

SENATE BILL NO. 224

INTRODUCED BY *Barbara Wilson* *Tom Nelson* *Janet Johnston* *John Bergeson* *Tom Klumpe* *Gregg Prager* *Bill Wilson* *Natalie Keating*

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

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

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or another communicable disease or that the property was the site of a suicide or felony.

(2)(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(3)(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving

1 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or  
 2 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

3 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,  
 4 subleasing, or other disposition of real estate for consideration;

5 (c) engages in the business of charging an advance fee or contracting for collection of a fee in  
 6 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other  
 7 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or  
 8 for referral of information concerning real estate to brokers;

9 (d) makes the advertising, sale, lease, or other real estate information available by public display  
 10 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining  
 11 any real estate for purchase or lease;

12 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate  
 13 for purchase or lease;

14 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~  
 15 salesperson the name of a prospective buyer or seller of real property; or

16 (g) advertises or represents to the public that the individual is engaged in any of the activities  
 17 referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

18 ~~(4)(5)~~ "Broker associate" means a broker who associates, as an employee or independent  
 19 contractor, with a broker owner and does not own an interest in a real estate firm.

20 ~~(5)(6)~~ "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

21 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property  
 22 or who has entered into an agreement to acquire an interest in real property. The term includes tenants  
 23 or potential tenants with respect to leases or rental agreements of real property.

24 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker  
 25 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent  
 26 and an in-house buyer agent designate.

27 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs  
 28 a broker to locate real estate of the type and with terms and conditions as designated in the written  
 29 agreement.

30 (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,

1 acts as the agent of a buyer.

2 ~~(6)(11)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part  
3 18.

4 (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or  
5 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with  
6 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be  
7 considered a dual agent.

8 ~~(7)(13)~~ "Franchise agreement" means a contract or agreement by which:

9 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in  
10 substantial part by the franchisor;

11 (b) the operation of the franchisee's business is substantially associated with the franchisor's  
12 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

13 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the  
14 agreement.

15 (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or  
16 associated as an independent contractor with a broker owner and designated by the broker owner as the  
17 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for  
18 other than the buyer with respect to the designated transaction.

19 (15) "In-house seller agent designate" means a broker associate or salesperson employed by or  
20 associated as an independent contractor with a broker owner and designated by the broker owner as the  
21 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for  
22 other than the seller with respect to the designated transaction.

23 (16) "Listing agreement" means a written agreement between a seller and broker for the sale of  
24 real estate, with the terms and conditions set out in the agreement.

25 (17) "Negotiations" means:

26 (a) efforts to act as an intermediary between parties to a real estate transaction;

27 (b) facilitating and participating in contract discussions;

28 (c) completing forms for offers, counteroffers, addendums, and other writings; and

29 (d) presenting offers and counteroffers.

30 ~~(8)(18)~~ "Person" includes individuals, partnerships, associations, and corporations, foreign and

1 domestic, except that when referring to a person licensed under this chapter, it means an individual.

2 ~~(9)~~(19) "Property manager" includes a person who for a salary, commission, or compensation of  
3 any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real  
4 estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and  
5 37-51-602.

6 ~~(10)~~(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether  
7 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or  
8 elsewhere.

9 (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,  
10 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,  
11 negotiation, and contract development and closing.

12 ~~(11)~~(22) "Salesman" "Salesperson" includes an individual who for a salary, commission, or  
13 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real  
14 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

15 (23) "Seller" means a person who has entered into a listing agreement to sell real estate and  
16 includes landlords who have an interest in or are a party to a lease or rental agreement.

17 (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts  
18 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

19 (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,  
20 acts as the agent of a seller.

21 (26)(a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real  
22 estate transaction without acting as an agent or representative of any party to the real estate transaction.

23 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or  
24 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or  
25 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

26

27 **Section 2.** Section 37-51-321, MCA, is amended to read:

28 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The  
29 board may on its own motion and shall on the sworn complaint in writing of a person investigate the  
30 actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may

1 revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty  
2 by a majority of the board of any of the following practices:

3 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,  
4 display, or other nature, which advertising in any material particular or in any material way misrepresents  
5 any property, terms, values, policies, or services of the business conducted. A broker who operates under  
6 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise  
7 name, the broker does not incorporate the broker's own name in the franchise name or logotype or does  
8 not conspicuously display, on the broker's letterhead and other printed materials available to the public, a  
9 statement that the broker's office is independently owned and operated and the trade name, if any, by  
10 which the office is known. The board may not adopt advertising standards more stringent than those set  
11 forth in this subsection.

12 (b) making any false promises of a character likely to influence, persuade, or induce;

13 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through  
14 agents or salespersons or any medium of advertising or otherwise;

15 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or  
16 insignia of membership in a real estate organization of which the licensee is not a member;

17 (e) failing to account for or to remit money coming into the broker's or salesperson's possession  
18 belonging to others;

19 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures  
20 made for a principal;

21 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing  
22 to disclose in advertisements for real property the person's dual capacity as broker and principal;

23 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may  
24 result from the resale of real property;

25 (i) offering real property for sale or lease without the knowledge and consent of the owner or the  
26 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized  
27 agent;

28 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of  
29 substituting a new contract with another principal;

30 (k) accepting employment or compensation for appraising real property contingent on the reporting

1 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson  
2 has an undisclosed interest;

3 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller  
4 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding  
5 ~~contract~~ listing agreement or buyer broker agreement in connection with the property granting an exclusive  
6 agency to another broker;

7 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
8 influencing a purchaser or prospective purchaser of real property;

9 (n) representing or attempting to represent a real estate broker other than the employer without  
10 the express knowledge or consent of the employer;

11 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time  
12 of its execution;

13 (p) paying a commission in connection with a real estate sale or transaction to a person who is not  
14 licensed as a real estate broker or real estate salesperson under this chapter;

15 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity  
16 with this chapter;

17 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody  
18 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that  
19 capacity by a person;

20 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

21 (t) conviction of a felony.

22 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,  
23 whether by means of printed material, radio, television, or display or by other means, unless the broker or  
24 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be  
25 valid as of the date of advertisement.

26 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including  
27 information on properties listed by other brokers or salespersons who will cooperate with the selling broker  
28 or salesperson in materials dispensed to prospective customers.

29 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or  
30 revoked as provided in subsection (1)."

1           **NEW SECTION. Section 3. Duties, duration, and termination of relationship between broker or**  
2 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section  
3 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace  
4 the common law as applied to these relationships. The duties of a broker or salesperson vary depending  
5 upon the relationship with a party to a real estate transaction and are as provided in this section.

6           (2) A seller's agent is obligated to the seller to:

7           (a) act solely in the best interests of the seller;

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

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

12           (d) safeguard the seller's confidences;

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

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

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

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

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

22           (b) act in good faith with a buyer and a buyer's agent; and

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

24           (4) A buyer's agent is obligated to the buyer to:

25           (a) act solely in the best interests of the buyer;

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

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

30           (d) safeguard the buyer's confidences;

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

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

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

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

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

9 (b) act in good faith with a seller and a seller's agent; and

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

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

13 (a) disclose to:

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

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

19 (b) exercise reasonable care, skill, and diligence putting together a real estate transaction; and

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

21 (7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to  
22 a buyer in the same manner as a buyer's agent under this section, except as follows:

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

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

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

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

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



- 1 (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.
- 2 (8)(a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the
- 3 earliest of the following dates:
- 4 (i) completion of performance by the agent;
- 5 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or
- 6 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker
- 7 agreement.
- 8 (b) A statutory broker's relationship continues until the completion, termination, or abandonment
- 9 of the real estate transaction giving rise to the relationship.
- 10 (9) Upon termination of an agency relationship, a broker or salesperson does not have any further
- 11 duties to the principal, except as follows:
- 12 (a) to account for all money and property of the principal;
- 13 (b) to keep confidential all information received during the course of the agency relationship that
- 14 was made confidential at the principal's direction, except for:
- 15 (i) subsequent conduct by the principal that authorizes disclosure;
- 16 (ii) disclosure required by law or to prevent the commission of a crime;
- 17 (iii) the information being disclosed by someone other than the broker or salesperson; and
- 18 (iv) the disclosure of the information being reasonably necessary to defend the conduct of the
- 19 broker or salesperson, including employees, independent contractors, and subagents.
- 20
- 21 **NEW SECTION. Section 4. Relationship disclosure requirements.** (1) A broker or salesperson shall
- 22 disclose the existence and nature of relevant agency or other relationships to the parties to a real estate
- 23 transaction as provided in this section.
- 24 (2) A seller agent shall make the required relationship disclosures:
- 25 (a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a
- 26 seller subagent, at the time negotiations commence; and
- 27 (b) to the buyer or buyer agent at the time negotiations commence.
- 28 (3) A buyer agent shall make the required relationship disclosures:
- 29 (a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting
- 30 as a buyer subagent, at the time negotiations commence; and

1 (b) to the seller or seller agent at the time negotiations commence.

