

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 300: GENERAL INFORMATION

SUMMARY: This rule establishes guidelines relating to meetings, agendas, maintenance of records and filing of documents or fees.

Section 1. Meetings

Meetings shall be called by the Chairman or a majority of the members whenever such meetings are deemed necessary for carrying out the business of the Commission, but the Commission shall not meet less than four times a year.

Section 2. Meeting Notices

The Director shall be responsible for distributing meeting notices to the members and to others as required by statute or rule. Notices may also be provided to others deemed to have an interest in the business before the Commission.

Section 3. Meeting Agendas

- A. An agenda for meetings shall be prepared by the Director and shall include business requiring consideration or action by the members. The agenda shall also include all business items requested by the members provided such request is received by the Director at least seven (7) days in advance of the meeting.
- B. Business not included on the agenda may be considered following an affirmative vote of a majority of the members present.

Section 4. Records

The Director shall have custody of the Commission seal and shall maintain a record of all business conducted by the Commission. The Director shall preserve, subject to the provisions of 5 M.R.S.A. Chapter 6, all books, documents and papers entrusted to his care. Records shall be opened to public inspection subject to 1 M.R.S.A. Chapter 13. Delays in making records available for inspection may be occasioned by action necessary to preserve the security of records, to obtain legal advice, or to avoid disrupting regular business activities and for these reasons it is recommended that requests be submitted three (3) business days in advance of anticipated inspection.

Access to written communication with the Assistant Attorney General, criminal history records, materials relating to license examinations and other records may be restricted subject to 1 M.R.S.A. Chapter 13.

Section 5. Filing of Applications, Documents and Fees

Whenever the statutes or rules specify filing with the Commission it shall be construed to mean the Director of the Commission. The Director shall be responsible for transmitting the information to the members if notice or action by the members is required. Timely filing with the Director shall be considered timely filing with the members.

Section 6. Chairman

The Chairman shall be elected by the members at the first meeting in December of each year and shall take office on the following January 1st. The Commission members may also elect a Vice Chairman to preside over meetings in the absence of the Chairman.

STATUTORY AUTHORITY: 32 M.R.S.A. Section 13065(8)

EFFECTIVE DATE:

February 1, 1988

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 22, 1996

AMENDED:

October 4, 1999

NON-SUBSTANTIVE CORRECTION:

April 6, 2000 - spacing only

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

CHAPTER 310 ADVISORY RULINGS

SUMMARY: This chapter details procedures for submission, consideration, and disposition of requests for advisory rulings.

Section 1. Authority and Scope

The Commission may issue an advisory ruling pursuant to 5 M.R.S.A. §9001 concerning the applicability to an existing factual situation of any statutes or rules it administers. Each request shall be reviewed individually by the Director to determine whether an advisory ruling is appropriate. The Director may decline the request for an advisory ruling when the question is hypothetical, if there is insufficient experience upon which to base a ruling, or for any other reason deemed proper. The denial of a request may be appealed to the Commission by providing written notice to the Director within twenty (20) days following the denial.

Section 2. Submission

A request for an advisory ruling shall be submitted to the Director in writing and shall set forth in detail all facts pertinent to the question. The Director may require additional information as necessary to complete a factual background for a ruling of the Commission.

Section 3. Acknowledgment

A request for an advisory ruling shall be acknowledged by the Director within ten (10) days of receipt. Within thirty (30) days the Director shall provide notification that a request for ruling shall or shall not be presented to the Commission, or the Director may request additional information which is necessary to determine whether or not an advisory ruling is appropriate.

An advisory ruling shall be in writing and shall include a statement of facts or assumptions, or both, upon which the ruling is based. The statement, without reference to other documents, shall be sufficiently detailed to allow understanding of the basis of the opinion. A ruling shall be rendered with the assent of four (4) members of the Commission. An advisory ruling shall be signed by the Chairman of the Commission, shall be identified specifically as an advisory ruling, and shall be numbered serially.

Section 4. Disposition

An advisory ruling shall be mailed to the requesting party and a copy shall be kept by the Director. An advisory ruling is a public document and shall be available for public inspection during normal working hours of the Commission. In addition, the Commission, as it deems appropriate, may otherwise publish or circulate an advisory ruling.

STATUTORY AUTHORITY: 32 M.R.S.A., Section 13065

EFFECTIVE DATE: February 1, 1988

AMENDED: October 1, 1992

EFFECTIVE DATE (ELECTRONIC CONVERSION):

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

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CHAPTER 340 COMPLAINTS AND INVESTIGATIONS

SUMMARY: This rule establishes guidelines and procedures for filing complaints, conducting investigations and disposition of matters following investigations.

Section 1. Verified Complaints

A copy of a written verified complaint, signed under oath, alleging activities in violation of 32 M.R.S.A. Chapter 114 or concerning the qualifications of any Commission licensee, shall be sent by regular mail to the last known address of the person against whom the complaint is filed and his designated broker together with a request for a written response to the allegation. The investigation may also include such other inquiries as may be deemed appropriate in order to complete the processing of the complaint according to the provisions of 32 M.R.S.A. §13067 or §13174.

Section 2. Other Investigations

An investigation may be conducted based upon information other than a verified complaint if such information provides prima facie evidence of a violation of 32 M.R.S.A. Chapter 114, or if the information raises a substantial question regarding the qualifications of any applicant or licensee.

Section 3. Member Request for Investigation

A member of the Commission may file a complaint or request an investigation, but such complaint or request shall serve to disqualify the member from participating in a hearing or a consent agreement regarding the issue. He shall be prohibited from discussing the issue with other members, except as a witness or party, until after final agency action and the time for appeal has lapsed or appeal rights have been exhausted.

Section 4. Prohibited Communications

The members shall avoid discussing, except with adequate notice and opportunity for all parties to participate, any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, until after final agency action and the time for filing an appeal has lapsed or appeal remedies have been exhausted.

This rule shall not be construed to limit the members at Commission meetings from discussion among themselves or with the attorney for the Commission. These rules shall not be construed to limit communications regarding closed matters, investigations in general, inquiries regarding the status of a specific case, or other matters not relating to issues of fact or law concerning a specific case.

STATUTORY AUTHORITY: 32 M.R.S.A., Section 13065

EFFECTIVE DATE: February 1, 1988

AMENDED: April 17, 1992 - Sec., 1, 2 & 4

EFFECTIVE DATE (ELECTRONIC CONVERSION):

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

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Chapter 350: ADJUDICATORY HEARINGS

SUMMARY: This rule establishes policies, guidelines and procedures relating to adjudicatory proceedings which come before the Commission.

