

2013 -- S 0635 SUBSTITUTE A

=====
LC01357/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————
A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - AGENCY RELATIONSHIPS IN
RESIDENTIAL REAL ESTATE TRANSACTIONS

Introduced By: Senators Picard, and Walaska

Date Introduced: March 06, 2013

Referred To: Senate Corporations

(Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. The title of Chapter 20.6 of the General Laws entitled "Agency
2 Relationships in Residential Real Estate Transactions" is hereby amended to read as follows:

3 ~~CHAPTER 20.6~~

4 ~~Agency Relationships in Residential Real Estate Transactions~~

5 CHAPTER 20.6

6 RELATIONSHIPS IN RESIDENTIAL REAL ESTATE TRANSACTIONS

7 SECTION 2. Sections 5-20.6-2, 5-20.6-3, 5-20.6-4, 5-20.6-5, 5-20.6-6 and 5-20.6-8 of
8 the General Laws in Chapter 5-20.6 entitled "Agency Relationships in Residential Real Estate
9 Transactions" are hereby amended to read as follows:

10 **5-20.6-2. Definitions.** -- As used in this chapter, the following terms shall have the
11 following meanings:

12 (1) "Affiliated licensee" means a licensed real estate salesperson or real estate broker as
13 defined in section 5-20.5-1 associated with a particular principal broker.

14 (2) "Brokerage" means a principal broker as defined in section 5-20.5-8 and his or her
15 affiliated licensees.

16 (3) "Buyer" means a person who acquires or seeks to acquire an ownership interest in
17 real estate.

18 (4) "Client" means a buyer, seller, tenant or landlord who has agreed to representation by

1 a licensee in a real estate transaction, evidenced by an executed mandatory relationship
2 disclosure, to whom a licensee owes the duties set forth in section 5-20.6-5.

3 (5) "Client representation contract" means an express, written contract between a
4 principal broker or his or her affiliated licensees and a client that authorizes the principal broker
5 or his or her affiliated licensees to act as a client representative for a buyer, seller, landlord, or
6 tenant and meets the requirements of section 5-20.6-10.

7 (6) "Confidential information" means the following information:

8 (i) A buyer or tenant's willingness to pay more than the offered price;

9 (ii) A seller or landlord's willingness to accept less than the asking price;

10 (iii) A buyer or tenant's previous offers made to purchase or lease real estate;

11 (iv) A seller or landlord's previous offers received to purchase or lease real estate;

12 (v) Any parties' motivating factors;

13 (vi) Any parties' willingness to agree to other financing terms;

14 (vii) Any facts or suspicions regarding circumstances, other than known material defects
15 of a property that a licensee must in all cases disclose, that may psychologically impact or
16 stigmatize any real estate; or

17 (viii) Any information about a party's assets, liabilities, income, or expenses.

18 (7) "Customer" means a buyer, seller, tenant, or landlord who has agreed to certain
19 assistance by a licensee in a real estate transaction, evidenced by an executed mandatory
20 relationship disclosure, to whom a licensee owes the duties set forth in section 5-20.6-4.

21 (8) "Designated client representative" means an affiliated licensee appointed by the
22 principal broker or his or her designee to represent a buyer, seller, tenant, or landlord in a real
23 estate transaction.

24 The affiliated licensee so designated shall obtain the informed, written consent of the
25 buyer, seller, tenant, or landlord with a signed mandatory relationship disclosure pursuant to
26 section 5-20.6-8.

27 (9) "Designee" means an associate broker as defined in section 5-20.5-1 whom a
28 principal broker authorizes to act on his or her behalf.

29 ~~(9)~~(10) "Director" means the director of business regulation for the state.

30 ~~(10)~~(11) "Dual facilitator" means a single licensee who, with the prior written consent of
31 both parties assists a seller client and a buyer client in the same transaction subject to the
32 limitations set forth in section 5-20.6-6.

33 ~~(11)~~(12) "Landlord" means a person who leases or attempts to lease his ownership
34 interest in real estate to another person.

1 ~~(12)~~(13) "Lease" means an express written or oral contract between a landlord and tenant
2 for the use or occupancy by the tenant of real estate that is owned by another person.

3 ~~(13)~~(14) "Licensee" means an individual licensed by the director as a real estate broker
4 or real estate salesperson pursuant to chapter 5-20.5.

5 ~~(14)~~(15) "Mandatory relationship disclosure" means a form that describes the
6 relationship between a consumer and a principal broker and his or her affiliated licensees that
7 meets the requirements of section 5-20.6-8.

8 ~~(15)~~(16) "Ministerial acts" means acts of an administrative nature that licensees perform
9 for client or customers, including, but not limited to, showing property; preparing offers or
10 agreements to sell, purchase, exchange, rent, or lease; conveying offers or agreements to the
11 parties; and providing information and assistance.

