

Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 114: REAL ESTATE BROKERAGE LICENSE ACT

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Subchapter 1: GENERAL PROVISIONS

§13001. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 395, Pt. A, §212 (NEW).]

1. Real estate. "Real estate" means all estates and lesser interests in land and an existing business if real estate is a part of the business.

[1987, c. 395, Pt. A, §212 (NEW) .]

1-A. Commission. "Commission" means the Real Estate Commission.

[2007, c. 402, Pt. BB, §1 (NEW) .]

1-B. Director. "Director" means the director of the Real Estate Commission.

[2007, c. 402, Pt. BB, §2 (NEW) .]

2. Real estate brokerage. "Real estate brokerage" means a single instance of offering, attempting to conduct or conducting services on behalf of another for compensation, or with the expectation of receiving compensation, calculated to result in the transfer of an interest in real estate. Real estate brokerage includes, but is not limited to, the following activities conducted in behalf of another:

A. Listing real estate for sale or exchange; [1987, c. 395, Pt. A, §212 (NEW).]

B. Promoting the purchase, sale or exchange of real estate; [1987, c. 395, Pt. A, §212 (NEW).]

C. Procuring of prospects calculated to result in the purchase, sale or exchange of real estate; [1987, c. 395, Pt. A, §212 (NEW).]

D. Advertising or holding oneself out as offering any services described in this subsection; [1987, c. 395, Pt. A, §212 (NEW).]

E. Negotiating the purchase, sale or exchange of real estate; [1987, c. 395, Pt. A, §212 (NEW).]

F. Buying options on real estate or selling real estate options or the real estate under option; [1987, c. 395, Pt. A, §212 (NEW).]

G. Acting as a finder to facilitate the purchase, sale or exchange of real estate; and [1987, c. 395, Pt. A, §212 (NEW).]

H. Buying, selling or exchanging real estate. [1987, c. 395, Pt. A, §212 (NEW).]

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §§1, 2 (AMD).

§13002. EXCEPTIONS TO BROKERAGE

Real estate brokerage does not include the following: [1991, c. 53, §1 (AMD).]

1. Transactions by owner or lessor. Transactions conducted by any person who is the owner or lessor of the real estate, or to their regular employees with regard to the employer's real estate, provided that:

A. The real estate transaction services rendered by the employee are performed as an incident to the usual duties performed for the employer; or [1989, c. 471, §1 (NEW).]

B. The real estate transaction services are subject to the provisions of the Maine Condominium Act, Title 33, chapter 31; [1997, c. 209, §1 (AMD).]

[1997, c. 209, §1 (AMD) .]

2. Transactions by attorneys-at-law. Transactions conducted by an attorney-at-law in the performance of duties as an attorney-at-law. This exception does not apply to attorneys who are regularly engaged in real estate brokerage;

[1999, c. 129, §1 (AMD); 1999, c. 129, §16 (AFF) .]

3. Exception. Any person licensed as an auctioneer under chapter 5, hired to call bids at an auction, if the person employed does not prepare contracts or otherwise control the actual sale or take custody of any part of the purchase price; and

[1999, c. 129, §2 (AMD); 1999, c. 129, §16 (AFF) .]

4. Time share. Real estate transaction services subject to the provisions of Title 33, chapter 10-A.

[1999, c. 129, §3 (NEW); 1999, c. 129, §16 (AFF) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1989, c. 471, §1 (AMD). 1991, c. 53, §1 (AMD). 1997, c. 209, §1 (AMD). 1999, c. 129, §§1-3 (AMD). 1999, c. 129, §16 (AFF).

§13003. LICENSE REQUIRED

It is unlawful for any person or entity to engage in real estate brokerage without a current real estate brokerage agency license issued under this chapter or a license authorizing the person to engage in brokerage activity on behalf of a brokerage agency. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY

1987, c. 395, §A212 (NEW).

§13004. CIVIL ACTIONS

No person or entity may bring or maintain any action in the courts of this State for the collection of compensation for real estate brokerage services, without first proving that the person or entity was properly licensed by the Real Estate Commission at the time the cause of action arose. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY

1987, c. 395, §A212 (NEW).

§13005. PENALTIES

A person or entity who violates any provision of this chapter commits a civil violation for which a forfeiture of not more than \$2,000 for each violation may be adjudged, plus the amount of compensation received in the subject transaction. Any officer or agent of an entity who personally participates in or is accessory to a violation of this chapter is subject to the penalties prescribed under this section. Any court of competent jurisdiction has full power to try any violation of this chapter and, upon conviction, the court may at its discretion revoke or suspend the license of the person or entity so convicted. All fines and penalties over and above the cost of court proceedings inure to the commission. A violation of this chapter includes performing or attempting to perform those acts that constitute prohibited practices. [2001, c. 421, Pt. B, §101 (AMD); 2001, c. 421, Pt. C, §1 (AFF).]

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted. [2001, c. 421, Pt. B, §101 (AMD); 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B101 (AMD). 2001, c. 421, §C1 (AFF).

§13006. CONFIDENTIALITY

All hearings and records of hearings conducted by the grievance committee or the professional standards committee of any state or regional professional real estate association or board are confidential and are exempt from discovery. [1989, c. 82, (NEW).]

SECTION HISTORY

1989, c. 82, (NEW).

§13007. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed \$100. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. BB, §3 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY

2007, c. 402, Pt. BB, §3 (NEW). 2011, c. 286, Pt. B, §5 (REV).

Subchapter 2: COMMISSION**§13061. DECLARATION OF POLICY**

It is declared to be the policy of the State that licensees shall be supervised by the Real Estate Commission in a manner to ensure that they meet standards which will promote public understanding and confidence in the business of real estate brokerage. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY

1987, c. 395, §A212 (NEW).

§13062. REAL ESTATE COMMISSION; ORGANIZATION

1. Real Estate Commission composition. The Real Estate Commission, established by Title 5, section 12004-A, subsection 37, consists of 4 industry members and 2 public members as defined in Title 5, section 12004-A.

[2007, c. 402, Pt. BB, §4 (AMD) .]

2. Qualifications. Each industry member of the commission must have been a real estate broker or associate broker by vocation in this State for at least 5 years prior to appointment.

[2007, c. 402, Pt. BB, §4 (AMD) .]

3. Geographic distribution.

[2007, c. 402, Pt. BB, §4 (RP) .]

4. Terms; removal. Terms of the members of the commission are for 3 years. Members may be removed by the Governor for cause.

[1993, c. 600, Pt. A, §266 (AMD) .]

5. Quorum; procedure.

[2013, c. 246, Pt. B, §23 (RP) .]

