

# House Study Bill 201

## Conference Committee Text

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

1 3 543B.5 OTHER DEFINITIONS.

1 4 As used in this chapter, unless the context otherwise  
1 5 requires:

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

1 9 2. "Agency agreement" means a written agreement between a  
1 10 broker and a client which identifies the party the broker  
1 11 represents in a transaction.

1 12 3. "Appointed agent" means that affiliated licensee who is  
1 13 appointed by the designated broker of the affiliated  
1 14 licensee's real estate brokerage agency to act solely for a  
1 15 client of that brokerage agency to the exclusion of other  
1 16 affiliated licensees of that brokerage agency.

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- ~~4.~~ "Broker associate" means a person who has a broker's  
1 18 license but is employed by or otherwise associated with  
1 19 another broker as a salesperson.

1 20 5. "Brokerage" means the business or occupation of a real  
1 21 estate broker.

1 22 6. "Brokerage agreement" means a contract between a broker  
1 23 and a client which establishes the relationship between the  
1 24 parties as to the brokerage services to be performed.

1 25 7. "Brokerage services" means those activities identified  
1 26 in sections 543B.3 and 543B.6.

1 27 8. "Client" means a party to a transaction who has an  
1 28 agency agreement with a broker for brokerage services.

1 29 9. "Customer" means a consumer who is not being  
1 30 represented by a licensee but for whom the licensee may  
1 31 perform ministerial acts.

1 32 10. "Designated broker" means a licensee designated by a  
1 33 real estate brokerage agency to act for the agency in  
1 34 conducting real estate brokerage services.

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- ~~11.~~ "Inactive license" means either a broker or  
2 1 salesperson license certificate that is on file with the real  
2 2 estate commission in the commission office and during which  
2 3 time the licensee is precluded from engaging in any of the  
2 4 acts of this chapter.

2 5 12. "Licensee" means a broker or a salesperson licensed  
2 6 pursuant to this chapter.

2 7 13. "Material adverse fact" means an adverse fact that a  
2 8 party indicates is of such significance, or that is generally  
2 9 recognized by a competent licensee as being of such  
2 10 significance to a reasonable party, that it affects or would  
2 11 affect the party's decision to enter into a contract or  
2 12 agreement concerning a transaction, or affects or would affect  
2 13 the party's decision about the terms of the contract or  
2 14 agreement.

2 15 For purposes of this subsection, "adverse fact" means a

2 16 condition or occurrence that is generally recognized by a  
2 17 competent licensee as resulting in any of the following:  
2 18 a. Significantly and adversely affecting the value of the  
2 19 property.  
2 20 b. Significantly reducing the structural integrity of  
2 21 improvement to real estate.  
2 22 c. Presenting a significant health risk to occupants of  
2 23 the property.  
2 24 14. "Negotiate" means to act as an intermediary between  
2 25 the parties to a transaction, and includes any of the  
2 26 following acts:  
2 27 a. Participating in the parties' discussion of the terms  
2 28 of a contract or agreement concerning a transaction.  
2 29 b. Completing, when requested by a party, appropriate  
2 30 forms or other written record to document the party's proposal  
2 31 in a manner consistent with the party's intent.  
2 32 c. Presenting to a party the proposals of other parties to  
2 33 the transaction and informing the party receiving a proposal  
2 34 of the advantages and disadvantages of the proposal.  
2 35 15. "Party" means a person seeking to sell, exchange, buy,  
3 1 or rent an interest in real estate, a business, or a business  
3 2 opportunity. "Party" includes a person who seeks to grant or  
3 3 accept an option to buy, sell, or rent an interest in real  
3 4 estate.  
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- 16. "Salesperson" means a person employed by or  
3 6 otherwise associated with a real estate broker, as a selling,  
3 7 renting, or listing agent or representative of the broker.  
3 8 17. "Transaction" means the sale, exchange, purchase or  
3 9 rental of, or the granting or acceptance of an option to sell,  
3 10 exchange, purchase, or rent an interest in real estate.  
3 11 Sec. 2. NEW SECTION. 543B.56 DUTIES OF BROKERS.  
3 12 1. DUTIES TO ALL PARTIES IN A TRANSACTION. In providing  
3 13 brokerage services to all parties to a transaction, a broker  
3 14 shall do all of the following:  
3 15 a. Provide brokerage services to all parties to the  
3 16 transaction honestly and in good faith.  
3 17 b. Diligently exercise reasonable skill and care in  
3 18 providing brokerage services to all parties.  
3 19 c. Disclose to each party all material adverse facts that  
3 20 the broker knows except for the following:  
3 21 (1) Material adverse facts known by the party.  
3 22 (2) Material adverse facts the party could discover  
3 23 through a reasonably diligent inspection.  
3 24 (3) Material adverse facts the disclosure of which is  
3 25 prohibited by law.  
3 26 d. Account for all property coming into the possession of  
3 27 a broker that belongs to any party within a reasonable time of  
3 28 receiving the property.  
3 29 2. DUTIES TO A CLIENT. In addition to the broker's duties  
3 30 under subsection 1, a broker providing brokerage services to a  
3 31 client shall do all of the following:  
3 32 a. Place the client's interests ahead of the interests of  
3 33 any other party, unless loyalty to a client violates the  
3 34 broker's duties under subsection 1, section 543B.58, or under  
3 35 other applicable law.  
4 1 b. Disclose to the client all information known by the  
4 2 broker that is material to the transaction and that is not  
4 3 known by the client or could not be discovered by the client  
4 4 through a reasonably diligent inspection.  
4 5 c. Fulfill any obligation that is within the scope of the  
4 6 agency agreement, except those obligations that are  
4 7 inconsistent with other duties that the broker has under this  
4 8 chapter or any other law.  
4 9 3. PROHIBITED CONDUCT. In providing brokerage services, a

