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MAR 21 1995

Place On Calendar

HOUSE FILE 515

BY COMMITTEE ON COMMERCE AND  
REGULATION

(SUCCESSOR TO HSB 201)

(P. 1092) Passed House, Date 3-30-95 (P. 1024) Passed Senate, Date 4-4-95  
 Vote: Ayes 90 Nays 3 Vote: Ayes 49 Nays 0  
 Approved April 11, 1995

**A BILL FOR**

1 An Act relating to the relationship between a licensed real  
 2 estate salesperson or broker and the parties to a transaction  
 3 and providing an effective date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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*HF 515*

1 Section 1. Section 543B.5, Code 1995, is amended to read  
2 as follows:

3 543B.5 OTHER DEFINITIONS.

4 As used in this chapter, unless the context otherwise  
5 requires:

6 1. "Agency" means a relationship in which a real estate  
7 broker acts for or represents another by the other person's  
8 express authority in a transaction.

9 2. "Agency agreement" means a written agreement between a  
10 broker and a client which identifies the party the broker  
11 represents in a transaction.

12 3. "Appointed agent" means that affiliated licensee who is  
13 appointed by the designated broker of the affiliated  
14 licensee's real estate brokerage agency to act solely for a  
15 client of that brokerage agency to the exclusion of other  
16 affiliated licensees of that brokerage agency.

17 ~~4.~~ 4. "Broker associate" means a person who has a broker's  
18 license but is employed by or otherwise associated with  
19 another broker as a salesperson.

20 5. "Brokerage" means the business or occupation of a real  
21 estate broker.

22 6. "Brokerage agreement" means a contract between a broker  
23 and a client which establishes the relationship between the  
24 parties as to the brokerage services to be performed.

25 7. "Brokerage services" means those activities identified  
26 in sections 543B.3 and 543B.6.

27 8. "Client" means a party to a transaction who has an  
28 agency agreement with a broker for brokerage services.

29 9. "Customer" means a consumer who is not being  
30 represented by a licensee but for whom the licensee may  
31 perform ministerial acts.

32 10. "Designated broker" means a licensee designated by a  
33 real estate brokerage agency to act for the agency in  
34 conducting real estate brokerage services.

35 ~~11.~~ 11. "Inactive license" means either a broker or

1 salesperson license certificate that is on file with the real  
2 estate commission in the commission office and during which  
3 time the licensee is precluded from engaging in any of the  
4 acts of this chapter.

5 12. "Licensee" means a broker or a salesperson licensed  
6 pursuant to this chapter.

7 13. "Material adverse fact" means an adverse fact that a  
8 party indicates is of such significance, or that is generally  
9 recognized by a competent licensee as being of such  
10 significance to a reasonable party, that it affects or would  
11 affect the party's decision to enter into a contract or  
12 agreement concerning a transaction, or affects or would affect  
13 the party's decision about the terms of the contract or  
14 agreement.

15 For purposes of this subsection, "adverse fact" means a  
16 condition or occurrence that is generally recognized by a  
17 competent licensee as resulting in any of the following:

18 a. Significantly and adversely affecting the value of the  
19 property.

20 b. Significantly reducing the structural integrity of  
21 improvement to real estate.

22 c. Presenting a significant health risk to occupants of  
23 the property.

24 14. "Negotiate" means to act as an intermediary between  
25 the parties to a transaction, and includes any of the  
26 following acts:

27 a. Participating in the parties' discussion of the terms  
28 of a contract or agreement concerning a transaction.

29 b. Completing, when requested by a party, appropriate  
30 forms or other written record to document the party's proposal  
31 in a manner consistent with the party's intent.

32 c. Presenting to a party the proposals of other parties to  
33 the transaction and informing the party receiving a proposal  
34 of the advantages and disadvantages of the proposal.

35 15. "Party" means a person seeking to sell, exchange, buy,

1 or rent an interest in real estate, a business, or a business  
2 opportunity. "Party" includes a person who seeks to grant or  
3 accept an option to buy, sell, or rent an interest in real  
4 estate.

5 3- 16. "Salesperson" means a person employed by or  
6 otherwise associated with a real estate broker, as a selling,  
7 renting, or listing agent or representative of the broker.

8 17. "Transaction" means the sale, exchange, purchase or  
9 rental of, or the granting or acceptance of an option to sell,  
10 exchange, purchase, or rent an interest in real estate.

11 Sec. 2. NEW SECTION. 543B.56 DUTIES OF LICENSEES.

12 1. DUTIES TO ALL PARTIES IN A TRANSACTION. In providing  
13 brokerage services to all parties to a transaction, a licensee  
14 shall do all of the following:

15 a. Provide brokerage services to all parties to the  
16 transaction honestly and in good faith.

17 b. Diligently exercise reasonable skill and care in  
18 providing brokerage services to all parties.

19 c. Disclose to each party all material adverse facts that  
20 the licensee knows except for the following:

21 (1) Material adverse facts known by the party.

22 (2) Material adverse facts the party could discover  
23 through a reasonably diligent inspection.

24 (3) Material adverse facts the disclosure of which is  
25 prohibited by law.

26 d. Account for all property coming into the possession of  
27 a licensee that belongs to any party within a reasonable time  
28 of receiving the property.

29 2. DUTIES TO A CLIENT. In addition to the licensee's  
30 duties under subsection 1, a licensee providing brokerage  
31 services to a client shall do all of the following:

32 a. Place the client's interests ahead of the interests of  
33 any other party, unless loyalty to a client violates the  
34 licensee's duties under subsection 1, section 543B.58, or  
35 under other applicable law.

1 b. Disclose to the client all information known by the  
2 licensee that is material to the transaction and that is not  
3 known by the client or could not be discovered by the client  
4 through a reasonably diligent inspection.

5 c. Fulfill any obligation that is within the scope of the  
6 agency agreement, except those obligations that are  
7 inconsistent with other duties that the licensee has under  
8 this chapter or any other law.

9 d. Disclose to a client any financial interests the  
10 licensee or the brokerage has in any business entity to which  
11 the licensee or brokerage refers a client for any service or  
12 product related to the transaction.

13 3. PROHIBITED CONDUCT. In providing brokerage services, a  
14 licensee shall not do either of the following:

15 a. Accept a fee or compensation related to a transaction  
16 from a person other than the licensee's client, unless the  
17 licensee has provided written notice to all parties to the  
18 transaction that a fee or compensation will be accepted by the  
19 licensee from such person.

20 b. Act in a transaction on the licensee's own behalf, on  
21 behalf of the licensee's immediate family or brokerage, or on  
22 behalf of an organization or business entity in which the  
23 licensee has an interest, unless the licensee has the written  
24 consent of all parties to the transaction.

