

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1525

H.P. 1072

House of Representatives, March 31, 2005

### An Act To Amend the Real Estate Brokerage Laws

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Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative SMITH of Monmouth. (GOVERNOR'S BILL)  
Cosponsored by Senator DOW of Lincoln and  
Representatives: AUSTIN of Gray, RECTOR of Thomaston, Senator: BROMLEY of  
Cumberland.

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

4 **Sec. 1. 32 MRSA §13171**, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

6 **§13171. Real estate brokerage agency**

8 "Real As used in this chapter, except for subchapter 7,  
10 "real estate brokerage agency" or "agency" means any person or  
12 entity engaged in real estate brokerage services through its  
designated broker, associates or employees and licensed by the  
commission as a real estate brokerage agency.

14 **Sec. 2. 32 MRSA §13177**, as amended by PL 1999, c. 129, §8 and  
16 affected by §16, is repealed.

18 **Sec. 3. 32 MRSA §13177-A** is enacted to read:

20 **§13177-A. Brokerage agreements**

22 1. Definitions. As used in this section, "brokerage  
agreement," "real estate brokerage agency" and "client" have the  
same meanings as in section 13271.

24 2. Written agreements. A brokerage agreement between a  
26 real estate brokerage agency and a client must be in writing and,  
at a minimum, include the following:

28 A. The signature of the client to be charged;

30 B. The terms and conditions of the brokerage services to be  
32 provided;

34 C. The method or amount of compensation to be paid; and

36 D. The date upon which the agreement will expire.

38 A brokerage agreement may not be enforced against any client who  
40 in good faith subsequently engages the services of another real  
estate brokerage agency following the expiration date of the  
42 first brokerage agreement. Any brokerage agreement provision  
extending a real estate brokerage agency's right to a fee  
44 following expiration of the brokerage agreement may not extend  
that right beyond 6 months.

46 **Sec. 4. 32 MRSA §13178**, as enacted by PL 1987, c. 395, Pt. A,  
48 §212, is amended to read:

50 **§13178. Trust accounts**

2 Every agency shall maintain a trust federally insured  
3 account or accounts in a ~~banking institution located in the~~  
4 financial institution authorized to do business in this State, as  
5 defined in Title 9-B, section 131, subsection 17-A, or a credit  
6 union authorized to do business in this State, as defined in  
7 Title 9-B, section 131, subsection 12-A, for the sole purpose of  
8 depositing all earnest money deposits and all other money held by  
9 it as an agency in which its clients or other persons with whom  
10 it is dealing have an interest. The trust account and withdrawal  
11 orders, including all checks drawn on the account, shall must  
12 name the subject agency and be identified as a real estate trust  
13 account. Real estate trust accounts shall must be free from  
14 trustee process, except by those persons for whom the brokerage  
15 agency has made the deposits and then only to the extent of the  
16 interest. The designated broker, except for an amount necessary  
17 to maintain the accounts not to exceed an amount prescribed by  
18 commission rule, shall withdraw from the accounts all fees due  
19 within 30 days after, but not until consummation or termination  
20 of the transaction when the designated broker makes or causes to  
21 be made a full accounting to ~~his~~ the broker's principal. The  
22 designated broker shall maintain, ~~at the agency's place of~~  
23 ~~business, contracts and other necessary records to verify the~~  
24 adequacy and proper use of the accounts trust accounts and  
25 supporting records in a manner prescribed by commission rule.  
26 These accounts and records shall must be opened open for  
27 inspection by the director or ~~his~~ the director's authorized  
28 representative at the agency's place of business during generally  
29 recognized business hours. Upon order of the director, the  
30 designated broker shall authorize the director in writing to  
31 confirm the balance of funds held in all agency trust accounts.  
32 Rules adopted pursuant to this section are routine technical  
33 rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **Sec. 5. 32 MRSA §13184** is enacted to read:

36 **§13184. Real estate brokerage records; retention**

38 A designated broker shall maintain complete and adequate  
39 records of all real estate brokerage activity conducted on behalf  
40 of the broker's agency. The commission shall specify by rule the  
41 records required to establish complete and adequate records,  
42 including retention schedules. The records must be open for  
43 inspection by the director or the director's authorized  
44 representative at the agency's place of business during generally  
45 recognized business hours.

46 **Sec. 6. 32 MRSA c. 114, sub-c. 7,** as amended, is further amended  
47 by repealing the subchapter headnote and enacting the following  
48 in its place:  
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SUBCHAPTER 7

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REAL ESTATE BROKERAGE RELATIONSHIPS

Sec. 7. 32 MRSA §13271, as amended by PL 1999, c. 129, §15 and affected by §16, is further amended to read:

**§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 real estate 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 real estate brokerage agency to the exclusion of other affiliated licensees of that real estate brokerage agency.

