

HOUSE BILL 1228

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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

AN ACT concerning

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

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

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

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

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

Article – Business Occupations and Professions

17–315.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

17-528.

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

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

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

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

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

[(f)] (E) “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.

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

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

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

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

- (1) the seller or lessor will accept a price or rent less than the price or rent as set forth in the brokerage agreement or will accept terms other than those contained in the brokerage agreement;
- (2) the buyer or lessee is willing to pay a price or rent higher than the price or rent the buyer or lessee offered or will accept terms other than those contained in the offer of the buyer or lessee;
- (3) discloses the motivation of a buyer, lessee, seller, or lessor or the need or urgency of a seller to sell, a buyer to buy, a lessee to lease, or a lessor to lease;
- (4) discloses any facts that led the seller to sell, the buyer to buy, the lessee to lease, or the lessor to lease; or
- (5) relates to the negotiating strategy of a client.

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

(j) “Dual agent” means a licensed real estate broker who acts as, or a branch office manager described in § 17–518(d) of this subtitle 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.

(k) “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 a seller or lessor or buyer or lessee in the purchase, sale, or lease of real estate.

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

- (1) a licensee performs on behalf of a client before and after the execution of a contract of sale or lease;
- (2) assists another person to complete or fulfill a contract of sale or lease with the client of the licensee; and
- (3) does not involve discretion or the exercise of the licensee’s own judgment.

(m) “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.

(n) “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] **A BROKERAGE** 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.

(o) “Timely” means a reasonable time under the particular facts and circumstances.

17–532.

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

(b) (1) A licensee shall:

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

(ii) promote the interests of the client by:

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

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

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

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

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

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

(vi) exercise reasonable care and diligence; and

- (vii) comply with all:
 - 1. requirements of this title;
 - 2. applicable federal, State, and local fair housing laws and regulations; and
 - 3. other applicable laws and regulations.

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

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

- (i) any of the licensee's other clients;
- (ii) any of the clients of the licensee's broker;
- (iii) any other party;
- (iv) any licensee acting as an agent for another party; or
- (v) any representative of another party.

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

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

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

- (1) showing other available properties to prospective buyers or lessees;
- (2) representing other clients who have or are looking for similar properties for sale or lease;
- (3) representing other sellers or lessors who have similar properties to that sought by the buyer or lessee;

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

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

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

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

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

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

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

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

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

17–534.

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

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

(2) the earlier of:

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

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

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

agreement; or

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

17-535.

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

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