

COURSE OUTLINE
REAL ESTATE BROKERAGE RELATIONSHIPS AND DISCLOSURES - RESIDENTIAL
APPROVED COURSE OF THE MARYLAND REAL ESTATE COMMISSION
CATEGORY (H)

I. INTRODUCTION

A. **Effective Date of Original Law:** January 1, 1999

Effective Date of Revision: October 1, 2019

B. **Application of Law**

1. Applies to:

- a. The sale or lease of real property improved by one, two, three, or four single family units.
- b. Unimproved real property zoned for residential use by the local zoning authority of the county or municipality in which the real property is located.
- c. Lease of more than 125 days.

C. **Definition of Terms**

1. "Broker" means a licensed real estate broker, including a corporation, limited liability company, partnership, or sole proprietorship through which a licensed real estate broker provides real estate brokerage services under Sec.17-321.
2. "Brokerage Agreement" means a written agreement between a broker and a client to provide real estate brokerage services under a brokerage relationship.
3. "Brokerage relationship" means a relationship under a Brokerage Agreement between a client and a broker who has been authorized by the client to provide real estate brokerage services in a residential real estate transaction.
4. "Client" means a person who has entered into a Brokerage Agreement with a broker under a brokerage relationship.
5. "Dual Agency" means each relationship in which a licensed real estate broker or branch office manager acts as a dual agent.
6. "Seller's agent" means a licensed real estate broker who, in accordance with a Brokerage Agreement, acts as the listing broker for real estate, or a licensed associate real estate broker or licensed real estate salesperson who is affiliated with the listing broker.
7. "Buyer's agent" means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who, in accordance with a Brokerage Agreement, represents a prospective buyer or lessee in the acquisition of real estate for sale or for lease.
8. "Subagent" means a licensed real estate broker, licensed associate real estate broker, or licensed real estate salesperson who:
 - a. is not affiliated with or acting as the listing real estate broker for a property;
 - b. is not a buyer's agent;
 - c. has a brokerage relationship with the seller or lessor; and
 - d. assists a prospective buyer or lessee in the acquisition of real estate for sale or for lease in a nonagency capacity.
9. "Ministerial Act" means an act that
 - a. A licensee performs on behalf of a client before and after the execution of a contract of sale or lease.
 - b. Assists another person to complete or fulfill a contract of sale or lease with the client of the licensee.

- c. Does not involve discretion or the exercise of the licensee's own judgment.

II. GENERALLY APPLICABLE PROVISIONS OF LAW

A. Required contents of a Brokerage Agreement. A Brokerage Agreement shall:

1. Be in writing.
2. Have a definite termination date that is effective automatically without notice from client.
3. State the amount of compensation to be paid to the broker and whether the broker is authorized to receive the compensation from a person other than the client
4. State whether the broker is authorized to cooperate with other brokers and share compensation with the other brokers and the amount of compensation to be shared.
5. Explain the events or conditions that will entitle the broker to a commission or other compensation.
6. Contain a provision for the cancellation of the brokerage relationship by either the client or the broker.
7. The law does not prohibit a broker and a client from entering a Brokerage Agreement that imposes additional duties and obligations upon a licensee in addition to the duties and obligations specified above. (more responsibility and additional confidentiality)

B. Payment of Compensation DOES NOT create a brokerage relationship.

1. The payment or promise of payment of compensation to a licensed real estate broker by a seller, lessor, buyer, or lessee or by a licensee acting for a seller, lessor, buyer or lessee;
 - a. Is NOT determinative of whether a brokerage relationship has been created or exists.
 - b. Does NOT create or determine the existence of a brokerage relationship between a broker and a seller, lessor, buyer, lessee or licensee.

C. Commencement and Expiration of Brokerage Relationship

1. A brokerage relationship commences at the time that a client enters into a Brokerage Agreement and shall continue until:
 - a. The Completion of performance in accordance with the Brokerage Agreement.; or
 - b. The earliest of:
 - i. Any date of expiration as agreed on by the parties in the Brokerage Agreement in writing or in any amendments to the Brokerage Agreement.
 - ii. Any mutually agreed on termination of the brokerage relationship that is in writing.
 - iii. A default by any party under the terms of the Brokerage Agreement; or
 - iv. A termination caused by a client who elects not to consent to dual agency.