25 Sec. 3. NEW SECTION. 543B.57 CONFIRMATION AND DISCLOSURE  
26 OF RELATIONSHIP.

27 1. A licensee shall not represent any party or parties to  
28 a transaction or otherwise as a licensee unless that licensee  
29 makes an affirmative written disclosure to all parties to the  
30 transaction identifying which party that person represents in  
31 the transaction. The disclosure shall be acknowledged by  
32 separate signatures of all parties to the transaction.

33 2. a. The disclosure required in subsection 1 shall be  
34 made by the licensee at the time the licensee provides  
35 specific assistance to the client, or prior to any offer being

1 made or accepted by any party to a transaction, whichever is  
2 sooner. A change in a licensee's representation that makes  
3 the initial disclosure incomplete, misleading, or inaccurate  
4 requires that a new disclosure be made immediately.

5 b. For purposes of this section, "specific assistance"  
6 means eliciting or accepting confidential information about a  
7 party's real estate needs, motivation, or financial  
8 qualifications. "Specific assistance" does not mean an open  
9 house showing, preliminary conversations concerning price  
10 range, location, and property styles, or responding to general  
11 factual questions concerning properties which have been  
12 advertised for sale or lease.

13 3. The written agency disclosure form shall contain all of  
14 the following:

15 a. A statement of which party is the licensee's client or,  
16 if the licensee is providing brokerage services to more than  
17 one client as provided under section 543B.60, a statement of  
18 all persons who are the licensee's clients.

19 b. A statement of the licensee's duties to the licensee's  
20 client under section 543B.56, subsections 1 and 2.

21 c. Any additional information that the licensee determines  
22 is necessary to clarify the licensee's relationship to the  
23 licensee's client or customer.

24 4. This section does not prohibit a person from  
25 representing oneself.

26 5. The seller, in the listing agreement, may authorize the  
27 seller's licensee to disburse part of the licensee's  
28 compensation to other licensees, including a buyer's licensee  
29 solely representing the buyer. A licensee representing a  
30 buyer shall inform the listing licensee, if there is a listing  
31 licensee, either verbally or in writing, of the agency  
32 relationship before any negotiations are initiated. The  
33 obligation of either the seller or the buyer to pay  
34 compensation to a licensee is not determinative of the agency  
35 relationship.

1     Sec. 4. NEW SECTION. 543B.58 LICENSEES REPRESENTING MORE  
2 THAN ONE CLIENT IN A TRANSACTION.

3     1. A licensee shall not be the agent for both a buyer and  
4 a seller to a transaction without obtaining the written  
5 consent of both the buyer and the seller. The written consent  
6 shall state that the licensee has made a full disclosure of  
7 the type of representation the licensee will provide. The  
8 consent to multiple representation shall contain a statement  
9 of the licensee's duties under section 543B.56, subsection 1,  
10 a statement of the licensee's duties to the client under  
11 section 543B.56, subsection 2, paragraphs "b" and "c", and a  
12 statement that the clients understand the licensee's duties  
13 and consent to the licensee's providing brokerage services to  
14 more than one client.

15     2. A consent to multiple representation may contain  
16 additional disclosures by the licensee or additional  
17 agreements between the licensee and the clients that do not  
18 violate any duty of a licensee under this chapter.

19     Sec. 5. NEW SECTION. 543B.59 APPOINTED AGENTS WITHIN A  
20 FIRM.

21     1. APPOINTED AGENTS. A real estate brokerage agency  
22 entering into a brokerage agreement, through a designated  
23 broker, may notify a client in writing of those affiliated  
24 licensees within the real estate brokerage agency who will be  
25 acting as appointed agents of that client to the exclusion of  
26 all other affiliated licensees within the real estate  
27 brokerage agency.

28     2. DUAL AGENT. A real estate brokerage agency and a  
29 designated broker are not considered to be dual agents solely  
30 because of an appointment under the provisions of this  
31 section. However, an affiliated licensee who personally  
32 represents both the seller and the buyer in a particular  
33 transaction is considered to be a disclosed dual agent and is  
34 required to comply with the provisions of this subchapter  
35 governing disclosed dual agents.

1 3. ACTUAL KNOWLEDGE -- INFORMATION. A client, a real  
2 estate brokerage agency, and its appointed agents are deemed  
3 to possess only actual knowledge and information at the time  
4 the appointed agents are appointed. Knowledge or information  
5 is not imparted by operation of law among the clients, the  
6 real estate brokerage agency, and its appointed agents.

7 4. APPOINTMENTS -- ROLES. The commission shall define by  
8 rule the methods of appointment and the role of the real  
9 estate brokerage agency and the designated broker. The rules  
10 must include a requirement that clients be informed as to the  
11 real estate brokerage agency's appointed agent policy and be  
12 given written notice of that policy in advance of entering  
13 into a brokerage agreement.

14 Sec. 6. NEW SECTION. 543B.60 LICENSEES PROVIDING  
15 SERVICES IN MORE THAN ONE TRANSACTION.

16 A licensee may provide brokerage services simultaneously to  
17 more than one party in different transactions unless the  
18 licensee agrees with a client that the licensee is to provide  
19 brokerage services only to that client. If the licensee and a  
20 client agree that the licensee is to provide brokerage  
21 services only to that client, the agency agreement disclosure  
22 required under section 543B.57, subsection 1, shall contain a  
23 statement of that agreement.

24 Sec. 7. NEW SECTION. 543B.61 VIOLATIONS -- REAL ESTATE  
25 COMMISSION JURISDICTION.

26 1. Failure of a licensee to comply with sections 543B.57  
27 through 543B.60 is prima facie evidence of a violation under  
28 section 543B.34, subsection 4.

29 2. Failure of a licensee to act in accordance with the  
30 disclosures made pursuant to sections 543B.56 through 543B.58  
31 is prima facie evidence of a violation under section 543B.34,  
32 subsection 4.

33 3. Nothing in this subchapter shall affect the validity of  
34 title to real property transferred based solely on the reason  
35 that a licensee failed to conform to the provisions of this

1 subchapter.

2 Sec. 8. NEW SECTION. 543B.62 CHANGES IN COMMON LAW  
3 DUTIES AND LIABILITIES OF LICENSEES AND PARTIES.

4 1. Except as provided in subsection 2, the duties of a  
5 licensee specified in this chapter or in rules adopted  
6 pursuant to this chapter supersede any fiduciary duties of a  
7 licensee to a party to a transaction based on common law  
8 principles of agency to the extent that those common law  
9 fiduciary duties are inconsistent with the duties specified in  
10 this chapter or rules adopted pursuant to this chapter.

11 2. This section shall not be construed to modify a  
12 licensee's duty under common law as to negligent or fraudulent  
13 misrepresentation of material information.

