

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE ENROLLED ACT No. 358

AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4.6-2.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter, "agent" means a real estate agent or other person acting on behalf of the owner of real estate or transferee **or acting as a limited agent.**

SECTION 2. IC 24-4.6-2.1-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.5. As used in this chapter, "limited agent" means an agent who, with the written and informed consent of all parties to a real estate transaction, is engaged by both the seller and buyer or both the landlord and tenant.**

SECTION 3. IC 25-34.1-10-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 0.5. As used in this chapter, "agency relationship" means a relationship in which a licensee represents a client in a real estate transaction.**

SECTION 4. IC 25-34.1-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this

SEA 358+



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chapter, "broker" means an individual or entity issued a broker's real estate license by the Indiana real estate commission. ~~The term includes the broker's salespersons unless the context indicates otherwise.~~

SECTION 5. IC 25-34.1-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. As used in this chapter, "client" means a person who has entered into a ~~brokerage engagement~~ **an agency relationship** with a ~~real estate broker licensee.~~

SECTION 6. IC 25-34.1-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. As used in this chapter, "customer" means a person who is provided ~~brokerage~~ services in the ordinary course of a ~~real estate transaction business~~ by a ~~real estate broker licensee~~ but who is not a client.

SECTION 7. IC 25-34.1-10-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6.5. As used in this chapter, "in-house agency relationship" means an agency relationship involving two (2) or more clients who are represented by different licensees within the same real estate firm.**

SECTION 8. IC 25-34.1-10-6.8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6.8. As used in this chapter, "licensee" means an individual or entity issued a salesperson's or broker's real estate license by the Indiana real estate commission.**

SECTION 9. IC 25-34.1-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. As used in this chapter, "limited agent" means a ~~broker licensee~~ who, with the written and informed consent of all parties to a real estate transaction, ~~is engaged by~~ **represents** both the seller and buyer or both the landlord and tenant and whose duties and responsibilities to a client are only those set forth in this chapter.

SECTION 10. IC 25-34.1-10-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 7.5. As used in this chapter, "managing broker" means a broker who manages a branch office or who acts on behalf of a principal broker.**

SECTION 11. IC 25-34.1-10-7.8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 7.8. As used in this chapter, "principal broker" means the individual broker (including the broker designated or representative of a partnership, corporation, or limited liability company) whom the Indiana real estate commission shall hold responsible for the actions of licensees who**



are affiliated with the individual broker.

SECTION 12. IC 25-34.1-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. As used in this chapter, "subagent" means a broker engaged to act for another broker in performing brokerage services for a client. ~~The subagent owes the same duties and responsibilities to the client as the client's broker.~~

SECTION 13. IC 25-34.1-10-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.5. A licensee has an agency relationship with, and is representing, the individual with whom the licensee is working unless:**

- (1) there is a written agreement to the contrary; or**
- (2) the licensee is merely assisting the individual as a customer.**

SECTION 14. IC 25-34.1-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A ~~broker engaged by licensee representing~~ a seller or landlord has the following duties and obligations:

- (1) To fulfill the terms of the ~~brokerage engagement agency relationship~~ made with the seller or landlord.
- (2) To disclose the nature of the ~~brokerage agency~~ relationship with the seller or landlord, and redefine and disclose if the relationship changes.
- (3) To promote the interests of the seller or landlord by:
 - (A) seeking a price or lease rate and contract terms satisfactory to the seller or landlord; however, the ~~broker licensee~~ is not obligated to seek additional offers to purchase or lease after an offer to purchase or lease has been accepted by the seller or landlord, unless otherwise ~~noted in the brokerage engagement agreed~~ between the parties;
 - (B) presenting all offers to purchase or lease to and from the seller or landlord immediately upon receipt of the offers regardless of whether an offer to purchase or lease has been accepted, unless otherwise directed by the seller or landlord;
 - (C) disclosing to the seller or landlord adverse material facts or risks actually known by the ~~broker licensee~~ concerning the real estate transaction;
 - (D) advising the seller or landlord to obtain expert advice concerning material matters that are beyond the ~~broker's licensee's~~ expertise;
 - (E) timely accounting for all money and property received from the seller or landlord;

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SEA 358+



- (F) exercising reasonable care and skill; and
- (G) complying with the requirements of this chapter and all applicable federal, state, and local laws, rules, and regulations, including fair housing and civil rights statutes, rules, and regulations.

