

CHAPTER 12

HB 1384 – FINAL VERSION

05Mar2008... 0545h

2008 SESSION

08-2581

10/03

HOUSE BILL **1384**

AN ACT relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions.

SPONSORS: Rep. D. Eaton, Ches 2; Rep. Campbell, Hills 24; Rep. Chandler, Carr 1; Sen. Clegg, Dist 14; Sen. DeVries, Dist 18; Sen. Cilley, Dist 6; Sen. Gallus, Dist 1

COMMITTEE: Commerce

ANALYSIS

This bill establishes and defines the practice of designated agent in the real estate practice act.

This bill also requires buyer agents, seller agents, designated agents, and facilitators to disclose certain conditions affecting a subject property.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eight

AN ACT relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

12:1 Real Estate Practice Act; Definitions; Appointing Agent. Amend RSA 331-A:2, I-b to read as follows:

I-b. “Appointing agent” means a broker named by the principal broker who appoints individual real estate licensees to represent either the buyer or tenant, or the seller or landlord, in an office of a firm that practices designated agency.

I-c. “Associate broker” means any person who is licensed as a real estate broker, but who is employed by a principal broker or under contract, expressed or implied, to a principal broker and in addition operates under the supervision of a principal broker to participate in any activity described in paragraph III of this section.

12:2 Real Estate Practice Act; Definitions; Designated Agent. Amend RSA 331-A:2, IV-a to read as follows:

IV-a. “Designated agent” means a licensee who has been appointed by an appointing agent to represent one party of a real estate transaction and who owes that party fiduciary duties, whether or not the other party to the same transaction is represented by another individual licensee associated with the same brokerage firm.

IV-b. “Disclosed dual agent” means a licensee acting for more than one party whose interests may differ in a transaction with the knowledge and written consent of all parties for whom the licensee acts.

12:3 Real Estate Practice Act; Definitions; Facilitator; Firm. Amend RSA 331-A:2, V-a and V-b to read as follows:

V-a. “Facilitator” means an individual licensee who assists one or more parties during all or a portion of a real estate transaction without being an agent or advocate for the interests of any party to such transaction.

V-b. “Firm” means any sole proprietorship, partnership, association, corporation, limited liability company, or other business association

engaged in the sale or lease of real estate or which employs licensees under this chapter.

V-c. “Landlord” means a party in a transaction who owns real estate intended for rental or leasing purposes. For the purposes of this chapter, “landlord” shall also mean “lessor.”

~~[V-b.]~~ **V-d.** “Licensee” means a broker or salesperson licensed by the New Hampshire real estate commission under the provisions of this chapter.

12:4 New Sections; Duty of a Designated Agent; Facilitator. Amend RSA 331-A by inserting after section 25-d the following new sections:

331-A:25-e Duty of a Designated Agent.

I. A licensee appointed by an appointing agent to be a designated agent shall:

(a) If representing a seller or landlord, comply with all duties as required in RSA 331-A:25-b.

(b) If representing a buyer or tenant, comply with all duties as required in RSA 331-A:25-c.

II. Appointment of a designated agent shall not be made without the written consent of the party at the commencement of the party’s agency relationship with the real estate brokerage firm. There shall be a conclusive presumption that a seller or landlord or a buyer or tenant has consented to a designated agency relationship, if the party signed a brokerage agreement containing an explanation of designated agency.

III. Upon appointment of a designated agent, the responsibility to satisfy agency duties owed to a buyer or tenant or a seller or landlord shall be the responsibility of the designated agent, and not other licensees affiliated with the same firm.

IV. Substitutions of designated agents shall not be made without informed written consent of the party being represented.

V. When a designated agent is appointed, information known or acquired by the designated agent shall not be imputed to the appointing agent or to other licensees within the same firm.

VI. When an appointing agent has appointed designated agents for both the buyer or tenant and the seller or landlord in the same transaction, the appointing agent is a dual agent, and does not exclusively represent either the seller or landlord or the buyer or tenant. The appointing agent is neutral as to any conflicting interests of

the seller or landlord and buyer or tenant but shall continue to owe the seller or landlord and the buyer or tenant the duties of confidentiality, disclosure of material information, and accounting for funds.

VII.(a) When consent to designated agency has been given by the seller or landlord and the buyer or tenant, written notice shall also be provided to the seller or landlord and the buyer or tenant that designated agency has occurred with both the seller or landlord and buyer or tenant in the transaction. This notice shall be provided prior to the execution of the purchase and sale or lease agreement.

(b) If the designated seller's agent and the designated buyer's agent in a transaction are affiliated with the same broker and the seller or landlord and the buyer or tenant each have consented to designated agency, a separate consent to dual agency of the appointing agent shall not be required.

(c) If the designated seller or landlord agent is also the designated buyer or tenant agent in the same transaction, the designated agent is a dual agent and a separate informed consent to dual agency shall be required in accordance with RSA 331-A:25-d.

VIII. Appointment of a designated agent shall not limit the liability or responsibility of the appointing agent and principal broker for breach of duty by the designated agent.

IX. Designated agents who are affiliated with the same managing broker in the same transaction shall not be considered dual agents, unless the same designated agent has agreed to represent both buyer and seller.

X. Dual agency does not occur between appointing agents who have separately appointed the designated seller agent and the designated buyer agent within the same firm. Appointing agents receipt of confidential information shall not be imputed to any other appointing or affiliated agents from the same firm.

XI. Dual agency does not occur in firms that represent buyers only and that have appointed designated buyer agents within the firm, or firms that represent sellers only and that have appointed designated seller agents within the firm.

331-A:25-f Facilitator; Duties.

I. A licensee acts as a facilitator when that licensee assists but does not represent either party in a transaction.

II. A facilitator shall disclose to a prospective buyer or tenant any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the facilitator has actual knowledge. Such disclosure shall occur

any time prior to the time the buyer or tenant makes a written offer to purchase or lease the subject property. This paragraph shall not create an affirmative obligation on the part of the facilitator to investigate material defects.

III. Unless otherwise agreed, the licensee acting as a facilitator shall have no duty to keep information received from the seller or landlord or the buyer or tenant confidential.

IV. The parties may or may not enter into a contractual relationship.

V. The duties of the facilitator apply only to the seller or landlord and the buyer or tenant in the particular property transaction involving the seller or landlord and the buyer or tenant.

VI. A facilitator shall treat all prospective sellers or landlords and buyers or tenants honestly.

VII. The performance of ministerial acts for the seller or landlord or the buyer or tenant shall not be construed as forming an agency relationship with the seller or landlord.

12:5 New Subparagraph; Seller Agent. Amend RSA 331-A:25-b, II by inserting after subparagraph (b) the following new subparagraph:

(c) Disclosing to a prospective buyer or tenant any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the licensee has actual knowledge. Such disclosure shall occur at any time prior to the time the buyer or tenant makes a written offer to purchase or lease the subject property. This subparagraph shall not create an affirmative obligation on the part of the licensee to investigate material defects.

12:6 New Subparagraph; Buyer Agent. Amend RSA 331-A:25-c, I by inserting after subparagraph (d) the following new subparagraph:

(e) Disclose to a prospective buyer or tenant any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the licensee has actual knowledge. Such disclosure shall occur at any time prior to the time the buyer or tenant makes a written offer to purchase or lease the subject property. This subparagraph shall not create an affirmative obligation on the part of the licensee to investigate material defects.

12:7 Repeal. RSA 331-A:2, VI-b, relative to the definition of non-agent.

12:8 Effective Date. This act shall take effect January 1, 2009.

Approved: May 6, 2008

Effective Date: January 1, 2009