

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1125
6

7 H.P. 795

House of Representatives, March 26, 1985

8 Reference to the Committee on Business and Commerce suggested and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.
11

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Require Full Disclosure by Real
18 Estate Brokers.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 32 MRSA §4056, sub-§3, ¶A, as enacted by PL 1977,
23 c. 365, is amended to read:

24 A. A licensee is found guilty of one or more of
25 the following acts:

26 (1) Intentionally using advertising which
27 is misleading or inaccurate in any material
28 particular or in any way misrepresents any
29 property, terms, values, policies or ser-
30 vices;

31 (2) Failure to account for or remit any
32 money coming into his possession belonging
33 to others;

- 1 (3) Commingling the money or other property
2 of his principals with his own;
- 3 (4) Failure to maintain a trust account and
4 deposit all money received by a broker act-
5 ing in such capacity or as trustee, or the
6 temporary custodian of the funds of others,
7 in a real estate transaction;
- 8 (5) Accepting, giving or charging any un-
9 disclosed commission, rebate or direct prof-
10 it on expenditures made for a principal;
- 11 (6) Representing or attempting to represent
12 a real estate broker, other than the li-
13 censed broker, without the express knowledge
14 and consent of the licensed broker;
- 15 (7) Accepting a commission or other valu-
16 able consideration by a salesman from anyone
17 other than the broker under whom he is li-
18 censed;
- 19 (8) Acting in a dual capacity of agent and
20 undisclosed principal in any transaction;
- 21 (9) Guaranteeing or authorizing any person
22 to guarantee future profits which may result
23 from the resale of real property;
- 24 (10) Placing a sign on any property offer-
25 ing it for sale or rent without the written
26 consent of the owner or his authorized
27 agent;
- 28 (11) Offering real estate for sale or lease
29 without the knowledge and consent of the
30 owner or his authorized agent or on terms
31 other than those authorized by the owner or
32 his authorized agent;
- 33 This subparagraph shall not mean that a bro-
34 ker is prohibited from communicating the in-
35 terest of a prospective purchaser to an own-
36 er of real estate who has not listed his
37 property for sale;

- 1 (12) Inducing any party to a contract of
2 sale or lease to break such contract for the
3 purpose of substituting, in lieu thereof, a
4 new contract with another principal;
- 5 (13) Negotiating a listing, sale, exchange
6 or lease of real estate directly with an
7 owner or lessor if it is known that such
8 owner has a written outstanding contract in
9 connection with the property granting an ex-
10 clusive agency or an exclusive right to sell
11 listing to another broker;
- 12 (14) Using prizes, money, free gifts or
13 other valuable consideration as inducements
14 to (a) secure customers to purchase, rent or
15 lease property when the awarding of prizes,
16 money, free gifts or other valuable consid-
17 eration is conditioned upon the purchase,
18 rental or lease, or (b) secure clients to
19 list properties with licensees, or (c) so-
20 licit, sell or offer for sale real estate by
21 offering free lots or conducting lotteries
22 for the purpose of influencing a purchaser
23 or prospective purchaser of real estate;
- 24 (15) Paying a commission or compensation to
25 any unlicensed person for performing the
26 services of a broker or salesman. This sub-
27 section shall not apply to a broker who is
28 licensed in his state of residence;
- 29 (16) Failure to include a fixed date of ex-
30 piration in any written listing agreement
31 and failing to leave a copy of the agreement
32 with the principal;
- 33 (17) Failure to deliver within a reasonable
34 time a completed copy of any purchase agree-
35 ment or offer to buy or sell real estate to
36 the purchaser and to the seller;
- 37 (18) Failure by a broker who is closing the
38 transaction at the time that the real estate
39 transaction is closed to deliver to the
40 seller a complete, detailed closing state-
41 ment showing all of the receipts and dis-

1 bursements handled by the broker for the
2 seller; to deliver to the buyer a complete
3 statement showing all money received by the
4 broker in the transaction from the buyer and
5 the method, amounts and for what the money
6 was disbursed; and to retain true copies of
7 the statements in his file. Furnishing of
8 such statements by an escrowee shall relieve
9 the broker's responsibility and shall be
10 deemed to be in compliance with this provi-
11 sion;