12 ~~(16)~~(17) "Principal broker" means a real estate broker licensed by the director who is
13 designated by the brokerage to be responsible for the supervision and activities of his or her
14 affiliated licensees in accordance with this chapter and chapter 5-20.5.

15 ~~(17)~~(18) "Real estate" refers to vacant land on which a building is intended to be
16 constructed for use as one or two (2) residential dwellings or land with physical improvements
17 consisting of a house and/or structure comprised of four (4) or fewer residential units.

18 ~~(18)~~(19) "Sales agreement" means an express written contract signed by the buyer and
19 seller for the purchase and sale of the real estate.

20 ~~(19)~~(20) "Sell," "sale," or "sold" means a transaction for the transfer of real estate from a
21 seller to a buyer, including, but not limited to, exchanges of real estate between the seller and
22 buyer and transactions involving the creation of a sales agreement.

23 ~~(20)~~(21) "Seller" means a person who sells or attempts to sell an ownership interest in
24 real estate to another person.

25 ~~(21)~~(22) "Tenant" means a person who acquired or seeks to acquire an interest in real
26 estate that entitles him or her to occupy or use a property that is owned by another person.

27 ~~(22)~~(23) "Transaction coordinator" means a principal broker or his or her designee who
28 supervises a real estate transaction in a ~~neutral~~ capacity in which one affiliated licensee represents
29 a buyer or tenant as a designated client representative and another affiliated licensee represents a
30 seller or landlord as a designated client representative in the same transaction. A transaction
31 coordinator does not own any fiduciary duties to any party in a transaction except the duties to
32 protect the confidential information of the parties and to properly account for money placed in his
33 or her care.

34 ~~(23)~~(24) "Transaction facilitator" means a licensee who provides assistance to a buyer,

1 seller, tenant, or landlord, or both, in a real estate transaction ~~as a neutral facilitator~~. A transaction
2 facilitator does not owe any fiduciary duties to any party in a transaction but does owe the duties
3 set forth in section 5-20.6-4.

4 **5-20.6-3. Relationships -- Creation and presumption.** -- (a) It shall be presumed that
5 all licensees in a real estate transaction are ~~neutral~~ transaction facilitators unless, the licensee
6 obtains the informed, written consent of a buyer, seller, tenant, or landlord with an executed
7 mandatory relationship disclosure to represent that person as a designated client representative.

8 (b) The provisions of this chapter are expressly intended to abrogate the common law of
9 agency; no type of agency representation shall be assumed by a brokerage, principal broker,
10 licensee, buyer, seller, tenant, or landlord nor shall agency representation be created by
11 implication.

12 (c) Types of relationships. - The following types of relationships are recognized:

13 (1) ~~Neutral-assistance~~ Assistance as a transaction facilitator to assist one or more
14 customers; and

15 (2) Representation of a buyer, seller, tenant or landlord as a designated client
16 representative.

17 **5-20.6-4. Duties owed by a transaction facilitator to a customer.** -- (a) A ~~neutral~~
18 transaction facilitator owes the following duties to a customer:

19 (1) To perform agreed upon ministerial acts timely and competently;

20 (2) To perform these acts with honesty, good faith, reasonable skill and care;

21 (3) To properly account for money or property placed in the care and responsibility of
22 the principal broker; and

23 (4) To protect confidential information when assisting customers as a dual facilitator.

24 (b) A licensee acting as a transaction facilitator does not owe any fiduciary duties to a
25 customer except those duties specified in paragraph (a).

26 **5-20.6-5. Duties owed by a designated client representative to client.** -- (a) If an
27 affiliated licensee is appointed by the principal broker or his or her designee to represent a buyer,
28 seller, tenant, or landlord in a real estate transaction and obtains the written consent of a buyer,
29 seller, tenant, or landlord with an executed mandatory relationship disclosure to represent that
30 person as a designated client representative, the licensee owes the following legal duties and
31 obligations to his or her client:

32 (1) To perform the terms of the client representation contract, if any, with reasonable
33 skill and care;

34 (2) To promote the client's best interest in good faith and honesty;

1 (3) To protect the client's confidential information during the relationship and after its
2 termination;

3 (4) To perform agreed upon ministerial acts timely and competently;

4 (5) To perform these acts with honesty, good faith, reasonable care and skill; and

5 (6) To properly account for money or property placed in the care and responsibility of
6 the principal broker.

7 (b) A principal broker or his or her designee may appoint one or more affiliated licensees
8 to act as the designated client representative(s) of a seller or landlord and one or more affiliated
9 licensees to act as the designated client representative(s) of a buyer or tenant in the same
10 transaction; provided; that, all parties to the transaction receive written notice that an inherent
11 conflict of interest may exist when designated client representatives are affiliated with the same
12 principal broker.