D. Duties Owed by a Licensee to Client and Non-Client

1. A licensee shall:
 - a. Act in accordance with the terms of the Brokerage Agreement.
 - b. Promote the interests of the client by:
 - i. Seeking a sale or lease of real estate at a price or rent specified in the Brokerage Agreement or at a price or rent acceptable to the client.
 - ii. Seeking a sale or lease of real estate on terms specified in the Brokerage Agreement or on terms acceptable to the client.
 - iii. Unless otherwise specified in the Brokerage Agreement, presenting in a timely manner, all written offers or counteroffers to and from the client, even if the real estate is subject to an existing contract of sale or lease.

- c. Make all disclosures of material fact as required by law.
- d. Treat all parties to the transaction honestly and fairly and answer all questions truthfully.
- e. In a timely manner, account for all trust money received.
- f. Exercise reasonable care and diligence.
- g. Comply with all:
 - i. Requirements of the Maryland Real Estate Brokers Act
 - ii. Applicable federal, state, and local fair housing laws and regulations
 - iii. Other applicable laws and regulations.
- h. Hold all confidential information confidential which includes information that:
 - i. the seller or lessor will accept a price or rent less than the price or rent set forth in the Brokerage Agreement or will accept terms other than those contained in the Brokerage Agreement;
 - ii. the buyer or lessee is willing to pay a price or rent higher than the price or rent the buyer or lessee offered or will accept terms other than those contained in the offer of the buyer or lessee;
 - iii. discloses the motivation of a buyer, lessee, seller, or lessor or the need or urgency of a seller to sell a buyer to buy a lessee to lease or a lessor to lease;
 - iv. discloses any facts that led the seller to sell, the buyer to buy, the lessee to lease, or the lessor to lease; or
 - v. relates to the negotiating strategy of a client.
- i. Unless the client to whom the confidential information relates, consents, in writing, to a disclosure of that confidential information, a licensee who receives confidential information from or about the licensee's own past or present client or a past or present client of the licensee's broker, MAY NOT disclose that information to:
 - i. Any of the licensee's other clients.
 - ii. Any of the clients of the licensee's broker
 - iii. Any other party.
 - iv. Any licensee acting as an agent for another party
 - v. Any representative of another party
 - vi. The law does not prohibit a broker and a client from entering a Brokerage Agreement that imposes additional duties and obligations upon a licensee in addition to the duties and obligations specified above. (more responsibility and additional confidentiality)
- 2. The specified duties are in addition to any other duties required of the licensee by law that are not inconsistent with these duties.
- 3. The duties specified may not be waived or modified.

E. Duties of Licensee Prior to Entering into a Brokerage Relationship and Following Expiration or Termination of the Brokerage Relationship.

- 1. A licensee may not disclose confidential information obtained from a prospective client in anticipation of forming a brokerage relationship, unless the prospective client consents in writing to the disclosure.
- 2. Except as otherwise provided in the Brokerage Agreement, a licensee shall have no further duties or obligations to a client after the termination, expiration, or completion of performance of the brokerage relationship, except to:
 - a. Account for all trust money in the licensee's possession in accordance with this

title; and

- b. Except as otherwise provided by law, keep confidential all personal and financial information received from the client during the course of the brokerage relationship; and any other information that the client requests during the brokerage relationship to be kept confidential, unless:
 - i. The client consents, in writing, to the disclosure of the information; or
 - ii. The information becomes public from a source other than the licensee.

F. Specified Allowable Activities of Licensees

- 1. A licensee does not breach any duty or obligation to the client by:
 - a. Showing other available properties to prospective buyers or lessees.
 - b. Representing other clients who have or are looking for similar properties for sale or lease.
 - c. Representing other sellers or lessors who have similar properties to that sought by the buyer or lessee.
 - d. Showing the buyer other available properties.
 - e. During an open house, discussing other properties with prospective buyers or lessees, if the licensee has the written consent of the seller or lessor to do so.
 - f. Unless otherwise specified in the Brokerage Agreement, a licensee is not required to seek additional offers to purchase or lease real estate while the real estate is subject to an existing contract of sale or lease.
- 2. A licensee who performs ministerial acts for a person may not be construed to:
 - a. Violate the licensee's duties to the client, provided that the client has consented in the Brokerage Agreement to the licensee's provision of ministerial acts.
 - b. Form a brokerage relationship between the licensee and the person for whom the ministerial acts are performed.