12 (19) Making any substantial misrepresenta-
13 tions;

14 (20) Acting for more than one party in a
15 transaction without the knowledge of all
16 parties for whom he acts;

17 (21) Failure by a salesman to place, as
18 soon after receipt as practicable, in the
19 custody of his licensed broker any deposit
20 money or other money or funds entrusted to
21 him by any person dealing with him as the
22 representative of his licensed broker;

23 (22) Violating any rule or regulation
24 promulgated by the commission;

25 (23) Representing to any lender, guarantee-
26 ing agency or any other interested party,
27 either verbally or through the preparation
28 of false documents, an amount in excess of
29 the true and actual sale price of the real
30 estate or terms differing from those actual-
31 ly agreed upon;

32 (24) Failure to make known to any purchaser
33 any interest the licensee has in the proper-
34 ty he is selling;

35 (25) Failure of the licensee to inform the
36 buyer and seller at the time an offer is
37 presented which party will be expected to
38 pay the following closing costs: Proration
39 of real estate taxes, proration of rents,
40 title examination fee and real estate trans-
41 fer tax;

- 1 (26) Accepting a note as earnest money un-
2 less that fact is communicated to the owner
3 prior to his acceptance of the offer to pur-
4 chase, and such fact is shown in the con-
5 tract;
- 6 (27) Failure to deposit any check or cash
7 received as an earnest money deposit within
8 2 business days of the acceptance of the of-
9 fer.
- 10 (28) Failure to produce to the commission
11 or its authorized representative any re-
12 quested documents, book or record in the
13 licensee's possession or under his control,
14 concerning any real estate transaction under
15 investigation by the commission.
- 16 (29) Failure to submit all written bona
17 fide offers to a seller when such offers are
18 received prior to the seller accepting an
19 offer in writing and until the broker has
20 knowledge of the acceptance;
- 21 (30) Failure to disclose to a buyer a known
22 material defect, not openly apparent, re-
23 garding the condition of a parcel of real
24 estate of which a broker or salesman has
25 knowledge;
- 26 (31) Failing, within a reasonable time, to
27 account for or remit any money coming into
28 his possession which belongs to others; ~~er~~
- 29 (32) The broker or salesman shall have been
30 convicted in any court subsequent to the ef-
31 fective date of this section of any Class C
32 crime or above, or of Class D crimes involv-
33 ing moral turpitude or the equivalent there-
34 to; ~~er~~
- 35 (33) Failure of the licensee to make writ-
36 ten disclosure to the seller at or before
37 the time a listing agreement is signed that
38 the licensee is the agent of the seller; or

1 (34) Failure of a licensee to make written
2 disclosure to a potential buyer at or before
3 the time the buyer makes an offer to pur-
4 chase real estate that the licensee is the
5 agent of the seller, not the buyer. This
6 obligation does not apply when a prospective
7 buyer retains a broker as his own agent; or
8

9 STATEMENT OF FACT

10 A broker in a real estate transaction is the
11 agent of the seller and owes his loyalties and duties
12 to that seller. Yet, studies have shown that many
13 buyers and sellers mistakenly believe that the bro-
14 kers they deal with are the buyers' agents.

15 This so-called "dual agency" situation is a grow-
16 ing problem nationwide due to the increase of multi-
17 ple listing agreements where there are 2 brokers in-
18 volved, the listing agent and the selling agent.
19 While the selling agent usually deals only with the
20 buyer and consequently a relationship of trust devel-
21 ops, the selling agent is still a subagent of the
22 seller and receives his compensation from the seller.
23 Pennsylvania has already amended its license laws to
24 address the issue, while several more are now working
25 on license law amendments or policies to deal with
26 the problem.

27 This bill follows the approach successfully used
28 in Pennsylvania and simply requires the broker to
29 make written disclosure to the buyer, at or before
30 the time the buyer makes an offer to purchase, that
31 the broker is the agent of the seller, not the buyer.
32 This obligation does not apply when the buyer hires a
33 "buyer's broker" to represent his interests as is
34 common with commercial real estate. In addition, the
35 bill requires the broker to make written disclosure
36 of this agency relationship to the seller at or be-
37 fore the time a listing agreement is signed.

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