

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 644 (Senators Ramirez and Muse)
Education, Health, and Environmental Affairs

**State Real Estate Commission - Licensees - Inspection of Records and Agency
Disclosure Requirements**

This bill requires an audit of a real estate agency's disclosure records if a disclosure record inspection is in response to a consumer complaint. The bill also alters the definitions of specified real estate professionals.

Fiscal Summary

State Effect: None. The State Real Estate Commission can implement the bill with existing budgeted resources. The application of existing penalty provisions is not expected to materially affect State finances.

Local Effect: None.

Small Business Effect: Potential meaningful for real estate brokerage firms.

Analysis

Bill Summary: A "cooperating agent" includes a person who acts as a subagent of the listing real estate broker and is an agent of a seller or lessor.

"Dual agent" does *not* include an associate real estate broker or a real estate salesperson representing the seller or lessor or the buyer or lessee in a real estate transaction in which the broker employing the associate broker or salesperson is a dual agent.

“Buyer’s agent” and “seller’s agent” definitions are repealed and replaced by “exclusive buyer agent,” who can represent only the buyer in a real estate transaction, and “exclusive seller agent,” who can represent only the seller in a real estate transaction.

“Single agency” means the practice of representing either the seller or lessor, *or* buyer or lessee, but not both, in the same transaction.

“Subagent” means a licensed associate real estate broker or licensed real estate salesperson who works for the brokerage employed by a seller but assists the buyer or lessee in a real estate transaction.

Specified written disclosures in residential real estate transactions must include the definitions of exclusive seller and exclusive buyer agent, subagent, and single agency, including the differences between agency types.

Current Law/Background: “Buyer’s agent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who represents a prospective buyer or lessee in the acquisition of real estate for sale or for lease. “Seller’s agent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who (1) is affiliated with or acts as the listing broker for real estate; and (2) assists a prospective buyer or lessee in the acquisition of real estate for sale or for lease. A “cooperating agent” is a licensee who is not affiliated with or not acting as the listing broker and assists a prospective buyer or lessee as a subagent of the listing broker in the purchase or leasing of real estate.

A licensee who participates in a residential real estate transaction as a seller’s agent, buyer’s agent, or as a cooperating agent must disclose in writing that the licensee represents the seller or lessor or the buyer or lessee. The disclosure must occur no later than the first in-person meeting between the licensee and the seller or lessor or the buyer or lessee. The disclosure must explain the differences between the various agency types, specified duties of and obligations of the licensee, and how and by whom the licensee will be compensated, among other specified items.

The State Real Estate Commission grants licenses to qualified real estate brokers, associate brokers, and salespersons. The downturn in the residential real estate market resulted in a decrease in the number of licensees over the past several years; the decrease was especially marked among new salesperson licensees. There were 41,465 licensees in June 2011, which is a significant reduction from the 54,460 individuals licensed with the commission in June 2008.

Small Business Effect: The bill requires an audit of agency disclosure records if a disclosure record inspection is in response to a consumer complaint. Small businesses are affected to the extent that real estate agencies that qualify as small businesses must devote time and resources to an audit. They would also have to pay for the reprinting of contracts, forms, and various other documents to conform with bill's disclosure requirements.

Additional Comments: The commission advises that the bill will require the commission to develop a significantly revised agency course and to retrain the instructors. A delay in implementation would give the commission the time necessary to create the program, educate staff, teach instructors, and have education providers be able to schedule licensees for continuing education credits. Finally, the commission advises that disclosure records are currently inspected during audits.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2012
mc/mcr

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510