4 10 broker shall not do either of the following:

4 11 a. Accept a fee or compensation related to a transaction  
4 12 from a person other than the broker's client, unless the  
4 13 broker has provided written notice to all parties to the  
4 14 transaction that a fee or compensation will be accepted by the  
4 15 broker from such person.

4 16 b. Act in a transaction on the broker's own behalf, on  
4 17 behalf of the broker's immediate family or brokerage, or on  
4 18 behalf of an organization or business entity in which the  
4 19 broker has an interest, unless the broker has the written  
4 20 consent of all parties to the transaction.

4 21 Sec. 3. NEW SECTION. 543B.57 CONFIRMATION AND DISCLOSURE  
4 22 OF RELATIONSHIP.

4 23 1. A person licensed as a broker or salesperson pursuant  
4 24 to this chapter shall not represent any party or parties to a  
4 25 transaction or otherwise as a real estate broker or  
4 26 salesperson unless that person makes an affirmative written  
4 27 disclosure to all parties to the transaction identifying which  
4 28 party that person represents in the transaction. The  
4 29 disclosure shall be acknowledged by separate signatures of all  
4 30 parties to the transaction.

4 31 2. The disclosure required in subsection 1 shall be made  
4 32 by the licensee prior to any offer being made or accepted by  
4 33 any party to a transaction. A change in a licensee's  
4 34 representation that makes the initial disclosure incomplete,  
4 35 misleading, or inaccurate requires that a new disclosure be  
5 1 made immediately.

5 2 3. The written agency disclosure form shall contain all of  
5 3 the following:

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

5 8 b. A statement of the broker's duties to the broker's  
5 9 client under section 543B.56, subsections 1 and 2.

5 10 c. Any additional information that the broker determines  
5 11 is necessary to clarify the broker's relationship to the  
5 12 broker's client or customer.

5 13 4. This section does not prohibit a person from  
5 14 representing oneself.

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

5 24 Sec. 4. NEW SECTION. 543B.58 BROKERS REPRESENTING MORE  
5 25 THAN ONE CLIENT IN A TRANSACTION.

5 26 1. A licensee shall not be the agent for both a buyer and  
5 27 a seller to a transaction without obtaining the written  
5 28 consent of both the buyer and the seller. The written consent  
5 29 shall state that the licensee has made a full disclosure of  
5 30 the type of representation the licensee will provide. The  
5 31 consent to multiple representation shall contain a statement  
5 32 of the broker's duties under section 543B.56, subsection 1, a  
5 33 statement of the broker's duties to the client under section  
5 34 543B.56, subsection 2, paragraphs "b" and "c", and a statement  
5 35 that the clients understand the broker's duties and consent to  
6 1 the licensee's providing brokerage services to more than one  
6 2 client.

