

HOUSE BILL 1228

C2

9lr2582
CF SB 807

By: **Delegates Arentz, Ghrist, Jacobs, and Miller**

Introduced and read first time: February 8, 2019

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Real Estate Commission – Real Estate Brokerage Relationships,**
3 **Continuing Education, and Disclosures**

4 FOR the purpose of altering the subject matter of a certain continuing education course
5 required by the State Real Estate Commission to include the principles of real estate
6 brokerage relationships and disclosures; prohibiting a licensee from disclosing
7 confidential information obtained from a prospective client except under certain
8 circumstances; specifying that certain licensees may not be deemed to have a certain
9 relationship under certain circumstances; altering certain definitions; repealing the
10 definition of “agency relationship”; defining a certain term; making certain stylistic
11 and conforming changes; and generally relating to real estate brokerage
12 relationships and disclosures.

13 BY repealing and reenacting, without amendments,
14 Article – Business Occupations and Professions
15 Section 17–315(b)(1)
16 Annotated Code of Maryland
17 (2018 Replacement Volume)

18 BY repealing and reenacting, with amendments,
19 Article – Business Occupations and Professions
20 Section 17–315(b)(2)(v), 17–528, 17–532, 17–534(a), and 17–535(a)
21 Annotated Code of Maryland
22 (2018 Replacement Volume)

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

25 **Article – Business Occupations and Professions**

26 17–315.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) The Commission shall approve the form, substance, and, as provided
2 under paragraph (2) of this subsection, subject matter of all continuing education courses.

3 (2) The subject matter approved by the Commission shall:

4 (v) every 2 years, include at least one 3 clock hour course that
5 includes the principles of [agency and agency disclosure] **REAL ESTATE BROKERAGE**
6 **RELATIONSHIPS AND DISCLOSURES**; and

7 17–528.

8 (a) In this Part III of this subtitle the following words have the meanings
9 indicated.

10 (b) [“Agency relationship” means each relationship in which a licensee acts for or
11 represents another person with the person’s authority in a residential real estate
12 transaction.

13 (c) [“Broker” means a licensed real estate broker, including a corporation, limited
14 liability company, partnership, or sole proprietorship through which a licensed real estate
15 broker provides real estate brokerage services under § 17–321 of this title.

16 [(d) (C) “Brokerage agreement” means a written agreement between a broker
17 and a client to provide real estate brokerage services under a brokerage relationship.

18 [(e) (D) “Brokerage relationship” means [an agency relationship under a
19 brokerage agreement between a client and a broker who has been engaged by the client to
20 provide real estate brokerage services in a residential real estate transaction] **A**
21 **RELATIONSHIP IN WHICH A LICENSEE ACTS FOR OR REPRESENTS ANOTHER PERSON**
22 **WITH THE PERSON’S AUTHORITY IN A RESIDENTIAL REAL ESTATE TRANSACTION.**

23 [(f) (E) “Buyer’s agent” means a licensed real estate broker, licensed associate
24 real estate broker, or licensed real estate salesperson who, in accordance with a written
25 brokerage agreement, represents a prospective buyer or lessee in the acquisition of real
26 estate for sale or for lease.

27 [(g) (F) “Client” means a person who has entered into a brokerage agreement
28 with a broker under a brokerage relationship.

29 [(h) (G) (1) “Common source information company” means any person that
30 is a source, compiler, or supplier of information regarding residential real estate for sale or
31 lease or other data.

32 (2) “Common source information company” includes a multiple listing
33 service.

1 [(i)] (H) “Confidential information” includes information that:

2 (1) the seller or lessor will accept a price or rent less than the price or rent
3 as set forth in the brokerage agreement or will accept terms other than those contained in
4 the brokerage agreement;

5 (2) the buyer or lessee is willing to pay a price or rent higher than the price
6 or rent the buyer or lessee offered or will accept terms other than those contained in the
7 offer of the buyer or lessee;

8 (3) discloses the motivation of a buyer, lessee, seller, or lessor or the need
9 or urgency of a seller to sell, a buyer to buy, a lessee to lease, or a lessor to lease;

10 (4) discloses any facts that led the seller to sell, the buyer to buy, the lessee
11 to lease, or the lessor to lease; or

12 (5) relates to the negotiating strategy of a client.