6. Appointments. The members of the commission are appointed by the Governor. Appointments of members must comply with Title 10, section 8009.

[2007, c. 402, Pt. BB, §4 (AMD) .]

7. Chair. The commission shall annually elect a chair from its members.

[1993, c. 600, Pt. A, §266 (AMD) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1989, c. 471, §2 (AMD). 1989, c. 503, §B156 (AMD). 1989, c. 878, §§A100,B30 (AMD). 1991, c. 53, §2 (AMD). 1991, c. 53, §10 (AFF). 1993, c. 600, §A266 (AMD). 1997, c. 727, §§C12-14 (AMD). 2007, c. 402, Pt. BB, §4 (AMD). 2013, c. 246, Pt. B, §23 (AMD).

§13063. COMPENSATION

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §5 (RP).

§13064. SEAL; EVIDENCE; INSPECTION OF RECORDS

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §6 (RP).

§13065. RULES

The commission may establish guidelines and rules by which this chapter shall be administered. Rules shall be subject to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II and consistent with the law to govern the following. [1987, c. 395, Pt. A, §212 (NEW).]

1. Adjudicatory hearings.

[2007, c. 402, Pt. BB, §7 (RP) .]

2. Investigations.

[2007, c. 402, Pt. BB, §8 (RP) .]

3. Brokerage practice. The commission may adopt rules consistent with the standards set forth in this chapter governing real estate brokerage practices in order to establish standards of practice which serve the interests of both the public and the industry.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. License qualifications. The commission may adopt rules relating to the qualifications and application for any license authorized under this chapter as are deemed necessary to assure that applicants are sufficiently trustworthy and competent to transact the business for which they will be licensed.

[1987, c. 395, Pt. A, §212 (NEW) .]

5. Fees.

[2007, c. 402, Pt. BB, §9 (RP) .]

6. Education. The commission may adopt rules to be applied in determining whether educational programs meet the license qualifications required under this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

7. Supervision of employees. The commission shall adopt rules defining the authority and responsibility of designated brokers in supervising sales agents, as well as other brokerage related employees and independent contractors.

[1987, c. 395, Pt. A, §212 (NEW) .]

8. Other. The commission may adopt and enforce such other rules as are necessary for the performance of its duties under this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §2 (AMD). 2007, c. 402, Pt. BB, §§7-9 (AMD).

§13066. HEARINGS

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 129, §4 (AMD). 1999, c. 129, §16 (AFF). 2007, c. 402, Pt. BB, §10 (RP).

§13067. CAUSES FOR DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1991, c. 53, §§3-5 (AMD). 1999, c. 129, §5 (AMD). 1999, c. 129, §16 (AFF). 2007, c. 402, Pt. BB, §11 (RP).

§13067-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the commission may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. BB, §12 (NEW).]

1. Lack of trustworthiness. Lack of trustworthiness and competence to transact real estate brokerage services in such manner as to safeguard the interests of the public;

[2007, c. 402, Pt. BB, §12 (NEW) .]

2. Misconduct. Any act or conduct, whether of the same or different character than specified in this chapter, that constitutes or demonstrates bad faith, incompetency, untrustworthiness or dishonest, fraudulent or improper dealings;

[2007, c. 402, Pt. BB, §12 (NEW) .]

3. Act that constitutes grounds for denial. Performing or attempting to perform any act or acts for which a license may lawfully be denied to any applicant;

[2007, c. 402, Pt. BB, §12 (NEW) .]

4. Substantial misrepresentation. Making any substantial misrepresentation by omission or commission, but not including innocent misrepresentation;

[2007, c. 402, Pt. BB, §12 (NEW) .]

5. Failure to protect principal. Failing to act in a reasonably prudent manner in order to protect and promote the interests of the principal with absolute fidelity;

[2007, c. 402, Pt. BB, §12 (NEW) .]

6. Failure to avoid error, exaggeration or concealment. Failing to act in a reasonably prudent manner in order to avoid error, exaggeration or concealment of pertinent information;

[2007, c. 402, Pt. BB, §12 (NEW) .]

7. Liability of agency and designated broker. Violation of this chapter by a licensed or unlicensed person acting on the agency's behalf if:

A. The designated broker had prior knowledge and did not take reasonable action to prevent the violation; [2007, c. 402, Pt. BB, §12 (NEW).]

B. The designated broker permitted or authorized a person to engage in activity for which that person was not properly licensed; or [2007, c. 402, Pt. BB, §12 (NEW).]

C. The designated broker failed to exercise a reasonable degree of supervision over employees and independent contractors commensurate with their qualifications and experience; [2007, c. 402, Pt. BB, §12 (NEW) .]

[2007, c. 402, Pt. BB, §12 (NEW) .]

8. Unlawful payment. Offering, promising, allowing, giving or paying, directly or indirectly, any part or share of compensation arising or accruing from a real estate brokerage transaction to any person who is not licensed to perform the service for which the person is or would be compensated, if a license is required under this chapter for performance of that service. A licensee may not be employed by or accept brokerage compensation from any person other than the agency under which the licensee is at the time licensed. An agency may share compensation with a nonresident licensee when the service by the nonresident is performed outside this State;

[2007, c. 402, Pt. BB, §12 (NEW) .]

9. Suspension or revocation of license. Having had a professional or occupational license application rejected for reasons related to untrustworthiness within 3 years prior to the date of application or had a professional or occupational license suspended or revoked for disciplinary reasons; and

[2017, c. 210, Pt. F, §1 (AMD) .]

10. Failure to meet professional qualifications; failure to submit complete application. Failing to meet the professional qualifications for licensure as provided in this subchapter or failing to submit a complete application within 30 days after being notified of the materials needed to complete the application.

[2007, c. 402, Pt. BB, §12 (NEW) .]

SECTION HISTORY

2007, c. 402, Pt. BB, §12 (NEW). 2017, c. 210, Pt. F, §1 (AMD).

§13068. DECISIONS

1. Licensing. After hearing, the commission may affirm, modify or reverse the director's decision to deny an examination, license or renewal license or, in its discretion, file a complaint in the District Court pursuant to Title 4, chapter 5 and Title 5, section 10051 to determine whether a license may be denied.

[1999, c. 547, Pt. B, §75 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. Violation of chapter. If, after hearing, the commission finds that a violation of this chapter has occurred, it may:

A. Reprimand the person or entity; [1987, c. 395, Pt. A, §212 (NEW) .]

B. Require the person or entity to comply with such terms and conditions as it determines necessary to correct the basis for the violation or prevent further violations by issuing a cease and desist order. Violation of a cease and desist order shall constitute a violation of this chapter; [1987, c. 395, Pt. A, §212 (NEW) .]