Section 1. Hearings in General

Commission hearings shall conform to the Administrative Procedures Act 5 M.R.S.A. Chapter 375.

Section 2. Duties and Responsibilities of the Chairman

The Chairman or an alternate designated by the Commission shall preside at a hearing in a manner affording consideration of fair play and compliance with the constitutional requirements of due process. The Chairman shall also have authority to:

- A. Hold a conference for the simplification of issues;
- B. Issue subpoenas requested by the parties;
- C. Place witnesses under oath;
- D. Take action necessary to maintain order;
- E. Rule on motions and procedural questions arising during the hearing;
- F. Call recesses or adjourn the hearing; and
- G. Prescribe and enforce general rules of conduct and decorum.

Section 3. Role of Commission Members

The members collectively shall be responsible for reviewing evidence and hearing testimony and argument in order to:

- A. Determine whether or not the alleged conduct was supported by the evidence;

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- B. Determine whether or not the conduct was a violation of 32 M.R.S.A. Chapter 114 and/or related rules;
 - C. Determine and impose appropriate sanctions; and
 - D. Determine whether or not to issue cease and desist orders, and to issue such orders.

Section 4. Ex Parte Communications

A member shall not discuss an issue of fact or law concerning a case or pending appeal which comes before the Commission, except with notice and opportunity for participation by all parties. This rule shall not be construed to limit a discussion that does not relate to the merits of a case, such as scheduling or procedural issues. A member shall not be limited from discussing a case at meetings with the attorney for the Commission.

Section 5. Parties

Parties in a Commission hearing, with the exception of the Director or the Director's designee and an intervenor, shall be limited to:

- A. The person against whom the allegation is made; or
- B. The person whose qualifications are in question.

Section 6. Intervention

An application for intervention in a Commission proceeding shall be filed, except for good cause shown, at least seven (7) days in advance of the scheduled hearing. Rulings by the Chairman shall be subject to the provisions of 5 M.R.S.A. §9054.

Section 7. Order of Proceedings

The order of proceedings, unless modified by the Chairman to facilitate the hearing, shall be as follows:

- A. The party bringing the action may offer an opening statement;
- B. The party defending against the action may offer an opening statement;
- C. The party presenting evidence in support of the action may offer his case;
- D. The party defending against the action may cross examine each witness;
- E. The party defending against the action may offer his case;

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- F. The party in support of the action may cross examine each witness; and
 - G. Each party may offer a closing statement at the hearing or in writing within seven (7) business days following the hearing.

Section 8. Subpoenas

A party shall be entitled to the issuance of subpoenas in the name of the Commission subject to the provisions of 5 M.R.S.A. §9060. Subpoenas shall be requested, except for good cause, at least ten (10) days in advance of a scheduled hearing. Subpoenaed witnesses shall be paid the same fees for attendance and travel as in civil cases before the courts. Fees shall be paid by the party requesting the subpoenas when the request is submitted.

Section 9. Appeals of Director's Decisions

The decision of the Director may be appealed in any of the following circumstances:

- A. Denial of an examination for licensing; or,
- B. Denial of a license or license renewal.

The appeal for a hearing before the Commission shall be in writing within thirty (30) days following the receipt of the decision of the Director.

Section 10. Notice of Hearings

Notice of a hearing shall be given to all parties at least ten (10) days prior to the date on which the hearing is to be held.

STATUTORY AUTHORITY: 32 M.R.S.A. Section 13065(1)

EFFECTIVE DATE:

February 1, 1988

AMENDED:

April 17, 1989 - Section 3

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 22, 1996

AMENDED:

October 4, 1999

Summary: This chapter establishes the educational guidelines which must be met by individuals in order to qualify for licensure under 32 MRSA Chapter 114.

1. Policy Statement

The Commission shall encourage the development and delivery of high quality pre-licensure courses throughout the state. In an effort to heighten professionalism within the real estate industry, the Commission shall encourage degree-granting institutions in the state to develop and deliver such courses

2. Definitions

1. Qualifying Educational Program

“Qualifying educational program” means a program or course of study which meets one or more of the minimum competencies defined in the Commission-approved models entitled “The Sales Agent Course,” “The Associate Broker Course” or “The Designated Broker Course.” These courses shall be sponsored by a degree-granting institution, a proprietary school or a public school adult education program that follows the Commission-established procedure for approval.

2. Program Sponsor

A program sponsor shall be defined as that individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a course or program.

3. Satisfactory Completion

Satisfactory completion of a course or program shall mean having met all minimum requirements established by the sponsor for the course or program and having achieved a grade of at least 75%.

4. Degree Program Meeting Commission-Established Guidelines

“Degree program” means a program in business requiring a minimum of 60 credit hours of study, which shall include a minimum of 9 credit hours of real estate course work covering the minimum competencies defined in the Commission-approved models “The Sales Agent Course,” “The Associate Broker Course” and “The Designated Broker Course.”

3. Approval of Qualifying Educational Program

1. Syllabus

The program sponsor shall submit the course syllabus, on a form furnished by the director, meeting the minimum course competencies set for each course as described in Section 5 of this chapter for each pre-licensure course offered. The syllabus, at a minimum, must contain:

- A. Name, address, phone number of the sponsor;
- B. Name, address, phone number of the instructor;
- C. Course title;
- D. Course start and end dates;
- E. Class session times;
- F. Course text titles and publishers;
- G. A class session-by-session breakdown of the content and concepts to be covered, with quiz and test dates noted;
- H. Grading policy;
- I. Attendance policy; and
- J. Final course examination and answer key.

The course sponsor shall submit the syllabus and the filing fee to the director at least 30 days prior to the first class session. A syllabus received less than 30 days prior to the first class session will be assessed a late filing fee.

2. Reporting Program Changes

The course sponsor shall report any substantial change in a submitted or approved course syllabus to the director.

3. Syllabus Review

The director, within 30 days of receipt of a complete syllabus, shall notify the sponsor, in writing, of the approval or denial of the syllabus.

4. Appeal of Denial to the Director

A sponsor who is aggrieved by denial of syllabus approval may request a hearing to appeal the decision. Such request shall be made in writing, and shall be submitted within 30 days of receipt of the denial of the syllabus.

5. Distribution of Course Guidelines and Syllabus.

At the first class session, the sponsor shall disseminate to students the course guidelines developed by the Commission and the syllabus.

6. Advance Notice to Course Participants

Upon commencement of the first class session of a pre-licensure course, the instructor shall read and distribute to the students one of the following statements. If the syllabus for the course has been approved, Statement #1 is to be read. If the syllabus for the course has not been submitted or the course has not received approval, Statement #2 is to be read.