2 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the  
3 time negotiations commence.

4 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the  
5 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual  
6 agency arises.

7 (6) A disclosure required by this section must be signed and dated by the party to whom the  
8 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the  
9 following information:

10 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your  
11 agent or subagent in the sale of your property located at (address of property). Your seller agent is  
12 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes  
13 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent  
14 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from  
15 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you  
16 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent  
17 disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This  
18 consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to  
19 give this consent, your opportunity to sell your property to that buyer may be lost.

20 Your seller agent is obligated to you as follows:

21 (1) to act solely in the best interests of the seller to the exclusion of all other interests, including  
22 those of the seller agent;

23 (2) to obey promptly and efficiently all lawful instructions of the seller;

24 (3) to disclose to the seller all relevant and material information that concerns the real estate  
25 transaction and that is known by the seller agent and not known by the seller, unless the information is  
26 subject to confidentiality arising from a prior or existing agency relationship;

27 (4) to safeguard the seller's confidences;

28 (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established  
29 in the listing agreement;

30 (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's

1 possession;

2 (7) to comply with all applicable federal and state laws, rules, and regulations; and

3 (8) to carry out the terms of the listing agreement."

4 (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with  
5 respect to the seller's property located at (address of property). Although the seller agent is primarily  
6 obligated to the seller, the seller agent is obligated to you as specified below.

7 A seller agent is obligated to a buyer as follows:

8 (1) to disclose to a buyer any adverse material facts that concern the property and that are known  
9 to the seller agent;

10 (2) to deal in good faith with the buyer; and

11 (3) to comply with all applicable federal and state laws, rules, and regulations.

12 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
13 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
14 be a fact that materially affects the value or structural integrity or presents a documented health risk to  
15 occupants of the property. The term may not include the fact that an occupant of the property has or has  
16 had AIDS or another communicable disease or that the property was the site of a suicide or felony."

17 (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your  
18 agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.  
19 Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller  
20 of property that you become interested in, a dual agency may be created. In a dual agency relationship,  
21 the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer  
22 agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of  
23 representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with  
24 a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the  
25 seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller  
26 declines to give this consent, your opportunity to acquire the seller's property may be lost.

27 Your buyer agent is obligated to you as follows:

28 (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including  
29 those of the buyer agent;

30 (2) to obey promptly and efficiently all lawful instructions of the buyer;

1 (3) to disclose to the buyer all relevant and material information that concerns the real estate  
2 transaction and that is known by the buyer agent and not known by the buyer, unless the information is  
3 subject to confidentiality arising from a prior or existing agency relationship;

4 (4) to safeguard the buyer's confidences;

5 (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established  
6 in the buyer broker agreement;

7 (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer  
8 agent's possession;

9 (7) to comply with all applicable federal and state laws, rules, and regulations; and

10 (8) to carry out the terms of the buyer broker agreement."

11 (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with  
12 respect to the seller's property located at (address of property). Although the buyer agent is primarily  
13 obligated to the buyer, the buyer agent is obligated to you as specified below.

14 A buyer agent is obligated to a seller as follows:

15 (i) to disclose to a seller any adverse material facts that concern the property and that are known  
16 to the buyer agent;

17 (ii) to deal in good faith with the seller; and

18 (iii) to comply with all applicable federal and state laws, rules, and regulations.

19 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
20 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
21 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
22 proposed or existing contract."

23 (e) Statutory agent disclosure to the buyer and seller: "(Name of statutory broker) will be involved  
24 as a statutory broker with respect to the purchase and sale of real property located at (address). A  
25 statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale  
26 of the property. A statutory broker is obligated to the buyer and seller as specified below.

27 A statutory broker is obligated to the parties as follows:

28 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known  
29 to the statutory broker and not known to the buyer. However, the statutory broker is not required to  
30 conduct an independent inspection of the property or to verify any representation made by the seller.

1           (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to  
2 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

3           (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the  
4 property; and

5           (4) to comply with all applicable federal and state laws, rules, and regulations.

6           "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
7 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be  
8 a fact that materially affects the value or structural integrity or presents a documented health risk to  
9 occupants of the property, but may not include the fact that an occupant of the property has or has had  
10 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may  
11 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
12 proposed or existing contract."

13           (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer  
14 interested in purchasing the property and of the seller of the property located at (address of property). A  
15 dual agent is obligated to the buyer and seller as follows:

16           (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests  
17 including the dual agent's;

18           (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

19           (3) to disclose to the buyer and seller all relevant and material information that concerns the real  
20 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the  
21 information is subject to confidentiality arising from a prior or existing agency relationship;

22           (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives  
23 as established in the listing agreement and buyer broker agreement;

24           (5) to fully account to the buyer and seller for all funds or property of the buyer coming into the  
25 dual agent's possession;

26           (6) to comply with all applicable federal and state laws, rules, and regulations;

27           (7) to carry out the terms of the buyer broker agreement; and

28           (8) to safeguard the buyer's and seller's confidences, except that the obligation to disclose relevant  
29 and material information concerning the real estate transaction to either the buyer or the seller supersedes  
30 any confidentiality requirement. However, the following may not be disclosed without the written consent

1 of the party to whom the information is confidential:

2 (a) that the buyer is willing to pay more than the buyer has offered for the property;

3 (b) that the seller is willing to accept less than the asking price for the property;

4 (c) factors motivating the buyer to buy or the seller to sell; and

5 (d) any other information that a party specifically indicates in writing to the dual agent is to be kept  
6 confidential and that is not relevant and material information concerning the real estate transaction.

7 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
8 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be  
9 a fact that materially affects the value or structural integrity or presents a documented health risk to  
10 occupants of the property, but may not include the fact that an occupant of the property has or has had  
11 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may  
12 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
13 proposed or existing contract.

14 Upon signing this disclosure form, the buyer and seller acknowledge that they understand the  
15 obligations owed by a dual agent to them and consent to the dual agent representing them as a dual  
16 agent."

17 (7) A written disclosure that complies with the provisions of this section must be construed as a  
18 sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be  
19 construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller  
20 in a real estate transaction.

21

22 **NEW SECTION. Section 5. Vicarious liability.** (1) A party to a real estate transaction is not liable  
23 for a misrepresentation made by the party's agent or subagent unless:

24 (a) the party has actual knowledge of the misrepresentation; or

25 (b) the agent or subagent is repeating a misrepresentation made by the party.

26 (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent  
27 unless:

28 (a) the broker has actual knowledge of the misrepresentation;

29 (b) a broker associate making the misrepresentation is an employee of the broker and not an  
30 independent contractor or subagent; or

1 (c) a broker associate or subagent is repeating a misrepresentation made by the broker.

2 (3) An agent is not liable for a misrepresentation made by the principal unless the agent has  
3 knowledge of the misrepresentation.

4  
5 **NEW SECTION. Section 6. Name change -- directions to code commissioner.** In Title 37, chapter  
6 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever  
7 the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".

8  
9 **NEW SECTION. Section 7. Codification instruction.** [Sections 3 through 5] are intended to be  
10 codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part  
11 3, apply to [sections 3 through 5].

12 -END-

## SENATE BILL NO. 224

INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,  
FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

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

**Section 1.** Section 37-51-102, MCA, is amended to read:

**"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or another communicable disease or that the property was the site of a suicide or felony.

~~(2)~~(3) "Board" means the board of realty regulation provided for in 2-15-1867.

~~(3)~~(4) "Broker" includes an individual who:



1 (a) for another or for valuable consideration or who with the intent or expectation of receiving  
2 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or  
3 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

4 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,  
5 subleasing, or other disposition of real estate for consideration;

6 (c) engages in the business of charging an advance fee or contracting for collection of a fee in  
7 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other  
8 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or  
9 for referral of information concerning real estate to brokers;

10 (d) makes the advertising, sale, lease, or other real estate information available by public display  
11 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining  
12 any real estate for purchase or lease;

13 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate  
14 for purchase or lease;

15 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~  
16 salesperson the name of a prospective buyer or seller of real property; or

17 (g) advertises or represents to the public that the individual is engaged in any of the activities  
18 referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

19 ~~(4)~~(5) "Broker associate" means a broker who associates, as an employee or independent  
20 contractor, with a broker owner and does not own an interest in a real estate firm.

