (a) and (b) of this
32 section, a licensee may keep and store an electronic record of the information if:

33 (1) the stored record cannot be erased or edited;

1 (2) the stored record is made or preserved as part of, and in the
2 regular course of, the licensee's business;

3 (3) the original record from which the stored record was copied was
4 made or prepared by the licensee or the licensee's employees at or near the time of the
5 activity described in the record;

6 (4) the custodian of the record is able to identify the stored record, the
7 mode of its preparation, and the mode of storage; and

8 (5) the electronic storage system contains a reliable indexing system
9 that provides:

10 (i) convenient access to the document or record;

11 (ii) appropriate quality control of the storage process; and

12 (iii) chronological arrangement of stored documents or records.

13 (d) (1) **(I)** On reasonable notice from the Commission, a licensee shall
14 allow a representative of the Commission to enter the licensee's place of business
15 during business hours to inspect a record required to be kept under subsection (b) of
16 this section.

17 **(II) IF THE INSPECTION IS RESPONSIVE TO A CONSUMER**
18 **COMPLAINT, THE INSPECTION SHALL INCLUDE AN AUDIT OF AGENCY**
19 **DISCLOSURE RECORDS.**

20 (2) The licensee shall provide, at the licensee's expense, a paper copy
21 of any document or record requested by the Commission.

22 (3) A licensee shall display to the Commission on demand all records,
23 books, and accounts of any money held in trust.

24 17-530.

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

1 (i) is not affiliated with or is not acting as the listing real estate
2 broker for a property; [and]

3 (ii) assists a prospective buyer or lessee [as a subagent of the
4 listing real estate broker,] in the acquisition of real estate for sale or for lease;

5 (III) ACTS AS A SUBAGENT OF THE LISTING REAL ESTATE
6 BROKER; AND

7 (IV) IS AN AGENT OF THE SELLER OR LESSOR.

8 (3) (I) “DUAL AGENT” MEANS A LICENSED REAL ESTATE
9 BROKER WHO OBTAINS CONSENT TO ACT AS AN AGENT FOR BOTH THE SELLER
10 AND THE BUYER OR THE LESSOR AND THE LESSEE IN THE SAME REAL ESTATE
11 TRANSACTION.

12 (II) “DUAL AGENT” DOES NOT INCLUDE AN ASSOCIATE REAL
13 ESTATE BROKER OR A REAL ESTATE SALESPERSON REPRESENTING THE SELLER
14 OR LESSOR OR THE BUYER OR LESSEE IN A REAL ESTATE TRANSACTION IN
15 WHICH THE BROKER EMPLOYING THE ASSOCIATE BROKER OR SALESPERSON IS
16 A DUAL AGENT.

17 (4) “EXCLUSIVE BUYER AGENT” MEANS A LICENSED REAL ESTATE
18 BROKER, LICENSED ASSOCIATE REAL ESTATE BROKER, OR LICENSED REAL
19 ESTATE SALESPERSON WHO IS NOT THE LISTING AGENT AND REPRESENTS ONLY
20 THE BUYER OR LESSEE, AND NOT THE SELLER OR LESSOR, IN A REAL ESTATE
21 TRANSACTION.

22 (5) “EXCLUSIVE SELLER AGENT” MEANS A LICENSED REAL
23 ESTATE BROKER, LICENSED ASSOCIATE REAL ESTATE BROKER, OR LICENSED
24 REAL ESTATE SALESPERSON WHO REPRESENTS ONLY THE SELLER OR LESSOR,
25 AND NOT THE BUYER OR LESSEE, IN A REAL ESTATE TRANSACTION.

26 [(4)] (6) “Intra-company agent” means a licensed associate real
27 estate broker or licensed real estate salesperson who has been designated by the real
28 estate broker who the associate real estate broker or licensed real estate salesperson is
29 affiliated with to act as a dual agent on behalf of a seller or lessor or buyer or lessee in
30 the purchase, sale, or lease of real estate that is listed with the real estate broker.

31 [(5)] “Dual agent” means a licensed real estate broker, licensed
32 associate real estate broker, or licensed real estate salesperson who acts as an agent
33 for both the seller and the buyer or the lessor and the lessee in the same real estate
34 transaction.

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

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

5 (ii) assists a prospective buyer or lessee in the acquisition of real
6 estate for sale or for lease.]