Statement #1 – “The Maine Real Estate Commission is committed to quality real estate education. Toward this goal, the syllabus for this pre-licensure course has been reviewed and approved as meeting the guidelines established by the Commission. These guidelines and the syllabus have been distributed for your information. At the end of this course, you will be given an opportunity to critique this course and its delivery. The Commission welcomes your comments regarding your experience in this course.”

Statement #2 – “The Maine Real Estate Commission is committed to quality real estate education. To achieve this goal, the syllabus for each pre-licensure course must be submitted and approved before the course is promoted as meeting pre-licensure requirements. The syllabus for this course has not been approved. Unless and until it is approved, you may not assume that successful completion of this course will qualify you for licensure”.

7. Student Enrollment Report.

The course sponsor shall be responsible for submitting a completed enrollment report, in a format approved by the director, within 30 days of the completion of each pre-licensure course.

8. Evaluations Required

The course sponsor shall distribute course evaluation forms to students for their critique of the learning experience. A summary of the student evaluations shall be submitted to the director with the enrollment report.

9. Transcripts

The course sponsor shall provide a course transcript to students successfully completing the course. Such transcript shall, at a minimum, include the course title, student’s name, final numerical grade, beginning and course completion date and be signed by the course sponsor.

10. Disciplinary Action

Approval of pre-license courses may be revoked or suspended for violation of this chapter.

11. Prohibition Against Recruiting

The course sponsor shall not allow anyone to use the school's premises or classroom to recruit new affiliates for any real estate brokerage company.

4. Educational Requirements For Licensure

1. Real Estate Broker

A. An applicant who has one year of full-time practice in real estate brokerage as a licensed associate broker immediately preceding the date of application must submit evidence of satisfactory completion of a qualifying educational program which covers the minimum competencies defined in the Commission-approved model entitled "The Designated Broker Course." The application for licensure must be submitted within one year of completion of this educational program.

B. An applicant who has one year of experience as a sales agent within the 3 years immediately preceding the date of application must submit evidence of satisfactory completion of a 2-year business degree program as defined in Section 2(4) of this chapter. The license application must be submitted within 5 years of completion of the 2-year business degree program as defined in Section 2(4) of this chapter, with the exception that the Commission-approved model entitled "The Designated Broker Course" must be completed within 1 year immediately preceding application for the license.

2. Associate Real Estate Broker

An applicant who has practiced as a real estate sales agent for 2 years within the 5 years immediately preceding the date of application must submit a course transcript confirming that the applicant successfully completed the qualifying educational program which covers the minimum competencies defined in the Commission-approved model entitled "The Associate Broker Course."

3. Real Estate Sales Agent

As a prerequisite to examination, an applicant for a sales agent license must, within one year of completion of the course, submit a course transcript confirming that the applicant successfully completed a qualifying educational program which covers the minimum competencies defined in the Commission-approved model entitled "The Sales Agent Course".

5. Commission Established Minimum Competencies

1. Generally

The Commission shall establish minimum competency requirements for all levels and types of licensure. Educational models and examinations shall be designed to satisfy these requirements.

2. Annual Review

The Commission, on an annual basis, shall review the minimum competencies required for all levels and types of licensure.

STATUTORY AUTHORITY: 32 MRS §13065(6)

EFFECTIVE DATE: July 1, 2006

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

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Chapter 370: CONTINUING EDUCATION

SUMMARY: This rule sets forth the policy and guidelines for review and approval of programs which will be accepted for credit toward continuing education requirements for license renewal.

Section 1. Policy Statement

The Commission shall encourage the development and delivery of high quality real estate educational programs, and, in an effort to stimulate opportunity for professional growth of licensees, shall encourage development and delivery of programs at graduated levels of study.

In reviewing and approving a program application, the Director shall consider:

- A. Program content as it contributes to the ability of the licensee to serve and meet the needs of his clients and customers;
- B. Program content as it assists a licensee to keep informed concerning real estate laws, regulations, and practices;
- C. Geographic availability to licensees.

Section 2. Definition of Terms

- A. Real Estate Educational Program. Real estate educational program shall be defined as a planned learning experience of at least two (2) hours, designed to promote development of knowledge, skills, and attitudes pertaining to real estate brokerage.
- B. Program Sponsor. A Program Sponsor shall be defined as that individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a program.
- C. Program Instructor. A Program Instructor shall be defined as an individual appointed to impart knowledge or information to licensees participating in a program.

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- D. Distance Education. A continuing education distance education course is a program whereby instruction does not take place in a traditional classroom setting but rather where teacher and student are apart and instruction takes place through other media. Distance education programs include but are not limited to those which are presented through interactive classrooms, computer conferencing, interactive computer, the internet and by written correspondence course.
 - E. Core Educational Requirement. A core educational requirement shall be defined as a three hour course which includes all of the Commission approved components for a core course. The commission prescribed curriculum for this course may be obtained from the Director.

Section 3. Program Criteria

- A. Subject Matter. Consistent with 32 M.R.S.A. §13197, the following real estate related topics shall be acceptable subject matter for educational programs:
 - 1. Property valuation;
 - 2. Construction;
 - 3. Contract and agency law;
 - 4. Financing and investments;
 - 5. Land use, planning, zoning and other public limitations on ownership;
 - 6. Landlord-tenant relationships;
 - 7. License laws, rules and standards of professional practice;
 - 8. Taxation;
 - 9. Timeshares, condominiums and cooperatives;
 - 10. Staff supervision and training;
 - 11. Office management;
 - 12. Any additional topic which is approved by the Director.
- B. Examination. Each distance education course must include a comprehensive examination to be completed by the licensee before a grade or credit may be awarded. A copy of the examination must accompany the application for program approval.

Section 4. Administrative Procedure

A. Applications. An application adopted by the Commission for program approval shall be furnished by the Director. This application shall require information on the following:

1. Sponsor;
2. Instructor qualifications;
3. Content and methodology;
4. Length of program;
5. Learning objectives;
6. Assessment of learning objectives;
7. Requirement for completion.

The completed application and the fee shall be submitted to the Director. Applications submitted after the first course session will be assessed a late filing fee.

B. Program Evaluation. A program evaluation shall be required and the results shall be made available to the Director upon request. An evaluation form may be obtained from the Director. A summary of student evaluations shall be submitted when an application for renewed approval is submitted.

C. Reporting Program Changes. A change in a submitted or approved program application shall be reported to the Director. A change in program content or instructor shall be reviewed and approved in advance of the scheduled program.

D. Program Approval. The Director, within thirty (30) days of receipt of a completed application, shall notify the sponsor, in writing, of the terms and duration of the approval, or the reasons for denial.