(b) A ~~broker engaged by licensee representing~~ a seller or landlord may not disclose the following without the informed written consent of the seller or landlord:

- (1) That a seller or landlord will accept less than the listed price or lease rate for the property or other contract concessions.
- (2) What motivates the seller to sell or landlord to lease the property.
- (3) Any material or confidential information about the seller or landlord unless the disclosure is required by law or where failure to disclose would constitute fraud or dishonest dealing.

(c) A ~~broker engaged by licensee representing~~ a seller or landlord owes no duties or obligations to the buyer or tenant except that a ~~broker licensee~~ shall treat all prospective buyers or tenants honestly and shall not knowingly give them false information.

(d) A ~~broker licensee~~ shall disclose to a prospective buyer or tenant adverse material facts or risks actually known by the ~~broker licensee~~ concerning the physical condition of the property and facts required by statute or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the buyer or tenant. A ~~broker engaged by licensee representing~~ a seller or landlord owes no duty to conduct an independent inspection of the property for the buyer or tenant or to verify the accuracy of any statement, written or oral, made by the seller, the landlord, or an independent inspector. This subsection does not limit the obligation of a prospective buyer or tenant to obtain an independent inspection of the physical condition of the property. A cause of action does not arise against a ~~broker licensee~~ for disclosing information in compliance with this section.

(e) A ~~broker engaged by licensee representing~~ a seller or landlord may:

- (1) show alternative properties not owned by the seller or landlord to a prospective buyer or tenant and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord; and
- (2) provide ~~assistance~~ to a buyer or tenant ~~with~~ services in the ordinary course of a real estate transaction ~~such as preparing offers to purchase or lease and communicating the offers to the seller or landlord; arranging for lenders; attorneys; inspectors;~~

SEA 358+



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~~insurance agents, surveyors and any similar services that do not violate the terms of the **brokerage engagement agency relationship** made with the seller or landlord.~~

~~(f) A subagent has the same duties and responsibilities as those set forth in this section:~~

SECTION 15. IC 25-34.1-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) A ~~broker~~ **engaged by licensee representing** a buyer or tenant has the following duties and obligations:

- (1) To fulfill the terms of the ~~brokerage engagement agency relationship~~ **relationship** made with the buyer or tenant.
- (2) To disclose the nature of the ~~brokerage agency~~ **relationship** with the buyer or tenant, and redefine and disclose if the relationship changes.
- (3) To promote the interests of the buyer or tenant by:
 - (A) seeking a property with a price or lease rate and contract terms satisfactory to the buyer or tenant; however, the ~~broker licensee~~ **licensee** is not obligated to locate other properties to purchase or lease while the buyer is under contract to buy property or while the tenant is under contract to lease property, unless otherwise ~~noted in the brokerage engagement~~ **agreed** between the parties;
 - (B) presenting all offers to purchase and lease to and from the buyer or tenant immediately upon receipt of an offer regardless of whether the buyer is already under contract to buy or the tenant is under contract to lease property, unless otherwise directed by the buyer or tenant;
 - (C) disclosing to the buyer or tenant adverse material facts or risks actually known by the ~~broker licensee~~ **broker licensee** concerning the real estate transaction;
 - (D) advising the buyer or tenant to obtain expert advice concerning material matters that are beyond the ~~broker's licensee's~~ **broker's licensee's** expertise;
 - (E) timely accounting for all money and property received from the buyer or tenant;
 - (F) exercising reasonable care and skill; and
 - (G) complying with the requirements of this chapter and all applicable federal, state, and local laws, rules, and regulations, including fair housing and civil rights statutes, rules, and regulations.

(b) A ~~broker engaged by licensee representing~~ **broker engaged by licensee representing** a buyer or tenant shall not disclose the following without the informed consent, in

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writing, of the buyer or tenant:

- (1) That a buyer or tenant will pay more than the offered purchase price or offered lease rate for the property or other contract concessions.
- (2) What motivates the buyer to buy or tenant to lease the property.
- (3) Any material or confidential information about the buyer or tenant unless this disclosure is required by law or where failure to disclose would constitute fraud or dishonest dealing.