21 ~~(5)~~(6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

22 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property  
23 or who has entered into an agreement to acquire an interest in real property. The term includes tenants  
24 or potential tenants with respect to leases or rental agreements of real property.

25 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker  
26 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent  
27 and an in-house buyer agent designate.

28 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs  
29 a broker to locate real estate of the type and with terms and conditions as designated in the written  
30 agreement.

1           (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,  
2 acts as the agent of a buyer.

3           ~~(6)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
4 18.

5           (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or  
6 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with  
7 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be  
8 considered a dual agent.

9           ~~(7)~~(13) "Franchise agreement" means a contract or agreement by which:

10           (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in  
11 substantial part by the franchisor;

12           (b) the operation of the franchisee's business is substantially associated with the franchisor's  
13 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

14           (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the  
15 agreement.

16           (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or  
17 associated as an independent contractor with a broker owner and designated by the broker owner as the  
18 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for  
19 other than the buyer with respect to the designated transaction.

20           (15) "In-house seller agent designate" means a broker associate or salesperson employed by or  
21 associated as an independent contractor with a broker owner and designated by the broker owner as the  
22 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for  
23 other than the seller with respect to the designated transaction.

24           (16) "Listing agreement" means a written agreement between a seller and broker for the sale of  
25 real estate, with the terms and conditions set out in the agreement.

26           (17) "Negotiations" means:

27           (a) efforts to act as an intermediary between parties to a real estate transaction;

28           (b) facilitating and participating in contract discussions;

29           (c) completing forms for offers, counteroffers, addendums, and other writings; and

30           (d) presenting offers and counteroffers.

1 ~~(8)~~(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and  
2 domestic, except that when referring to a person licensed under this chapter, it means an individual.

3 ~~(9)~~(19) "Property manager" includes a person who for a salary, commission, or compensation of  
4 any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real  
5 estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and  
6 37-51-602.

7 ~~(10)~~(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether  
8 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or  
9 elsewhere.

10 (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,  
11 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,  
12 negotiation, and contract development and closing.

13 ~~(11)~~(22) "~~Salesman~~" "Salesperson" includes an individual who for a salary, commission, or  
14 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real  
15 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

16 (23) "Seller" means a person who has entered into a listing agreement to sell real estate and  
17 includes landlords who have an interest in or are a party to a lease or rental agreement.

18 (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts  
19 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

20 (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,  
21 acts as the agent of a seller.

22 (26)(a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real  
23 estate transaction without acting as an agent or representative of any party to the real estate transaction.

24 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or  
25 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or  
26 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

27  
28 **Section 2.** Section 37-51-321, MCA, is amended to read:

29 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The  
30 board may on its own motion and shall on the sworn complaint in writing of a person investigate the

1 actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may  
2 revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty  
3 by a majority of the board of any of the following practices:

4 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,  
5 display, or other nature, which advertising in any material particular or in any material way misrepresents  
6 any property, terms, values, policies, or services of the business conducted. A broker who operates under  
7 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise  
8 name, the broker does not incorporate the broker's own name in the franchise name or logotype or does  
9 not conspicuously display, on the broker's letterhead and other printed materials available to the public, a  
10 statement that the broker's office is independently owned and operated and the trade name, if any, by  
11 which the office is known. The board may not adopt advertising standards more stringent than those set  
12 forth in this subsection.

13 (b) making any false promises of a character likely to influence, persuade, or induce;

14 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through  
15 agents or salespersons or any medium of advertising or otherwise;

16 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or  
17 insignia of membership in a real estate organization of which the licensee is not a member;

18 (e) failing to account for or to remit money coming into the broker's or salesperson's possession  
19 belonging to others;

20 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures  
21 made for a principal;

22 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing  
23 to disclose in advertisements for real property the person's dual capacity as broker and principal;

24 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may  
25 result from the resale of real property;

26 (i) offering real property for sale or lease without the knowledge and consent of the owner or the  
27 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized  
28 agent;

29 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of  
30 substituting a new contract with another principal;

1 (k) accepting employment or compensation for appraising real property contingent on the reporting  
2 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson  
3 has an undisclosed interest;

4 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller  
5 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding  
6 ~~contract listing agreement or buyer broker agreement~~ in connection with the property granting an exclusive  
7 agency to another broker;

8 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
9 influencing a purchaser or prospective purchaser of real property;

10 (n) representing or attempting to represent a real estate broker other than the employer without  
11 the express knowledge or consent of the employer;

12 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time  
13 of its execution;

14 (p) paying a commission in connection with a real estate sale or transaction to a person who is not  
15 licensed as a real estate broker or real estate salesperson under this chapter;

16 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity  
17 with this chapter;

18 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody  
19 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that  
20 capacity by a person;

21 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

22 (t) conviction of a felony.

23 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,  
24 whether by means of printed material, radio, television, or display or by other means, unless the broker or  
25 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be  
26 valid as of the date of advertisement.

27 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including  
28 information on properties listed by other brokers or salespersons who will cooperate with the selling broker  
29 or salesperson in materials dispensed to prospective customers.

30 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or

1 revoked as provided in subsection (1)."

2

3 **NEW SECTION. Section 3. Duties, duration, and termination of relationship between broker or**  
4 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section  
5 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace  
6 the common law as applied to these relationships. The duties of a broker or salesperson vary depending  
7 upon the relationship with a party to a real estate transaction and are as provided in this section.

8 (2) A seller's agent is obligated to the seller to:

9 (a) act solely in the best interests of the seller;

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

11 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and  
12 that is known to the seller's agent and not known or discoverable by the seller, unless the information is  
13 subject to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

14 (d) safeguard the seller's confidences;

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

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

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

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

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

24 (b) act in good faith with a buyer and a buyer's agent; and

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

26 (4) A buyer's agent is obligated to the buyer to:

27 (a) act solely in the best interests of the buyer;

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

29 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and  
30 that is known to the buyer's agent and not known or discoverable by the buyer, unless the information is

1 subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's  
2 agent;

3 (d) safeguard the buyer's confidences;

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

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

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

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

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

12 (b) act in good faith with a seller and a seller's agent; and

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

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

16 (a) disclose to:

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

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

22 (b) exercise reasonable care, skill, and diligence putting together a real estate transaction; and

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

24 (7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to  
25 a buyer in the same manner as a buyer's agent under this section, except as follows:

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

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

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

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

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

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

5 (8)(a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the  
6 earliest of the following dates:

7 (i) completion of performance by the agent;

8 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

9 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker  
10 agreement.

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

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

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

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

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

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

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

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

23

24 **NEW SECTION. Section 4. Relationship disclosure requirements.** (1) A broker or salesperson shall  
25 disclose the existence and nature of relevant agency or other relationships to the parties to a real estate  
26 transaction as provided in this section.

27 (2) A seller agent shall make the required relationship disclosures:

28 (a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a  
29 seller subagent, at the time negotiations commence; and

30 (b) to the buyer or buyer agent at the time negotiations commence.



1 (3) A buyer agent shall make the required relationship disclosures:

2 (a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting  
3 as a buyer subagent, at the time negotiations commence; and

4 (b) to the seller or seller agent at the time negotiations commence.

5 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the  
6 time negotiations commence.

7 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the  
8 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual  
9 agency arises.

10 (6) A disclosure required by this section must be signed and dated by the party to whom the  
11 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the  
12 following information:

13 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your  
14 agent or subagent in the sale of your property located at (address of property). Your seller agent is  
15 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes  
16 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent  
17 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from  
18 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you  
19 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent  
20 disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This  
21 consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to  
22 give this consent, your opportunity to sell your property to that buyer may be lost.

23 Your seller agent is obligated to you as follows:

24 (1) to act solely in the best interests of the seller to the exclusion of all other interests, including  
25 those of the seller agent;

26 (2) to obey promptly and efficiently all lawful instructions of the seller;

27 (3) to disclose to the seller all relevant and material information that concerns the real estate  
28 transaction and that is known by the seller agent and not known by the seller, unless the information is  
29 subject to confidentiality arising from a prior or existing agency relationship;

30 (4) to safeguard the seller's confidences;

1 (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established  
2 in the listing agreement;

3 (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's  
4 possession;

5 (7) to comply with all applicable federal and state laws, rules, and regulations; and

6 (8) to carry out the terms of the listing agreement."