III. DUAL AGENCY

A. Single Licensee Dual Agency Prohibited

- 1. Law prohibits one (1) licensee from acting as the sole agent on behalf of the seller/lessor and buyer/lessee. Three (3) licensees are required for dual agency:
 - a. Intracompany agent for the Seller
 - b. Intracompany agent for the Buyer
 - c. The Dual Agent
 - i. Dual Agent is Broker or Office Manager designated to represent both parties.

B. Intra Company Agent

- 1. Only an Associate Broker or Salesperson who has been designated by the dual agent, may be an intracompany agent
- 2. The Dual Agent (Broker or designee) MAY NOT also act as an intracompany agent in the same transaction.
- 3. An intracompany agent MAY NOT also act as the Dual Agent in the same transaction.
- 4. Written consent for dual agency on form prepared by the Maryland Real Estate Commission is required. The form shall include an affirmation that identifies the property and the buyer when a contract is entered into.
- 5. When acting as a dual agent in a real estate transaction, the dual agent shall assign a licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intracompany agent on behalf of the seller or lessor and another licensed associate real estate broker or licensed real estate salesperson affiliated

with the real estate broker to act as the intra- company agent on behalf of the buyer or lessee.

6. An intracompany agent representing the seller or buyer shall provide the same services to the client as an agent for the seller or buyer would provide in a transaction that does not involve dual agency, including advising the client as to price and negotiation strategy, provided that the intracompany agent has made the appropriate disclosures to the client and the client has consented as required by law to dual agency representation.
7. Except as otherwise required by law and except to the dual agent, an intra-company agent MAY NOT disclose confidential information.
8. Except as otherwise required by law, the dual agent MAY NOT disclose confidential information to the buyer or seller or the buyer's or seller's intra-company agent in the same real estate transaction.
9. A real estate broker who offers any financial bonuses to licensees affiliated with the broker for the sale or lease of real property listed with the real estate broker shall provide to each party to a real estate transaction a statement that discloses that financial bonuses are offered.
10. A cause of action may not arise against a licensee for disclosure of the dual agency relationship as provided by this section.
11. A dual agent does not terminate any brokerage relationship by making any required disclosure of dual agency.
12. In any residential transaction a licensee may withdraw from representing a client who refuses to consent to a disclosed dual agency and terminate the brokerage relationship with the client.
13. The withdrawal may not prejudice the ability of the licensee to continue to represent the other client in the transaction, nor to limit the licensee from representing the client who refused the dual agency in other transactions not involving dual agency.

C. Dual Agency within a Team

1. If a broker's designee designates intracompany agents the broker's designee may not be a member of the real estate team.
2. Buyer and Seller must be notified in writing of the Team Intracompany agency relationship BEFORE a contract is written.

IV. NOTICE TO UNREPRESENTED PARTIES

- A. A licensee who participates in a residential transaction shall utilize the standard disclosure form prepared by the Real Estate Commission.
 1. No disclosure required to a person who has entered into a Brokerage Agreement
 2. Distinguish between first contact and first face-to-face contact
 - a. First contact – if not face-to-face, disclose who the licensee represents
 - b. Disclosure made in medium in which contact occurs
 3. Open House – Comply with Disclosure requirements through conspicuous display of notice that licensee present at the house represents the Seller
 4. The Written Disclosure shall explain:
 - a. the differences between a seller's agent, buyer's agent, subagent, dual agent, and intra-company agent;
 - b. the duties of a licensee to exercise reasonable care and diligence and maintain confidentiality;

- c. that regardless of whom a licensee represents in a real estate transaction, the licensee has a duty to treat each party fairly and honestly, promptly present each written offer and counteroffer, respond truthfully to each question, disclose all material facts that are known or should be known relating to a property, and offer each property without discrimination;
- d. that a licensee is qualified to advise only on real estate matters and that legal or tax advice should be obtained from a licensed attorney or accountant;
- e. the need for an agreement with a seller's agent, buyer's agent, or dual agent to be in writing and to include the duties and obligations of the agent, how and by whom the agent will be compensated, and any fee-sharing arrangements with other agents;
- f. the duty of a buyer's agent to assist in the:
 - i. evaluation of a property, including the provision of a market analysis of the property; and
 - ii. preparation of an offer on a property and to negotiate in the best interests of the buyer;
- g. the possibility that a dual agency may arise in a real estate transaction and the options that would become available to the buyer and seller or lessee and lessor; and
- h. that any complaints concerning a licensee may be filed with the Commission.

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