

# MAINE STATE LEGISLATURE

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DATE: 3/29/94

(Filing No. S- 551 )

**BUSINESS LEGISLATION**

Reported by: REPORT A

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**STATE OF MAINE  
SENATE  
116TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 616, L.D. 1714, Bill, "An Act to Clarify Agency Relationships in Real Estate Transactions"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 32 MRSA c. 114, sub-c. VII is enacted to read:

SUBCHAPTER VII

AGENCY RELATIONSHIPS

§13271. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affiliated licensee. "Affiliated licensee" means a licensee who is authorized to engage in brokerage activity by and on behalf of a brokerage agency.

2. Appointed agent. "Appointed agent" means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.

2           3. Brokerage agreement. "Brokerage agreement" means a  
contract that establishes the relationships between the parties  
4 as to that brokerage services to be performed.

6           4. Buyer agent. "Buyer agent" means a brokerage agency  
that is engaged by and represents the buyer in a real estate  
8 transaction.

10           5. Client. "Client" means a person who has entered into a  
brokerage agreement creating a special agency relationship with a  
12 real estate brokerage agency.

14           6. Designated broker. "Designated broker" means a licensee  
designated by a real estate brokerage agency to act for it in the  
16 conduct of real estate brokerage.

18           7. Disclosed dual agent. "Disclosed dual agent" means a  
brokerage agency representing 2 or more clients whose interests  
20 are adverse in the same transaction with the knowledge and  
informed consent of the clients.

22           8. Material fact. "Material fact" means a fact that  
24 relates to the transaction and is so substantial and important as  
to influence the parties to whom it is imparted.

26           9. Ministerial acts. "Ministerial acts" means those acts  
28 that a brokerage agency or its affiliated licensees perform for a  
person that do not require discretion or the exercise of the  
30 brokerage agency's or its affiliated licensees' judgment.

32           10. Real estate brokerage agency. "Real estate brokerage  
agency" means a person providing real estate brokerage services  
34 through that person's designated broker, associates or employees  
and licensed by the commission as a real estate brokerage agency.

36           11. Seller agent. "Seller agent" means a brokerage agency  
38 that is engaged by and represents the seller in a real estate  
transaction.

40           12. Subagent. "Subagent" means a licensee engaged by  
42 another brokerage agency to perform brokerage tasks for a client.

44           13. Third party. "Third party" means a person who is not a  
client and has no agency relationship to the real estate  
46 brokerage agency.

48           14. Undisclosed dual agent. "Undisclosed dual agent" means  
a brokerage agency representing 2 or more clients whose interests

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2 are adverse in the same transaction without the knowledge and  
informed consent of the clients.

4 **§13272. Scope of agency**

6 A real estate brokerage agency that provides services  
8 through a brokerage agreement for a client is bound by the duties  
of loyalty, obedience, disclosure, confidentiality, reasonable  
10 care, diligence and accounting as set forth in this chapter.  
Such an agency may be a seller agent, a buyer agent or subagent.  
12 If a different relationship between the real estate brokerage  
agency and the person for whom the real estate brokerage agency  
14 performs the services is intended, including a dual agent, it  
must be described in writing and signed by the parties.

16 **§13273. Seller agent**

18 1. Duty to seller. A real estate brokerage agency engaged  
20 by a seller:

22 A. Shall perform the terms of the brokerage agreement made  
with the seller;

24 B. Shall promote the interests of the seller by exercising  
26 agency duties as set forth in section 13272 including:

28 (1) Seeking a sale at the price and terms stated in  
the brokerage agreement or at a price and terms  
30 acceptable to the seller except that the licensee is  
not obligated to seek additional offers to purchase  
32 the property while the property is subject to a  
contract of sale unless the brokerage agreement so  
34 provides;

36 (2) Presenting in a timely manner all offers to and  
from the seller, even when the property is subject to a  
38 contract of sale;

40 (3) Disclosing to the seller material facts of which  
the licensee has actual knowledge or if acting in a  
42 reasonable manner should have known concerning the  
transaction, except as directed in section 13280;

44 (4) Advising the seller to obtain expert advice on  
material matters that are beyond the expertise of the  
46 licensee; and

48 (5) Accounting in a timely manner for all money and  
property received in which the seller has or may have  
50 an interest;

2 C. Shall exercise reasonable skill and care;

4 D. Shall comply with all requirements of the laws governing  
6 real estate commission brokerage licenses and any rules  
adopted by the commission;

8 E. Shall comply with any applicable federal, state or local  
10 laws, rules, regulations or ordinances related to real  
estate brokerage including fair housing and civil rights  
12 laws or regulations;

14 F. Has an obligation to preserve confidential information  
16 provided by the seller during the course of the relationship  
that might have a negative impact on the seller's real  
estate activity unless:

18 (1) The seller to whom the information pertains grants  
20 consent to disclose the information;

22 (2) Disclosure of the information is required by law;

24 (3) The information is made public or becomes public  
26 by the words or conduct of the seller to whom the  
information pertains or from a source other than the  
licensee; or

28 (4) Disclosure is necessary to defend the licensee  
30 against an accusation of wrongful conduct in a judicial  
proceeding before the commission or before a  
32 professional committee; and

34 G. Must be able to promote alternative properties not owned  
36 by the seller to prospective buyers as well as list  
competing properties for sale without breaching any duty to  
the client.