7 (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with  
8 respect to the seller's property located at (address of property). Although the seller agent is primarily  
9 obligated to the seller, the seller agent is obligated to you as specified below.

10 A seller agent is obligated to a buyer as follows:

11 (1) to disclose to a buyer any adverse material facts that concern the property and that are known  
12 to the seller agent;

13 (2) to deal in good faith with the buyer; and

14 (3) to comply with all applicable federal and state laws, rules, and regulations.

15 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
16 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
17 be a fact that materially affects the value or structural integrity or presents a documented health risk to  
18 occupants of the property. The term may not include the fact that an occupant of the property has or has  
19 had AIDS or another communicable disease or that the property was the site of a suicide or felony."

20 (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your  
21 agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.  
22 Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller  
23 of property that you become interested in, a dual agency may be created. In a dual agency relationship,  
24 the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer  
25 agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of  
26 representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with  
27 a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the  
28 seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller  
29 declines to give this consent, your opportunity to acquire the seller's property may be lost.

30 Your buyer agent is obligated to you as follows:

1 (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including  
2 those of the buyer agent;

3 (2) to obey promptly and efficiently all lawful instructions of the buyer;

4 (3) to disclose to the buyer all relevant and material information that concerns the real estate  
5 transaction and that is known by the buyer agent and not known by the buyer, unless the information is  
6 subject to confidentiality arising from a prior or existing agency relationship;

7 (4) to safeguard the buyer's confidences;

8 (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established  
9 in the buyer broker agreement;

10 (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer  
11 agent's possession;

12 (7) to comply with all applicable federal and state laws, rules, and regulations; and

13 (8) to carry out the terms of the buyer broker agreement."

14 (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with  
15 respect to the seller's property located at (address of property). Although the buyer agent is primarily  
16 obligated to the buyer, the buyer agent is obligated to you as specified below.

17 A buyer agent is obligated to a seller as follows:

18 (i) to disclose to a seller any adverse material facts that concern the ~~property~~ ABILITY OF THE  
19 BUYER TO PERFORM ON ANY PURCHASE OFFER and that are known to the buyer agent;

20 (ii) to deal in good faith with the seller; and

21 (iii) to comply with all applicable federal and state laws, rules, and regulations.

22 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
23 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
24 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
25 proposed or existing contract."

26 (e) Statutory ~~agent~~ BROKER disclosure to the buyer and seller: "(Name of statutory broker) will  
27 be involved as a statutory broker with respect to the purchase and sale of real property located at  
28 (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in  
29 executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

30 A statutory broker is obligated to the parties as follows:

1 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known  
2 to the statutory broker and not known to the buyer. However, the statutory broker is not required to  
3 conduct an independent inspection of the property or to verify any representation made by the seller.

4 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to  
5 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

6 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the  
7 property; and

8 (4) to comply with all applicable federal and state laws, rules, and regulations.

9 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
10 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be  
11 a fact that materially affects the value or structural integrity or presents a documented health risk to  
12 occupants of the property, but may not include the fact that an occupant of the property has or has had  
13 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may  
14 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
15 proposed or existing contract."

16 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer  
17 interested in purchasing the property and of the seller of the property located at (address of property). A  
18 dual agent is obligated to the buyer and seller as follows:

19 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests  
20 including the dual agent's;

21 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

22 (3) to disclose to the buyer and seller all relevant and material information that concerns the real  
23 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the  
24 information is subject to confidentiality arising from a prior or existing agency relationship;

25 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives  
26 as established in the listing agreement and buyer broker agreement;

27 (5) to fully account to the buyer and seller for all funds or property of the buyer AND SELLER  
28 coming into the dual agent's possession;

29 (6) to comply with all applicable federal and state laws, rules, and regulations;

30 (7) to carry out the terms of the buyer broker agreement; and

1           (8) to safeguard the buyer's and seller's confidences, ~~except that~~ SUBJECT TO the obligation to  
 2 disclose ~~relevant and material information concerning the real estate transaction to either the buyer or the~~  
 3 ~~seller supersedes any confidentiality requirement. However, the~~ TO A BUYER OR A SELLER ANY ADVERSE  
 4 MATERIAL FACTS THAT ARE KNOWN TO THE DUAL AGENT, REGARDLESS OF ANY CONFIDENTIALITY  
 5 CONSIDERATIONS. THE following may not be disclosed without the written consent of the party to whom  
 6 the information is confidential:

7           (a) that the buyer is willing to pay more than the buyer has offered for the property;

8           (b) that the seller is willing to accept less than the asking price for the property;

9           (c) factors motivating the buyer to buy or the seller to sell; and

10           (d) any other information that a party specifically indicates in writing to the dual agent is to be kept  
 11 confidential and that is not ~~relevant and material information concerning the real estate transaction~~ AN  
 12 ADVERSE MATERIAL FACT.

13           "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
 14 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be  
 15 a fact that materially affects the value or structural integrity or presents a documented health risk to  
 16 occupants of the property, but may not include the fact that an occupant of the property has or has had  
 17 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may  
 18 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
 19 proposed or existing contract.

20           Upon signing this disclosure form, the buyer and seller acknowledge that they understand the  
 21 obligations owed by a dual agent to them and consent to the dual agent representing them as a dual  
 22 agent."

23           (7) A written disclosure that complies with the provisions of this section must be construed as a  
 24 sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be  
 25 construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller  
 26 in a real estate transaction.

27  
 28           NEW SECTION. Section 5. Vicarious liability. (1) A party to a real estate transaction is not liable  
 29 for a misrepresentation made by the party's agent or subagent unless:

30           (a) the party has actual knowledge of the misrepresentation; or

- 1 (b) the agent or subagent is repeating a misrepresentation made by the party.
- 2 (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent
- 3 unless:
- 4 (a) the broker has actual knowledge of the misrepresentation;
- 5 (b) a broker associate making the misrepresentation is an employee of the broker and not an
- 6 independent contractor or subagent; or
- 7 (c) a broker associate or subagent is repeating a misrepresentation made by the broker.
- 8 (3) An agent is not liable for a misrepresentation made by the principal unless the agent has
- 9 ACTUAL knowledge of the misrepresentation.

10

11 NEW SECTION. Section 6. Name change -- directions to code commissioner. In Title 37, chapter

12 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever

13 the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".

14

15 NEW SECTION. Section 7. Codification instruction. [Sections 3 through 5] are intended to be

16 codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part

17 3, apply to [sections 3 through 5].

18

-END-

## 1 SENATE BILL NO. 224

2 INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,  
3 FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL  
6 ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS;  
7 ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS  
8 OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND  
9 SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS  
10 REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND  
11 BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND  
12 37-51-321, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.




## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 224** (third reading copy -- blue) **be concurred in as amended.**

Signed:

  
Bruce Simon, Chair

**And, that such amendments read:**

**Carried by: Rep. Bohlinger**

1. Page 1, lines 27 and 28.  
Following: "had" on line 27  
Strike: "AIDS or another"  
Insert: "a"

2. Page 7, following line 23.  
Insert: "(b) disclose to a buyer or the buyer's agent when the seller's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;"  
Re-number: subsequent subsections

3. Page 8, following line 11.  
Insert: "(b) disclose to the seller or the seller's agent when the buyer's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;"  
Re-number: subsequent subsections

4. Page 9, line 23.  
Insert: "(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation,

Committee Vote:  
Yes 18, No 0.

SB 224

HOUSE



or concealment of pertinent facts."

-END-

## SENATE BILL NO. 224

INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,  
FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

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

**Section 1.** Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or another A communicable disease or that the property was the site of a suicide or felony.

~~(2)~~(3) "Board" means the board of realty regulation provided for in 2-15-1867.

~~(3)~~(4) "Broker" includes an individual who:

1 (a) for another or for valuable consideration or who with the intent or expectation of receiving  
 2 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or  
 3 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

4 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,  
 5 subleasing, or other disposition of real estate for consideration;

6 (c) engages in the business of charging an advance fee or contracting for collection of a fee in  
 7 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other  
 8 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or  
 9 for referral of information concerning real estate to brokers;

10 (d) makes the advertising, sale, lease, or other real estate information available by public display  
 11 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining  
 12 any real estate for purchase or lease;

13 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate  
 14 for purchase or lease;

15 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~  
 16 salesperson the name of a prospective buyer or seller of real property; or

17 (g) advertises or represents to the public that the individual is engaged in any of the activities  
 18 referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

19 ~~(4)(5)~~ "Broker associate" means a broker who associates, as an employee or independent  
 20 contractor, with a broker owner and does not own an interest in a real estate firm.