C. Assess the violator a fine of no more than \$2,000 a violation; [1987, c. 395, Pt. A, §212 (NEW) .]

D. Suspend or revoke any license issued under this chapter; or [1987, c. 395, Pt. A, §212 (NEW) .]

E. Report its findings and recommendations to the Attorney General or the district attorney recommending prosecution. [1987, c. 395, Pt. A, §212 (NEW).]

[1987, c. 395, Pt. A, §212 (NEW) .]

3. Appeals.

[2007, c. 402, Pt. BB, §13 (RP) .]

Notwithstanding the provisions of Title 10, section 8003, subsection 5-A, revocations ordered by the commission are subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2007, c. 402, Pt. BB, §13 (NEW).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 547, §§B75,78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. BB, §13 (AMD).

§13069. DIRECTOR

1. Appointment. The Commissioner of Professional and Financial Regulation, with the advice of the Real Estate Commission and subject to the Civil Service Law, shall appoint a director of the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. Duties. The director is responsible for the management of the commission's affairs, within the guidelines, policies and rules established by the commission and for carrying out the duties allocated to the director under this chapter. Duties of the director may be carried out by the director's designee, other than a member of the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

3. Employees.

[1999, c. 687, Pt. F, §8 (RP) .]

4. Disposal of fees; expenses.

[1995, c. 502, Pt. H, §44 (RP) .]

4-A. Real estate account.

[2007, c. 402, Pt. BB, §14 (RP) .]

5. Advocate. The director shall seek to protect the interests of the public and the industry in the administration of this chapter. In this capacity, the director may serve as an advocate in any proceeding before the commission, presenting evidence and argument in support of a recommended disposition.

[1987, c. 395, Pt. A, §212 (NEW) .]

6. Investigations. The director may investigate the actions of any licensee under this chapter, or any person or entity who assumes to act in a capacity requiring a license under this chapter, upon receipt of a verified written complaint or in accordance with the guidelines prescribed by commission rule. Upon completion of the investigation, the director shall take one of the following actions:

A. With the commission's approval, dismiss the complaint; [1999, c. 129, §6 (AMD); 1999, c. 129, §16 (AFF).]

B. With the consent of the parties and subject to approval of the commission and commission counsel, execute a consent agreement; or [1987, c. 395, Pt. A, §212 (NEW).]

C. Issue a staff petition for hearing before the commission, which may include a recommended disposition. [1987, c. 395, Pt. A, §212 (NEW).]

[2007, c. 402, Pt. BB, §15 (AMD) .]

7. Subpoenas. The director may issue subpoenas to compel the attendance of witnesses at hearings and to compel the production of documents and other records deemed necessary in connection with the administration of this chapter. Whenever a person refuses to obey a subpoena duly issued by the director, the Superior Court for Kennebec County or any court of this State, within the jurisdiction of which the person resides or transacts business, shall have jurisdiction to issue to that person an order requiring him to comply with the subpoena and any failure to obey that order may be punished by the court as contempt. Refusal to obey the director's subpoena also constitutes a violation of this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

8. Denial of licenses. The director may only issue a license to persons or entities meeting the requirements of this chapter. If it appears to the director that grounds for denial of a license or renewal exists, the director shall deny the license or renewal and notify the applicant in writing of the basis for denial together with notice of the applicant's right to a hearing before the commission, if requested in accordance with commission rules within a 30-day period. The director shall not issue a license to any applicant for renewal if the license has been expired for more than 90 days, unless the applicant passes the license examination designated by commission rule for this purpose.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1995, c. 502, §§H43-45 (AMD). 1999, c. 129, §6 (AMD). 1999, c. 129, §16 (AFF). 1999, c. 687, §§F8,9 (AMD). 2007, c. 402, Pt. BB, §§14, 15 (AMD).

Subchapter 3: REAL ESTATE BROKERAGE AGENCY

§13171. REAL ESTATE BROKERAGE AGENCY

As used in this chapter, except for subchapter 7, "real estate brokerage agency" or "agency" means any person or 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. [2005, c. 378, §2 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2005, c. 378, §2 (AMD). 2005, c. 378, §29 (AFF).

§13172. ORIGINAL APPLICATION

Each applicant for an original agency license shall submit an application, signed by the authorized agency official, together with the fee as set under section 13007. [2007, c. 402, Pt. BB, §16 (AMD) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §16 (AMD).

§13173. AGENCY LICENSE QUALIFICATIONS

1. Designated broker. The owner or a duly authorized agency official shall hold a Maine real estate broker license and be designated by the agency to act for it in the conduct of real estate brokerage.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. Employees. Every person employed by or on behalf of the agency in the performance of real estate brokerage shall be properly licensed under this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

3. Reputation. The agency and its owner or principal officers, if previously engaged in any business, shall bear a good reputation for honesty, truthfulness, fair dealing and competency.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. Nonresidents. The following applies to nonresidents.

A. Nonresident applicants shall hold a similar license in good standing and maintain an active place of business in its resident jurisdiction. [1987, c. 395, Pt. A, §212 (NEW).]

B. [2013, c. 217, Pt. K, §6 (RP).]

[2013, c. 217, Pt. K, §6 (AMD) .]

5. Place of business. Every agency holding an active license shall maintain a fixed and definite place of business where its designated broker and employees may be personally contacted without unreasonable delay.

[1987, c. 395, Pt. A, §212 (NEW) .]

6. Branch office. Other locations that are advertised as locations where the public may contact the agency or its employees concerning brokerage services must be licensed as a branch office.

[2011, c. 286, Pt. J, §1 (AMD) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 129, §7 (AMD). 1999, c. 129, §16 (AFF). 2011, c. 286, Pt. J, §1 (AMD). 2013, c. 217, Pt. K, §6 (AMD).

§13174. LICENSE DENIAL

A license may be denied to any agency applicant: [1987, c. 395, Pt. A, §212 (NEW).]

1. Complete and accurate application. Who fails to submit a complete and accurate application;

[1987, c. 395, Pt. A, §212 (NEW) .]

2. Proof of qualifications. Who fails to submit satisfactory proof that it has met the qualifications specified in this chapter and is sufficiently trustworthy and competent to transact real estate brokerage services in such a manner as to safeguard the interests of the public;

[1987, c. 395, Pt. A, §212 (NEW) .]

3. Conviction of crime. Subject to Title 5, chapter 341, if the owner or principal entity officials have been convicted of any Class A, B or C crime or any crime which bears directly on the practice of real estate brokerage; or

[1987, c. 395, Pt. A, §212 (NEW) .]