(c) A **broker engaged by licensee representing** a buyer or tenant owes no duties or obligations to the seller or landlord except that a **broker licensee** shall

- (1) treat all prospective sellers or landlords honestly and not knowingly give them false information. ~~and~~
- (2) ~~notify the seller, landlord, or agent verbally at the time of the appointment and in writing, not later than the presentation of the purchase agreement or lease, that the broker is promoting solely the interests of the buyer or tenant.~~

(d) A **broker engaged by licensee representing** a buyer or tenant owes no duty to conduct an independent investigation of the buyer's or tenant's financial ability to perform for the benefit of the seller or landlord or to verify the accuracy of any statement, written or oral, made by the buyer, the tenant, or a third party.

(e) A **broker engaged by licensee representing** a buyer or tenant may:

- (1) show properties in which the buyer or tenant is interested to other prospective buyers or tenants and may show competing buyers or tenants the same property or assist other buyers or tenants in purchasing or leasing a particular property without breaching any duty or obligation to the buyer or tenant; and
- (2) provide ~~assistance~~ to a seller or landlord ~~with~~ services in the ordinary course of a real estate transaction ~~such as preparing offers to purchase or lease and communicating the offers to the buyer or tenant, arranging for attorneys, inspectors, surveyors and any similar services that do not violate the terms of the brokerage engagement agency relationship~~ made with the buyer or tenant.

SECTION 16. IC 25-34.1-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. (a) A **broker licensee** may act as a limited agent only with the written consent of all parties to a real estate transaction. The written consent is presumed to have been given and all parties are considered informed for any party who signs a writing or writings at the time of entering into a **brokerage**

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an agency relationship with the broker licensee that contains the following:

(1) A description of the real estate transaction or types of real estate transactions in which the **broker licensee** will serve as a limited agent.

(2) A statement that in serving as a limited agent, the **broker licensee** represents parties whose interests are different or even adverse.

(3) A statement that a limited agent shall not disclose the following without the informed consent, in writing, of the parties to the real estate transaction:

(A) Any material or confidential information, except adverse material facts or risks actually known by the **broker licensee** concerning the physical condition of the property and facts required by statute, rule, or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the parties.

(B) That a buyer or tenant will pay more than the offered purchase price or offered lease rate for the property.

(C) That a seller or landlord will accept less than the listed price or lease rate for the property.

(D) What motivates a party to buy, sell, or lease the property.

(E) Other terms that would create a contractual advantage for one (1) party over another party.

(4) A statement that there will be no imputation of knowledge or information between any party and the limited agent or among **brokers within an entity engaged as a limited agent licensees.**

(5) A statement that a party does not have to consent to the limited agency.

(6) A statement that the consent of each party has been given voluntarily and that any limited agency disclosure has been read and understood.

(b) Under a brokerage engagement, a broker may assign different salespersons affiliated with the broker to represent exclusively different clients in the same transaction. The salespersons may not disclose, except to the salesperson's broker, information made confidential by request or instructions of the client the salesperson is representing, except information permitted or required to be disclosed under this chapter. The broker may not be considered to be acting for more than one (1) party to a real estate transaction. A licensee acting as a limited agent may disclose and provide to both the seller and buyer property information, including listed and sold properties available

SEA 358+



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through a multiple listing service or other information source.

(c) A cause of action does not arise against a ~~broker~~ licensee for disclosing or failing to disclose information in compliance with this section, and the limited agent does not terminate the limited agency relationship by making a required disclosure.

SECTION 17. IC 25-34.1-10-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 12.5. (a) An individual licensee affiliated with a principal broker represents only the client with which the licensee is working in an in-house agency relationship. A client represented by an individual licensee affiliated with a principal broker is represented only by that licensee to the exclusion of all other licensees. A principal or managing broker does not represent any party in such transactions unless the principal or managing broker has an agency relationship to personally represent a client.**

(b) A licensee who personally represents both the seller and buyer or both the landlord and tenant in a real estate transaction is a limited agent and is required to comply with the provisions of this chapter governing limited agents.

(c) A licensee representing a client in an in-house agency relationship owes the client duties and obligations set forth in this chapter and shall not disclose material or confidential information obtained from the client to other licensees, except to the principal or managing broker for the purpose of seeking advice or assistance for the client's benefit.

(d) A principal broker, managing broker, and any affiliated licensee shall take reasonable and necessary care to protect any material or confidential information disclosed by a client to the client's in-house agent.