21 ~~(5)(6)~~ "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

22 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property  
 23 or who has entered into an agreement to acquire an interest in real property. The term includes tenants  
 24 or potential tenants with respect to leases or rental agreements of real property.

25 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker  
 26 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent  
 27 and an in-house buyer agent designate.

28 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs  
 29 a broker to locate real estate of the type and with terms and conditions as designated in the written  
 30 agreement.

1           (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,  
2 acts as the agent of a buyer.

3           ~~(6)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
4 18.

5           (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or  
6 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with  
7 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be  
8 considered a dual agent.

9           ~~(7)~~(13) "Franchise agreement" means a contract or agreement by which:

10           (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in  
11 substantial part by the franchisor;

12           (b) the operation of the franchisee's business is substantially associated with the franchisor's  
13 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

14           (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the  
15 agreement.

16           (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or  
17 associated as an independent contractor with a broker owner and designated by the broker owner as the  
18 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for  
19 other than the buyer with respect to the designated transaction.

20           (15) "In-house seller agent designate" means a broker associate or salesperson employed by or  
21 associated as an independent contractor with a broker owner and designated by the broker owner as the  
22 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for  
23 other than the seller with respect to the designated transaction.

24           (16) "Listing agreement" means a written agreement between a seller and broker for the sale of  
25 real estate, with the terms and conditions set out in the agreement.

26           (17) "Negotiations" means:

27           (a) efforts to act as an intermediary between parties to a real estate transaction;

28           (b) facilitating and participating in contract discussions;

29           (c) completing forms for offers, counteroffers, addendums, and other writings; and

30           (d) presenting offers and counteroffers.

1           ~~(8)~~(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and  
2 domestic, except that when referring to a person licensed under this chapter, it means an individual.

3           ~~(9)~~(19) "Property manager" includes a person who for a salary, commission, or compensation of  
4 any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real  
5 estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and  
6 37-51-602.

7           ~~(10)~~(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether  
8 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or  
9 elsewhere.

10           (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,  
11 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,  
12 negotiation, and contract development and closing.

13           ~~(11)~~(22) "~~Salesman~~" "Salesperson" includes an individual who for a salary, commission, or  
14 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real  
15 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

16           (23) "Seller" means a person who has entered into a listing agreement to sell real estate and  
17 includes landlords who have an interest in or are a party to a lease or rental agreement.

18           (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts  
19 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

20           (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,  
21 acts as the agent of a seller.

22           (26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real  
23 estate transaction without acting as an agent or representative of any party to the real estate transaction.

24           (b) "A broker or salesperson is presumed to be acting as a statutory broker unless the broker or  
25 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or  
26 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

27

28           **Section 2.** Section 37-51-321, MCA, is amended to read:

29           "**37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The  
30 board may on its own motion and shall on the sworn complaint in writing of a person investigate the

1 actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may  
2 revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty  
3 by a majority of the board of any of the following practices:

4 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,  
5 display, or other nature, which advertising in any material particular or in any material way misrepresents  
6 any property, terms, values, policies, or services of the business conducted. A broker who operates under  
7 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise  
8 name, the broker does not incorporate the broker's own name in the franchise name or logotype or does  
9 not conspicuously display, on the broker's letterhead and other printed materials available to the public, a  
10 statement that the broker's office is independently owned and operated and the trade name, if any, by  
11 which the office is known. The board may not adopt advertising standards more stringent than those set  
12 forth in this subsection.

13 (b) making any false promises of a character likely to influence, persuade, or induce;

14 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through  
15 agents or salespersons or any medium of advertising or otherwise;

16 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or  
17 insignia of membership in a real estate organization of which the licensee is not a member;

18 (e) failing to account for or to remit money coming into the broker's or salesperson's possession  
19 belonging to others;

20 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures  
21 made for a principal;

22 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing  
23 to disclose in advertisements for real property the person's dual capacity as broker and principal;

24 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may  
25 result from the resale of real property;

26 (i) offering real property for sale or lease without the knowledge and consent of the owner or the  
27 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized  
28 agent;

29 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of  
30 substituting a new contract with another principal;

1 (k) accepting employment or compensation for appraising real property contingent on the reporting  
2 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson  
3 has an undisclosed interest;

4 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller  
5 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding  
6 contract listing agreement or buyer broker agreement in connection with the property granting an exclusive  
7 agency to another broker;

8 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
9 influencing a purchaser or prospective purchaser of real property;

10 (n) representing or attempting to represent a real estate broker other than the employer without  
11 the express knowledge or consent of the employer;

12 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time  
13 of its execution;

14 (p) paying a commission in connection with a real estate sale or transaction to a person who is not  
15 licensed as a real estate broker or real estate salesperson under this chapter;

16 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity  
17 with this chapter;

18 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody  
19 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that  
20 capacity by a person;

21 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

22 (t) conviction of a felony.

23 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,  
24 whether by means of printed material, radio, television, or display or by other means, unless the broker or  
25 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be  
26 valid as of the date of advertisement.

27 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including  
28 information on properties listed by other brokers or salespersons who will cooperate with the selling broker  
29 or salesperson in materials dispensed to prospective customers.

30 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or

1 revoked as provided in subsection (1)."

2

3 NEW SECTION. **Section 3. Duties, duration, and termination of relationship between broker or**  
 4 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section  
 5 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace  
 6 the common law as applied to these relationships. The duties of a broker or salesperson vary depending  
 7 upon the relationship with a party to a real estate transaction and are as provided in this section.

8 (2) A seller's agent is obligated to the seller to:

9 (a) act solely in the best interests of the seller;

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

11 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and  
 12 that is known to the seller's agent and not known or discoverable by the seller, unless the information is  
 13 subject to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

14 (d) safeguard the seller's confidences;

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

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

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

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

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

24 (B) DISCLOSE TO A BUYER OR THE BUYER'S AGENT WHEN THE SELLER'S AGENT HAS NO  
 25 PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS  
 26 THAT CONCERN THE PROPERTY;

27 ~~(b)~~(C) act in good faith with a buyer and a buyer's agent; and

28 ~~(c)~~(D) comply with all applicable federal and state laws, rules, and regulations.

29 (4) A buyer's agent is obligated to the buyer to:

30 (a) act solely in the best interests of the buyer;



- 1 (b) obey promptly and efficiently all lawful instructions of the buyer;
- 2 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and  
3 that is known to the buyer's agent and not known or discoverable by the buyer, unless the information is  
4 subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's  
5 agent;
- 6 (d) safeguard the buyer's confidences;
- 7 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying  
8 with the terms established in the buyer broker agreement;
- 9 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's  
10 agent's possession; and
- 11 (g) comply with all applicable federal and state laws, rules and regulations.
- 12 (5) A buyer's agent is obligated to the seller to:
- 13 (a) disclose any adverse material facts that are known to the buyer's agent and that concern the  
14 ability of the buyer to perform on any purchase offer;
- 15 (B) DISCLOSE TO THE SELLER OR THE SELLER'S AGENT WHEN THE BUYER'S AGENT HAS NO  
16 PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS  
17 THAT CONCERN THE PROPERTY;
- 18 ~~(b)~~(C) act in good faith with a seller and a seller's agent; and
- 19 ~~(e)~~(D) comply with all applicable federal and state laws, rules, and regulations.
- 20 (6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them  
21 to:
- 22 (a) disclose to:
- 23 (i) a buyer or a buyer's agent any adverse material facts that concern the property and that are  
24 known to the statutory broker, except that the statutory broker is not required to inspect the property or  
25 verify any statements made by the seller;
- 26 (ii) a seller or a seller's agent any adverse material facts that are known to the statutory broker and  
27 that concern the ability of the buyer to perform on any purchase offer;
- 28 (b) exercise reasonable care, skill, and diligence putting together a real estate transaction; and
- 29 (c) comply with all applicable federal and state laws, rules, and regulations.
- 30 (7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to

1 a buyer in the same manner as a buyer's agent under this section, except as follows:

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

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

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

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

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

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

11 (8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the  
12 earliest of the following dates:

13 (i) completion of performance by the agent;

14 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

15 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker  
16 agreement.