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

6 7 Sec. 5. NEW SECTION. 543B.59 APPOINTED AGENTS WITHIN A  
6 8 FIRM.

6 9 1. APPOINTED AGENTS. A real estate brokerage agency  
6 10 entering into a brokerage agreement, through a designated  
6 11 broker, may notify a client in writing of those affiliated  
6 12 licensees within the real estate brokerage agency who will be  
6 13 acting as appointed agents of that client to the exclusion of  
6 14 all other affiliated licensees within the real estate  
6 15 brokerage agency.

6 16 2. DUAL AGENT. A real estate brokerage agency and a  
6 17 designated broker are not considered to be dual agents solely  
6 18 because of an appointment under the provisions of this  
6 19 section. However, an affiliated licensee who personally  
6 20 represents both the seller and the buyer in a particular  
6 21 transaction is considered to be a disclosed dual agent and is  
6 22 required to comply with the provisions of this subchapter  
6 23 governing disclosed dual agents.

6 24 3. ACTUAL KNOWLEDGE & INFORMATION. A client, a real  
6 25 estate brokerage agency, and its appointed agents are deemed  
6 26 to possess only actual knowledge and information at the time  
6 27 the appointed agents are appointed. Knowledge or information  
6 28 is not imparted by operation of law among the clients, the  
6 29 real estate brokerage agency, and its appointed agents.

6 30 4. APPOINTMENTS & ROLES. The commission shall define by  
6 31 rule the methods of appointment and the role of the real  
6 32 estate brokerage agency and the designated broker. The rules  
6 33 must include a requirement that clients be informed as to the  
6 34 real estate brokerage agency's appointed agent policy and be  
6 35 given written notice of that policy in advance of entering  
7 1 into a brokerage agreement.

7 2 Sec. 6. NEW SECTION. 543B.60 BROKERS PROVIDING SERVICES  
7 3 IN MORE THAN ONE TRANSACTION.

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

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

7 14 1. Failure of a licensee to comply with sections 543B.57  
7 15 through 543B.60 is prima facie evidence of a violation under  
7 16 section 543B.34, subsection 4.

7 17 2. Failure of a licensee to act in accordance with the  
7 18 disclosures made pursuant to sections 543B.56 through 543B.58  
7 19 is prima facie evidence of a violation under section 543B.34,  
7 20 subsection 4.

7 21 3. Nothing in this subchapter shall affect the validity of  
7 22 title to real property transferred based solely on the reason  
7 23 that a licensee failed to conform to the provisions of this  
7 24 subchapter.

7 25 Sec. 8. NEW SECTION. 543B.62 CHANGES IN COMMON LAW  
7 26 DUTIES AND LIABILITIES OF LICENSEES AND PARTIES.

7 27 1. Except as provided in subsection 2, the duties of a  
7 28 licensee specified in this chapter or in rules adopted  
7 29 pursuant to this chapter supersede any fiduciary duties of a  
7 30 licensee to a party to a transaction based on common law  
7 31 principles of agency to the extent that those common law  
7 32 fiduciary duties are inconsistent with the duties specified in  
7 33 this chapter or rules adopted pursuant to this chapter.

7 34 2. This section shall not be construed to modify a  
7 35 licensee's duty under common law as to negligent or fraudulent  
8 1 misrepresentation of material information.

8 2 3. a. A broker who is providing brokerage services to a  
8 3 client and who retains another broker to provide brokerage

8 4 services to that client is not liable for misrepresentation  
8 5 made by the other broker, unless the retaining broker knew or  
8 6 should have known of the other broker's misrepresentation or  
8 7 the other broker is repeating a misrepresentation made to the  
8 8 other broker by the retaining broker.

8 9 b. A broker is responsible for supervising a salesperson  
8 10 or broker associate employed by or otherwise associated with  
8 11 the broker as a representative of the broker. The existence  
8 12 of an independent contractor relationship or any other special  
8 13 compensation arrangement between the broker and the  
8 14 salesperson or broker associate does not relieve the broker,  
8 15 salesperson, or broker associate of the duties and  
8 16 responsibilities established by this chapter. A salesperson  
8 17 or broker associate shall keep the employing broker fully  
8 18 informed of all activities being conducted on behalf of the  
8 19 broker and any other activities that might impact on the  
8 20 broker's responsibilities. However, the failure of the  
8 21 salesperson or broker associate to keep the employing broker  
8 22 fully informed does not relieve the broker of the duties and  
8 23 responsibilities established by this chapter.