3. **Brokerage agreement.** "Brokerage agreement" means a contract that establishes the relationships between the parties ~~as-to-that~~ and the brokerage services to be performed.

4. **Buyer agent.** "Buyer agent" means a real estate brokerage agency that ~~is-engaged-by-and-represents~~ has entered into a written brokerage agreement with the buyer in a real estate transaction to represent the buyer as its client.

5. **Client.** "Client" means a person who has entered into a written brokerage agreement ~~creating---a---special---agency relationship~~ with a real estate brokerage agency that has agreed to represent that person and be bound by the duties set forth in section 13272 on behalf of that person.

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

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

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

4  
6           **9. Ministerial acts.** "Ministerial acts" means those acts  
that a real estate brokerage agency ~~or its affiliated licensees~~  
~~perform~~ performs for a person who is not a client and that do not  
8 require discretion or the exercise of the brokerage agency's or  
~~its affiliated licensees' judgment~~ are informative or clerical in  
10 nature and do not rise to the level of active representation on  
behalf of the person.

12  
14           **10. Real estate brokerage agency.** "Real estate brokerage  
agency" means a person or entity providing real estate brokerage  
services through that person's designated broker, affiliated  
16 licensees, associates or employees and licensed by the commission  
as a real estate brokerage agency.

18  
20           **11. Seller agent.** "Seller agent" means a real estate  
brokerage agency that ~~is engaged by and represents~~ has entered  
22 into a written brokerage agreement with the seller in a real  
estate transaction to represent the seller as the real estate  
brokerage agency's client.

24  
26           **12. Subagent.** "Subagent" means a real estate brokerage  
agency engaged by another real estate brokerage agency to perform  
brokerage tasks for a client.

28  
30           ~~**13. Third party.** "Third party" means a person who is not a~~  
~~client and has no agency relationship to the real estate~~  
~~brokerage agency.~~

32  
34           **13-A. Transaction broker.** "Transaction broker" means a  
real estate brokerage agency that provides real estate brokerage  
services to one or more parties in a real estate transaction  
36 without a fiduciary relationship as a buyer agent, a seller  
agent, a subagent or a disclosed dual agent.

38  
40           **14. Undisclosed dual agent.** "Undisclosed dual agent" means  
a real estate brokerage agency representing 2 or more clients  
whose interests are adverse in the same transaction without the  
42 knowledge and informed consent of the clients.

44           **Sec. 8. 32 MRS §13272 to 13274**, as enacted by PL 1993, c.  
679, §1, are amended to read:

46           **§13272. Scope of agency**

48  
50           A real estate brokerage agency that provides services  
through a brokerage agreement for a client is bound by the duties

of loyalty, obedience, disclosure, confidentiality, reasonable  
2 care, diligence and accounting as set forth in this chapter.  
Such an a real estate brokerage agency may be a seller agent, a  
4 buyer agent ~~or, a subagent or a disclosed dual agent.~~ If--a  
6 ~~different-relationship-between-the-real-estate-brokerage-agency~~  
~~and-the-person-for-whom-the-real-estate-brokerage-agency-performs~~  
~~the-services-is-intended,-including-a-dual-agent,-it-must-be~~  
8 ~~described-in-writing-and-signed-by-the-parties.~~

10 **§13273. Seller agent**

12 **1. Duty to seller.** A ~~real-estate-brokerage-agency-engaged~~  
by-a seller agent:

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

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

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

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

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

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

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

46 C. Shall exercise reasonable skill and care;

48

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

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

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

14 (1) The seller to whom the information pertains grants  
16 consent to disclose the information;

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

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

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

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

34 **2. Duty to buyer.** The duty of a seller agent to a buyer is  
36 governed by the following.

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



2 reasonable manner, should not have known that the  
3 information was false. A ~~real-estate-brokerage-agency~~  
4 seller agent is not obligated to discover latent defects in  
the property.