4. Revocation of license. If the agency and its owner or its principal officers have had any professional or occupational license revoked for disciplinary reasons, or an application rejected for reasons relating to untrustworthiness, within 3 years prior to the date of application.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW).

§13175. AGENCY CHANGES

Any change of address, name or other material changes in the conditions or qualifications set forth in the original application must be reported to the director no later than 10 days after the change. Upon application and payment of the fee as set under section 13007, the commission records must be changed and a new license must be issued for the unexpired term of the current license, if appropriate. [2007, c. 402, Pt. BB, §17 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §17 (AMD).

§13176. TRADE NAMES

Agencies may conduct business under a trade name, provided that their license is issued under the trade name. If an agency is licensed with a trade name, that trade name shall be used by the agency, its employees and independent contractors in all real estate brokerage related advertising. The director may refuse to issue a license under a specific trade name if the name is deemed to be misleading, deceptive or will likely result in confusion with other existing businesses. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY

1987, c. 395, §A212 (NEW).

§13177. REAL ESTATE BROKERAGE CONTRACTS

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 129, §8 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §29 (AFF). 2005, c. 378, §3 (RP).

§13177-A. BROKERAGE AGREEMENTS

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

[2005, c. 378, §4 (NEW); 2005, c. 378, §29 (AFF) .]

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

- A. The signature of the client to be charged; [2005, c. 378, §4 (NEW); 2005, c. 378, §29 (AFF).]
- B. The terms and conditions of the brokerage services to be provided; [2005, c. 378, §4 (NEW); 2005, c. 378, §29 (AFF).]
- C. The method or amount of compensation to be paid; [2011, c. 286, Pt. J, §2 (AMD).]
- D. The date upon which the agreement will expire; and [2011, c. 286, Pt. J, §2 (AMD).]
- E. A statement that the agreement creates an agency-client relationship. [2011, c. 286, Pt. J, §2 (NEW).]

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

[2011, c. 286, Pt. J, §2 (AMD).]

SECTION HISTORY

2005, c. 378, §4 (NEW). 2005, c. 378, §29 (AFF). 2011, c. 286, Pt. J, §2 (AMD).

§13178. TRUST ACCOUNTS

Every agency shall maintain a federally insured account or accounts in a financial institution authorized to do business in this State, as defined in Title 9-B, section 131, 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, for the sole purpose of depositing all earnest money deposits and all other money held by it as an agency in which its clients or other persons with whom it is dealing have an interest. The trust account and withdrawal orders, including all checks drawn on the account, must name the subject agency and be identified as a real estate trust account. Real estate trust accounts must be free from trustee process, except by those persons for whom the brokerage agency has made the deposits and then only to the extent of the interest. The designated broker, except for an amount necessary to maintain the accounts not to exceed an amount prescribed by commission rule, shall withdraw from the accounts all fees due within 30 days after but not until consummation or termination of the transaction when the designated broker makes or causes to be made a full accounting to the broker's principal. The designated broker shall maintain trust accounts and supporting records in a manner prescribed by commission rule. These accounts and records must be open for inspection by the director or the director's authorized representative at the agency's place of business during generally recognized business hours. Upon order of the director, the designated broker shall authorize the director in writing to confirm the balance of funds held in all agency trust accounts. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 378, §5 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2005, c. 378, §5 (AMD). 2005, c. 378, §29 (AFF).

§13179. SUPERVISION OF EMPLOYEES

The designated broker shall exercise a reasonable level of supervision commensurate with the level of qualification and experience of agency employees and independent contractors supervised, in order to protect and promote the interests of its clients with absolute fidelity. The designated broker shall not permit or authorize any person to engage in any activity for which they are not properly licensed. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY

1987, c. 395, §A212 (NEW).

§13180. TERMINATION OF EMPLOYMENT

When any broker, associate broker or real estate sales agent is discharged or terminates employment with a brokerage agency, the designated broker shall immediately send a communication to the last known address of the broker, associate broker or sales agent advising the broker, associate broker or sales agent that the commission has been notified. The designated broker shall deliver a copy of the communication to the commission. [2017, c. 210, Pt. F, §2 (AMD).]

Upon receipt of the notice of termination by the licensee, the license is void and may only be reinstated or placed on inactive status after proper application and payment of the prescribed fee. It is unlawful for any broker, associate broker or real estate sales agent to perform any brokerage services without first receiving a new active license. [2017, c. 210, Pt. F, §2 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2017, c. 210, Pt. F, §2 (AMD).

§13181. CONTENTS; DISPLAY

The director shall issue to each agency a license in the form and size prescribed by the Commissioner of Professional and Financial Regulation. The license of each broker, associate broker and sales agent must be delivered or mailed to the designated broker and be kept in the custody and control of the designated broker. It is the duty of the designated broker to conspicuously display the agency license in the broker's place of business. [2007, c. 402, Pt. BB, §18 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §18 (AMD).

§13182. AGENCY LICENSE RENEWAL

Agency licenses expire on December 31st, or at such times as the Commissioner of Professional and Financial Regulation may designate, of each biennial period for which it was issued. Upon application and payment of the fee as set under section 13007, a renewal license is issued for each ensuing biennial period in the absence of any reason or condition that might warrant denial of a license. The suspension, revocation or expiration of an agency or designated broker's license automatically voids every license granted to any person by virtue of the person's employment by the agency whose license has been suspended, revoked or expired pending a change of employer and the issuance of a new license. The new license is issued without charge if granted during the same biennial period in which the original was granted. [2017, c. 210, Pt. F, §3 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §19 (AMD). 2017, c. 210, Pt. F, §3 (AMD).

§13183. ACTS AUTHORIZED

An agency, through its designated broker, may perform all of the brokerage services contemplated by this chapter and may employ or retain others to perform brokerage services on behalf of the agency. The designated broker may also delegate any of the designated broker's duties and authority provided for under this chapter to an agency affiliate, but when doing so is not relieved of any responsibility imposed by this chapter. [2017, c. 210, Pt. F, §4 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2017, c. 210, Pt. F, §4 (AMD).

§13184. REAL ESTATE BROKERAGE RECORDS; RETENTION

A designated broker shall maintain complete and adequate records of all real estate brokerage activity conducted on behalf of the broker's agency. The commission shall specify by rule the records required to establish complete and adequate records, including retention schedules. The records must be open for inspection by the director or the director's authorized representative at the agency's place of business during generally recognized business hours. [2005, c. 378, §6 (NEW); 2005, c. 378, §29 (AFF).]