13 (I) **“DUAL AGENCY” MEANS EACH RELATIONSHIP IN WHICH A LICENSED
14 REAL ESTATE BROKER OR BRANCH OFFICE MANAGER ACTS AS A DUAL AGENT.**

15 (j) “Dual agent” means a licensed real estate broker who acts as, or a branch
16 office manager described in § 17–518(d) of this subtitle who has been designated by the
17 licensed real estate broker to act as, an agent for both the seller and the buyer or the lessor
18 and the lessee in the same real estate transaction.

19 (k) “Intra–company agent” means a licensed associate real estate broker or
20 licensed real estate salesperson who has been designated by a dual agent to act on behalf
21 of a seller or lessor or buyer or lessee in the purchase, sale, or lease of real estate.

22 (l) “Ministerial act” means an act that:

23 (1) a licensee performs on behalf of a client before and after the execution
24 of a contract of sale or lease;

25 (2) assists another person to complete or fulfill a contract of sale or lease
26 with the client of the licensee; and

27 (3) does not involve discretion or the exercise of the licensee’s own
28 judgment.

29 (m) “Seller’s agent” means a licensed real estate broker who, in accordance with a
30 written brokerage agreement, acts as the listing broker for real estate, or a licensed
31 associate real estate broker or licensed real estate salesperson who is affiliated with the
32 listing broker.

1 (n) "Subagent" means a licensed real estate broker, licensed associate real estate
2 broker, or licensed real estate salesperson who:

3 (1) is not affiliated with or acting as the listing real estate broker for a
4 property;

5 (2) is not a buyer's agent;

6 (3) has [an agency] **A BROKERAGE** relationship with the seller or lessor;
7 and

8 (4) assists a prospective buyer or lessee in the acquisition of real estate for
9 sale or for lease in a nonagency capacity.

10 (o) "Timely" means a reasonable time under the particular facts and
11 circumstances.

12 17-532.

13 (a) A licensee shall comply with the provisions of this section when providing real
14 estate brokerage services.

15 (b) (1) A licensee shall:

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

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

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

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

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

25 (iii) disclose to the client all material facts as required under §
26 17-322 of this title;

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

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

30 (vi) exercise reasonable care and diligence; and

1 (vii) comply with all:

2 1. requirements of this title;

3 2. applicable federal, State, and local fair housing laws and
4 regulations; and

5 3. other applicable laws and regulations.

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

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

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

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

15 (iii) any other party;

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

17 (v) any representative of another party.

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

21 (5) An intra-company agent may disclose confidential information to the
22 broker or dual agent for whom the intra-company agent works but the broker or dual agent
23 may not disclose that confidential information to the other party or the intra-company
24 agent for the other party, as provided in § 17-530.1(b) of this subtitle.

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

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

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

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

1 (4) showing the buyer or lessee other available properties; and

2 (5) during an open house, discussing other properties with prospective
3 buyers or lessees, if the licensee has the written consent of the seller or lessor to do so.

4 **(D) A LICENSEE MAY NOT DISCLOSE CONFIDENTIAL INFORMATION**
5 **OBTAINED FROM A PROSPECTIVE CLIENT IN ANTICIPATION OF FORMING A**
6 **BROKERAGE RELATIONSHIP, UNLESS THE PROSPECTIVE CLIENT CONSENTS IN**
7 **WRITING TO THE DISCLOSURE.**

8 **[(d)] (E)** This title does not limit the applicability of § 10–702 of the Real
9 Property Article.

10 **[(e)] (F)** The requirements of this section are in addition to any other duties
11 required of the agent by law that are not inconsistent with these duties.

12 **[(f)] (G)** The duties specified in this section may not be waived or modified.

13 **[(g)] (H)** A licensee who performs ministerial acts for a person may not be
14 construed to:

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

17 (2) form **[an agency] A BROKERAGE** relationship between the licensee and
18 the person for whom the ministerial acts are performed.

19 17–534.

20 (a) **[Except as provided in § 17–533 of this subtitle, a] A** brokerage relationship
21 commences at the time that a client enters into a brokerage agreement and shall continue
22 until:

23 (1) the completion of performance in accordance with the brokerage
24 agreement; or

25 (2) the earlier of:

26 (i) any date of expiration as agreed on by the parties in the
27 brokerage agreement or in any amendments to the brokerage agreement;

28 (ii) any mutually agreed on termination of the brokerage
29 relationship;

30 (iii) a default by any party under the terms of the brokerage

1 agreement; or

2 (iv) a termination under § 17-530 of this subtitle.

3 17-535.

4 (a) A licensee may not be deemed to be an agent or subagent of or to have [an
5 agency] **A BROKERAGE** relationship with a common source information company solely by
6 reason of a licensee's participation in a common source information company.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2019.