

MAINE STATE LEGISLATURE

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R.O.S.

L.D. 1714

DATE: 3/29/94

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BUSINESS LEGISLATION

Reported by: REPORT C

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

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

Amend the bill by striking out the title and substituting the following:

'An Act to Require Real Estate Agency Disclosure and a Study of Certain Agency Relationships'

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

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation requires a study that is to be completed by October 1, 1994; and

Whereas, unless this legislation is enacted on an emergency basis there will be inadequate time for the Real Estate Relationship Study Committee to adequately perform its mission; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

4 Sec. 1. 32 MRSA §13184 is enacted to read:

6 §13184. Agency disclosure required

8 A brokerage agency shall provide an oral and written agency
10 relationship disclosure statement describing the various types of
12 possible agency relationships legal on the effective date of this
14 section and the fee arrangements for these relationships to:

16 1. Buyers. A buyer at the initial interview and prior to
18 the buyer's needs being discussed; and

20 2. Sellers. A seller before a listing.

22 The Real Estate Commission shall adopt rules to implement
24 this section. In making the disclosure required by this section,
26 an agency shall use the form mandated and definitions set forth
28 in these rules. The agency shall obtain from each buyer and
30 seller it represents a written indication on the disclosure form
32 of the type of agency relationship chosen and a signed
34 acknowledgement on the form that the disclosure occurred. Prior
36 to completing a sale, any agency representing the buyer and any
38 agency representing the seller shall deliver to the other party
40 and that party's agent a copy of the signed disclosure form.

42 **Sec. 2. Committee; study.** The Real Estate Relationship Study
44 Committee, referred to in this section as the "committee," is
46 created to study the real estate relationships of dual agency and
48 appointed agent.

1. **Definitions.** For the purposes of this section,
"appointed agent" means a licensee within a brokerage agency who
is appointed by that agency to act for a specific client to the
exclusion of all other licensees of that agency.

2. **Appointment of members.** The committee consists of 5
members, appointed in the following manner:

A. Two Senators appointed by the President of the Senate,
one of whom must be from the minority party and one of whom
must be from the majority party. One of these 2 Senators
must be from the Joint Standing Committee on Business
Legislation; and

B. Three members of the House of Representatives appointed
by the Speaker of the House of Representatives, one of whom

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2 must be from the minority party and one of whom must be from
the Joint Standing Committee on Business Legislation.

4 One legislative member of the committee must be from the Joint
Standing Committee on the Judiciary.

6 All appointments must be made no later than 30 days following the
8 effective date of this Act. The appointing authorities shall
10 notify the Executive Director of the Legislative Council upon
12 making their appointments. The executive director shall contact
14 any appointing authority whose appointments have not been made
within the required time period in order to remind the appointing
authorities of the deadline for these appointments.

16 **3. Convening of committee.** The Chair of the Legislative
Council shall call the first meeting of the committee between the
18 30th and 45th day following the effective date of this Act. If
the first meeting of the committee is not called within that time
20 period, the Senate member from the majority party shall call the
first meeting.

22 **4. Selection of chair.** The committee shall select a chair
from among its members.

24 **5. Study subjects and tasks.** In the conduct of the study
26 the committee must be aware that the issues facing it are
national issues and, to the extent possible, the committee shall
28 take advantage of studies made on this subject by state agencies
of other states.

30 **A.** In conducting the study, the committee shall examine the
32 following.

34 (1) What problems would the legalization or
prohibition of the concepts of dual agency and
36 appointed agent make to the real estate industry and to
its clients? Study of these issues must include their
38 effect on small agencies and on towns with only one
agency.

40 (2) Is the Real Estate Commission currently
42 representing the general public? If it is not, what
action can be taken to make it do so? Should there be
44 more public members on the commission? Should a
majority of the commission members be public members?

46 (3) Should qualifications of members of the Real
48 Estate Commission be more explicitly stated? Should
there be requirements for members who are buyer agents,
50 who represent agencies of various sizes or who

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2 represent both members and nonmembers of the Maine
Association of Realtors?

4 (4) What should be the content of the disclosure form
6 that real estate brokers are required to use with
8 clients? How should the subject of disclosure of fees
for various types of agency relationships be handled?
At what specific time should this disclosure be made?

10 (5) If the concepts of dual agency or appointed agent
12 are adopted, how can this be done while maintaining the
client protection now available under common law?

14 (6) What relationship should the issues under study
16 have to the Maine Unfair Trade Practices Act?