E. Appeal of the Decision of the Director to "Deny Program Approval." A sponsor who is aggrieved by denial of program approval may request a hearing to appeal the decision. Such request shall be made in writing, and shall be submitted within thirty (30) days of receipt of denial of application.

F. Program Completion. The sponsor, following program delivery, shall issue a certificate of course completion to each licensee successfully completing the course and prepare a roster of licensees successfully completing the course. The

sponsor shall retain the roster of licensees completing the course for a period of not less than three (3) years.

G. Program Renewal. An application adopted by the commission for program renewal shall be furnished by the Director. This application shall require information on the following:

1. Sponsor;
2. Instructor;
3. Length of program;
4. Title;
5. Program approval number;
6. List of dates, times, and locations course was held;
7. List of future dates, times, and locations;
8. Statement by sponsor on the extent to which the identified learning objectives were met;
9. Description of any changes implemented to ensure that the learning objectives will be met in the future; and
10. Summary of student evaluations.

The completed application and the fee shall be submitted to the Director.

H. Approval Expiration. Sponsors who promote and conduct continuing education courses as approved once the course approval has expired, may be subject to suspension or revocation of approval of additional continuing education courses.

Section 5. Program Advertisement

An advertisement for an educational program shall include the following:

- A. A course description sufficient to identify the subject matter to be covered;
- B. Identification of the level of instruction;
- C. Identification of the method or format of instruction;
- D. A statement of program objectives; and
- E. Notice indicating the program has been approved by the Director for continuing education and the number of clock hours to be received upon satisfactory completion of the program.

Section 6. Advance Notice to Program Participants

Upon commencement of each program, participants shall be informed of the following:

"This program has been approved by the Director of the Real Estate Commission for clock hours toward fulfillment of the educational requirements for renewal of a real estate license.

"The Commission is interested in the quality and delivery of educational programs which are offered to licensees and, therefore, welcomes and encourages comments regarding program subject matter and quality of the delivery of the program."

Section 7. Limitations on Obtaining Clock Hours

- A. A licensee shall complete an educational program in its entirety in order to be eligible for continuing education approval.
- B. A licensee, for purposes of renewal or reactivation, shall use only those clock hours which were accumulated during the two (2) years immediately preceding such renewal or activation.
- C. An instructor who teaches an approved program shall receive clock hour approval for that program only once.
- D. Licensees who wish to use a continuing education distance education course to activate or renew a real estate license must complete the distance education course with a minimum grade of 85%.

Section 8. Approval of Individual Requests

- A. An Educational Program in Which a Sponsor Has Not Submitted An Application for Director Approval. The Director shall consider, on an individual basis, a request by a licensee for approval of a program for which the sponsor did not seek approval, but in which the licensee participated. Approval of such a request shall be subject to the program meeting the standards and criteria required by the Director for other educational programs. The licensee shall be responsible for submitting to the Director a completed program application and fee.
- B. Research and Real Estate Related Projects. A licensee may obtain continuing education clock hours, for real estate related research from which a report, article, or thesis results, or for participation in real estate related projects, provided that the director finds that the effort has enhanced the ability of the licensee to meet the needs of his clients and customers. The licensee shall be responsible for submitting documentation and the fee for individual review to the Director.

Section 9. Disciplinary Action

Approval of continuing educational programs may be revoked or suspended for violation of this chapter.

Section 10. Core Educational Requirement

- A. As of January 1, 1994, no real estate license may be renewed or activated unless the licensee has completed a three hour continuing education program approved as meeting the core educational requirement.
 - B. The Commission, on an annual basis, shall review the prescribed curriculum for the core educational requirement.
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STATUTORY AUTHORITY: 32 M.R.S.A. §13065

EFFECTIVE Date:

February 1, 1988

AMENDED:

October 1, 1992 - Sections 2, 3, 4, 7 & 10

April 1, 1994 - Section 4

April 1, 1994 - Section 8

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 22, 1996

AMENDED:

August 5, 2002 - Sections 2(D), 3(B), 4(B, G), 7(B, E), and consequent renumbering.

Summary: This chapter provides information concerning license examinations and explains the procedure for filing license applications.

1. Expiration of Sales Agent License Examination Results

An applicant qualifying for a sales agent license shall apply for licensure within one year of the date of passing the examination. In the absence of proper application for licensure, the applicant shall be required to meet all of the requirements for licensure as set forth in Chapter 360, Section 4(3) of the board's rules for new applicants, including the provisions of this Section.

2. Transcript Requirement

An applicant who seeks to qualify for licensure through educational requirements shall accompany such application for licensure with an official transcript. A transcript shall include, but shall not be limited to, the following:

1. Title of course;
2. Date of completion of course;
3. Numeric grade received; and
4. Signature of the authorized official.

3. Criminal History Records of Applicant

In determining eligibility for a license the Commission, in accordance with 5 MRSA Chapter 341, shall take into consideration criminal history records of the applicant.

4. Nonresident License Applicants

A nonresident license applicant, upon making application for license, shall furnish a certificate of licensure from each state in which he holds a real estate license, evidencing the type of license held, the date of original licensure and a statement indicating that any complaints filed against him have been resolved to the satisfaction of the licensing agency.

5. Documentation of Experience of an Applicant for Real Estate Broker License

An applicant for a real estate broker license who seeks licensure through one year of full-time practice as a licensed real estate associate shall submit proof that he has been engaged in the full-time occupation of real estate brokerage during the 12-month period immediately preceding application. The applicant shall submit to the director a resume documenting his real estate brokerage-related production and activity.

6. Reporting New Designated Brokers

An agency which changes its designated broker shall report such change to the director as required by 32 MRSA §13195.

7. Waiver to 2-Year Sales Agent License

A sales agent license may be extended, due to extenuating circumstances, for one year beyond the 2-year requirement. A request for such waiver shall be made in writing and shall include an explanation and supporting evidence of the extenuating circumstance. The request shall be accompanied by the Sales Agent fee and this fee shall be retained whether or not the waiver is granted. The request shall be evaluated by the director.

STATUTORY AUTHORITY: 32 MRSA §13065

EFFECTIVE DATE: July 1, 2006

Summary: This chapter details requirements of maintaining a real estate brokerage agency and establishes the specific supervisory responsibilities of the designated broker.

