

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1714

S.P. 616

In Senate, January 11, 1994

An Act to Clarify Agency Relationships in Real Estate Transactions.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CARPENTER of York.

Cosponsored by Senator: SUMMERS of Cumberland, Representative: LIBBY of Kennebunk.

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

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

SUBCHAPTER VII

AGENCY RELATIONSHIPS

§13271. Definitions

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

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

2. Buyer's agent. "Buyer's agent" means a brokerage agency that is engaged by and represents the buyer in a real estate transaction.

3. Designated agent. "Designated agent" means an affiliated licensee who is appointed by the designated broker of the real estate brokerage agency to act solely for a client of the brokerage agency to the exclusion of other affiliated licensees of the brokerage agency.

4. Disclosed dual agent. "Disclosed dual agent" means a brokerage agency representing 2 clients in the same transaction with the knowledge and informed consent of the clients.

5. Licensee or affiliated licensee. "Licensee" or "affiliated licensee" means anyone licensed under state law and authorized to engage in brokerage activity on behalf of a brokerage agency.

6. Limited agent or limited agency relationship. "Limited agent" or "limited agency relationship" means an agent whose duties and obligations to a client and a 3rd party are only as set forth in this chapter.

7. Ministerial acts. "Ministerial acts" means acts that a brokerage agency or its affiliated licensees perform for a person or an entity and do not require discretion or the exercise of the brokerage agency's or its affiliated licensees' own judgment.

8. Principal or client. "Principal" or "client" means a person who has entered into a brokerage agreement creating an agency relationship with a real estate brokerage agency.

9. Real estate brokerage agency or agency. "Real estate brokerage agency" or "agency" means any person or entity engaged

2 in real estate brokerage services through that person's or
3 entity's designated broker, associates or employees and licensed
4 by the commission as a real estate brokerage agency.

5 10. Seller's agent. "Seller's agent" means a brokerage
6 agency that is engaged by and represents the seller in a real
7 estate transaction.

8 11. Subagent. "Subagent" means a licensee engaged to act
9 for another broker in performing brokerage tasks for a client.

10 12. Undisclosed dual agent. "Undisclosed dual agent" means
11 a brokerage agency representing 2 clients in the same transaction
12 without the knowledge and informed consent of the clients.

13 §13272. Limited agent

14 A brokerage agency that provides services under a brokerage
15 agreement for a client is a limited agent with the duties as
16 described in this chapter. A limited agent may be one of the
17 following: a seller's agent, a buyer's agent, a subagent or a
18 disclosed dual agent. If a different legal relationship between
19 the brokerage agency and the person for whom the brokerage agency
20 performs the services is intended, it must be reduced to writing
21 and signed by the parties.

22 §13273. Seller's agent

23 1. Duty to seller. A brokerage agency engaged by a seller
24 shall:

25 A. Perform the terms of the brokerage agreement made with
26 the seller;

27 B. Promote the interests of the seller by:

28 (1) Seeking a sale at the price and terms stated in
29 the brokerage agreement or at a price and terms
30 acceptable to the seller, except that the licensee is
31 not obligated to seek additional offers to purchase the
32 property while the property is subject to a contract of
33 sale, unless it is provided by the brokerage agreement;

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

37 (3) Disclosing to the seller pertinent information of
38 which the licensee has actual knowledge concerning the
39 transaction;

2 (4) Advising the seller to obtain expert advice as to
3 material matters that are beyond the expertise of the
4 licensee; and

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

8 C. Exercise reasonable skill and care;

9 D. Comply with the requirements of this chapter and rules
10 adopted pursuant to it;

11 E. Comply with applicable federal, state or local laws,
12 rules, regulations or ordinances including fair housing and
13 civil rights laws or regulations; and

14 F. Keep confidential personal information about the seller
15 obtained during the course of the relationship that could
16 have a negative impact on the seller's real estate activity,
17 unless:

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

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

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

25 (4) Disclosure is necessary to defend the licensee
26 against an action of wrongful conduct.

27 2. Duty to buyer. The seller's agent has the following
28 duties to a buyer.