SECTION HISTORY

2005, c. 378, §6 (NEW). 2005, c. 378, §29 (AFF).

Subchapter 4: BROKERS, ASSOCIATE BROKERS, SALES AGENTS AND TIMESHARE AGENTS

§13191. GENERAL QUALIFICATIONS

1. Application. Applicants must submit an application together with the fee as set under section 13007.

[2007, c. 402, Pt. BB, §20 (AMD) .]

2. Age. The applicant shall have reached his 18th birthday at the time of his application.

[1987, c. 395, Pt. A, §212 (NEW) .]

3. Residence. The applicant shall provide evidence of his legal residence.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. High school. The applicant shall be a high school graduate or hold an equivalency certificate.

[1987, c. 395, Pt. A, §212 (NEW) .]

5. Reputation. The applicant must have a good reputation for honesty, truthfulness, fair dealing and competency.

[2013, c. 217, Pt. J, §5 (AMD) .]

6. Active license. Upon application for an active license, the applicant shall provide a written statement from the designated broker of the agency, who will be employing the applicant, authorizing issuance of the applicant's license under the agency.

[1987, c. 395, Pt. A, §212 (NEW) .]

7. Single license. No more than one license may be issued to any person for the same period of time. In the event of a change in an employer, another license shall not be issued until the current license has been returned or for which a satisfactory accounting has been made.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §§20, 21 (AMD). 2013, c. 217, Pt. J, §5 (AMD).

§13192. LICENSE DENIAL

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1991, c. 53, §§6,7 (AMD). 2007, c. 402, Pt. BB, §22 (RP).

§13193. NONRESIDENTS

In lieu of education and experience requirements, nonresident original license applicants must hold a similar active license in good standing in another jurisdiction and must appear at such time and place as the director may designate for the purpose of written examination pertaining to Maine real estate laws. [2017, c. 210, Pt. F, §5 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2013, c. 217, Pt. K, §7 (AMD). 2017, c. 210, Pt. F, §5 (AMD).

§13194. LICENSE RENEWAL

Licenses expire on December 31st, or at such other times as the Commissioner of Professional and Financial Regulation may designate, of each biennial period for which it was issued, except those licenses issued under section 13200. The director shall issue a renewal license for each ensuing biennial period in the absence of any reason or condition that might warrant the refusal of granting a license, upon receipt of the written request of the applicant, the biennial fee as set under section 13007 for the license and upon the applicant presenting evidence of compliance with the requirements of section 13197. The director shall deny a renewal license to any applicant whose license has lapsed for more than 90 days, unless the renewal license applicant passes the license examination designated by commission rule for this purpose. [2007, c. 402, Pt. BB, §23 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §23 (AMD).

§13195. CHANGES

Any change of address, name or other material change in the conditions or qualifications set forth in the original application, including but not limited to criminal convictions or suspension or revocation of any professional license, must be reported to the director no later than 10 days after the change. Upon application and payment of the fee as set under section 13007, the commission records must be changed and a new license issued for the unexpired term of the current license, if appropriate. [2007, c. 402, Pt. BB, §24 (AMD).]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 129, §9 (AMD). 1999, c. 129, §16 (AFF). 2007, c. 402, Pt. BB, §24 (AMD).

§13196. INACTIVE LICENSES

1. Placement on inactive status. Any licensee who does not desire to perform any of the activities described in section 13001 and who wants to preserve the license while not engaged in any brokerage activity may apply to the commission for inactive status upon payment of the fee as set under section 13007. The commission may place the license on inactive status and issue an inactive license only upon application by the licensee. During inactive status, the licensee is required to renew the license biennially, but is not required to maintain a place of business or meet the educational provisions of section 13197.

[2007, c. 402, Pt. BB, §25 (AMD) .]

2. Reinstatement to active status. Licensees who have remained on inactive status for 6 years or more may have their licenses reinstated to active status by submitting an application and fee and by successfully passing a license examination designated by commission rule for this purpose. Licensees who activate within 6 years of the initial inactive license may activate by successfully completing the designated examination or by completing continuing education courses that meet commission approved clock hours as follows:

A. For those applicants remaining inactive from the issuance of the inactive licenses up to 2 years, 21 clock hours of continuing education completed within the previous biennium; [2005, c. 378, §7 (AMD); 2005, c. 378, §29 (AFF).]

B. For those applicants remaining inactive for more than 2 years but less than 4 years, 28 clock hours of continuing education completed within the previous biennium; or [2005, c. 378, §7 (AMD); 2005, c. 378, §29 (AFF).]

C. For those applicants remaining inactive for more than 4 years but less than 6 years, 36 clock hours of continuing education completed within the previous biennium. [2005, c. 378, §7 (AMD); 2005, c. 378, §29 (AFF).]

[2007, c. 402, Pt. BB, §25 (AMD) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1991, c. 53, §8 (AMD). 1999, c. 129, §16 (AFF). 1999, c. 129, §10 (RPR). 2005, c. 378, §7 (AMD). 2005, c. 378, §29 (AFF). 2007, c. 402, Pt. BB, §25 (AMD).

§13197. CONTINUING EDUCATION

1. Requirement. As a prerequisite to renewal of a license, applicants must complete 21 clock hours of continuing education within 2 years prior to the date of application in programs or courses approved by the commission. This requirement does not apply to agency and company licenses.

[2005, c. 378, §8 (AMD); 2005, c. 378, §29 (AFF) .]

2. Program approval. Each application for approval of a continuing education program must be submitted according to the guidelines prescribed by the commission, together with the fee as set under section 13007. The fee is retained whether or not the application is approved, except that the commission may waive the application fee for any program or course for the purpose of promoting the intent of this section and that meets the standards prescribed by rule.

[2007, c. 402, Pt. BB, §26 (AMD) .]

3. Core requirement. The commission may establish a core educational requirement for each license type, not to exceed 6 clock hours, in which case the remaining requirement shall be fulfilled from elective programs approved by the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. Voluntary certification program. The commission may establish a program for recognizing real estate brokers who have advanced education, training and experience in a specialized discipline related to the field of real estate. Standards to be met in order to be certified shall be prescribed by rules adopted by the commission, subject to the Maine Administrative Procedure Act, Title 5, chapter 375.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 129, §11 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §8 (AMD). 2005, c. 378, §29 (AFF). 2007, c. 402, Pt. BB, §26 (AMD).

§13198. REAL ESTATE BROKER

1. Definition. "Real estate broker" or "broker" means any person employed by or on behalf of an agency to perform brokerage and licensed by the commission as a broker.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. Professional qualifications. An applicant for a broker license must meet the qualifications under paragraphs A and B.

