

SENATE BILL NO. 319  
INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING, WITH RESPECT TO REAL ESTATE TRANSACTIONS, WHEN A SELLER AGENT OR BUYER AGENT MAY REPRESENT MORE THAN ONE SELLER OR MORE THAN ONE BUYER; MODIFYING CONFIDENTIALITY REQUIREMENTS OWED TO A PRINCIPAL UPON TERMINATION OF THE AGENCY RELATIONSHIP; AMENDING SECTION 37-51-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 37-51-313, MCA, is amended to read:

**"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or similar properties to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the

veracity of information regarding adverse material facts that concern the property;

- (c) act in good faith with a seller and a seller agent; and
- (d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

- (b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and
- (c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section; ~~except as follows: that~~

~~—(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and~~

~~(b)(8) a A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:~~

~~(i)(a) the fact that the buyer is willing to pay more than the offered purchase price;~~

~~(ii)(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;~~

~~(iii)(c) factors motivating either party to buy or sell; and~~

~~(iv)(d) any information that a party indicates in writing to the dual agent is to be kept confidential.~~

~~(8)(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.~~

~~(9)(10) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:~~

- (i) completion of performance by the agent;
- (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or
- (iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

~~(10)~~(11) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;

~~(ii)~~(iii) disclosure required by law or to prevent the commission of a crime;

~~(iii)~~(iv) the information being disclosed by someone other than the broker or salesperson; and

~~(iv)~~(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

~~(11)~~(12) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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