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

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

26 **§13274. Buyer agent**

28 1. **Duty to buyer.** A ~~real-estate-brokerage-agency-engaged~~  
29 ~~by-a~~ buyer agent:

30 A. Shall perform the terms of the brokerage agreement made  
31 with the buyer;

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

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

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

42 (3) Disclosing to the buyer material facts of which  
43 the ~~agency~~ buyer agent has actual knowledge or, if  
44 acting in a reasonable manner, should have known  
45 concerning the transaction, except as directed in  
46

2 section 13280. Nothing in this subchapter limits any  
obligation of a buyer to inspect the physical condition  
4 of the property;

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

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

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

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

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

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

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

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

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

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

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

50

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

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

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

22           C. ~~A real-estate-brokerage-agency-engaged-by-a-buyer-in-a~~  
23 ~~real-estate-transaction~~ buyer agent may provide assistance  
24 to the seller by performing ministerial acts such as  
25 preparing and conveying offers to the buyer and providing  
26 information and assistance concerning professional services  
27 not related to real estate brokerage services. Performing  
28 ministerial acts for the seller may not be construed as  
29 violating the ~~real-estate-brokerage-agency's~~ buyer agent's  
30 agreement with the buyer and performing ministerial acts for  
31 the seller may not be construed as or forming a brokerage  
32 agreement with the seller. Performing ministerial acts for  
33 the seller does not make the buyer agent a transaction  
34 broker for the seller.

36           **Sec. 9. 32 MRSA §13275, sub-§1, ¶C,** as enacted by PL 1993, c.  
37 679, §1, is amended to read:

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

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

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

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

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

6  
8 **Sec. 10. 32 MRSA §13275, sub-§2**, as enacted by PL 1993, c.  
679, §1, is amended to read:

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

16  
18 **Sec. 11. 32 MRSA §13275, sub-§4** is enacted to read:

20 **4. Duty to parties.** The duty of a disclosed dual agent to  
the client who is selling is the same as set forth in section  
13273, and the duty to the client who is buying is the same as  
22 set forth in section 13274, except that:

24 A. A disclosed dual agent may not promote the interests of  
one party to the detriment of the other party except as  
26 required to comply with this section; and

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

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

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

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

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

44  
46 **Sec. 12. 32 MRSA §13277**, as enacted by PL 1993, c. 679, §1,  
is amended to read:

48 **§13277. Written policy**

2 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  
4 broker and affiliated licensees may engage.

6 **Sec. 13. 32 MRSA §13278, sub-§§2 and 4**, as enacted by PL 1993,  
c. 679, §1, are amended to read:

8  
2. **Not a dual agent.** A real estate brokerage agency and  
10 the designated broker are not considered to be dual agents solely  
because of an appointment under the provisions of this section,  
12 except that any affiliated licensee who personally represents  
both the seller and the buyer, as clients, in a particular  
14 transaction is considered to be a ~~disclosed~~ dual agent and is  
required to comply with the provisions of this subchapter  
16 governing disclosed dual agents.

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

26 **Sec. 14. 32 MRSA §13279**, as amended by PL 1999, c. 100, §1,  
is further amended to read:

28

**§13279. Real estate brokerage relationship disclosure required**

30

A real estate brokerage agency shall provide in a timely  
32 manner to buyers and sellers of residential real property a  
meaningful, written real estate brokerage agency relationship  
34 disclosure form as defined and mandated by rules adopted by the  
commission. For purposes of this section, "residential real  
36 property" means real estate consisting of not less than one nor  
more than 4 residential dwelling units.

38

**Sec. 15. 32 MRSA §13281, sub-§1**, as enacted by PL 1993, c.  
40 679, §1, is amended to read:

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

48 **Sec. 16. 32 MRSA §13281, sub-§2, ¶B**, as enacted by PL 1993, c.  
679, §1, is amended to read:

50

2 B. Treating For seller agents, buyer agents, subagents and  
3 disclosed dual agents, treating as confidential information  
4 provided by the client during the course of the relationship  
5 that could have a negative impact on the client's real  
6 estate activity, unless:

7 (1) The client to whom the information pertains grants  
8 written consent;

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

10 (3) The information is made public or becomes public  
11 by the words or conduct of the client to whom the  
12 information pertains or from a source other than the  
13 real estate brokerage agency or the affiliated  
14 licensee; or  
15

16 (4) Disclosure is necessary to defend the real estate  
17 brokerage agency or an affiliated licensee against an  
18 action of wrongful conduct in a judicial proceeding  
19 before the commission or before a professional  
20 committee.  
21

22  
23 **Sec. 17. 32 MRSA §§13282 and 13283 are enacted to read:**

24  
25 **§13282. Presumption**

26  
27 Except as otherwise provided in this subchapter, a real  
28 estate brokerage agency providing real estate brokerage services  
29 is presumed to be acting as a transaction broker unless the real  
30 estate brokerage agency has agreed, in a written brokerage  
31 agreement, to represent one or more parties to the real estate  
32 transaction as the real estate brokerage agency's clients.  
33 Client representation may not be created orally or by implication  
34 or be assumed by a real estate brokerage agency or any party to a  
35 real estate transaction.  
36

37 **§13283. Transaction broker**

38  
39 **1. Not an agent.** A transaction broker does not represent  
40 any party as a client to a real estate transaction and is not  
41 bound by the duties set forth in section 13272.