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

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

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

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

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

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

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

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

29 (10) CONSISTENT WITH THE LICENSEE'S DUTIES AS A BUYER AGENT, A SELLER AGENT, A  
30 DUAL AGENT, OR A STATUTORY BROKER, A LICENSEE SHALL ENDEAVOR TO ASCERTAIN ALL

1 PERTINENT FACTS CONCERNING EACH PROPERTY IN ANY TRANSACTION IN WHICH THE LICENSEE  
 2 ACTS SO THAT THE LICENSEE MAY FULFILL THE OBLIGATION TO AVOID ERROR, EXAGGERATION,  
 3 MISREPRESENTATION, OR CONCEALMENT OF PERTINENT FACTS.

4  
 5 **NEW SECTION. Section 4. Relationship disclosure requirements.** (1) A broker or salesperson shall  
 6 disclose the existence and nature of relevant agency or other relationships to the parties to a real estate  
 7 transaction as provided in this section.

8 (2) A seller agent shall make the required relationship disclosures:

9 (a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a  
 10 seller subagent, at the time negotiations commence; and

11 (b) to the buyer or buyer agent at the time negotiations commence.

12 (3) A buyer agent shall make the required relationship disclosures:

13 (a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting  
 14 as a buyer subagent, at the time negotiations commence; and

15 (b) to the seller or seller agent at the time negotiations commence.

16 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the  
 17 time negotiations commence.

18 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the  
 19 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual  
 20 agency arises.

21 (6) A disclosure required by this section must be signed and dated by the party to whom the  
 22 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the  
 23 following information:

24 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your  
 25 agent or subagent in the sale of your property located at (address of property). Your seller agent is  
 26 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes  
 27 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent  
 28 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from  
 29 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you  
 30 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent

1 disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This  
2 consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to  
3 give this consent, your opportunity to sell your property to that buyer may be lost.

4 Your seller agent is obligated to you as follows:

5 (1) to act solely in the best interests of the seller to the exclusion of all other interests, including  
6 those of the seller agent;

7 (2) to obey promptly and efficiently all lawful instructions of the seller;

8 (3) to disclose to the seller all relevant and material information that concerns the real estate  
9 transaction and that is known by the seller agent and not known by the seller, unless the information is  
10 subject to confidentiality arising from a prior or existing agency relationship;

11 (4) to safeguard the seller's confidences;

12 (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established  
13 in the listing agreement;

14 (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's  
15 possession;

16 (7) to comply with all applicable federal and state laws, rules, and regulations; and

17 (8) to carry out the terms of the listing agreement."

18 (b) Seller agent disclosure to the buyer: "{Name of seller agent} is the agent of the seller with  
19 respect to the seller's property located at (address of property). Although the seller agent is primarily  
20 obligated to the seller, the seller agent is obligated to you as specified below.

21 A seller agent is obligated to a buyer as follows:

22 (1) to disclose to a buyer any adverse material facts that concern the property and that are known  
23 to the seller agent;

24 (2) to deal in good faith with the buyer; and

25 (3) to comply with all applicable federal and state laws, rules, and regulations.

26 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
27 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
28 be a fact that materially affects the value or structural integrity or presents a documented health risk to  
29 occupants of the property. The term may not include the fact that an occupant of the property has or has  
30 had AIDS or another communicable disease or that the property was the site of a suicide or felony."

1 (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your  
2 agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.  
3 Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller  
4 of property that you become interested in, a dual agency may be created. In a dual agency relationship,  
5 the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer  
6 agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of  
7 representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with  
8 a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the  
9 seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller  
10 declines to give this consent, your opportunity to acquire the seller's property may be lost.

11 Your buyer agent is obligated to you as follows:

12 (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including  
13 those of the buyer agent;

14 (2) to obey promptly and efficiently all lawful instructions of the buyer;

15 (3) to disclose to the buyer all relevant and material information that concerns the real estate  
16 transaction and that is known by the buyer agent and not known by the buyer, unless the information is  
17 subject to confidentiality arising from a prior or existing agency relationship;

18 (4) to safeguard the buyer's confidences;

19 (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established  
20 in the buyer broker agreement;

21 (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer  
22 agent's possession;

23 (7) to comply with all applicable federal and state laws, rules, and regulations; and

24 (8) to carry out the terms of the buyer broker agreement."

25 (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with  
26 respect to the seller's property located at (address of property). Although the buyer agent is primarily  
27 obligated to the buyer, the buyer agent is obligated to you as specified below.

28 A buyer agent is obligated to a seller as follows:

29 (i) to disclose to a seller any adverse material facts that concern the ~~property~~ ABILITY OF THE  
30 BUYER TO PERFORM ON ANY PURCHASE OFFER and that are known to the buyer agent;

1 (ii) to deal in good faith with the seller; and

2 (iii) to comply with all applicable federal and state laws, rules, and regulations.

3 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
4 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
5 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
6 proposed or existing contract."

7 (e) Statutory ~~agent~~ BROKER disclosure to the buyer and seller: "(Name of statutory broker) will  
8 be involved as a statutory broker with respect to the purchase and sale of real property located at  
9 (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in  
10 executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

11 A statutory broker is obligated to the parties as follows:

12 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known  
13 to the statutory broker and not known to the buyer. However, the statutory broker is not required to  
14 conduct an independent inspection of the property or to verify any representation made by the seller.

15 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to  
16 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

17 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the  
18 property; and

19 (4) to comply with all applicable federal and state laws, rules, and regulations.

20 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
21 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be  
22 a fact that materially affects the value or structural integrity or presents a documented health risk to  
23 occupants of the property, but may not include the fact that an occupant of the property has or has had  
24 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may  
25 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
26 proposed or existing contract."

27 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer  
28 interested in purchasing the property and of the seller of the property located at (address of property). A  
29 dual agent is obligated to the buyer and seller as follows:

30 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests

1 including the dual agent's;

2 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

3 (3) to disclose to the buyer and seller all relevant and material information that concerns the real  
4 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the  
5 information is subject to confidentiality arising from a prior or existing agency relationship;

6 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives  
7 as established in the listing agreement and buyer broker agreement;

8 (5) to fully account to the buyer and seller for all funds or property of the buyer AND SELLER  
9 coming into the dual agent's possession;

10 (6) to comply with all applicable federal and state laws, rules, and regulations;

11 (7) to carry out the terms of the buyer broker agreement; and

12 (8) to safeguard the buyer's and seller's confidences, ~~except that~~ SUBJECT TO the obligation to  
13 disclose ~~relevant and material information concerning the real estate transaction to either the buyer or the~~  
14 ~~seller supersedes any confidentiality requirement. However, the~~ TO A BUYER OR A SELLER ANY ADVERSE  
15 MATERIAL FACTS THAT ARE KNOWN TO THE DUAL AGENT, REGARDLESS OF ANY CONFIDENTIALITY  
16 CONSIDERATIONS. THE following may not be disclosed without the written consent of the party to whom  
17 the information is confidential:

18 (a) that the buyer is willing to pay more than the buyer has offered for the property;

19 (b) that the seller is willing to accept less than the asking price for the property;

20 (c) factors motivating the buyer to buy or the seller to sell; and

21 (d) any other information that a party specifically indicates in writing to the dual agent is to be kept  
22 confidential and that is not ~~relevant and material information concerning the real estate transaction~~ AN  
23 ADVERSE MATERIAL FACT.

24 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
25 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be  
26 a fact that materially affects the value or structural integrity or presents a documented health risk to  
27 occupants of the property, but may not include the fact that an occupant of the property has or has had  
28 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may  
29 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
30 proposed or existing contract.





GOVERNOR'S AMENDMENTS TO  
SENATE BILL NO. 224  
(REFERENCE COPY)  
April 11, 1995

1. Page 8, line 28.  
Following: "diligence"  
Insert: "in"

2. Page 11, line 30.  
Page 13, line 24.  
Page 14, line 28.  
Strike: "AIDS or another"  
Insert: "a"

## SENATE BILL NO. 224

INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,  
FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

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

**Section 1.** Section 37-51-102, MCA, is amended to read:

**"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or another A communicable disease or that the property was the site of a suicide or felony.

~~(2)~~(3) "Board" means the board of realty regulation provided for in 2-15-1867.

~~(3)~~(4) "Broker" includes an individual who:

1 (a) for another or for valuable consideration or who with the intent or expectation of receiving  
 2 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or  
 3 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

4 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,  
 5 subleasing, or other disposition of real estate for consideration;

6 (c) engages in the business of charging an advance fee or contracting for collection of a fee in  
 7 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other  
 8 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or  
 9 for referral of information concerning real estate to brokers;

10 (d) makes the advertising, sale, lease, or other real estate information available by public display  
 11 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining  
 12 any real estate for purchase or lease;

13 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate  
 14 for purchase or lease;

15 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~  
 16 salesperson the name of a prospective buyer or seller of real property; or

17 (g) advertises or represents to the public that the individual is engaged in any of the activities  
 18 referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

19 ~~(4)(5)~~ "Broker associate" means a broker who associates, as an employee or independent  
 20 contractor, with a broker owner and does not own an interest in a real estate firm.