13 (c) A designated client representative of a seller client or landlord client shall have no
14 duty to protect the confidential information of a buyer customer or tenant customer involved in a
15 transaction with his or her client. Conversely, a designated client representative of a buyer client
16 or tenant client shall have no duty to protect the confidential information of a seller customer or
17 landlord customer involved in a transaction with his or her client.

18 (d) In the event that one or more affiliated licensees represent a seller as a designated
19 client representative and one or more affiliated licensees represent the buyer as a designated client
20 representative in the same transaction, the principal broker or his or her designee shall act in a
21 ~~neutral~~ capacity as the transaction coordinator and shall protect the confidential information of all
22 parties to the transaction and properly account for funds.

23 (e) No affiliated licensees of the principal broker other than those licensee(s) specifically
24 designated to represent the client as a designated client representative shall represent the client or
25 owe any other duties except that affiliated licensees not appointed to represent a client in a
26 transaction shall have the duty to protect the client's confidential information.

27 (f) All other affiliated licensees of the principal broker not appointed as a designated
28 client representative for a party in a real estate transaction may represent another party with
29 conflicting interests in the same transaction.

30 ~~(g) The mandatory relationship disclosure shall be presented, explained, and executed at~~
31 ~~the first personal contact with the prospective buyer, seller, tenant, or landlord, or prior to an offer~~
32 ~~to purchase, whichever is first to occur.~~

33 ~~(h)~~(g) A designated client representative is exclusively responsible for the performance
34 of any duties owed to the client.

1 ~~(h)~~ An appointment of a designated client representative by a principal broker or his or
2 her designee to represent a client shall not limit the principal broker's liability or responsibility for
3 any breach of duty owed to a client by the designated client representative.

4 **5-20.6-6. Dual facilitator.** -- (a) A licensee may assist both the buyer client and the seller
5 client or tenant client and landlord client in the same transaction only as a neutral dual facilitator.

6 (b) The dual facilitator relationship between the licensee and buyer and seller, or
7 between the licensee and tenant client and landlord client, exists solely for the specific transaction
8 between the parties. In the event the transaction is not completed or fails to close, then the dual
9 facilitator remains the designated client representative for the respective buyer and the seller or
10 tenant and landlord in all future, separate transactions where there is no relationship with other
11 party.

12 (c) A licensee may be a neutral dual facilitator only after he or she has obtained the
13 informed, written consent of his or her principal broker and all parties involved in the transaction
14 before presenting an offer to a seller client on behalf of a buyer client or to a landlord client on
15 behalf of a tenant client. Such consent shall specifically inform all parties to the transaction of the
16 following:

17 (1) The dual facilitator is authorized to assist both parties in a transaction but shall be
18 neutral as to any conflicting interests between the parties to the transaction;

19 (2) A dual facilitator shall ~~not have the ability to satisfy fully the duties of loyalty, full~~
20 ~~disclosure, reasonable care and obedience to lawful instructions, but shall still~~ owe a duty to
21 protect the confidential information of all parties and a duty to account for funds;

22 (3) Confidential information obtained by a dual facilitator from either party may not be
23 disclosed except:

- 24 (i) If disclosure is expressly authorized;
- 25 (ii) If such disclosure is required by law;
- 26 (iii) If such disclosure is intended to prevent illegal conduct; or
- 27 (iv) If such disclosure is necessary to prosecute a claim against a person represented or to
28 defend a claim against the licensee. The duty to protect confidential information shall continue
29 after the completion of the transaction; and

30 (4) If a comparative market analysis was prepared for a seller client or a buyer client and
31 a dual facilitation situation subsequently arises, the dual facilitator may only provide the
32 comparative market analysis to the other party with the prior consent of the party for whom it was
33 initially prepared. A dual facilitator shall not be able to prepare a comparative market analysis for
34 either party after a dual facilitation situation arises as it may adversely affect one party's

1 bargaining position relative to the other party.

2 In the event that either the seller client or buyer client in the case of a sale of property, or
3 the landlord client and the tenant client in the case of a rental of property, does not consent to dual
4 facilitation, then the principal broker or his or her designee, may, with the consent of the
5 party(ies) withholding consent designate another licensee to represent one of the parties as a
6 designated client representative.

7 In the event that an affiliated licensee is acting as a dual facilitator, the principal broker
8 or his or her designee shall act as a ~~neutral~~ transaction coordinator in the transaction, ~~except as~~
9 ~~required by section 5-20.8-2,~~ and shall protect the parties' confidential information. In the event
10 that the clients of a principal broker consent to his or her acting as a disclosed dual facilitator, the
11 principal broker may also oversee the transaction as a transaction coordinator.