29 A. A brokerage agency engaged by a seller shall treat all
30 prospective buyers honestly and may not knowingly give them
31 false information. The brokerage agency shall disclose in a
32 timely manner to a prospective buyer all material defects
33 pertaining to the physical condition of the property of
34 which the brokerage agency knows or, acting in a reasonable
35 manner, should know. A brokerage agency is not liable to a
36 buyer for providing false information to the buyer if the
37 false information is provided to the brokerage agency by the
38 brokerage agency's client and the brokerage agency does not
39 know nor, acting in a reasonable manner, should know that
40 the information is false. A brokerage agency is not
41 obligated to discover latent defects in the property.

2 B. This subsection does not limit the obligation of a buyer
4 to inspect the physical condition of the property. A cause
 of action may not be brought against a brokerage agency for
 revealing information in compliance with this subsection.

6 C. A brokerage agency engaged by a seller in a real estate
8 transaction may provide assistance to the buyer by
 performing ministerial acts such as preparing offers and
10 conveying them to the seller and providing information about
12 and assistance in obtaining other related professional
14 services. Performing ministerial acts is not construed as
 violating the brokerage agency's agreement with the seller
 nor is performing ministerial acts for the buyer construed
 as forming a brokerage agreement with the buyer.

16 3. Other properties. A brokerage agency engaged by a
18 seller may show alternative properties not owned by the seller to
 prospective buyers and may list competing properties for sale.

20 §13274. Buyer's agent

22 1. Duty to buyer. A brokerage agency engaged by a buyer
24 shall:

26 A. Perform the terms of the brokerage agreement made with
 the buyer;

28 B. Promote the interests of the buyer by:

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

36 (2) Presenting in a timely manner all offers to and
38 from the buyer;

40 (3) Disclosing to the buyer material facts or
42 pertinent information of which the licensee has actual
44 knowledge or, acting in a reasonable manner, should
 know concerning the transaction. This subsection does
 not limit the obligation of a buyer to inspect the
 physical condition of the property;

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

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

6 C. Exercise reasonable skill and care, except a licensee is
7 not obligated to discover latent defects in the property;

8 D. Comply with the requirements of this chapter and rules
9 adopted pursuant to it;

10 E. Comply with applicable federal, state or local laws,
11 rules, regulations or ordinances including fair housing and
12 civil rights laws and regulations; and

13 F. Keep confidential personal information about the buyer
14 obtained during the course of the relationship that could
15 have a negative impact on the buyer's real estate activity,
16 unless:

17 (1) The buyer to whom the information pertains grants
18 written consent to disclose the information;

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

20 (3) The information is made public or becomes public
21 by the words or conduct of the buyer to whom the
22 information pertains or from a source other than the
23 licensee; and

24 (4) Disclosure is necessary to defend the licensee
25 against an action of wrongful conduct.

26 2. Duty to seller. A buyer's agent has the following
27 duties to a seller.

28 A. A brokerage agency engaged by a buyer shall treat all
29 prospective sellers honestly and may not knowingly give them
30 false information. A brokerage agency shall disclose in a
31 timely manner to a prospective seller any adverse pertinent
32 information concerning the buyer's financial ability to
33 perform the terms of the transaction of which the agency
34 knows or, acting in a reasonable manner, should know. A
35 brokerage agency is not liable to a seller for providing
36 false information to the seller if the false information is
37 provided to the brokerage agency by the brokerage agency's
38 client and the licensee does not know nor, acting in a
39 reasonable manner, should know that the information is
40 false. A cause of action may not be brought against a
41 brokerage agency for revealing information in compliance
42 with this subsection.

2 B. A brokerage agency engaged by a buyer in a real estate
4 transaction may provide assistance to the seller by
6 performing ministerial acts such as preparing offers and
8 conveying them to the buyer and providing information about
10 and assistance in obtaining other related professional
12 services. Performing ministerial acts for the seller is not
14 construed as violating the brokerage agency's agreement with
16 the buyer nor is performing ministerial acts for the seller
18 construed as forming a brokerage agreement with the seller.

20 3. Other properties. A brokerage agency engaged by a buyer
22 does not breach a duty or obligation by showing properties in
24 which the buyer is interested to other buyers who might also be
26 clients of the brokerage agency.