(e) **In all in-house agency relationships, a principal broker, managing broker, and an individual licensee possess only actual knowledge and information. There is no imputation of agency, knowledge, or information among or between clients, the principal broker, the managing broker, and licensees.**

SECTION 18. IC 25-34.1-10-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 13. (a) A principal broker shall develop and enforce among the broker's salespersons a written office policy that identifies and describes the brokerage agency relationships in which the broker engages that a licensee may have with a seller, landlord, buyer, or tenant and that specifically permits or rejects the practice of disclosed limited agency.**

SEA 358+



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(b) ~~When entering into brokerage engagement~~ **At the beginning of an agency relationship**, a **broker licensee** shall disclose in writing the **principal** broker's written office policy set forth in this section before the disclosure by the potential seller, landlord, buyer, or tenant of any confidential information specific to that potential seller, landlord, buyer, or tenant.

(c) ~~A broker shall advise~~ Parties to a real estate transaction **shall be advised** whether ~~the broker will share the broker's~~ compensation **will be shared** with other **principal** brokers who may represent other parties to the transaction whose interests are different or even adverse.

(d) The payment of compensation does not create a **brokerage agency** relationship between a **broker licensee** and a seller, landlord, buyer, or tenant.

SECTION 19. IC 25-34.1-10-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. (a) The **brokerage relationships duties and obligations** set forth in this ~~section~~ **chapter** begin at the time the **broker licensee** enters into a **brokerage engagement an agency relationship** with a party to a real estate transaction and continues until the ~~engagement~~ **agency relationship** terminates.

(b) If the ~~brokerage engagement~~ **agency relationship** is not ~~performed~~ **fulfilled** or completed for any reason, the ~~brokerage~~ **agency** relationship ends at the earlier of:

- (1) a date of expiration agreed upon by the parties; or
- (2) a termination of the relationship by the parties.

(c) Except as otherwise agreed to in writing and as provided in subsection (b), a ~~broker engaged by licensee~~ **representing** a seller, landlord, buyer, or tenant owes no further duties or obligations after termination, expiration, or completion of ~~performance of the~~ **brokerage engagement agency relationship**, except:

- (1) accounting for all money and property received during the ~~brokerage~~ **agency** relationship; and
- (2) keeping confidential all information received during the course of the ~~brokerage~~ **agency** relationship that was made confidential by request or instructions from the ~~engaging party~~ **client**, unless:
 - (A) the disclosure is required by law;
 - (B) the ~~engaging party~~ **client** gives written consent to the disclosure; or
 - (C) the information becomes public from a source other than the ~~broker licensee~~ or by subsequent words or conduct of the ~~engaging party~~ **client**.

SEA 358+



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SECTION 20. IC 25-34.1-10-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. The duties and ~~responsibilities~~ **obligations** of a ~~broker licensee~~ set forth in this chapter supersede any fiduciary duties of a ~~broker licensee~~ to a party based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties and ~~responsibilities~~ **obligations** set forth in this chapter.

SECTION 21. IC 25-34.1-10-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) A client is not liable for any misrepresentation made by a ~~broker licensee~~ in connection with the ~~brokerage engagement agency relationship~~, unless the client ~~knows~~ **knew** or should have known of the misrepresentation. ~~or the broker is repeating a misrepresentation made to the broker by the client.~~

(b) A ~~broker who is providing brokerage services to a client and who retains another broker to provide brokerage services to that client~~ **licensee** is not liable for any misrepresentation made by ~~the other broker~~ **another licensee**, unless

(1) the ~~broker licensee~~ **licensee** knew or should have known of the other ~~broker's licensee's~~ **licensee's** misrepresentation. ~~or~~

(2) the ~~other broker~~ **other licensee** is repeating a misrepresentation made to the ~~other broker by the broker.~~

SECTION 22. IC 25-34.1-10-17 IS ADDED TO THE INDIANA CODE AS A ~~NEW SECTION~~ TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 17. A licensee may not make an offer of subagency through a multiple listing service or other information source, or agree to appoint, cooperate with, compensate, or otherwise associate with a subagent in a real estate transaction. The elimination of subagency by this section is not intended to limit the rights of a licensee to cooperate with, compensate, or otherwise associate with another licensee who is not acting on behalf of a client.**

SECTION 23. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1999]: IC 25-34.1-10-2; IC 25-34.1-10-3; IC 25-34.1-10-4.

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