1. Responsibilities of Designated Broker

1. Generally

The designated broker shall supervise the activities of affiliated licensees, the activities of unlicensed persons affiliated with the real estate brokerage agency and the operation of the real estate brokerage agency. The supervision includes, at a minimum, the establishment of policies and procedures that enable the designated broker to review, manage and oversee the following:

- A. The real estate transactions performed by an affiliated licensee;
- B. Documents that may have a material effect upon the rights or obligations of a party to a real estate transaction;
- C. The filing, storage and maintenance of such documents;
- D. The handling of money received by the real estate brokerage agency for the parties to a real estate transaction;
- E. The advertising of any service for which a real estate license is required;
- F. The familiarization by the affiliated licensee with the requirements of federal and state law governing real estate transactions; and
- G. The dissemination, in a timely manner, to affiliated licensees of all regulatory information received by the real estate brokerage agency pertaining to the practice of real estate brokerage.

2. Monitoring Compliance

The designated broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems, that includes regular meetings with affiliated licensees, company policy manuals, training programs and materials and availability of designated broker to assist and advise.

3. Delegation

The designated broker may designate another person to assist in administering the provisions of the Commission's rules. However, the designated broker does not relinquish overall responsibility for the supervision of affiliated licensees and unlicensed persons affiliated with the real estate brokerage agency.

4. Company Policy

The designated broker shall have a written company policy that identifies and describes the types of real estate brokerage relationships in which the real estate brokerage agency may engage. In addition, the company policy must also include the procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the real estate brokerage agency, the arrangement of agency office space and the personal relationships of affiliated licensees who are representing buyers and sellers with adverse interests.

5. Review of Sales Agent Documents

The designated broker, at a minimum, shall review and initial, as soon as possible, all contracts, property data sheets, disclosure forms, market analyses and other relevant information prepared by a sales agent for buyers and sellers during the first 90 days of the licensing of the sales agent with the real estate brokerage agency. The requirements of this Section are not intended to affect the validity of a contract.

2. Real Estate Trust Accounts

1. Definition of "Earnest Money Deposit"

As used in this Section, the term "earnest money deposit" includes earnest money deposits and all other money held by the real estate brokerage agency for clients or other persons for purposes related to a real estate brokerage transaction.

2. Various Forms of Real Estate Trust Accounts

A real estate trust account shall be in the form of a checking or savings account and may accrue interest on an earnest money deposit provided that the accumulated interest is properly disbursed. If the parties to the transaction agree to place the earnest money deposit in something other than a real estate trust account, the real estate brokerage agency shall not hold the funds or act as trustee.

3. Opening a Real Estate Trust Account

The real estate trust account checks and bank statements must contain the real estate brokerage agency's trade name as licensed by the commission and must be imprinted with the words "real estate trust account."

4. Making Earnest Money Deposits

An earnest money deposit received by a designated broker, as trustee, shall be deposited within 5 business days of acceptance of the offer. Other earnest money deposits received by the trustee shall be deposited within 5 business days of the trustee's receipt of such earnest money deposits.

5. Restrictions on Earnest Money Deposits in Real Estate Trust Accounts

A designated broker shall not commingle the earnest money deposit of buyers or sellers in a real estate transaction with:

A. Funds belonging to the real estate brokerage agency. This provision shall not be construed to limit deposits made by the real estate brokerage agency of an amount sufficient to maintain the account, but such amount shall not exceed \$500; or

B. Funds held for persons that do not involve the sale, purchase or exchange of real estate.

An earnest money deposit shall not be utilized prior to a closing for selling or buying expenses such as a title fee, survey, etc., unless agreed to in writing by all parties in the transaction. There shall be a proper accounting for all monies held by the real estate brokerage agency and any remittance shall be made within a reasonable time, but not more than 30 days, after the conclusion of the transaction.

6. Maintaining Real Estate Trust Account Records

The designated broker shall maintain records and supporting documents sufficient to verify the adequacy and proper use of the real estate trust account. The records and supporting documents shall be maintained for a period of at least 3 years after the date set forth in Section 7(G) of this chapter.

7. Information Included in Minimum Real Estate Trust Account Records

Minimum real estate trust account records shall include a ledger or journal which records in chronological order all receipts and disbursements of funds in the real estate trust account and provides the following information:

A. The date the earnest money deposit is received by the real estate brokerage agency;

B. The date the earnest money deposit is received by the banking institution;

C. The purpose of the earnest money deposit and from whom received;

D. The purpose of the withdrawal and to whom paid;

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- E. The amount of the earnest money deposit;
 - F. The current running balance of funds held by the real estate brokerage agency; and
 - G. The closing date of a transaction, if any, or the date the earnest money deposit was disbursed.
8. Real Estate Trust Account Supporting Documents
- Real estate trust account supporting documents shall include:
- A. Bank statements;
 - B. Canceled checks;
 - C. Copies of contracts;
 - D. Closing statements, if available;
 - E. Correspondence; and
 - F. Additional items necessary to verify and explain record entries.
9. Disbursement of Undisputed Earnest Money Deposits Held in Trust
- Disbursement of an undisputed earnest money deposit may occur by one of the two following procedures:
- A. Authorization, in writing, from the parties to a real estate brokerage transaction agreeing to the disbursement; or
 - B. Authorization by the designated broker who, in reasonable reliance on the terms of the purchase and sale agreement or other written documents signed by both parties, determines the appropriate disbursement of the undisputed earnest money deposit. The designated broker may, at the designated broker's own discretion, make such disbursement to release the undisputed earnest money deposit no sooner than 5 business days after notifying both parties of the designated broker's proposed decision to release the undisputed earnest money deposit. The earnest money deposit shall not be disbursed under this Section if prior to disbursement the designated broker receives actual knowledge of a dispute as provided in Section 2(10) of this chapter.
10. Disputed Earnest Money
- A. Any time that more than one party to a transaction makes demand on the earnest money deposit for which the real estate brokerage agency is acting as trustee, the designated broker shall:

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- (1) Notify each party, in writing, of the demand of the other party; and
 - (2) Keep all parties to the transaction informed of any actions by the designated broker regarding the disputed earnest money deposit, including retention of the earnest money deposit by the designated broker until receipt of written release from both parties agreeing to the disposition of the earnest money deposit or agreeing that the dispute has been properly resolved.
 - B. After notice as provided in Section 2(10)(A)(1) of this chapter, the designated broker may reasonably rely on the terms of the purchase and sale agreement or other written documents signed by both parties to determine the disposition of the disputed earnest money deposit and may, at the designated broker's own discretion, make such disbursement no sooner than 5 business days after notifying both parties of the designated broker's proposed disbursement of the earnest money deposit. This discretionary disbursement by the designated broker is not a violation of license law, but may not relieve the designated broker of civil liability.
 - C. The designated broker may hold the earnest money deposit until ordered by a court of proper jurisdiction or agreement of the parties to make a disbursement. The designated broker shall give all parties written notice of any decision to hold the earnest money deposit pending a court judgment or agreement of the parties for disbursement.
 - D. Absent written authorization from the party to be charged, the designated broker is not entitled to withhold any portion of the earnest money deposit when a real estate transaction fails to close even if a commission is earned. The earnest money deposit must be disposed of as provided by Section 2(10) of this chapter.
3. Record Retention Schedules; Format.
1. Generally
- All real estate brokerage records, including real estate trust account and supporting records, transaction files, and other brokerage-related records, are to be under the control of the designated broker and made available to the director upon request. Except for rejected offers and counteroffers, which must be kept for one year from the date of the rejected offer or counteroffer, the following records must be kept by the designated broker for 3 calendar years after all funds held by the designated broker in connection with a transaction have been disbursed to the proper party or until the conclusion of the transaction, whichever last occurs:
- A. The original or a true copy of all purchase and sale contracts;
 - B. Listing or buyer brokerage representation agreements, appointed agent consent forms, disclosed dual agent consent forms and the Real Estate