A. The applicant must have been licensed as an associate broker affiliated with a real estate brokerage agency for 2 years within the 5 years immediately preceding the date of application. [2009, c. 112, Pt. A, §17 (RPR).]

B. The applicant must satisfactorily complete the course of study meeting guidelines established by the commission. [2009, c. 112, Pt. A, §17 (RPR).]

[2009, c. 112, Pt. A, §17 (RPR) .]

3. Acts authorized. Each broker license granted entitles the holder to perform all of the acts contemplated under this chapter on behalf of an agency, including being designated by the agency to act for it.

[2017, c. 210, Pt. F, §6 (AMD) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §27 (AMD). 2009, c. 112, Pt. A, §17 (AMD). 2017, c. 210, Pt. F, §6 (AMD).

§13199. ASSOCIATE REAL ESTATE BROKER

1. Definition. "Associate real estate broker" or "associate broker" means any person employed by or on behalf of an agency to perform real estate brokerage services and licensed by the commission as an associate broker.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. Professional qualifications.

[2005, c. 378, §29 (AFF); 2005, c. 378, §9 (RP) .]

2-A. Professional qualifications. An applicant for an associate broker license must have been licensed as a real estate sales agent affiliated with a real estate brokerage agency for 2 years within the 5 years immediately preceding the date of application and satisfactorily completed a course of study meeting guidelines established by the commission. The commission may not issue a license under this section until an individual has completed 2 years as a licensed real estate sales agent.

[2009, c. 112, Pt. A, §18 (AMD) .]

3. Acts authorized. Each associate broker license granted entitles the holder to perform all of the acts contemplated by this chapter on behalf of an agency.

[2017, c. 210, Pt. F, §7 (AMD) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §3 (AMD). 1999, c. 129, §12 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §§9,10 (AMD). 2005, c. 378, §29 (AFF). 2007, c. 402, Pt. BB, §28 (AMD). 2009, c. 112, Pt. A, §18 (AMD). 2017, c. 210, Pt. F, §7 (AMD).

§13200. REAL ESTATE SALES AGENT

1. Definition. "Real estate sales agent" or "sales agent" means any person employed by or on behalf of an agency to perform real estate brokerage services in a training capacity and licensed by the commission as a sales agent.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. Professional qualification. Each applicant for a sales agent license must meet the following qualifications:

A. The applicant must satisfactorily complete a course of study meeting commission established guidelines; and [2005, c. 378, §11 (AMD); 2005, c. 378, §29 (AFF).]

B. The applicant must appear at such time and place as the director may designate for the purpose of a written sales agent examination. [2005, c. 378, §11 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §11 (AMD); 2005, c. 378, §29 (AFF) .]

3. Acts authorized. Each sales agent license granted shall entitle the holder to perform all brokerage services contemplated by this chapter which are specifically authorized by the designated broker and which are within the guidelines established by the commission for sales agents.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. License term. Sales agent licenses shall be issued for 2 years and may not be renewed. A new sales agent license may not be reissued within 5 years following the date the previous sales agent license was issued.

[1987, c. 395, Pt. A, §212 (NEW) .]

5. Waiver. The commission may grant waivers to allow individuals to remain licensed as sales agents beyond the 2-year term specified in subsection 4. Waivers shall be granted on the basis of extenuating circumstances as defined by rules promulgated by the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY

1987, c. 395, §A212 (NEW). 2005, c. 378, §11 (AMD). 2005, c. 378, §29 (AFF).

§13201. TIMESHARE AGENT

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1999, c. 129, §16 (AFF). 1999, c. 129, §13 (RP).

Subchapter 5: HOME SERVICE CONTRACTS

§13221. DEFINITIONS

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13222. RULES

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13223. REVIEW OF DECISIONS

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13224. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13225. APPLICATION FOR LICENSE

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1989, c. 502, §B39 (AMD). 1997, c. 209, §4 (RP).

§13226. REQUIRED DEPOSIT OR BOND

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13227. RESERVES

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13228. LICENSE EXPIRATION; RENEWAL

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13229. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE OR DENIAL OF RENEWAL

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13230. AUTOMATIC TERMINATION OF SALES AGENT REGISTRATION

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13231. ORDER, NOTICE OF SUSPENSION OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13232. DURATION OF SUSPENSION; OBLIGATION DURING SUSPENSION PERIOD; REINSTATEMENT

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13233. FILING OF FORMS

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13234. FILING OF FEES

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13235. ANNUAL STATEMENT; EXAMINATION

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1991, c. 627, §1 (AMD). 1997, c. 209, §4 (RP).

§13236. SERVICE OF PROCESS; APPOINTMENT OF DIRECTOR AS PROCESS AGENT

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13237. HOME SERVICE COMPANY SALES AGENT REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13238. PENALTY FOR VIOLATION

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13239. TRANSITIONAL PROVISIONS

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1989, c. 600, §§A15,16 (AMD). 1989, c. 600, §§A15,A16 (AMD). 1991, c. 53, §9 (RP).

Subchapter 6: OPINIONS OF VALUE

§13251. OPINIONS OF VALUE; MOBILE HOMES

(REPEALED)

SECTION HISTORY

1987, c. 770, §10 (NEW). 1999, c. 129, §16 (AFF). 1999, c. 129, §14 (RP).

§13251-A. CONFLICT OF INTEREST

A real estate broker or associate broker may not knowingly provide or offer an appraisal or opinion of market value, as set forth in section 14004, on real estate in a transaction where the broker or associate broker, or any other licensee licensed with the agency, is to receive a fee on that transaction. [1999, c. 185, §3 (AMD).]

SECTION HISTORY

1995, c. 240, §1 (NEW). 1999, c. 185, §3 (AMD).

Subchapter 7: REAL ESTATE BROKERAGE RELATIONSHIPS

§13271. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 679, §1 (NEW).]

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.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

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.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

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

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

4. Buyer agent. "Buyer agent" means a real estate brokerage agency that has entered into a written brokerage agreement with the buyer in a real estate transaction to represent the buyer as its client.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

5. Client. "Client" means a person who has entered into a written brokerage agreement 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.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

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

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

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.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

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

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

9. Ministerial acts. "Ministerial acts" means those acts that a real estate brokerage agency performs for a person who is not a client and that are informative or clerical in nature and do not rise to the level of active representation on behalf of the person.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

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 licensees, associates or employees and licensed by the commission as a real estate brokerage agency.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

11. Seller agent. "Seller agent" means a real estate brokerage agency that has entered 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.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

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

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

13. Third party.

[2005, c. 378, §29 (AFF); 2005, c. 378, §13 (RP) .]