38 2. Duty to buyer. The duty of a seller agent to a buyer is  
40 governed by the following.

42 A. A real estate brokerage agency engaged by a seller shall  
44 treat all prospective buyers honestly and may not knowingly  
give false information and shall disclose in a timely manner  
46 to a prospective buyer all material defects pertaining to  
the physical condition of the property of which the real  
48 estate brokerage agency knew or, acting in a reasonable  
manner, should have known. A real estate brokerage agency  
50 is not liable to a buyer for providing false information to  
the buyer if the false information was provided to the real  
estate brokerage agency by the real estate brokerage

2 agency's seller-client and the real estate brokerage agency  
3 did not know or, acting in a reasonable manner, should not  
4 have known that the information was false. A real estate  
5 brokerage agency is not obligated to discover latent defects  
6 in the property.

7 B. Nothing in this subchapter precludes the obligation of a  
8 buyer to inspect the physical condition of the property. A  
9 cause of action may not arise on behalf of any person  
10 against a real estate brokerage agency for revealing  
11 information in compliance with this subchapter.

12 C. A real estate brokerage agency engaged by a seller in a  
13 real estate transaction may provide assistance to the buyer  
14 by performing ministerial acts such as preparing offers and  
15 conveying those offers to the seller and providing  
16 information and assistance concerning professional services  
17 not related to real estate brokerage services. Performing  
18 ministerial acts for the buyer may not be construed as  
19 violating the real estate brokerage agency's agreement with  
20 the seller and performing ministerial acts for the buyer may  
21 not be construed as forming a brokerage agreement with the  
22 buyer.

23 **§13274. Buyer agent**

24  
25 1. Duty to buyer. A real estate brokerage agency engaged  
26 by a buyer:

27  
28 A. Shall perform the terms of the brokerage agreement made  
29 with the buyer;

30  
31 B. Shall promote the interests of the buyer by exercising  
32 agency duties as set forth in section 13272 including:

33  
34 (1) Seeking a property at a price and terms specified  
35 by the buyer except that the licensee is not obligated  
36 to seek other properties for the buyer while the buyer  
37 is a party to a contract to purchase that property  
38 unless it is provided by the brokerage agreement;

39  
40 (2) Presenting in a timely manner all offers to and  
41 from the buyer;

42  
43 (3) Disclosing to the buyer material facts of which  
44 the agency has actual knowledge or, if acting in a  
45 reasonable manner, should have known concerning the  
46 transaction, except as directed in section 13280.  
47 Nothing in this subchapter limits any obligation of a  
48 buyer to inspect the physical condition of the property;  
49  
50

2           (4) Advising the buyer to obtain expert advice on  
4           material matters that are beyond the expertise of the  
            agency; and

6           (5) Accounting in a timely manner for all money and  
8           property received in which the buyer has or may have an  
            interest;

10          C. Shall exercise reasonable skill and care, except that a  
12          real estate brokerage agency is not obligated to discover  
            latent defects in the property;

14          D. Shall comply with all requirements of the laws governing  
16          real estate commission brokerage licenses and any rules  
            adopted by the commission;

18          E. Shall comply with any applicable federal, state or local  
20          laws, rules, regulations or ordinances related to real  
22          estate brokerage including fair housing and civil rights  
            laws or regulations;

24          F. Has an obligation to preserve confidential information  
26          provided by the buyer during the course of the relationship  
            that might have a negative impact on the buyer's real estate  
            activity unless:

28                 (1) The buyer to whom the information pertains grants  
30                 consent to disclose the information;

32                 (2) Disclosure of the information is required by law;

34                 (3) The information is made public or becomes public  
36                 by the words or conduct of the buyer to whom the  
                    information pertains or from a source other than the  
                    licensee; or

38                 (4) Disclosure is necessary to defend the licensee  
40                 against an action of wrongful conduct in a judicial  
42                 proceeding before the commission or before a  
                    professional committee; and

44          G. Must be able to promote other properties in which the  
46          buyer is interested to other buyers who might also be  
            clients of the real estate brokerage agency without  
            breaching any duty or obligation.

48          2. Duty to seller. The duty of a buyer agent to a seller  
50          is governed by the following.

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2 A. A real estate brokerage agency engaged by a buyer shall  
4 treat all prospective sellers honestly and may not knowingly  
6 give them false information including material facts about  
8 the buyer's financial ability to perform the terms of the  
10 transaction.

12 B. A real estate brokerage agency is not liable to a seller  
14 for providing false information to the seller if the false  
16 information was provided to the real estate brokerage agency  
18 by the real estate brokerage agency's buyer-client and the  
20 real estate brokerage agency did not know or, acting in a  
22 reasonable manner, should not have known that the  
24 information was false. A cause of action may not arise on  
26 behalf of any person against a real estate brokerage agency  
28 for revealing information in compliance with this subchapter.