Relationships Form required under Chapter 410, Section 9 of the Commission's rules;

- C. Property disclosure forms, data sheets and other property information prepared by the real estate brokerage agency or one of its affiliated licensees to promote property for sale or purchase;
- D. Real Estate Trust Account ledger records, as listed in Section 2(7) of this chapter; and
- E. Real Estate Trust Account reconciliation records, as listed in Section 2(8) of this chapter.

2. Electronic Format

Real estate brokerage records may be maintained in electronic format, as defined by 10 MRSA Chapter 1051. An electronic record means a record generated, communicated, received or stored by electronic means. Such electronic records must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the director, printed records shall be produced.

4. Examinations for Compliance with Licensing Laws

A real estate brokerage office may be examined for compliance with licensing laws once each licensing period, as necessary as part of an investigation of a complaint filed with the director or may be examined upon receipt of prima facie evidence indicating improper use of a real estate trust account. The designated broker shall produce for inspection by an authorized representative of the Commission any document or record reasonably necessary for investigation or audit in the enforcement of 32 MRSA Chapter 114 and in enforcement of the rules promulgated by the Commission. Failure to submit such documents or records as requested by the director shall be grounds for disciplinary action. The examiner shall notify the agency of the results of such office examination and may file a complaint.

STATUTORY AUTHORITY: 32 MRSA §§13065(7), 13184

EFFECTIVE DATE: July 1, 2006

Summary: This chapter clarifies and establishes standards for practicing real estate brokerage.

1. Advertising

1. Definition

As used in this Section, the terms “advertise,” “advertising” and “advertisement” include all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services conducted by mail, telephone, the Internet, the World Wide Web, E-mail, electronic bulletin board or other similar electronic common carrier systems, business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering machine messages.

2. Trade Name

Advertising must be done in the real estate brokerage agency’s trade name as licensed with the Commission and the trade name must be prominently displayed.

3. Contact Information

Advertising must include information where the public can contact the real estate brokerage agency either by phone or in person at the agency’s place of business as licensed by the Commission.

4. Advertising by Affiliated Licensees

Advertising by affiliated licensees must be under the supervision of the designated broker. Such advertising may include an affiliated licensee’s name and phone number or other contact information, provided the real estate brokerage agency’s trade name and contact information is also included as required in this Section.

5. Written Permission of Owner Required to Advertise

A real estate brokerage agency or its affiliated licensees shall not advertise any real estate for sale without first obtaining the written permission of the owner or the owner's authorized representative.

6. Advertising of Exclusive Listing Held by Another Agency

A real estate brokerage agency or its affiliated licensees shall not publish or cause to be published an advertisement that makes reference to the availability of real estate which is exclusively listed for sale by another real estate brokerage agency unless the licensee obtains the prior written consent of the designated broker who has been authorized by the owner to provide consent.

7. Deception and Misrepresentation Prohibited

Advertising must be free from deception and shall not misrepresent the condition of the real estate, terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.

2. Acting in Self-Interest

A licensee holding an active real estate license shall disclose, in the offer to purchase, that the licensee is a real estate licensee:

1. When buying real estate not listed with a real estate brokerage agency;
2. When buying real estate listed with the licensee's real estate brokerage agency; or
3. When buying real estate and sharing in the brokerage fee resulting from the sale of such real estate.

3. Market Value

1. When Opinion Permitted

A licensee may provide a free opinion of value to a buyer or seller when the licensee is soliciting the buyer or seller to provide brokerage services and before an agreement to provide any services has been reached or executed.

2. When Advice Prohibited

At any time after the solicitation to provide brokerage services, as described in Section 3(1) of this chapter, a transaction broker may not provide advice to either party regarding market value.

3. Provision of Comparable Market Data

A licensee who provides comparable market data to a buyer or seller for the buyer or seller to determine market value or list price is performing a ministerial act as defined in 32 MRSA §13271 (9).

4. Factors or Conditions That May Impact Client's Interest

A licensee who represents a buyer or seller client shall advise the client of any factors or conditions actually known by the licensee, or if acting in a reasonable manner, should have been known by the licensee, that may materially impact the client's interest as it pertains to the market value of real estate.

4. Net Listing Prohibited

A net listing shall be prohibited. A net listing is a type of listing in which the real estate brokerage agency receives, as commission, all excess money over and above the minimum sale price set by the seller.

5. Duty to Furnish Real Estate Brokerage-Related Documents

A licensee shall furnish copies of brokerage agreements, offers, counteroffers, and all types of contracts to all parties at the time of their signatures. Upon obtaining a written acceptance of an offer or counteroffer to purchase real estate, a licensee shall, within a reasonable time, deliver true, legible copies of the purchase and sale contract, signed by the seller and buyer, to both seller and buyer.

6. Disclosure of Real Estate Brokerage Agency Compensation Policy

1. Other Agencies

Written brokerage agreements must include a statement disclosing the real estate brokerage agency's policy on cooperating with and compensating other real estate brokerage agencies in the sale or purchase of real estate. If the real estate brokerage agency's policy is not to compensate all other real estate brokerage agencies in the same manner, this policy must be included in the statement and include a notice to the buyer or seller that this policy may limit the participation of other real estate brokerage agencies in the marketplace.

2. Affiliated Licensees

When a real estate brokerage agency's policy on paying commissions to its affiliated licensees provides for an incentive to an affiliated licensee for a greater commission for an in-house sale versus transactions involving a cooperating real estate brokerage agency, this policy must be disclosed in a written brokerage agreement with a buyer or seller.