14 3. a. A licensee who is providing brokerage services to a  
15 client and who retains another licensee to provide brokerage  
16 services to that client is not liable for misrepresentation  
17 made by the other licensee, unless the retaining licensee knew  
18 or should have known of the other licensee's misrepresentation  
19 or the other licensee is repeating a misrepresentation made to  
20 the other licensee by the retaining licensee.

21 b. A broker is responsible for supervising a salesperson  
22 or broker associate employed by or otherwise associated with  
23 the broker as a representative of the broker. The existence  
24 of an independent contractor relationship or any other special  
25 compensation arrangement between the broker and the  
26 salesperson or broker associate does not relieve the broker,  
27 salesperson, or broker associate of the duties and  
28 responsibilities established by this chapter. A salesperson  
29 or broker associate shall keep the employing broker fully  
30 informed of all activities being conducted on behalf of the  
31 broker and any other activities that might impact on the  
32 broker's responsibilities. However, the failure of the  
33 salesperson or broker associate to keep the employing broker  
34 fully informed does not relieve the broker of the duties and  
35 responsibilities established by this chapter.



1 ahead of the interests of any other party, disclosing all  
2 material information related to the transaction to the client,  
3 fulfilling any obligation that is within the scope of the  
4 agency agreement, and disclosing to the client any financial  
5 interest the licensee or brokerage has in any business entity  
6 to which the licensee or brokerage refers the client. The  
7 section also prohibits certain conduct including the  
8 acceptance of any fee or compensation related to a transaction  
9 from a person other than the broker's client unless the broker  
10 has disclosed that fact in writing to all parties to the  
11 transaction, and acting in a transaction on the broker's own  
12 behalf, on behalf of the broker's immediate family or firm, or  
13 on behalf of an organization or business in which the broker  
14 has an interest unless the broker has the written consent of  
15 all parties to the transaction.

16 New section 543B.57 requires a licensed real estate broker  
17 or salesperson to make an affirmative written disclosure to  
18 all parties to a transaction identifying which party the  
19 broker or salesperson represents.

20 New section 543B.58 prohibits a licensed real estate broker  
21 or salesperson from representing a buyer and a seller in a  
22 transaction unless written consent has been obtained from both  
23 parties.

24 New section 543B.59 provides for the notification of  
25 clients of a real estate brokerage agency of an agent within  
26 the agency who will act as the appointed agent of that client  
27 to the exclusion of all other agents in the brokerage agency.

28 New section 543B.60 provides that a broker may provide  
29 brokerage services simultaneously to more than one party in  
30 different transactions unless the broker agrees with a client  
31 that the broker is to provide such services only to that  
32 client.

33 New section 543B.61 provides that the failure of a licensee  
34 to comply with the provisions of section 543B.56 through  
35 543B.59 is prima facie evidence of a violation under section

1 543B.34, which gives the real estate commission authority to  
2 conduct an investigation.

3 New section 543B.62 provides that the duties of a licensee  
4 specified in chapter 543B supersede any fiduciary duties of a  
5 licensee to a party to a transaction based on common law  
6 principles of agency to the extent those duties are  
7 inconsistent with the duties specified in chapter 543B or the  
8 rules adopted pursuant to that chapter, except that the  
9 licensee's duty under common law as to negligent or fraudulent  
10 misrepresentation of material information is not modified.

11 New section 543B.63 provides that a broker is not  
12 considered to be a subagent of a client of another broker  
13 solely by reason of membership or other affiliation by the  
14 broker in a multiple listing service or other similar  
15 information source.

16 New section 543B.64 provides that the duties imposed  
17 pursuant to chapter 543B do not limit any duty or  
18 responsibility to disclose created in other applicable law or  
19 agreement.

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## HOUSE FILE 515

H-3625

- 1 Amend House File 515 as follows:
- 2 1. Page 6, by striking lines 1 through 27.
- 3 2. By renumbering as necessary.

By HOLVECK of Polk

H-3625 FILED MARCH 29, 1995

*Lost 3/30/95 (P. 1092)*

## HOUSE FILE 515

H-3626

- 1 Amend House File 515 as follows:
- 2 1. Page 8, by striking lines 2 through 35.
- 3 2. By renumbering and correcting internal
- 4 references as necessary.

By HOLVECK of Polk

H-3626 FILED MARCH 29, 1995

MARCH 30, 1995

WITHDRAWN  
3-30-95

## HOUSE FILE 515

H-3624

- 1 Amend House File 515 as follows:
- 2 1. Page 3, line 23, by inserting after the word
- 3 "inspection" the following: ", and which would be
- 4 discovered by a reasonably prudent person under like
- 5 or similar circumstances".
- 6 2. Page 3, by inserting after line 25 the
- 7 following:
- 8 "(4) Material adverse facts that are known to a
- 9 person who conducts an inspection on behalf of the
- 10 party."

By HOLVECK of Polk  
JACOBS of Polk

H-3624 FILED MARCH 29, 1995

*adapted 3/30/95  
(P. 1092)*

HOUSE FILE 515  
BY COMMITTEE ON COMMERCE AND  
REGULATION

(SUCCESSOR TO HSB 201)

(As Amended and Passed by the House March 30, 1995)

Passed House, Date <sup>(P. 1092)</sup> 3-30-95 Passed Senate, Date <sup>(P. 1024)</sup> 4-4-95  
Vote: Ayes 90 Nays 3 Vote: Ayes 49 Nays 0  
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4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

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3 time the licensee is precluded from engaging in any of the  
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29 representing oneself.

30 5. The seller, in the listing agreement, may authorize the  
31 seller's licensee to disburse part of the licensee's  
32 compensation to other licensees, including a buyer's licensee  
33 solely representing the buyer. A licensee representing a  
34 buyer shall inform the listing licensee, if there is a listing  
35 licensee, either verbally or in writing, of the agency

1 relationship before any negotiations are initiated. The  
2 obligation of either the seller or the buyer to pay  
3 compensation to a licensee is not determinative of the agency  
4 relationship.

5 Sec. 4. NEW SECTION. 543B.58 LICENSEES REPRESENTING MORE  
6 THAN ONE CLIENT IN A TRANSACTION.

7 1. A licensee shall not be the agent for both a buyer and  
8 a seller to a transaction without obtaining the written  
9 consent of both the buyer and the seller. The written consent  
10 shall state that the licensee has made a full disclosure of  
11 the type of representation the licensee will provide. The  
12 consent to multiple representation shall contain a statement  
13 of the licensee's duties under section 543B.56, subsection 1,  
14 a statement of the licensee's duties to the client under  
15 section 543B.56, subsection 2, paragraphs "b" and "c", and a  
16 statement that the clients understand the licensee's duties  
17 and consent to the licensee's providing brokerage services to  
18 more than one client.