42  
43 **2. Responsibilities.** A transaction broker shall:

44  
45 **A.** Account in a timely manner for all money and property  
46 received;

47  
48 **B.** Disclose in a timely manner to a buyer to a transaction  
49 all material defects pertaining to the physical condition of  
50

2 the property of which the transaction broker has actual  
3 notice or knowledge;

4 C. Comply with all requirements of the laws governing real  
5 estate commission brokerage licenses and any rules adopted  
6 by the commission;

8 D. Comply with any applicable federal, state or local laws,  
9 rules, regulations or ordinances related to real estate  
10 brokerage, including fair housing and civil rights laws or  
11 regulations;

12 E. Treat all parties honestly and may not knowingly give  
13 false information; and

14 F. Perform such ministerial acts as may be agreed upon  
15 between the transaction broker and one or more parties to a  
16 real estate transaction.

17 A transaction broker is not liable for providing false  
18 information if the false information was provided to the  
19 transaction broker and the transaction broker did not know that  
20 the information was false. A transaction broker is not obligated  
21 to discover latent defects in the property. A cause of action  
22 does not arise on behalf of any person against a transaction  
23 broker who reveals information or makes disclosures permitted or  
24 required by this subchapter.

25 **3. Prohibited acts.** A transaction broker may not:

26 A. Conduct an inspection, investigation or analysis of a  
27 property for the benefit of any party;

28 B. Verify the accuracy or completeness of oral or written  
29 statements made by the seller or buyer or any 3rd party; or

30 C. Promote the interests of either party to a transaction  
31 except as required to comply with this section.

32 **4. No vicarious liability.** A party to a real estate  
33 transaction is not vicariously liable for the acts or omissions  
34 of a transaction broker.

35 **5. Actual knowledge; information.** In a situation in which  
36 one affiliated licensee acting as an appointed agent of a real  
37 estate brokerage agency represents a party to a real estate  
38 transaction as the real estate brokerage agency's client and  
39 another affiliated licensee of the same real estate brokerage  
40 agency is acting as a transaction broker for another party to the  
41 transaction, the real estate brokerage agency and its affiliated  
42 licensee shall be deemed to have actual knowledge of the  
43 information known by the other affiliated licensee.

2 licensees are considered to possess only actual knowledge and  
4 information. There is no imputation of knowledge or information  
4 by operation of law among or between the parties, the real estate  
4 brokerage agency or its affiliated licensees.

6 **Sec. 18. Effective date.** This Act takes effect January 1, 2006.

8  
10 **SUMMARY**

12 This bill amends the real estate brokerage license laws as follows:

14 1. It clarifies the definitions of the words "real estate  
16 brokerage agency" and "agency";

18 2. It repeals the current real estate brokerage contract  
20 section and enacts a section titled "Brokerage agreements."  
22 Brokerage agreements between a real estate company providing  
24 brokerage services to a client seller or buyer are required to be  
in writing, to include 4 specific contract provisions and to  
terminate a real estate company's rights to enforce an agreement  
after the expiration date against a client who engages the  
services of another real estate brokerage agency;

26 3. It amends the trust account section to permit brokerage  
28 trust accounts to be maintained only in a federally insured  
30 financial institution authorized to do business in this State, as  
32 defined in the Maine Revised Statutes, Title 9-B, section 131,  
34 subsection 17-A, or a credit union authorized to do business in  
this State as defined in Title 9-B, section 131, subsection 12-A,  
and authorizes the Real Estate Commission to adopt rules to  
establish standards by which trust account records are to be  
maintained;

36 4. It enacts a section that authorizes the Real Estate  
38 Commission to adopt rules establishing the requirements for real  
estate companies to maintain brokerage records, including a  
retention schedule;

40 5. It amends the agency relationship subchapter and  
42 establishes a nonagent presumption standard for real estate  
44 brokerage companies called "transaction broker." The roles of  
46 the transaction broker, buyer agent, seller agent and disclosed  
dual agent are clarified and the responsibilities to buyers and  
sellers are established; and

48 6. It adopts an effective date of January 1, 2006 for the  
bill.