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 without a fiduciary relationship as a buyer agent, a seller agent, a subagent or a disclosed dual agent.

[2005, c. 378, §13 (NEW); 2005, c. 378, §29 (AFF) .]

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 knowledge and informed consent of the clients.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

1993, c. 679, §1 (NEW). 1999, c. 129, §15 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §13 (AMD). 2005, c. 378, §29 (AFF).

§13272. SCOPE OF AGENCY

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 care, diligence and accounting as set forth in this chapter. Such a real estate brokerage agency may be a seller agent, a buyer agent, a subagent or a disclosed dual agent. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY

1993, c. 679, §1 (NEW). 2005, c. 378, §14 (AMD). 2005, c. 378, §29 (AFF).

§13273. SELLER AGENT

1. Duty to seller. A seller agent:

A. Shall perform the terms of the brokerage agreement made with the seller; [1993, c. 679, §1 (NEW).]

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

- (1) Seeking a sale at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the seller except that the seller agent is not obligated to seek additional offers to purchase the property while the property is subject to a contract of sale unless the brokerage agreement so provides;
- (2) Presenting in a timely manner all offers to and from the seller, even when the property is subject to a contract of sale;
- (3) Disclosing to the seller material facts of which the seller agent has actual knowledge or if acting in a reasonable manner should have known concerning the transaction, except as directed in section 13280;
- (4) Advising the seller to obtain expert advice on material matters that are beyond the expertise of the seller agent; and
- (5) Accounting in a timely manner for all money and property received in which the seller has or may have an interest; [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

C. Shall exercise reasonable skill and care; [1993, c. 679, §1 (NEW).]

D. Shall comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission; [1993, c. 679, §1 (NEW).]

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage including fair housing and civil rights laws or regulations; [1993, c. 679, §1 (NEW).]

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

- (1) The seller to whom the information pertains grants consent to disclose the information;
- (2) Disclosure of the information is required by law;
- (3) The information is made public or becomes public by the words or conduct of the seller to whom the information pertains or from a source other than the seller agent; or
- (4) Disclosure is necessary to defend the seller agent against an accusation of wrongful conduct in a judicial proceeding before the commission or before a professional committee; and [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

G. Must be able to promote alternative properties not owned by the seller to prospective buyers as well as list competing properties for sale without breaching any duty to the client. [1993, c. 679, §1 (NEW) .]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

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

A. A seller agent shall treat all prospective buyers honestly and may not knowingly give false information and shall disclose in a timely manner to a prospective buyer all material defects pertaining to the physical condition of the property of which the seller agent knew or, acting in a reasonable manner, should have known. A seller agent is not liable to a buyer for providing false information to the buyer if the false information was provided to the seller agent by the seller agent's client and the seller agent did not know or, acting in a reasonable manner, should not have known that the information was false. A seller agent is not obligated to discover latent defects in the property. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

B. Nothing in this subchapter precludes the obligation of a buyer to inspect the physical condition of the property. A cause of action may not arise on behalf of any person against a seller agent for revealing information in compliance with this subchapter. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

C. A seller agent may provide assistance to the buyer by performing ministerial acts such as preparing offers and conveying those offers to the seller and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the buyer may not be construed as violating the seller agent's agreement with the seller or forming a brokerage agreement with the buyer. Performing ministerial acts for the buyer does not make the seller agent a transaction broker for the buyer. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

1993, c. 679, §1 (NEW). 2005, c. 378, §14 (AMD). 2005, c. 378, §29 (AFF) .

§13274. BUYER AGENT

1. Duty to buyer. A buyer agent:

A. Shall perform the terms of the brokerage agreement made with the buyer; [1993, c. 679, §1 (NEW) .]

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

(1) Seeking a property at a price and terms specified by the buyer except that the buyer agent is not 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;

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

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

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

(5) Accounting in a timely manner for all money and property received in which the buyer has or may have an interest; [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

C. Shall exercise reasonable skill and care, except that a buyer agent is not obligated to discover latent defects in the property; [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

D. Shall comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission; [1993, c. 679, §1 (NEW).]

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage including fair housing and civil rights laws or regulations; [1993, c. 679, §1 (NEW).]

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

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

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

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

(4) Disclosure is necessary to defend the buyer agent against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee; and [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

G. Must be able to promote other properties in which the buyer is interested to other buyers who might also be clients of the buyer agent without breaching any duty or obligation. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

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

A. A buyer agent shall treat all prospective sellers honestly and may not knowingly give them false information including material facts about the buyer's financial ability to perform the terms of the transaction. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

B. A buyer agent is not liable to a seller for providing false information to the seller if the false information was provided to the buyer agent by the buyer agent's client and the buyer agent did not know or, acting in a reasonable manner, should not have known that the information was false. A cause of action may not arise on behalf of any person against a buyer agent for revealing information in compliance with this subchapter. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

C. A buyer agent may provide assistance to the seller by performing ministerial acts such as preparing and conveying offers to the buyer and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the seller may not be construed as violating the buyer agent's agreement with the buyer or forming a brokerage agreement with the seller. Performing ministerial acts for the seller does not make the buyer agent a transaction broker for the seller. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

1993, c. 679, §1 (NEW). 2005, c. 378, §14 (AMD). 2005, c. 378, §29 (AFF).

§13275. DISCLOSED DUAL AGENT

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

- A. A description of the transactions in which the real estate brokerage agency will serve as a disclosed dual agent; [1993, c. 679, §1 (NEW).]
- B. A statement that, in serving as a disclosed dual agent, the real estate brokerage agency represents 2 clients whose interests are adverse and that the agency duties are limited; [1993, c. 679, §1 (NEW).]
- C. A statement that the disclosed dual agent may disclose any information to one party that the disclosed dual 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;
 - (2) The willingness or ability of the buyer to pay more than has been offered;
 - (3) Confidential negotiating strategy not disclosed in the sales offer as terms of the sale; and
 - (4) The motivation of the seller for selling and the motivation of the buyer for buying; [2005, c. 378, §15 (AMD); 2005, c. 378, §29 (AFF).]
- D. A statement that the client may choose to consent or not consent to the disclosed dual agency; and [1993, c. 679, §1 (NEW).]
- E. A statement that the consent of the client has been given voluntarily and that the agreement has been read and understood. [1993, c. 679, §1 (NEW).]

[2005, c. 378, §15 (AMD); 2005, c. 378, §29 (AFF) .]

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 client relationship by making disclosures permitted or required by this subchapter.