19 2. A consent to multiple representation may contain  
20 additional disclosures by the licensee or additional  
21 agreements between the licensee and the clients that do not  
22 violate any duty of a licensee under this chapter.

23 Sec. 5. NEW SECTION. 543B.59 APPOINTED AGENTS WITHIN A  
24 FIRM.

25 1. APPOINTED AGENTS. A real estate brokerage agency  
26 entering into a brokerage agreement, through a designated  
27 broker, may notify a client in writing of those affiliated  
28 licensees within the real estate brokerage agency who will be  
29 acting as appointed agents of that client to the exclusion of  
30 all other affiliated licensees within the real estate  
31 brokerage agency.

32 2. DUAL AGENT. A real estate brokerage agency and a  
33 designated broker are not considered to be dual agents solely  
34 because of an appointment under the provisions of this  
35 section. However, an affiliated licensee who personally

1 represents both the seller and the buyer in a particular  
2 transaction is considered to be a disclosed dual agent and is  
3 required to comply with the provisions of this subchapter  
4 governing disclosed dual agents.

5 3. ACTUAL KNOWLEDGE -- INFORMATION. A client, a real  
6 estate brokerage agency, and its appointed agents are deemed  
7 to possess only actual knowledge and information at the time  
8 the appointed agents are appointed. Knowledge or information  
9 is not imparted by operation of law among the clients, the  
10 real estate brokerage agency, and its appointed agents.

11 4. APPOINTMENTS -- ROLES. The commission shall define by  
12 rule the methods of appointment and the role of the real  
13 estate brokerage agency and the designated broker. The rules  
14 must include a requirement that clients be informed as to the  
15 real estate brokerage agency's appointed agent policy and be  
16 given written notice of that policy in advance of entering  
17 into a brokerage agreement.

18 Sec. 6. NEW SECTION. 543B.60 LICENSEES PROVIDING  
19 SERVICES IN MORE THAN ONE TRANSACTION.

20 A licensee may provide brokerage services simultaneously to  
21 more than one party in different transactions unless the  
22 licensee agrees with a client that the licensee is to provide  
23 brokerage services only to that client. If the licensee and a  
24 client agree that the licensee is to provide brokerage  
25 services only to that client, the agency agreement disclosure  
26 required under section 543B.57, subsection 1, shall contain a  
27 statement of that agreement.

28 Sec. 7. NEW SECTION. 543B.61 VIOLATIONS -- REAL ESTATE  
29 COMMISSION JURISDICTION.

30 1. Failure of a licensee to comply with sections 543B.57  
31 through 543B.60 is prima facie evidence of a violation under  
32 section 543B.34, subsection 4.

33 2. Failure of a licensee to act in accordance with the  
34 disclosures made pursuant to sections 543B.56 through 543B.58  
35 is prima facie evidence of a violation under section 543B.34,

1 subsection 4.

2 3. Nothing in this subchapter shall affect the validity of  
3 title to real property transferred based solely on the reason  
4 that a licensee failed to conform to the provisions of this  
5 subchapter.

6 Sec. 8. NEW SECTION. 543B.62 CHANGES IN COMMON LAW  
7 DUTIES AND LIABILITIES OF LICENSEES AND PARTIES.

8 1. Except as provided in subsection 2, the duties of a  
9 licensee specified in this chapter or in rules adopted  
10 pursuant to this chapter supersede any fiduciary duties of a  
11 licensee to a party to a transaction based on common law  
12 principles of agency to the extent that those common law  
13 fiduciary duties are inconsistent with the duties specified in  
14 this chapter or rules adopted pursuant to this chapter.

15 2. This section shall not be construed to modify a  
16 licensee's duty under common law as to negligent or fraudulent  
17 misrepresentation of material information.

18 3. a. A licensee who is providing brokerage services to a  
19 client and who retains another licensee to provide brokerage  
20 services to that client is not liable for misrepresentation  
21 made by the other licensee, unless the retaining licensee knew  
22 or should have known of the other licensee's misrepresentation  
23 or the other licensee is repeating a misrepresentation made to  
24 the other licensee by the retaining licensee.

25 b. A broker is responsible for supervising a salesperson  
26 or broker associate employed by or otherwise associated with  
27 the broker as a representative of the broker. The existence  
28 of an independent contractor relationship or any other special  
29 compensation arrangement between the broker and the  
30 salesperson or broker associate does not relieve the broker,  
31 salesperson, or broker associate of the duties and  
32 responsibilities established by this chapter. A salesperson  
33 or broker associate shall keep the employing broker fully  
34 informed of all activities being conducted on behalf of the  
35 broker and any other activities that might impact on the

1 broker's responsibilities. However, the failure of the  
2 salesperson or broker associate to keep the employing broker  
3 fully informed does not relieve the broker of the duties and  
4 responsibilities established by this chapter.

5 Sec. 9. NEW SECTION. 543B.63 LICENSEE NOT CONSIDERED  
6 SUBAGENT.

7 A licensee is not considered to be a subagent of a client  
8 of another licensee solely by reason of membership or other  
9 affiliation by the licensee in a multiple listing service or  
10 other similar information source, and an offer of subagency  
11 shall not be made through a multiple listing service or other  
12 similar information source.

13 Sec. 10. NEW SECTION. 543B.64 CHAPTER IS NOT LIMITING.

14 The duties imposed upon persons under this chapter or  
15 pursuant to rules adopted by the real estate commission shall  
16 not limit or abridge any duty or responsibility to disclose  
17 created by other applicable law, or under a contract between  
18 parties.

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Jacobs, Chair  
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COMMERCE • REGULATION

CE / UE  
HOUSE FILE 515

BY (PROPOSED COMMITTEE ON  
COMMERCE AND REGULATION  
BILL BY CHAIRPERSON METCALF)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the relationship between a licensed real  
2 estate salesperson or broker and the parties to a transaction  
3 and providing an effective date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 543B.5, Code 1995, is amended to read  
2 as follows:

3 543B.5 OTHER DEFINITIONS.

4 As used in this chapter, unless the context otherwise  
5 requires:

6 1. "Agency" means a relationship in which a real estate  
7 broker acts for or represents another by the other person's  
8 express authority in a transaction.

9 2. "Agency agreement" means a written agreement between a  
10 broker and a client which identifies the party the broker  
11 represents in a transaction.

12 3. "Appointed agent" means that affiliated licensee who is  
13 appointed by the designated broker of the affiliated  
14 licensee's real estate brokerage agency to act solely for a  
15 client of that brokerage agency to the exclusion of other  
16 affiliated licensees of that brokerage agency.

17 ~~4.~~ 4. "Broker associate" means a person who has a broker's  
18 license but is employed by or otherwise associated with  
19 another broker as a salesperson.

20 5. "Brokerage" means the business or occupation of a real  
21 estate broker.