7. Disclosed Dual Agency

A real estate brokerage agency which has a written company policy that permits disclosed dual agency shall obtain the informed written consent, as set forth in 32 MRSA §13275, of the seller or buyer to the disclosed dual agency relationship at the time of entering into a written brokerage agreement that creates an agent-client relationship.

8. Appointed Agent Procedures and Disclosure

1. Designated Broker Responsibilities – Appointed Agent

A. A designated broker appointing an affiliated licensee(s) to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.

B. An appointed agent may disclose to the agency's designated broker, or a designee specified by the designated broker, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction. Confidential information shall be treated as such by the designated broker or other specified representative of the broker and shall not be disclosed unless otherwise required by 32 MRSA Chapter 114 or related rules or requested or permitted by the client who originally disclosed the confidential information.

C. A designated broker who is appointed to act as the agent of the client must select a designee to fulfill the responsibilities as listed in Section 8(1)(B) of this chapter.

2. Appointed Agent – Disclosure

The appointed agent disclosure shall be provided to the client prior to entering into a written brokerage agreement and shall include, at a minimum, the following provisions:

A. The name of the appointed agent and type of license held;

B. A statement that the appointed agent will be the client's agent and will owe the client fiduciary duties which, among other things, include the obligation not to reveal confidential information obtained from the client to other licensees, except to the designated broker or the designated broker's designee, as listed in Section 8(1)(B) of this chapter, for the purpose of seeking advice or assistance for the benefit of the client;

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- C. A statement that the real estate brokerage agency may be representing both the seller and the buyer in connection with the sale or purchase of real estate;
 - D. A statement that other agents may be appointed during the term of the written brokerage agreement should the appointed agent not be able to fulfill the terms of the written brokerage agreement or as by agreement between the designated broker and client. At the appointment of new or additional agent(s), the designated broker must comply with the provisions of this Section, including but not limited to, obtaining the client's signature consenting or not consenting to the appointment. An appointment of another agent as a new or additional agent does not relieve the first appointed agent of any of the fiduciary duties owed to the client; and
 - E. A section for the client to consent or not consent, in writing, to the appointment.

9. Real Estate Brokerage Relationship Disclosure Procedures

1. Real Estate Brokerage Relationships Form

The Commission incorporates into this chapter by reference the Real Estate Brokerage Relationships Form attached to this chapter. (Maine Real Estate Commission Form #3 revised 07/06).

2. Obligation to Furnish Real Estate Brokerage Relationships Form

Except as provided in Section 9(3) of this chapter, a licensee shall furnish a prospective buyer or seller with a copy of the Real Estate Brokerage Relationships Form when there is substantive communication regarding a real estate transaction by either a face-to-face meeting, a written communication, or an electronic communication with the prospective buyer or seller.

3. Exceptions

A licensee is not required to provide a copy of the form to a prospective buyer or seller in the following instances:

- A. The real estate is land without a residential dwelling unit or is land with more than 4 residential dwelling units;
- B. The licensee is acting solely as a principal in a real estate transaction;
- C. The written communication from the licensee is a solicitation of business; or

D. The licensee has knowledge, or may reasonably assume, that another licensee has given a copy of the form to a prospective buyer or seller in that transaction.

4. Completion of Real Estate Brokerage Relationships Form

The licensee shall complete the appropriate section of the form relating to the presentation of the form.

10. Solicitation of Written Brokerage Agreements

A licensee shall not solicit a written brokerage agreement from a seller or buyer if the licensee knows, or acting in a reasonable manner should have known, that the buyer or seller has contracted with another real estate brokerage agency for the same real estate brokerage services on an exclusive basis. This Section does not preclude a real estate brokerage agency from entering into a written brokerage agreement with a seller or buyer, when the initial contact is initiated by the seller or buyer, provided that the written brokerage agreement does not become effective until the expiration or release of the previous written brokerage agreement.

11. Inducements

The offering of a free gift, prize, money or other valuable consideration by a real estate brokerage agency or affiliated licensee as an inducement shall be free from deception, and shall not serve to distort the true value of the real estate or the service being promoted.

12. Confidentiality of Offers and Purchase and Sale Contract Terms

During the pendency of the transaction, the real estate brokerage agency or affiliated licensee shall not disclose any terms of an offer, counteroffer or purchase and sale contract to anyone other than the buyer and seller without the prior written permission of the buyer and seller, except said documents shall be made available to the director of the Commission upon request.

13. Licensee's Duty to the Designated Broker

An affiliated licensee shall keep the designated broker fully informed of all activities conducted on behalf of the agency and shall notify the designated broker of any other activities that might impact on the responsibilities of the designated broker as required under Chapter 400, Section 1 of the Commission's rules.

An affiliated licensee must provide originals or true copies of all real estate brokerage documents and records prepared in a real estate transaction and as listed in Chapter 400, Section 3 of the Commission's rules to the designated broker within 5 calendar days after execution of the document or record.

14. Licensee's Duty to Obtain and Provide Disclosure Information on Private Water Supply, Heating, Waste Disposal System and Known Hazardous Materials

1. Listing Licensee

A listing licensee shall be responsible for obtaining information necessary to make disclosures, as set forth in Sections 15 to 18 of this chapter, to buyers and shall make a reasonable effort to assure that the information is conveyed to a selling licensee.

2. Selling Licensee

A selling licensee shall be responsible for obtaining from the listing licensee the information necessary for making disclosures, as set forth in Sections 15 to 18 of this chapter, and for assuring that the disclosures are made to buyers.

3. Unlisted Property

A licensee shall be responsible for obtaining from the seller in a real estate brokerage transaction where the property is not listed with a real estate brokerage agency, the information necessary for making disclosures, as set forth in Sections 15 to 18 of this chapter, and for assuring that the disclosures are made to the buyer.

15. Private Water Supply Disclosure

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a private water supply, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information:

1. Type of system;
2. Location;
3. Malfunctions;
4. Date of installation;
5. Date of most recent water test; and
6. Whether or not the seller has experienced a problem such as an unsatisfactory water test or a water test with notations.

Such information and any other information pertinent to the private water supply shall be conveyed, in writing, to a buyer prior to or during preparation of an offer.

The fact that information regarding the private water supply is not available shall also be conveyed, in writing, when such is the case.

16. Heating Disclosure

A licensee listing a single-family residential property, a multifamily property or a commercial property with a residential component, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information regarding the heating system(s) and/or source(s):

1. Type(s);
2. Age of system/source(s);
3. Name of company who services system/source(s);
4. Date of most recent service call;
5. Annual consumption per system/source (i.e. gallons, kilowatt hours, cords);
6. Malfunctions per system/source within the past 2 years.