18 (7) If dual agency is permitted specifically, what
20 should be the allowed and required duties of the
22 agent? If the concept of appointed agent is allowed,
24 what specific procedures should be put in place to
police the desired client relationships? Is there
anything that can be learned from the practices of the
legal profession in regard to appointed agents?

26 B. In examining these study subjects, the committee:

28 (1) May hold an organizational meeting; 2 hearings,
30 which are not required to be public hearings; 2 work
sessions; and a session to review a draft report;

32 (2) Shall invite oral and written testimony from the
following:

34 (a) The Public Protection Division of the
Department of the Attorney General;

36 (b) The Maine Association of Buyers Agents;

38 (c) The General Counsel and the State and
40 Municipal Division of the National Association of
Realtors;

42 (d) The Real Estate Commission;

44 (e) The Commissioner of Professional and
46 Financial Regulation;

48 (f) The Consumer Federation of America;

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- 2 (g) The National Association of Real Estate License Law Officials;
- 4 (h) The American Association of Retired People;
- 6 (i) The person in the Office of the Governor who is responsible for recommending to the Governor appointees for the Maine Real Estate Commission;
- 8 and
- 10 (j) The Maine Association of Realtors; and
- 12

14 (3) Shall obtain information on how other states' laws deal with the study issues, if possible obtaining this information from a central source, and shall ascertain from several states with laws on each side of the issue the effect of those laws.

18 **6. Staffing.** The committee may request staffing from the
20 Legislative Council.

22 The Department of the Attorney General shall provide on a timely basis objective legal opinions as requested by the committee
24 utilizing the division of the department most appropriate to the questions asked.

26 The Real Estate Commission shall cooperate and provide
28 information as the committee may request.

30 **Sec. 7. Compensation.** The committee members may receive the legislative per diem as defined in the Maine Revised
32 Statutes, Title 3, section 2 for each day's attendance at committee meetings and may receive reimbursement for travel and
34 other necessary expenses upon application to the Legislative Council.

36 **Sec. 8. Report.** The committee shall produce a brief
38 written report and legislation necessary to implement any recommendations and shall make an oral report to the joint
40 standing committee of the Legislature having jurisdiction over business legislation matters.

42 If all members fail to agree on the committee recommendations, a
44 minority report may be submitted, which must include the response of the majority.

46 The committee shall finalize its conclusions and recommendations
48 by October 1, 1994 and shall present its report together with any recommended legislation to the First Regular Session of the 117th
50 Legislature no later than November 1, 1994.

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2 If the committee requires an extension of the reporting deadline,
4 it shall apply to the Legislative Council, which may grant the
extension.

6 **Sec. 9. Budget.** The Executive Director of the Legislative
Council shall administer the committee's budget.

8
10 **Sec. 3. Appropriation.** The following funds are appropriated
from the General Fund to carry out the purposes of this Act.

12 1994-95

14 **LEGISLATURE**

16 **Real Estate Relationship Study Committee**

18 Personal Services \$1,925
20 All Other 2,250

22 Provides funds for the Real Estate
Relationship Study Committee for the per
24 diem and expenses of its members and
miscellaneous committee expenses.

26 **LEGISLATURE**
28 **TOTAL** \$4,175

30 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.'

32 Further amend the bill by inserting at the end before the
34 statement of fact the following:

36 **FISCAL NOTE**

38 1994-95

40 **APPROPRIATIONS/ALLOCATIONS**

42 General Fund \$4,175

44
46 This bill includes a General Fund appropriation of \$4,175 in
48 fiscal year 1994-95 for the Legislature for the Real Estate
Relationship Study Committee for the per diem and expenses of
committee members and miscellaneous committee expenses. The

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2 Legislature can absorb the costs related to providing staff assistance to the committee.

4 The Department of the Attorney General, the Department of Professional and Financial Regulation and the Office of the Governor can absorb the costs associated with providing information to the committee within their existing budgeted resources.

10 The Real Estate Commission will incur some minor additional costs to adopt certain rules pertaining to agency relationships in real estate transactions. These costs can be absorbed within the commission's existing budgeted resources.

16 STATEMENT OF FACT

18 This is the minority report of the Joint Standing Committee on Business Legislation.

20 The original bill defines the relationship real estate licensees have to parties to real estate transactions and establishes the duties and obligations of licensees. It also codifies the practice of dual agency and creates the concept of an appointed agent.

26 This amendment requires only that real estate agencies must disclose to clients the various types of agency relationships and have the client indicate the relationship chosen. It requires a study by a committee of 5 Legislators of the issues of dual agency and appointed agent.