22 6. "Brokerage agreement" means a contract between a broker  
23 and a client which establishes the relationship between the  
24 parties as to the brokerage services to be performed.

25 7. "Brokerage services" means those activities identified  
26 in sections 543B.3 and 543B.6.

27 8. "Client" means a party to a transaction who has an  
28 agency agreement with a broker for brokerage services.

29 9. "Customer" means a consumer who is not being  
30 represented by a licensee but for whom the licensee may  
31 perform ministerial acts.

32 10. "Designated broker" means a licensee designated by a  
33 real estate brokerage agency to act for the agency in  
34 conducting real estate brokerage services.

35 ~~2.~~ 11. "Inactive license" means either a broker or

1 salesperson license certificate that is on file with the real  
2 estate commission in the commission office and during which  
3 time the licensee is precluded from engaging in any of the  
4 acts of this chapter.

5 12. "Licensee" means a broker or a salesperson licensed  
6 pursuant to this chapter.

7 13. "Material adverse fact" means an adverse fact that a  
8 party indicates is of such significance, or that is generally  
9 recognized by a competent licensee as being of such  
10 significance to a reasonable party, that it affects or would  
11 affect the party's decision to enter into a contract or  
12 agreement concerning a transaction, or affects or would affect  
13 the party's decision about the terms of the contract or  
14 agreement.

15 For purposes of this subsection, "adverse fact" means a  
16 condition or occurrence that is generally recognized by a  
17 competent licensee as resulting in any of the following:

18 a. Significantly and adversely affecting the value of the  
19 property.

20 b. Significantly reducing the structural integrity of  
21 improvement to real estate.

22 c. Presenting a significant health risk to occupants of  
23 the property.

24 14. "Negotiate" means to act as an intermediary between  
25 the parties to a transaction, and includes any of the  
26 following acts:

27 a. Participating in the parties' discussion of the terms  
28 of a contract or agreement concerning a transaction.

29 b. Completing, when requested by a party, appropriate  
30 forms or other written record to document the party's proposal  
31 in a manner consistent with the party's intent.

32 c. Presenting to a party the proposals of other parties to  
33 the transaction and informing the party receiving a proposal  
34 of the advantages and disadvantages of the proposal.

35 15. "Party" means a person seeking to sell, exchange, buy,

1 or rent an interest in real estate, a business, or a business  
2 opportunity. "Party" includes a person who seeks to grant or  
3 accept an option to buy, sell, or rent an interest in real  
4 estate.

5 ~~3-~~ 16. "Salesperson" means a person employed by or  
6 otherwise associated with a real estate broker, as a selling,  
7 renting, or listing agent or representative of the broker.

8 17. "Transaction" means the sale, exchange, purchase or  
9 rental of, or the granting or acceptance of an option to sell,  
10 exchange, purchase, or rent an interest in real estate.

11 Sec. 2. NEW SECTION. 543B.56 DUTIES OF BROKERS.

12 1. DUTIES TO ALL PARTIES IN A TRANSACTION. In providing  
13 brokerage services to all parties to a transaction, a broker  
14 shall do all of the following:

15 a. Provide brokerage services to all parties to the  
16 transaction honestly and in good faith.

17 b. Diligently exercise reasonable skill and care in  
18 providing brokerage services to all parties.

19 c. Disclose to each party all material adverse facts that  
20 the broker knows except for the following:

21 (1) Material adverse facts known by the party.

22 (2) Material adverse facts the party could discover  
23 through a reasonably diligent inspection.

24 (3) Material adverse facts the disclosure of which is  
25 prohibited by law.

26 d. Account for all property coming into the possession of  
27 a broker that belongs to any party within a reasonable time of  
28 receiving the property.

29 2. DUTIES TO A CLIENT. In addition to the broker's duties  
30 under subsection 1, a broker providing brokerage services to a  
31 client shall do all of the following:

32 a. Place the client's interests ahead of the interests of  
33 any other party, unless loyalty to a client violates the  
34 broker's duties under subsection 1, section 543B.58, or under  
35 other applicable law.

1 b. Disclose to the client all information known by the  
2 broker that is material to the transaction and that is not  
3 known by the client or could not be discovered by the client  
4 through a reasonably diligent inspection.

5 c. Fulfill any obligation that is within the scope of the  
6 agency agreement, except those obligations that are  
7 inconsistent with other duties that the broker has under this  
8 chapter or any other law.

9 3. PROHIBITED CONDUCT. In providing brokerage services, a  
10 broker shall not do either of the following:

11 a. Accept a fee or compensation related to a transaction  
12 from a person other than the broker's client, unless the  
13 broker has provided written notice to all parties to the  
14 transaction that a fee or compensation will be accepted by the  
15 broker from such person.

16 b. Act in a transaction on the broker's own behalf, on  
17 behalf of the broker's immediate family or brokerage, or on  
18 behalf of an organization or business entity in which the  
19 broker has an interest, unless the broker has the written  
20 consent of all parties to the transaction.

21 Sec. 3. NEW SECTION. 543B.57 CONFIRMATION AND DISCLOSURE  
22 OF RELATIONSHIP.

23 1. A person licensed as a broker or salesperson pursuant  
24 to this chapter shall not represent any party or parties to a  
25 transaction or otherwise as a real estate broker or  
26 salesperson unless that person makes an affirmative written  
27 disclosure to all parties to the transaction identifying which  
28 party that person represents in the transaction. The  
29 disclosure shall be acknowledged by separate signatures of all  
30 parties to the transaction.

31 2. The disclosure required in subsection 1 shall be made  
32 by the licensee prior to any offer being made or accepted by  
33 any party to a transaction. A change in a licensee's  
34 representation that makes the initial disclosure incomplete,  
35 misleading, or inaccurate requires that a new disclosure be

1 made immediately.

2 3. The written agency disclosure form shall contain all of  
3 the following:

4 a. A statement of which party is the broker's client or,  
5 if the broker is providing brokerage services to more than one  
6 client as provided under section 543B.60, a statement of all  
7 persons who are the broker's clients.

8 b. A statement of the broker's duties to the broker's  
9 client under section 543B.56, subsections 1 and 2.

10 c. Any additional information that the broker determines  
11 is necessary to clarify the broker's relationship to the  
12 broker's client or customer.

13 4. This section does not prohibit a person from  
14 representing oneself.

15 5. The seller, in the listing agreement, may authorize the  
16 seller's broker to disburse part of the broker's compensation  
17 to other brokers, including a buyer's broker solely  
18 representing the buyer. A broker representing a buyer shall  
19 inform the listing broker, if there is a listing broker,  
20 either verbally or in writing, of the agency relationship  
21 before any negotiations are initiated. The obligation of  
22 either the seller or the buyer to pay compensation to a broker  
23 is not determinative of the agency relationship.