Such information and any other information pertinent to the heating system(s) and/or source(s) shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer. The fact that information pertinent to the heating system(s) and/or source(s) is not available shall be conveyed, in writing, when such is the case.

17. Waste Disposal System Disclosure

1. Private Waste Disposal System

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a private waste disposal system, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller for the following information:

- A. Type of system;
- B. Size of tank;
- C. Type of tank;
- D. Location of tank;
- E. Malfunctions of tank;

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- F. Date of installation of tank;
 - G. Location of leach field;
 - H. Malfunctions of leach field;
 - I. Date of installation of leach field;
 - J. Date of most recent servicing of system; and
 - K. Name of the contractor who services the system.

Such information and any other information pertinent to the waste disposal system shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding the waste disposal system is not available shall also be conveyed, in writing, when such is the case.

2. Municipal or Quasi-Public Waste Disposal System

A licensee listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component served by a municipal or quasi-public waste disposal system, and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller if the seller has experienced any system or line malfunction. This information shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer.

18. Known Hazardous Materials Disclosure

1. Duty to Keep Informed

A licensee shall keep informed of any federal, state or local laws, rules, regulations or ordinances concerning known hazardous materials that may impact negatively upon the health and well being of buyers and sellers.

2. Duty to Disclose

A listing licensee, and a licensee in transactions when the property is not listed with a real estate brokerage agency, shall disclose, in writing, whether the seller makes any representations regarding current or previously existing known hazardous materials on or in the real estate. In addition, the licensee shall give a written statement to the buyer encouraging the buyer to seek information from professionals regarding any specific hazardous material issue or concern. Such written representation and statement shall be conveyed to a buyer prior to or during the preparation of an offer.

3. Request for Information From Seller

A licensee listing a single-family residential property, a multifamily property, a commercial property with a residential component and a licensee in such transactions when the property is not listed with a real estate brokerage agency, shall ask the seller whether the seller has any knowledge of current or previously existing asbestos, radon, lead based paint, and underground storage tanks. Such information and any other information pertinent to hazardous materials shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding hazardous materials is not available shall also be conveyed, in writing, when such is the case.

19. Referral Fees

1. Certain Referral Fees Prohibited

A licensee may not receive compensation or other valuable consideration from a title company, lender or closing company or any affiliated employee for directing a buyer or seller in a real estate transaction to a company or an individual for financing, title or closing services.

2. Disclosure of Certain Referral Fees Required

A licensee who anticipates receiving compensation or other valuable consideration from a company or person for a referral of services, other than the services listed in Section 19(1) of this chapter or real estate brokerage services, to a buyer or seller during a real estate brokerage transaction may not accept such compensation or valuable consideration unless the licensee discloses in writing to the person paying for such service, and to the client if not the same person, that the licensee anticipates receiving such compensation or other valuable compensation for such referral.

STATUTORY AUTHORITY: 32 MRS.A §§13065(3), 13279, 13280

EFFECTIVE DATE: July 1, 2006



Dept. of Professional & Financial Regulation
Office of Licensing & Registration
MAINE REAL ESTATE COMMISSION

35 State House Station Augusta ME 04333-0035



REAL ESTATE BROKERAGE RELATIONSHIPS FORM

Right Now You Are A Customer

Are you interested in buying or selling residential real estate in Maine? Before you begin working with a real estate licensee it is important for you to understand that Maine Law provides for different levels of brokerage service to buyers and sellers. You should decide whether you want to be represented in a transaction (as a client) or not (as a customer). To assist you in deciding which option is in your best interest, please review the following information about real estate brokerage relationships:

Maine law requires all real estate brokerage companies and their affiliated licensees ("licensee") to perform certain basic duties when dealing with a buyer or seller. You can expect a real estate licensee you deal with to provide the following **customer-level services**:

- ✓ To disclose all material defects pertaining to the physical condition of the real estate that are known by the licensee;
- ✓ To treat both the buyer and seller honestly and not knowingly give false information;
- ✓ To account for all money and property received from or on behalf of the buyer or seller; and
- ✓ To comply with all state and federal laws related to real estate brokerage activity.

Until you enter into a written brokerage agreement with the licensee for client-level representation you are considered a "customer" and the licensee is not your agent. **As a customer you should not expect the licensee to promote your best interests or to keep any information you give to the licensee confidential, including your bargaining position.**

You May Become A Client

If you want a licensee to represent you, you will need to enter into a written listing agreement or a written buyer representation agreement.

These agreements **create a client-agent relationship** between you and the licensee. As a client you can expect the licensee to provide the following services, **in addition to** the basic services required of all licensees listed above:

services required of all licensees listed above:

- ✓ To perform the terms of the written agreement with skill and care;
- ✓ To promote your best interests;
 - For seller clients this means the agent will put the seller's interests first and negotiate for the best price and terms for the seller;
 - For buyer clients this means the agent will put the buyer's interests first and negotiate for the best price and terms for the buyer; and
- ✓ To maintain the confidentiality of specific client information, including bargaining information.

COMPANY POLICY ON CLIENT-LEVEL SERVICES — WHAT YOU NEED TO KNOW

The real estate brokerage company's policy on client-level services determines which of the three types of agent-client relationships permitted in Maine may be offered to you. The agent-client relationships permitted in Maine are as follows:

- ✓ The company and all of its affiliated licensees represent you as a client (called "**single agency**");
- ✓ The company appoints, with your written consent, one or more of the affiliated licensees to represent you as an agent(s) (called "**appointed agency**");
- ✓ The company may offer limited agent level services as a **disclosed dual agent**.

WHAT IS A DISCLOSED DUAL AGENT?

In certain situations a licensee may act as an agent for and represent both the buyer and the seller in the same transaction. This is called **disclosed dual agency**. *Both the buyer and the seller must consent to this type of representation in writing.*

Working with a dual agent is not the same as having your own exclusive agent as a single or appointed agent. For instance, when representing both a buyer and a seller, the dual agent must not disclose to one party any confidential information obtained from the other party.

Remember

Unless you enter into a written agreement for agency representation, you are a customer—not a client.

THIS IS NOT A CONTRACT

It is important for you to know that this form is not a contract. The licensee's completion of the statement below acknowledges that you have been given the information required by Maine law regarding brokerage relationships so that you may make an informed decision as to the relationship you wish to establish with the licensee/company.

To Be Completed By Licensee

This form was presented on (date) _____

To _____
Name of Buyer(s) or Seller(s)

by _____
Licensee's Name

on behalf of _____
Company/Agency

MREC Form#3 Revised 07/06

To check on the license status of the real estate brokerage company or affiliated licensee go to www.maineprofessionalreg.org. Inactive licensees may not practice real estate brokerage.