30 C. A real estate brokerage agency engaged by a buyer in a  
32 real estate transaction may provide assistance to the seller  
34 by performing ministerial acts such as preparing and  
36 conveying offers to the buyer and providing information and  
38 assistance concerning professional services not related to  
40 real estate brokerage services. Performing ministerial acts  
42 for the seller may not be construed as violating the real  
44 estate brokerage agency's agreement with the buyer and  
46 performing ministerial acts for the seller may not be  
48 construed as forming a brokerage agreement with the seller.

28 §13275. Disclosed dual agent

30 1. Consent agreement; disclosed dual agent. A real estate  
32 brokerage agency may act as a disclosed dual agent only with the  
34 informed written consent of all parties. Consent is presumed to  
36 be informed if the party signs an agreement that contains the  
38 following:

40 A. A description of the transactions in which the real  
42 estate brokerage agency will serve as a disclosed dual agent;

44 B. A statement that, in serving as a disclosed dual agent,  
46 the real estate brokerage agency represents 2 clients whose  
48 interests are adverse and that the agency duties are limited;

50 C. A statement that the disclosed dual agent may disclose  
any information to one party that the agent gains from the  
other party if that information is relevant to the  
transaction, except:

(1) The willingness or ability of the seller to accept  
less than the asking price;



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2           (2) The willingness or ability of the buyer to pay  
more than has been offered;

4           (3) Confidential negotiating strategy not disclosed in  
the sales offer as terms of the sale; and

6           (4) The motivation of the seller for selling and the  
8 motivation of the buyer for buying;

10          D. A statement that the client may choose to consent or not  
12 consent to the disclosed dual agency; and

14          E. A statement that the consent of the client has been  
16 given voluntarily and that the agreement has been read and  
understood.

18          2. Cause of action. A cause of action may not be brought  
on behalf of any person against a disclosed dual agent for making  
disclosures permitted or required by this subchapter and the  
disclosed dual agent does not terminate any real estate brokerage  
agency relationship by making disclosures permitted or required  
22 by this subchapter.

24          3. Actual knowledge; information. In a disclosed dual  
agent situation each client and the real estate brokerage agency  
and its affiliated licensees are considered to possess only  
actual knowledge and information. There is no imputation of  
knowledge or information by operation of law among or between the  
clients, the real estate brokerage agency or its affiliated  
30 licensees.

32          §13276. Interpretation

34          The provisions of this subchapter supersede the duties and  
responsibilities of the parties under the common law, including  
fiduciary responsibilities of an agent to a client or principal,  
except with regard to vicarious liability and except as set forth  
in this subchapter. This section does not abrogate an injured  
party's cause of action pursuant to this chapter.

40          §13277. Written policy

42          Every real estate brokerage agency shall adopt a written  
company policy that identifies and describes the types of real  
estate brokerage agency relationships in which the designated  
broker and affiliated licensees may engage.

48          §13278. Appointed agents within a firm

2 1. Appointed agents. A real estate brokerage agency  
4 entering into a brokerage agreement may, through the designated  
6 broker, appoint in writing to the client those affiliated  
8 licensees within the real estate brokerage agency who will be  
10 acting as appointed agents of that client to the exclusion of all  
12 other affiliated licensees within the real estate brokerage  
14 agency.

16 2. Not a dual agent. A real estate brokerage agency and  
18 the designated broker are not considered to be dual agents solely  
20 because of an appointment under the provisions of this section,  
22 except that any affiliated licensee who personally represents  
24 both the seller and the buyer in a particular transaction is  
26 considered to be a disclosed dual agent and is required to comply  
28 with the provisions of this subchapter governing disclosed dual  
30 agents.

32 3. Actual knowledge; information. When agents are  
34 appointed, each client, the real estate brokerage agency and its  
36 appointed licensees are considered to possess only actual  
38 knowledge and information. There is no imputation of knowledge  
40 or information by operation of law among or between the clients,  
42 the real estate brokerage agency and appointed agents.

44 4. Appointments; roles. Methods of appointment and the  
46 role of the real estate brokerage agency and the designated  
48 broker must be defined by rules adopted by the commission. The  
50 rules must include a requirement that clients be informed as to  
the real estate brokerage agency's appointed agent policy and  
give written consent to that policy in advance of entering into a  
real estate brokerage agreement.

§13279. Real estate brokerage agency disclosure required

A real estate brokerage agency shall provide in a timely  
manner to buyers and sellers a meaningful, written real estate  
brokerage agency relationship disclosure form as defined and  
mandated by rules adopted by the commission.

§13280. Duration of the relationship

1. Effective date. The relationships set forth in this  
subchapter commence on the effective date of the real estate  
brokerage agency's agreement and continue until performance,  
completion, termination or expiration of that agreement.

2. Obligation; termination. A real estate brokerage agency  
and an affiliated licensee owe no further duty or obligation  
after termination, expiration, completion or performance of the  
brokerage agreement, except the duties of:



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buyer of property when the real estate brokerage agency is also acting as the seller's agent.

**COMMITTEE AMENDMENT**