21 ~~(5)(6)~~ "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

22 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property  
 23 or who has entered into an agreement to acquire an interest in real property. The term includes tenants  
 24 or potential tenants with respect to leases or rental agreements of real property.

25 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker  
 26 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent  
 27 and an in-house buyer agent designate.

28 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs  
 29 a broker to locate real estate of the type and with terms and conditions as designated in the written  
 30 agreement.

1        (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,  
2 acts as the agent of a buyer.

3        ~~(6)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
4 18.

5        (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or  
6 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with  
7 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be  
8 considered a dual agent.

9        ~~(7)~~(13) "Franchise agreement" means a contract or agreement by which:

10        (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in  
11 substantial part by the franchisor;

12        (b) the operation of the franchisee's business is substantially associated with the franchisor's  
13 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

14        (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the  
15 agreement.

16        (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or  
17 associated as an independent contractor with a broker owner and designated by the broker owner as the  
18 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for  
19 other than the buyer with respect to the designated transaction.

20        (15) "In-house seller agent designate" means a broker associate or salesperson employed by or  
21 associated as an independent contractor with a broker owner and designated by the broker owner as the  
22 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for  
23 other than the seller with respect to the designated transaction.

24        (16) "Listing agreement" means a written agreement between a seller and broker for the sale of  
25 real estate, with the terms and conditions set out in the agreement.

26        (17) "Negotiations" means:

27        (a) efforts to act as an intermediary between parties to a real estate transaction;

28        (b) facilitating and participating in contract discussions;

29        (c) completing forms for offers, counteroffers, addendums, and other writings; and

30        (d) presenting offers and counteroffers.

1           ~~(8)~~(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and  
2 domestic, except that when referring to a person licensed under this chapter, it means an individual.

3           ~~(9)~~(19) "Property manager" includes a person who for a salary, commission, or compensation of  
4 any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real  
5 estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and  
6 37-51-602.

7           ~~(10)~~(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether  
8 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or  
9 elsewhere.

10           (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,  
11 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,  
12 negotiation, and contract development and closing.

13           ~~(11)~~(22) "Salesman" "Salesperson" includes an individual who for a salary, commission, or  
14 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real  
15 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

16           (23) "Seller" means a person who has entered into a listing agreement to sell real estate and  
17 includes landlords who have an interest in or are a party to a lease or rental agreement.

18           (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts  
19 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

20           (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,  
21 acts as the agent of a seller.

22           (26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real  
23 estate transaction without acting as an agent or representative of any party to the real estate transaction.

24           (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or  
25 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or  
26 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

27  
28           **Section 2.** Section 37-51-321, MCA, is amended to read:

29           **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The  
30 board may on its own motion and shall on the sworn complaint in writing of a person investigate the

1 actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may  
2 revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty  
3 by a majority of the board of any of the following practices:

4 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,  
5 display, or other nature, which advertising in any material particular or in any material way misrepresents  
6 any property, terms, values, policies, or services of the business conducted. A broker who operates under  
7 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise  
8 name, the broker does not incorporate the broker's own name in the franchise name or logotype or does  
9 not conspicuously display, on the broker's letterhead and other printed materials available to the public, a  
10 statement that the broker's office is independently owned and operated and the trade name, if any, by  
11 which the office is known. The board may not adopt advertising standards more stringent than those set  
12 forth in this subsection.

13 (b) making any false promises of a character likely to influence, persuade, or induce;

14 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through  
15 agents or salespersons or any medium of advertising or otherwise:

16 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or  
17 insignia of membership in a real estate organization of which the licensee is not a member;

18 (e) failing to account for or to remit money coming into the broker's or salesperson's possession  
19 belonging to others;

20 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures  
21 made for a principal;

22 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing  
23 to disclose in advertisements for real property the person's dual capacity as broker and principal;

24 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may  
25 result from the resale of real property;

26 (i) offering real property for sale or lease without the knowledge and consent of the owner or the  
27 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized  
28 agent;

29 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of  
30 substituting a new contract with another principal;

1 (k) accepting employment or compensation for appraising real property contingent on the reporting  
2 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson  
3 has an undisclosed interest;

4 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller  
5 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding  
6 ~~contract~~ listing agreement or buyer broker agreement in connection with the property granting an exclusive  
7 agency to another broker;

8 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of  
9 influencing a purchaser or prospective purchaser of real property;

10 (n) representing or attempting to represent a real estate broker other than the employer without  
11 the express knowledge or consent of the employer;

12 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time  
13 of its execution;

14 (p) paying a commission in connection with a real estate sale or transaction to a person who is not  
15 licensed as a real estate broker or real estate salesperson under this chapter;

16 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity  
17 with this chapter;

18 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody  
19 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that  
20 capacity by a person;

21 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

22 (t) conviction of a felony.

23 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,  
24 whether by means of printed material, radio, television, or display or by other means, unless the broker or  
25 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be  
26 valid as of the date of advertisement.

27 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including  
28 information on properties listed by other brokers or salespersons who will cooperate with the selling broker  
29 or salesperson in materials dispensed to prospective customers.

30 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or

1 revoked as provided in subsection (1)."

2

3 **NEW SECTION. Section 3. Duties, duration, and termination of relationship between broker or**

4 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section

5 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace

6 the common law as applied to these relationships. The duties of a broker or salesperson vary depending

7 upon the relationship with a party to a real estate transaction and are as provided in this section.

8 (2) A seller's agent is obligated to the seller to:

9 (a) act solely in the best interests of the seller;

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

11 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and  
12 that is known to the seller's agent and not known or discoverable by the seller, unless the information is  
13 subject to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

14 (d) safeguard the seller's confidences;

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

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

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

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

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

24 (B) DISCLOSE TO A BUYER OR THE BUYER'S AGENT WHEN THE SELLER'S AGENT HAS NO  
25 PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS  
26 THAT CONCERN THE PROPERTY:

27 ~~(C)~~ act in good faith with a buyer and a buyer's agent; and

28 ~~(D)~~ comply with all applicable federal and state laws, rules, and regulations.

29 (4) A buyer's agent is obligated to the buyer to:

30 (a) act solely in the best interests of the buyer;



- 1 (b) obey promptly and efficiently all lawful instructions of the buyer;
- 2 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and  
3 that is known to the buyer's agent and not known or discoverable by the buyer, unless the information is  
4 subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's  
5 agent;
- 6 (d) safeguard the buyer's confidences;
- 7 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying  
8 with the terms established in the buyer broker agreement;
- 9 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's  
10 agent's possession; and
- 11 (g) comply with all applicable federal and state laws, rules and regulations.

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

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

15 (B) DISCLOSE TO THE SELLER OR THE SELLER'S AGENT WHEN THE BUYER'S AGENT HAS NO  
16 PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS  
17 THAT CONCERN THE PROPERTY;

18 ~~(b)~~(C) act in good faith with a seller and a seller's agent; and

19 ~~(c)~~(D) comply with all applicable federal and state laws, rules, and regulations.

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

22 (a) disclose to:

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

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

28 (b) exercise reasonable care, skill, and diligence IN putting together a real estate transaction; and

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

30 (7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to

1 a buyer in the same manner as a buyer's agent under this section, except as follows:

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

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

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

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

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

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

11 (8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the  
12 earliest of the following dates:

13 (i) completion of performance by the agent;

14 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

15 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker  
16 agreement.

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

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

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

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

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

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

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

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

29 (10) CONSISTENT WITH THE LICENSEE'S DUTIES AS A BUYER AGENT, A SELLER AGENT, A  
30 DUAL AGENT, OR A STATUTORY BROKER, A LICENSEE SHALL ENDEAVOR TO ASCERTAIN ALL

1 PERTINENT FACTS CONCERNING EACH PROPERTY IN ANY TRANSACTION IN WHICH THE LICENSEE  
2 ACTS SO THAT THE LICENSEE MAY FULFILL THE OBLIGATION TO AVOID ERROR, EXAGGERATION,  
3 MISREPRESENTATION, OR CONCEALMENT OF PERTINENT FACTS.