7 **(7) “SINGLE AGENCY” MEANS THE PRACTICE OF REPRESENTING**
8 **EITHER THE SELLER OR LESSOR OR BUYER OR LESSEE, BUT NOT BOTH, IN THE**
9 **SAME TRANSACTION.**

10 **(8) “SUBAGENT” MEANS A LICENSED ASSOCIATE REAL ESTATE**
11 **BROKER OR LICENSED REAL ESTATE SALESPERSON WHO WORKS FOR THE**
12 **BROKERAGE EMPLOYED BY A SELLER BUT ASSISTS THE BUYER OR LESSEE IN A**
13 **REAL ESTATE TRANSACTION.**

14 (b) (1) A licensee who participates in a residential real estate transaction
15 as [a seller’s] **AN EXCLUSIVE SELLER** agent, [buyer’s] **EXCLUSIVE BUYER** agent, or
16 as a cooperating agent shall disclose in writing that the licensee represents the seller
17 or lessor or the buyer or lessee.

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

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

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

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

32 (5) The written disclosure shall explain:

33 (i) the [differences between a seller’s] **DEFINITIONS OF**
34 **EXCLUSIVE SELLER** agent, [buyer’s] **EXCLUSIVE BUYER** agent, cooperating agent,

1 dual agent, [and] intra-company agent, **SUBAGENT, AND SINGLE AGENCY,**
2 **INCLUDING THE DIFFERENCES BETWEEN EACH TYPE OF AGENCY;**

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

5 (iii) that a licensee who assists a buyer or lessee in locating
6 residential real estate for purchase or lease and is neither affiliated with nor acting as
7 the listing real estate broker for any real estate shown or located, is presumed to be
8 acting as [a buyer's] **AN EXCLUSIVE BUYER** agent on behalf of the prospective buyer
9 or lessee, unless either the licensee or the prospective buyer or lessee expressly
10 declines to have the licensee act as [a buyer's] **AN EXCLUSIVE BUYER** agent;

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

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

19 (vi) the need for an agreement with [a seller's] **AN EXCLUSIVE**
20 **SELLER** agent, [buyer's] **EXCLUSIVE BUYER** agent, or dual agent to be in writing and
21 to include the duties and obligations of the agent, how and by whom the agent will be
22 compensated, and any fee-sharing arrangements with other agents;

23 (vii) the duty of [a buyer's] **AN EXCLUSIVE BUYER** agent to
24 assist in the:

25 1. evaluation of a property, including the provision of a
26 market analysis of the property; and

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

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

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

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

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

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

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

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

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

26 (v) An intra-company agent representing the seller or buyer
27 may provide [the same] **ONLY** services to the client [as an exclusive agent for the
28 seller or buyer] **OFFERED BY THE BROKER**, including advising the client as to price
29 and negotiation strategy, [provided that] **IF** the intra-company agent has made the
30 appropriate disclosures to the client and the client has consented, as required by this
31 section, to dual agency representation.

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

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

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

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

3 (II) IF APPLICABLE, THE DUAL AGENT'S FORMER ROLE AS
4 AN EXCLUSIVE BUYER AGENT OR EXCLUSIVE SELLER AGENT;

5 [(ii)] (III) as a dual agent the real estate broker represents both
6 the seller and the buyer and there [may] WILL LIKELY be a conflict of interest
7 because the interests of the seller and the buyer [may be] ARE different or adverse;

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

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

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

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

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

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

27 [(ix)] (X) the buyer or seller does not have to consent to the
28 dual agency;

29 [(x)] (XI) the buyer or seller has voluntarily consented to the
30 dual agency; and

31 [(xi)] (XII) the terms of the dual agency are understood by the
32 buyer or seller.

33 (4) (i) A cause of action may not arise against a licensee for
34 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 17-613.

1 (a) Subject to the provisions of subsection (d) of this section, a person who
2 violates any provision of the following sections of this title is guilty of a misdemeanor
3 and on conviction for a first offense is subject to a fine not exceeding \$5,000 or
4 imprisonment not exceeding 1 year or both:

5 (5) § 17-530;

6 (d) (1) Any person found guilty of a second violation of any provision of
7 the sections listed in subsection (a) of this section is subject to a fine not exceeding
8 \$15,000 or 2 years imprisonment or both.

9 (2) Any person found guilty of a third or subsequent violation of any
10 provision of the sections listed in subsection (a) of this section is subject to a fine not
11 exceeding \$25,000 or 3 years imprisonment or both.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2012.