[2005, c. 378, §16 (AMD); 2005, c. 378, §29 (AFF) .]

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 licensees.

[1993, c. 679, §1 (NEW) .]

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 set forth in section 13274, except that:

- A. A disclosed dual agent may not promote the interests of one party to the detriment of the other party except as required to comply with this section; and [2005, c. 378, §17 (NEW); 2005, c. 378, §29 (AFF).]
- B. A disclosed dual agent may disclose any information to one party that the disclosed dual 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;
 - (2) The willingness or ability of the buyer to pay more than has been offered;
 - (3) Confidential negotiating strategy not disclosed in the sales offer as terms of the sale; and

(4) The motivation of the seller for selling and the motivation of the buyer for buying. [2005, c. 378, §17 (NEW); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §17 (NEW); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

1993, c. 679, §1 (NEW). 2005, c. 378, §§15-17 (AMD). 2005, c. 378, §29 (AFF).

§13276. INTERPRETATION

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 preclude the use of common law, when it is not inconsistent with this subchapter, in defining and interpreting the duties listed in section 13272. This section does not abrogate an injured party's cause of action pursuant to this chapter. [1993, c. 679, §1 (NEW) .]

SECTION HISTORY

1993, c. 679, §1 (NEW).

§13277. WRITTEN POLICY

Every real estate brokerage agency shall adopt a written company policy that identifies and describes the types of real estate brokerage relationships in which the designated broker and affiliated licensees may engage. [2005, c. 378, §18 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

1993, c. 679, §1 (NEW). 2005, c. 378, §18 (AMD). 2005, c. 378, §29 (AFF).

§13278. APPOINTED AGENTS WITHIN A FIRM

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

[1993, c. 679, §1 (NEW) .]

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

[2005, c. 378, §19 (AMD); 2005, c. 378, §29 (AFF) .]

3. Actual knowledge; information. When agents are appointed, each client, the real estate brokerage agency and its appointed 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 and appointed agents.

[1993, c. 679, §1 (NEW) .]

4. Appointments; roles. Methods of appointment and the role of the real estate brokerage agency and the designated broker must be defined by rules adopted by the commission. The 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 brokerage agreement.

[2005, c. 378, §19 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

1993, c. 679, §1 (NEW). 2005, c. 378, §19 (AMD). 2005, c. 378, §29 (AFF).

§13279. REAL ESTATE BROKERAGE RELATIONSHIP DISCLOSURE REQUIRED

A real estate brokerage agency shall provide in a timely manner to buyers and sellers of residential real property a meaningful, written real estate brokerage relationship disclosure form as defined and mandated by rules adopted by the commission. For purposes of this section, "residential real property" means real estate consisting of not less than one nor more than 4 residential dwelling units. [2005, c. 378, §20 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY

1993, c. 679, §1 (NEW). 1999, c. 100, §1 (AMD). 2005, c. 378, §20 (AMD). 2005, c. 378, §29 (AFF).

§13280. REAL ESTATE COMMISSION RULES

The commission shall adopt rules setting forth criteria necessary to the implementation of this subchapter. The rules must include, but are not limited to, the following: [1993, c. 679, §1 (NEW) .]

1. Disclosure. Those aspects of the services of a real estate brokerage agency and its affiliated licensees that must be disclosed to a client; and

[1993, c. 679, §1 (NEW) .]

2. Handling of information. Procedures to be followed by a real estate brokerage agency and its affiliated licensees to prevent the mishandling of information and undisclosed dual agency in the representation of clients. In adopting these rules, the commission shall consider the formal and informal sharing of information within a real estate brokerage agency, the arrangement of real estate brokerage agency office space, the relationships of affiliated licensees within a real estate brokerage agency who are representing clients with adverse interests and means of avoiding client representation by an undisclosed dual agent. The commission shall review the professional responsibility rules and practices of the legal profession with regard to conflict of interest in considering the adoption of rules under this subsection.

[1993, c. 679, §1 (NEW) .]

SECTION HISTORY

1993, c. 679, §1 (NEW).

§13281. 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 brokerage agreement and continue until performance, completion, termination or expiration of that brokerage agreement.

[2005, c. 378, §21 (AMD); 2005, c. 378, §29 (AFF) .]

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:

A. Accounting in a timely manner for all money and property related to, and received during, the relationship; and [1993, c. 679, §1 (NEW).]

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

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

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

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

(4) Disclosure is necessary to defend the real estate brokerage agency or an affiliated licensee against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee. [2005, c. 378, §22 (AMD); 2005, c. 378, §29 (AFF) .]

[2005, c. 378, §22 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

1993, c. 679, §1 (NEW). 2005, c. 378, §§21,22 (AMD). 2005, c. 378, §29 (AFF) .

§13282. PRESUMPTION

Except as otherwise provided in this subchapter, a real estate brokerage agency providing real estate brokerage services is presumed to be acting as a transaction broker unless the real estate brokerage agency has agreed, in a written brokerage agreement, to represent one or more parties to the real estate transaction as the real estate brokerage agency's clients. Client representation may not be created orally or by implication or be assumed by a real estate brokerage agency or any party to a real estate transaction. [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

2005, c. 378, §23 (NEW). 2005, c. 378, §29 (AFF) .

§13283. TRANSACTION BROKER

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

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

2. Responsibilities. A transaction broker shall:

- A. Account in a timely manner for all money and property received; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]
- B. Disclose in a timely manner to a buyer to a transaction all material defects pertaining to the physical condition of the property of which the transaction broker has actual notice or knowledge; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]
- C. Comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]
- D. Comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage, including fair housing and civil rights laws or regulations; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]
- E. Treat all parties honestly and may not knowingly give false information; and [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]
- F. Perform such ministerial acts as may be agreed upon between the transaction broker and one or more parties to a real estate transaction. [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

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

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

3. Prohibited acts. A transaction broker may not:

- A. Conduct an inspection, investigation or analysis of a property for the benefit of any party; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]
- B. Verify the accuracy or completeness of oral or written statements made by the seller or buyer or any 3rd party; or [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]
- C. Promote the interests of either party to a transaction except as required to comply with this section. [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

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

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

5. Actual knowledge; information. In a situation in which one affiliated licensee acting as an appointed agent of a real estate brokerage agency represents a party to a real estate transaction as the real estate brokerage agency's client and another affiliated licensee of the same real estate brokerage agency is acting as a transaction broker for another party to the transaction, 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 parties, the real estate brokerage agency or its affiliated licensees.

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY

2005, c. 378, §23 (NEW). 2005, c. 378, §29 (AFF).

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