4  
5 NEW SECTION. Section 4. Relationship disclosure requirements. (1) A broker or salesperson shall  
6 disclose the existence and nature of relevant agency or other relationships to the parties to a real estate  
7 transaction as provided in this section.

8 (2) A seller agent shall make the required relationship disclosures:

9 (a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a  
10 seller subagent, at the time negotiations commence; and

11 (b) to the buyer or buyer agent at the time negotiations commence.

12 (3) A buyer agent shall make the required relationship disclosures:

13 (a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting  
14 as a buyer subagent, at the time negotiations commence; and

15 (b) to the seller or seller agent at the time negotiations commence.

16 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the  
17 time negotiations commence.

18 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the  
19 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual  
20 agency arises.

21 (6) A disclosure required by this section must be signed and dated by the party to whom the  
22 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the  
23 following information:

24 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your  
25 agent or subagent in the sale of your property located at (address of property). Your seller agent is  
26 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes  
27 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent  
28 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from  
29 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you  
30 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent

1 disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This  
2 consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to  
3 give this consent, your opportunity to sell your property to that buyer may be lost.

4 Your seller agent is obligated to you as follows:

5 (1) to act solely in the best interests of the seller to the exclusion of all other interests, including  
6 those of the seller agent;

7 (2) to obey promptly and efficiently all lawful instructions of the seller;

8 (3) to disclose to the seller all relevant and material information that concerns the real estate  
9 transaction and that is known by the seller agent and not known by the seller, unless the information is  
10 subject to confidentiality arising from a prior or existing agency relationship;

11 (4) to safeguard the seller's confidences;

12 (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established  
13 in the listing agreement;

14 (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's  
15 possession;

16 (7) to comply with all applicable federal and state laws, rules, and regulations; and

17 (8) to carry out the terms of the listing agreement."

18 (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with  
19 respect to the seller's property located at (address of property). Although the seller agent is primarily  
20 obligated to the seller, the seller agent is obligated to you as specified below.

21 A seller agent is obligated to a buyer as follows:

22 (1) to disclose to a buyer any adverse material facts that concern the property and that are known  
23 to the seller agent;

24 (2) to deal in good faith with the buyer; and

25 (3) to comply with all applicable federal and state laws, rules, and regulations.

26 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
27 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
28 be a fact that materially affects the value or structural integrity or presents a documented health risk to  
29 occupants of the property. The term may not include the fact that an occupant of the property has or has  
30 had ~~AIDS or another~~ A communicable disease or that the property was the site of a suicide or felony."

1 (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your  
2 agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.  
3 Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller  
4 of property that you become interested in, a dual agency may be created. In a dual agency relationship,  
5 the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer  
6 agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of  
7 representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with  
8 a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the  
9 seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller  
10 declines to give this consent, your opportunity to acquire the seller's property may be lost.

11 Your buyer agent is obligated to you as follows:

12 (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including  
13 those of the buyer agent;

14 (2) to obey promptly and efficiently all lawful instructions of the buyer;

15 (3) to disclose to the buyer all relevant and material information that concerns the real estate  
16 transaction and that is known by the buyer agent and not known by the buyer, unless the information is  
17 subject to confidentiality arising from a prior or existing agency relationship;

18 (4) to safeguard the buyer's confidences;

19 (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established  
20 in the buyer broker agreement;

21 (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer  
22 agent's possession;

23 (7) to comply with all applicable federal and state laws, rules, and regulations; and

24 (8) to carry out the terms of the buyer broker agreement."

25 (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with  
26 respect to the seller's property located at (address of property). Although the buyer agent is primarily  
27 obligated to the buyer, the buyer agent is obligated to you as specified below.

28 A buyer agent is obligated to a seller as follows:

29 (i) to disclose to a seller any adverse material facts that concern the ~~property~~ ABILITY OF THE  
30 BUYER TO PERFORM ON ANY PURCHASE OFFER and that are known to the buyer agent;

1 (ii) to deal in good faith with the seller; and

2 (iii) to comply with all applicable federal and state laws, rules, and regulations.

3 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
4 significance as to affect a person's decision to enter into a contract to buy or sell real property and may  
5 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
6 proposed or existing contract."

7 (e) Statutory ~~agent~~ BROKER disclosure to the buyer and seller: "(Name of statutory broker) will  
8 be involved as a statutory broker with respect to the purchase and sale of real property located at  
9 (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in  
10 executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

11 A statutory broker is obligated to the parties as follows:

12 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known  
13 to the statutory broker and not known to the buyer. However, the statutory broker is not required to  
14 conduct an independent inspection of the property or to verify any representation made by the seller.

15 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to  
16 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

17 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the  
18 property; and

19 (4) to comply with all applicable federal and state laws, rules, and regulations.

20 "Adverse material fact" means a fact that should be recognized by a broker as being of enough  
21 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be  
22 a fact that materially affects the value or structural integrity or presents a documented health risk to  
23 occupants of the property, but may not include the fact that an occupant of the property has or has had  
24 ~~AIDS or another~~ A communicable disease or that the property was the site of a suicide or felony, or it may  
25 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a  
26 proposed or existing contract."

27 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer  
28 interested in purchasing the property and of the seller of the property located at (address of property). A  
29 dual agent is obligated to the buyer and seller as follows:

30 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests

- 1 including the dual agent's;
- 2 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;
- 3 (3) to disclose to the buyer and seller all relevant and material information that concerns the real
- 4 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the
- 5 information is subject to confidentiality arising from a prior or existing agency relationship;
- 6 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives
- 7 as established in the listing agreement and buyer broker agreement;
- 8 (5) to fully account to the buyer and seller for all funds or property of the buyer AND SELLER
- 9 coming into the dual agent's possession;
- 10 (6) to comply with all applicable federal and state laws, rules, and regulations;
- 11 (7) to carry out the terms of the buyer broker agreement; and
- 12 (8) to safeguard the buyer's and seller's confidences, ~~except that~~ SUBJECT TO the obligation to
- 13 disclose ~~relevant and material information concerning the real estate transaction to either the buyer or the~~
- 14 ~~seller supersedes any confidentiality requirement. However, the~~ TO A BUYER OR A SELLER ANY ADVERSE
- 15 MATERIAL FACTS THAT ARE KNOWN TO THE DUAL AGENT, REGARDLESS OF ANY CONFIDENTIALITY
- 16 CONSIDERATIONS. THE following may not be disclosed without the written consent of the party to whom
- 17 the information is confidential:
- 18 (a) that the buyer is willing to pay more than the buyer has offered for the property;
- 19 (b) that the seller is willing to accept less than the asking price for the property;
- 20 (c) factors motivating the buyer to buy or the seller to sell; and
- 21 (d) any other information that a party specifically indicates in writing to the dual agent is to be kept
- 22 confidential and that is not ~~relevant and material information concerning the real estate transaction~~ AN
- 23 ADVERSE MATERIAL FACT.
- 24 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
- 25 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
- 26 a fact that materially affects the value or structural integrity or presents a documented health risk to
- 27 occupants of the property, but may not include the fact that an occupant of the property has or has had
- 28 ~~AIDS or another~~ A communicable disease or that the property was the site of a suicide or felony, or it may
- 29 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
- 30 proposed or existing contract.

1           Upon signing this disclosure form, the buyer and seller acknowledge that they understand the  
2 obligations owed by a dual agent to them and consent to the dual agent representing them as a dual  
3 agent."

4           (7) A written disclosure that complies with the provisions of this section must be construed as a  
5 sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be  
6 construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller  
7 in a real estate transaction.

8

9           **NEW SECTION. Section 5. Vicarious liability.** (1) A party to a real estate transaction is not liable  
10 for a misrepresentation made by the party's agent or subagent unless:

11           (a) the party has actual knowledge of the misrepresentation; or

12           (b) the agent or subagent is repeating a misrepresentation made by the party.

13           (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent  
14 unless:

15           (a) the broker has actual knowledge of the misrepresentation;

16           (b) a broker associate making the misrepresentation is an employee of the broker and not an  
17 independent contractor or subagent; or

18           (c) a broker associate or subagent is repeating a misrepresentation made by the broker.

19           (3) An agent is not liable for a misrepresentation made by the principal unless the agent has  
20 ACTUAL knowledge of the misrepresentation.

21

22           **NEW SECTION. Section 6. Name change -- directions to code commissioner.** In Title 37, chapter  
23 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever  
24 the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".

25

26           **NEW SECTION. Section 7. Codification instruction.** [Sections 3 through 5] are intended to be  
27 codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part  
28 3, apply to [sections 3 through 5].

29

-END-