28 **§13275. Disclosed dual agents**

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

38 A. A description of the transactions in which the brokerage
40 agency serves as a disclosed dual agent;

42 B. A statement that, in serving as a disclosed dual agent,
44 the brokerage agency represents 2 clients whose interests
46 are or at times could be different or adverse;

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

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

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

(3) Confidential negotiating strategy not disclosed in
the sales contract as terms of the sale; or

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

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

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

2 2. Cause of action. A cause of action may not be brought
4 against a disclosed dual agent for making disclosures allowed or
 required by this chapter and the disclosed dual agent does not
6 terminate a brokerage agency relationship by making those allowed
 or required disclosures.

8 3. Actual knowledge; information. In the case of a
10 disclosed dual agent, each client, the brokerage agency and the
 agency's affiliated licensees are considered to possess only
12 actual knowledge and information. There is no imputation of
 knowledge or information by operation of law among or between the
14 clients, brokerage agency or the agency's affiliated licensees.

16 **§13276. Interpretation**

18 The provisions of this chapter supersede the duties and
 responsibilities of the parties under common law, including
20 fiduciary responsibilities of an agent to a client, except as
 described in this chapter.

22 **§13277. Written policy**

24 Every brokerage agency shall adopt a written company policy
 that identifies and describes the types of brokerage agency
26 relationships in which the designated broker and affiliated
 licensees may engage with a seller or buyer as part of a real
28 estate brokerage activity. A brokerage agency is not required to
 offer or engage in more than one of the brokerage agency
30 relationships enumerated in this chapter.

32 **§13278. Designated agents within a firm**

34 1. Designated agents. A brokerage agency entering into a
 brokerage agreement with a client for the listing of property or
36 for the purpose of representing that client in the buying,
 selling or exchanging of real estate may appoint in writing,
38 through the designated broker, those licensees within the
 brokerage agency who will be acting as designated agents of that
40 client to the exclusion of all other licensees within the
 brokerage agency.

42 2. Not a dual agent. A brokerage agency and the designated
44 broker are not considered a dual agent solely because of making a
 designation under the provisions of this section, except that a
46 licensee who personally represents both the seller and buyer in a
 particular transaction must be a disclosed dual agent and must
48 comply with the provisions of this chapter governing disclosed
 dual agents.

50

2 3. Appointments; roles. Methods of appointment and the
3 role of the brokerage agency and designated broker must be
4 defined by rules adopted by the commission.

6 §13279. Liability for misrepresentation

8 1. Client liability. A client of a real estate brokerage
9 agency is not liable for a misrepresentation of the agency's
10 agents or subagents arising out of that licensee's brokerage
11 service unless the client knows or, acting in a reasonable
12 manner, should know of the misrepresentation.

14 2. Brokerage agency liability. A brokerage agency or its
15 affiliated licensees are not liable for a misrepresentation of a
16 client arising out of the brokerage services unless the licensee
17 knows or, acting in a reasonable manner, should know of the
18 misrepresentation.

20 3. Brokerage agency liability; subagent. A brokerage
21 agency and its affiliated licensees are not liable for a
22 misrepresentation made by a subagent unless the licensee knows
23 or, acting in a reasonable manner, should know of the
24 misrepresentation.

26 4. Subagent liability. A subagent is not liable for a
27 misrepresentation of the agent or the client, unless the subagent
28 knows or, acting in a reasonable manner, should know of the
29 misrepresentation.

30 §13280. Agency disclosure required

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

36 §13281. Duration of the relationship

38 1. Effective date of relationship. The relationships under
39 this chapter commence on the effective date of the brokerage
40 service agreement and continue until performance, completion,
41 termination or expiration of the agreement.

42 2. Obligation; termination. A licensee owes no further
43 duty or obligation after termination, expiration, completion or
44 performance of the agreement, except the duties of:

46 A. Accounting in a timely manner for all money and property
47 related to and received during a relationship; and

48 B. Keeping confidential personal information about the
49 client obtained during the course of a relationship that
50 is not otherwise available to the public.

