

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1469
Economic Matters

(Delegate Carey)
Education, Health, and Environmental Affairs

Real Estate Brokers - Agency Relationships in Residential Real Estate
Transactions - Disclosure and Consent Requirements

This bill alters specified disclosure and consent requirements related to agency relationships in residential real estate transactions. The bill also alters several related defined terms and makes various conforming changes.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

The Bill: In addition to altering defined terms and making conforming changes, the bill makes three substantive changes: (1) removing the presumption that a real estate agent who is not affiliated with or acting as a listing agent is a buyer's agent (at first meeting); (2) altering the disclosures required of a seller's agent at an open house, under specified conditions; and (3) requiring that specified disclosures be presented to unrepresented parties rather than directly from agent to agent.

Presumption of Buyer's Agency

Current Law: A licensee who assists a prospective buyer or lessee in locating residential real estate for purchase or lease and is neither affiliated with nor acting as the listing real estate broker for any real estate shown or located, is presumed to be acting as the buyer's or lessee's agent representing the buyer or lessee unless either the licensee or the buyer or lessee expressly declines to have the licensee act as a buyer's or lessee's agent. The agency relationship can be terminated under specified conditions. This information must be disclosed by the buyer's agent in writing under specified circumstances.

Before the licensee may present an offer to purchase or lease or negotiate the purchase or lease of real estate, the presumed buyer's or lessee's agency must be terminated and the buyer or lessee and the licensee must enter into a brokerage agreement for that licensee to act as an exclusive buyer's or lessee's agent or as an intra-company agent for the buyer or lessee.

The Bill: Provisions relating to the presumed agency between a real estate broker and a prospective buyer or lessee are repealed by the bill. Instead, a licensee who participates in a residential real estate transaction as a seller's agent, buyer's agent, or a subagent must disclose that the licensee represents the seller or lessor or the buyer or lessee no later than the first contact with the seller or lessor or buyer or lessee. If the first contact is a face-to-face meeting, then the disclosure must be in writing. If the first contact is not face-to-face, then the disclosure must take place through the medium in which the contact occurs, followed by a written disclosure at the first face-to-face meeting.

These disclosure requirements do not apply if the broker has entered into a written brokerage agreement with the individual.

Open House Disclosures

Current Law: 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, not later than the first scheduled fact-to-face contact with the relevant party, that the licensee represents the seller or lessor or the buyer or lessee. The requirement applies to any participation in a real estate transaction, including open houses.

The Bill: An exception is provided to the general disclosure requirements. If a licensee is holding a property open to the public, the licensee complies with the general disclosure requirements if the licensee displays, in a conspicuous manner, a notice to prospective buyers or lessees that the licensee present on the property represents the seller or lessor. The Maryland Real Estate Commission must prepare and provide the notice for the disclosure.

Disclosures to Individuals Rather than Agents

Current Law: In any residential real estate transaction involving a buyer's agent, it is the obligation of the buyer's agent to make the required written disclosures to the seller or lessor *or the agent of the seller or lessor*.

The Bill: In any residential real estate transaction that does not involve a seller's agent, the buyer's agent must make the required written disclosure *to the seller or lessor* that the buyer's agent represents the buyer or lessee.

Changes to Definitions and Conforming Changes

Buyer's Agent

Current Law: "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.

The Bill: "Buyer's agent" means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who, *in accordance with a written brokerage agreement*, represents a prospective buyer or lessee in the acquisition of real estate for sale or for lease.

Seller's Agent

Current Law: "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.

The Bill: "Seller's agent" means a licensed real estate broker who, *in accordance with a written brokerage agreement*, acts as the listing broker for real estate, or a licensed associate real estate broker or licensed real estate salesperson who is affiliated with the listing broker.

Dual Agent

Current Law: "Dual agent" means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who acts as an agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction.

The Bill: “Dual agent” means a licensed real estate broker who acts as, or a branch office manager who has been designated by the licensed real estate broker to act as, an agent for both the seller and the buyer or the lessor and the lessee in the same real estate transaction.

Intra-company Agent

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

The Bill: “Intra-company agent” means a licensed associate real estate broker or licensed real estate salesperson who has been designated by a dual agent to act on behalf of either a seller or lessor or a buyer or lessee in the purchase, sale, or lease of real estate. A written consent for dual agency must include an intra-company agent in the existing prohibition against a dual agent disclosing, unless authorized by the respective buyer or seller, specified information related to terms of the real estate transaction to the other party to the transaction.

Subagent

Current Law: “Subagent” includes a cooperating agent who acts on behalf of a client of another broker.

The Bill: “Subagent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who (1) is not affiliated with or acting as the listing real estate broker for a property; (2) is not a buyer’s agent; (3) has an agency relationship with the seller or lessor; and (4) assists a prospective buyer or lessee in the acquisition of real estate for sale or for lease in a nonagency capacity.

Cooperating Agent

Current Law: “Cooperating agent” means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who (1) is not affiliated with or is not acting as the listing real estate broker for a property and (2) assists a prospective buyer or lessee as a subagent of the listing real estate broker, in the acquisition of real estate for sale or for lease.

The Bill: “Cooperating agent” is removed as a defined term and references to cooperating agent are removed and generally replaced with “subagent” as defined in the bill.

Background: The State Real Estate Commission licenses real estate brokers, associate brokers, and salespersons. As of December 2015, there were approximately 40,500 total licensees.

Additional Information

Prior Introductions: None.

Cross File: SB 828 (Senator Conway) - Education, Health, and Environmental Affairs.

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

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Analysis by: Stephen M. Ross

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