12 ~~**5-20.6-8. Mandatory relations disclosure.**~~ **Mandatory relationship disclosure.** -- (a)
13 The Rhode Island real estate commission shall approve a mandatory relationship disclosure that
14 conforms to the requirements of this section.

15 (b) A licensee shall provide a prospective buyer, seller, tenant, or landlord in a real estate
16 transaction with a copy of the mandatory relationship disclosure and shall obtain a signed
17 acknowledgement of receipt from the buyer, seller, tenant, or landlord ~~at the first personal contact~~
18 ~~with the prospective buyer, seller, tenant, or landlord, or prior to an offer to purchase whichever is~~
19 ~~first to occur~~ prior to the disclosure of any confidential information. If a buyer, seller, tenant, or
20 landlord, refuses to sign an acknowledgement of receipt, the licensee shall set forth, sign and date
21 a written declaration of the facts of the refusal.

22 (c) The mandatory relationship disclosure shall contain the following information:

23 (1) A list of the types of representation or assistance available to a prospective buyer,
24 seller, tenant, or landlord consistent with section 5-20.6-3;

25 (2) A statement that a principal broker and his or her affiliated licensees must disclose
26 their relationship as a designated client representative, transaction facilitator, or transaction
27 coordinator to the buyer, seller, tenant, or landlord in any transaction;

28 (3) The legal duties and obligations owed to the buyer, seller, tenant, or landlord in each
29 type of relationship as set forth in this chapter and chapter 5-20.5;

30 (4) A conspicuous notice that a licensee cannot act as a client representative for a
31 prospective buyer, seller, tenant, or landlord unless the licensee obtains the informed written
32 consent of a prospective buyer, seller, tenant, or landlord with a signed mandatory relationship
33 disclosure;

34 (5) A box for the client or customer to select the type of representation or assistance that

1 he or she desires;

2 (6) A box for the client or customer to acknowledge the type of representation or
3 assistance that a real estate licensee is offering to the other party in the same transaction.

4 ~~(6)~~(7) A statement that a principal broker may designate one or more affiliated licensees
5 to act as the designated client representative(s) of a seller or landlord and one or more affiliated
6 licensees to act as the designated client representative(s) of a buyer or tenant in the same
7 transaction; provided, that the licensee obtains the consent from the client being represented;

8 ~~(7)~~(8) A statement that, when the principal broker or his or her designee appoints
9 designated client representatives to represent clients on different sides of a transaction, he or she
10 shall: (i) act in a neutral capacity as a transaction coordinator; (ii) protect all parties' confidential
11 information; and (iii) properly account for funds;

12 ~~(8)~~(9) A statement that all affiliated licensees not appointed as a designated client
13 representative for the client may represent another party in a transaction with conflicting interests;

14 ~~(9)~~(10) An explanation of the potential conflicts of interest that exist if a licensee acts ~~as~~
15 ~~a designated client representative in a transaction or a neutral transaction facilitator~~ for more than
16 one party in the same transaction;

17 ~~(10)~~(11) A statement that a principal broker and his or her affiliated licensees must
18 disclose their relationship as a designated client representative, transaction facilitator, or
19 transaction coordinator to the buyer, seller, tenant, or landlord in any transaction;

20 ~~(11)~~(12) A statement that the failure of a licensee to give a prospective buyer, seller,
21 tenant, or landlord the mandatory relationship disclosure timely or the failure of a licensee to
22 obtain any other written consent required by this chapter shall be a violation of Rhode Island real
23 estate license law and may subject the licensee to disciplinary action;

24 ~~(12)~~(13) A statement that if a consumer desires to change the nature of a relationship
25 with a licensee from a customer relationship to a client relationship that a licensee's relationship
26 with a buyer, seller, tenant, or landlord as a designated client representative must be established
27 no later than the preparation of a sales agreement, offer to purchase, or lease; and

28 ~~(13)~~(14) Written confirmation from each party signing the mandatory relationship
29 disclosure that he or she has received, read, and understood this mandatory relationship disclosure
30 and has consented to the relationship confirmed above.

31 (d) In all instances, a licensee's relationship with a buyer, seller, tenant, or landlord as a
32 designated client representative must be established, and the mandatory relationship disclosure
33 executed, no later than the preparation of a sales agreement, offer to purchase, or lease.

1 SECTION 3. This act shall take effect upon passage.

=====
LC01357/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - AGENCY RELATIONSHIPS IN
RESIDENTIAL REAL ESTATE TRANSACTIONS

1 This act would provide that a real estate broker or salesperson who provides assistance in
2 a real estate transaction shall no longer be deemed a neutral transaction facilitator. This act would
3 further provide that the mandatory relationship disclosure form include a box for the customer to
4 acknowledge the type of representation that a real estate broker or salesperson is offering to the
5 other party in the transaction.

6 This act would take effect upon passage.

=====
LC01357/SUB A
=====