24 Sec. 4. NEW SECTION. 543B.58 BROKERS REPRESENTING MORE  
25 THAN ONE CLIENT IN A TRANSACTION.

26 1. A licensee shall not be the agent for both a buyer and  
27 a seller to a transaction without obtaining the written  
28 consent of both the buyer and the seller. The written consent  
29 shall state that the licensee has made a full disclosure of  
30 the type of representation the licensee will provide. The  
31 consent to multiple representation shall contain a statement  
32 of the broker's duties under section 543B.56, subsection 1, a  
33 statement of the broker's duties to the client under section  
34 543B.56, subsection 2, paragraphs "b" and "c", and a statement  
35 that the clients understand the broker's duties and consent to

1 the licensee's providing brokerage services to more than one  
2 client.

3 2. A consent to multiple representation may contain  
4 additional disclosures by the licensee or additional  
5 agreements between the licensee and the clients that do not  
6 violate any duty of a licensee under this chapter.

7 Sec. 5. NEW SECTION. 543B.59 APPOINTED AGENTS WITHIN A  
8 FIRM.

9 1. APPOINTED AGENTS. A real estate brokerage agency  
10 entering into a brokerage agreement, through a designated  
11 broker, may notify a client in writing of those affiliated  
12 licensees within the real estate brokerage agency who will be  
13 acting as appointed agents of that client to the exclusion of  
14 all other affiliated licensees within the real estate  
15 brokerage agency.

16 2. DUAL AGENT. A real estate brokerage agency and a  
17 designated broker are not considered to be dual agents solely  
18 because of an appointment under the provisions of this  
19 section. However, an affiliated licensee who personally  
20 represents both the seller and the buyer in a particular  
21 transaction is considered to be a disclosed dual agent and is  
22 required to comply with the provisions of this subchapter  
23 governing disclosed dual agents.

24 3. ACTUAL KNOWLEDGE -- INFORMATION. A client, a real  
25 estate brokerage agency, and its appointed agents are deemed  
26 to possess only actual knowledge and information at the time  
27 the appointed agents are appointed. Knowledge or information  
28 is not imparted by operation of law among the clients, the  
29 real estate brokerage agency, and its appointed agents.

30 4. APPOINTMENTS -- ROLES. The commission shall define by  
31 rule the methods of appointment and the role of the real  
32 estate brokerage agency and the designated broker. The rules  
33 must include a requirement that clients be informed as to the  
34 real estate brokerage agency's appointed agent policy and be  
35 given written notice of that policy in advance of entering

1 into a brokerage agreement.

2 Sec. 6. NEW SECTION. 543B.60 BROKERS PROVIDING SERVICES  
3 IN MORE THAN ONE TRANSACTION.

4 A broker may provide brokerage services simultaneously to  
5 more than one party in different transactions unless the  
6 broker agrees with a client that the broker is to provide  
7 brokerage services only to that client. If the broker and a  
8 client agree that the broker is to provide brokerage services  
9 only to that client, the agency agreement disclosure required  
10 under section 543B.57, subsection 1, shall contain a statement  
11 of that agreement.

12 Sec. 7. NEW SECTION. 543B.61 VIOLATIONS -- REAL ESTATE  
13 COMMISSION JURISDICTION.

14 1. Failure of a licensee to comply with sections 543B.57  
15 through 543B.60 is prima facie evidence of a violation under  
16 section 543B.34, subsection 4.

17 2. Failure of a licensee to act in accordance with the  
18 disclosures made pursuant to sections 543B.56 through 543B.58  
19 is prima facie evidence of a violation under section 543B.34,  
20 subsection 4.

21 3. Nothing in this subchapter shall affect the validity of  
22 title to real property transferred based solely on the reason  
23 that a licensee failed to conform to the provisions of this  
24 subchapter.

25 Sec. 8. NEW SECTION. 543B.62 CHANGES IN COMMON LAW  
26 DUTIES AND LIABILITIES OF LICENSEES AND PARTIES.

27 1. Except as provided in subsection 2, the duties of a  
28 licensee specified in this chapter or in rules adopted  
29 pursuant to this chapter supersede any fiduciary duties of a  
30 licensee to a party to a transaction based on common law  
31 principles of agency to the extent that those common law  
32 fiduciary duties are inconsistent with the duties specified in  
33 this chapter or rules adopted pursuant to this chapter.

34 2. This section shall not be construed to modify a  
35 licensee's duty under common law as to negligent or fraudulent

1 misrepresentation of material information.

2 3. a. A broker who is providing brokerage services to a  
3 client and who retains another broker to provide brokerage  
4 services to that client is not liable for misrepresentation  
5 made by the other broker, unless the retaining broker knew or  
6 should have known of the other broker's misrepresentation or  
7 the other broker is repeating a misrepresentation made to the  
8 other broker by the retaining broker.

9 b. A broker is responsible for supervising a salesperson  
10 or broker associate employed by or otherwise associated with  
11 the broker as a representative of the broker. The existence  
12 of an independent contractor relationship or any other special  
13 compensation arrangement between the broker and the  
14 salesperson or broker associate does not relieve the broker,  
15 salesperson, or broker associate of the duties and  
16 responsibilities established by this chapter. A salesperson  
17 or broker associate shall keep the employing broker fully  
18 informed of all activities being conducted on behalf of the  
19 broker and any other activities that might impact on the  
20 broker's responsibilities. However, the failure of the  
21 salesperson or broker associate to keep the employing broker  
22 fully informed does not relieve the broker of the duties and  
23 responsibilities established by this chapter.

24 Sec. 9. NEW SECTION. 543B.63 BROKER NOT CONSIDERED  
25 SUBAGENT.

26 A broker is not considered to be a subagent of a client of  
27 another broker solely by reason of membership or other  
28 affiliation by the broker in a multiple listing service or  
29 other similar information source, and an offer of subagency  
30 shall not be made through a multiple listing service or other  
31 similar information source.

32 Sec. 10. NEW SECTION. 543B.64 CHAPTER IS NOT LIMITING.

33 The duties imposed upon persons under this chapter or  
34 pursuant to rules adopted by the real estate commission shall  
35 not limit or abridge any duty or responsibility to disclose

1 created by other applicable law, or under a contract between  
2 parties.

3 Sec. 11. IMPLEMENTATION. In order to implement this Act,  
4 the real estate commission shall adopt rules as required under  
5 this Act to be effective by July 1, 1995. This section, being  
6 deemed of immediate importance, is effective upon enactment.

7 EXPLANATION

8 This bill concerns the contractual relationship between a  
9 real estate broker and the broker's customers and clients.  
10 The bill establishes certain duties and responsibilities  
11 related to that relationship.

12 Section 543B.5 is amended to define additional terms used  
13 in the chapter, including "agency", "agency agreement",  
14 "appointed agent", "brokerage", "brokerage agreement",  
15 "brokerage services", "client", "customer", "designated  
16 broker", "material adverse fact", "negotiate", "party", and  
17 "transaction".

18 New section 543B.56 establishes duties of the broker to all  
19 parties to a transaction involving real property which include  
20 providing brokerage services honestly and in good faith,  
21 diligently exercising reasonable skill and care in providing  
22 brokerage services, disclosing certain material adverse facts,  
23 and accounting for all property in the possession of the  
24 broker that belongs to any party to the transaction within a  
25 reasonable time after receiving such property. The section  
26 also establishes additional duties of the broker to the  
27 broker's client which include placing the client's interests  
28 ahead of the interests of any other party, disclosing all  
29 material information related to the transaction to the client,  
30 and fulfilling any obligation that is within the scope of the  
31 agency agreement. The section also prohibits certain conduct  
32 including the acceptance of any fee or compensation related to  
33 a transaction from a person other than the broker's client  
34 unless the broker has disclosed that fact in writing to all  
35 parties to the transaction, and acting in a transaction on the

1 broker's own behalf, on behalf of the broker's immediate  
2 family or firm, or on behalf of an organization or business in  
3 which the broker has an interest unless the broker has the  
4 written consent of all parties to the transaction.

5 New section 543B.57 requires a licensed real estate broker  
6 or salesperson to make an affirmative written disclosure to  
7 all parties to a transaction identifying which party the  
8 broker or salesperson represents.

9 New section 543B.58 prohibits a licensed real estate broker  
10 or salesperson from representing a buyer and a seller in a  
11 transaction unless written consent has been obtained from both  
12 parties.

13 New section 543B.59 provides for the notification of  
14 clients of a real estate brokerage agency of an agent within  
15 the agency who will act as the appointed agent of that client  
16 to the exclusion of all other agents in the brokerage agency.

17 New section 543B.60 provides that a broker may provide  
18 brokerage services simultaneously to more than one party in  
19 different transactions unless the broker agrees with a client  
20 that the broker is to provide such services only to that  
21 client.

22 New section 543B.61 provides that the failure of a licensee  
23 to comply with the provisions of section 543B.56 through  
24 543B.59 is prima facie evidence of a violation under section  
25 543B.34, which gives the real estate commission authority to  
26 conduct an investigation.

27 New section 543B.62 provides that the duties of a licensee  
28 specified in chapter 543B supersede any fiduciary duties of a  
29 licensee to a party to a transaction based on common law  
30 principles of agency to the extent those duties are  
31 inconsistent with the duties specified in chapter 543B or the  
32 rules adopted pursuant to that chapter, except that the  
33 licensee's duty under common law as to negligent or fraudulent  
34 misrepresentation of material information is not modified.

35 New section 543B.63 provides that a broker is not

1 considered to be a subagent of a client of another broker  
2 solely by reason of membership or other affiliation by the  
3 broker in a multiple listing service or other similar  
4 information source.

5 New section 543B.64 provides that the duties imposed  
6 pursuant to chapter 543B do not limit any duty or  
7 responsibility to disclose created in other applicable law or  
8 agreement.

9 Section 11 provides that the real estate commission is to  
10 adopt rules as required by the bill to be effective by July 1,  
11 1995.

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HOUSE FILE 515

AN ACT

RELATING TO THE RELATIONSHIP BETWEEN A LICENSED REAL ESTATE SALESPERSON OR BROKER AND THE PARTIES TO A TRANSACTION AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 543B.5, Code 1995, is amended to read as follows:

543B.5 OTHER DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a relationship in which a real estate broker acts for or represents another by the other person's express authority in a transaction.

2. "Agency agreement" means a written agreement between a broker and a client which identifies the party the broker represents in a transaction.

3. "Appointed agent" means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a

client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.

4. "Broker associate" means a person who has a broker's license but is employed by or otherwise associated with another broker as a salesperson.

5. "Brokerage" means the business or occupation of a real estate broker.

6. "Brokerage agreement" means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed.

7. "Brokerage services" means those activities identified in sections 543B.3 and 543B.6.

8. "Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

9. "Customer" means a consumer who is not being represented by a licensee but for whom the licensee may perform ministerial acts.

10. "Designated broker" means a licensee designated by a real estate brokerage agency to act for the agency in conducting real estate brokerage services.

11. "Inactive license" means either a broker or salesperson license certificate that is on file with the real estate commission in the commission office and during which time the licensee is precluded from engaging in any of the acts of this chapter.

12. "Licensee" means a broker or a salesperson licensed pursuant to this chapter.

13. "Material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction, or affects or would affect the party's decision about the terms of the contract or agreement.

For purposes of this subsection, "adverse fact" means a condition or occurrence that is generally recognized by a competent licensee as resulting in any of the following:

a. Significantly and adversely affecting the value of the property.

b. Significantly reducing the structural integrity of improvement to real estate.

c. Presenting a significant health risk to occupants of the property.

14. "Negotiate" means to act as an intermediary between the parties to a transaction, and includes any of the following acts:

a. Participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

b. Completing, when requested by a party, appropriate forms or other written record to document the party's proposal in a manner consistent with the party's intent.

c. Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

15. "Party" means a person seeking to sell, exchange, buy, or rent an interest in real estate, a business, or a business opportunity. "Party" includes a person who seeks to grant or accept an option to buy, sell, or rent an interest in real estate.

3- 16. "Salesperson" means a person employed by or otherwise associated with a real estate broker, as a selling, renting, or listing agent or representative of the broker.

17. "Transaction" means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest in real estate.

Sec. 2. NEW SECTION. 543B.56 DUTIES OF LICENSEES.

1. DUTIES TO ALL PARTIES IN A TRANSACTION. In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:

a. Provide brokerage services to all parties to the transaction honestly and in good faith.

b. Diligently exercise reasonable skill and care in providing brokerage services to all parties.

c. Disclose to each party all material adverse facts that the licensee knows except for the following:

(1) Material adverse facts known by the party.

(2) Material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances.

(3) Material adverse facts the disclosure of which is prohibited by law.

(4) Material adverse facts that are known to a person who conducts an inspection on behalf of the party.

d. Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

2. DUTIES TO A CLIENT. In addition to the licensee's duties under subsection 1, a licensee providing brokerage services to a client shall do all of the following:

a. Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under subsection 1, section 543B.58, or under other applicable law.

b. Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.

c. Fulfill any obligation that is within the scope of the agency agreement, except those obligations that are inconsistent with other duties that the licensee has under this chapter or any other law.

d. Disclose to a client any financial interests the licensee or the brokerage has in any business entity to which

the licensee or brokerage refers a client for any service or product related to the transaction.

3. PROHIBITED CONDUCT. In providing brokerage services, a licensee shall not do either of the following:

a. Accept a fee or compensation related to a transaction from a person other than the licensee's client, unless the licensee has provided written notice to all parties to the transaction that a fee or compensation will be accepted by the licensee from such person.

b. Act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family or brokerage, or on behalf of an organization or business entity in which the licensee has an interest, unless the licensee has the written consent of all parties to the transaction.

Sec. 3. NEW SECTION. 543B.57 CONFIRMATION AND DISCLOSURE OF RELATIONSHIP.

1. A licensee shall not represent any party or parties to a transaction or otherwise as a licensee unless that licensee makes an affirmative written disclosure to all parties to the transaction identifying which party that person represents in the transaction. The disclosure shall be acknowledged by separate signatures of all parties to the transaction.

2. a. The disclosure required in subsection 1 shall be made by the licensee at the time the licensee provides specific assistance to the client, or prior to any offer being made or accepted by any party to a transaction, whichever is sooner. A change in a licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made immediately.

b. For purposes of this section, "specific assistance" means eliciting or accepting confidential information about a party's real estate needs, motivation, or financial qualifications. "Specific assistance" does not mean an open house showing, preliminary conversations concerning price range, location, and property styles, or responding to general

factual questions concerning properties which have been advertised for sale or lease.

3. The written agency disclosure form shall contain all of the following:

a. A statement of which party is the licensee's client or, if the licensee is providing brokerage services to more than one client as provided under section 543B.60, a statement of all persons who are the licensee's clients.

b. A statement of the licensee's duties to the licensee's client under section 543B.56, subsections 1 and 2.

c. Any additional information that the licensee determines is necessary to clarify the licensee's relationship to the licensee's client or customer.

4. This section does not prohibit a person from representing oneself.

5. The seller, in the listing agreement, may authorize the seller's licensee to disburse part of the licensee's compensation to other licensees, including a buyer's licensee solely representing the buyer. A licensee representing a buyer shall inform the listing licensee, if there is a listing licensee, either verbally or in writing, of the agency relationship before any negotiations are initiated. The obligation of either the seller or the buyer to pay compensation to a licensee is not determinative of the agency relationship.

Sec. 4. NEW SECTION. 543B.58 LICENSEES REPRESENTING MORE THAN ONE CLIENT IN A TRANSACTION.

1. A licensee shall not be the agent for both a buyer and a seller to a transaction without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee has made a full disclosure of the type of representation the licensee will provide. The consent to multiple representation shall contain a statement of the licensee's duties under section 543B.56, subsection 1, a statement of the licensee's duties to the client under

section 543B.56, subsection 2, paragraphs "b" and "c", and a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

2. A consent to multiple representation may contain additional disclosures by the licensee or additional agreements between the licensee and the clients that do not violate any duty of a licensee under this chapter.

Sec. 5. NEW SECTION. 543B.59 APPOINTED AGENTS WITHIN A FIRM.

1. APPOINTED AGENTS. A real estate brokerage agency entering into a brokerage agreement, through a designated broker, may notify a client in writing of those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage agency.

2. DUAL AGENT. A real estate brokerage agency and a designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section. However, an affiliated licensee who personally represents both the seller and the buyer in a particular transaction is considered to be a disclosed dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

3. ACTUAL KNOWLEDGE -- INFORMATION. A client, a real estate brokerage agency, and its appointed agents are deemed to possess only actual knowledge and information at the time the appointed agents are appointed. Knowledge or information is not imparted by operation of law among the clients, the real estate brokerage agency, and its appointed agents.

4. APPOINTMENTS -- ROLES. The commission shall define by rule the methods of appointment and the role of the real estate brokerage agency and the designated broker. The rules must include a requirement that clients be informed as to the

real estate brokerage agency's appointed agent policy and be given written notice of that policy in advance of entering into a brokerage agreement.

Sec. 6. NEW SECTION. 543B.60 LICENSEES PROVIDING SERVICES IN MORE THAN ONE TRANSACTION.

A licensee may provide brokerage services simultaneously to more than one party in different transactions unless the licensee agrees with a client that the licensee is to provide brokerage services only to that client. If the licensee and a client agree that the licensee is to provide brokerage services only to that client, the agency agreement disclosure required under section 543B.57, subsection 1, shall contain a statement of that agreement.

Sec. 7. NEW SECTION. 543B.61 VIOLATIONS -- REAL ESTATE COMMISSION JURISDICTION.

1. Failure of a licensee to comply with sections 543B.57 through 543B.60 is prima facie evidence of a violation under section 543B.34, subsection 4.

2. Failure of a licensee to act in accordance with the disclosures made pursuant to sections 543B.56 through 543B.58 is prima facie evidence of a violation under section 543B.34, subsection 4.

3. Nothing in this subchapter shall affect the validity of title to real property transferred based solely on the reason that a licensee failed to conform to the provisions of this subchapter.

Sec. 8. NEW SECTION. 543B.62 CHANGES IN COMMON LAW DUTIES AND LIABILITIES OF LICENSEES AND PARTIES.

1. Except as provided in subsection 2, the duties of a licensee specified in this chapter or in rules adopted pursuant to this chapter supersede any fiduciary duties of a licensee to a party to a transaction based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or rules adopted pursuant to this chapter.

2. This section shall not be construed to modify a licensee's duty under common law as to negligent or fraudulent misrepresentation of material information.

3. a. A licensee who is providing brokerage services to a client and who retains another licensee to provide brokerage services to that client is not liable for misrepresentation made by the other licensee, unless the retaining licensee knew or should have known of the other licensee's misrepresentation or the other licensee is repeating a misrepresentation made to the other licensee by the retaining licensee.

b. A broker is responsible for supervising a salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate does not relieve the broker, salesperson, or broker associate of the duties and responsibilities established by this chapter. A salesperson or broker associate shall keep the employing broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact on the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the employing broker fully informed does not relieve the broker of the duties and responsibilities established by this chapter.

Sec. 9. NEW SECTION. 543B.63 LICENSEE NOT CONSIDERED SUBAGENT.

A licensee is not considered to be a subagent of a client of another licensee solely by reason of membership or other affiliation by the licensee in a multiple listing service or other similar information source, and an offer of subagency shall not be made through a multiple listing service or other similar information source.

Sec. 10. NEW SECTION. 543B.64 CHAPTER IS NOT LIMITING.

The duties imposed upon persons under this chapter or pursuant to rules adopted by the real estate commission shall not limit or abridge any duty or responsibility to disclose created by other applicable law, or under a contract between parties.

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RON J. CORBETT  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 515, Seventy-sixth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 11, 1995

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TERRY E. BRANSTAD  
Governor