8 24 Sec. 9. NEW SECTION. 543B.63 BROKER NOT CONSIDERED  
8 25 SUBAGENT.

8 26 A broker is not considered to be a subagent of a client of  
8 27 another broker solely by reason of membership or other  
8 28 affiliation by the broker in a multiple listing service or  
8 29 other similar information source, and an offer of subagency  
8 30 shall not be made through a multiple listing service or other  
8 31 similar information source.

8 32 Sec. 10. NEW SECTION. 543B.64 CHAPTER IS NOT LIMITING.

8 33 The duties imposed upon persons under this chapter or  
8 34 pursuant to rules adopted by the real estate commission shall  
8 35 not limit or abridge any duty or responsibility to disclose  
9 1 created by other applicable law, or under a contract between  
9 2 parties.

9 3 Sec. 11. IMPLEMENTATION. In order to implement this Act,  
9 4 the real estate commission shall adopt rules as required under  
9 5 this Act to be effective by July 1, 1995. This section, being  
9 6 deemed of immediate importance, is effective upon enactment.

#### 9 7 EXPLANATION

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

9 12 Section 543B.5 is amended to define additional terms used  
9 13 in the chapter, including "agency", "agency agreement",  
9 14 "appointed agent", "brokerage", "brokerage agreement",  
9 15 "brokerage services", "client", "customer", "designated  
9 16 broker", "material adverse fact", "negotiate", "party", and  
9 17 "transaction".

9 18 New section 543B.56 establishes duties of the broker to all  
9 19 parties to a transaction involving real property which include  
9 20 providing brokerage services honestly and in good faith,  
9 21 diligently exercising reasonable skill and care in providing  
9 22 brokerage services, disclosing certain material adverse facts,  
9 23 and accounting for all property in the possession of the  
9 24 broker that belongs to any party to the transaction within a  
9 25 reasonable time after receiving such property. The section  
9 26 also establishes additional duties of the broker to the  
9 27 broker's client which include placing the client's interests  
9 28 ahead of the interests of any other party, disclosing all  
9 29 material information related to the transaction to the client,  
9 30 and fulfilling any obligation that is within the scope of the  
9 31 agency agreement. The section also prohibits certain conduct  
9 32 including the acceptance of any fee or compensation related to  
9 33 a transaction from a person other than the broker's client  
9 34 unless the broker has disclosed that fact in writing to all  
9 35 parties to the transaction, and acting in a transaction on the

10 1 broker's own behalf, on behalf of the broker's immediate  
10 2 family or firm, or on behalf of an organization or business in  
10 3 which the broker has an interest unless the broker has the  
10 4 written consent of all parties to the transaction.  
10 5 New section 543B.57 requires a licensed real estate broker  
10 6 or salesperson to make an affirmative written disclosure to  
10 7 all parties to a transaction identifying which party the  
10 8 broker or salesperson represents.  
10 9 New section 543B.58 prohibits a licensed real estate broker  
10 10 or salesperson from representing a buyer and a seller in a  
10 11 transaction unless written consent has been obtained from both  
10 12 parties.  
10 13 New section 543B.59 provides for the notification of  
10 14 clients of a real estate brokerage agency of an agent within  
10 15 the agency who will act as the appointed agent of that client  
10 16 to the exclusion of all other agents in the brokerage agency.  
10 17 New section 543B.60 provides that a broker may provide  
10 18 brokerage services simultaneously to more than one party in  
10 19 different transactions unless the broker agrees with a client  
10 20 that the broker is to provide such services only to that  
10 21 client.  
10 22 New section 543B.61 provides that the failure of a licensee  
10 23 to comply with the provisions of section 543B.56 through  
10 24 543B.59 is prima facie evidence of a violation under section  
10 25 543B.34, which gives the real estate commission authority to  
10 26 conduct an investigation.  
10 27 New section 543B.62 provides that the duties of a licensee  
10 28 specified in chapter 543B supersede any fiduciary duties of a  
10 29 licensee to a party to a transaction based on common law  
10 30 principles of agency to the extent those duties are  
10 31 inconsistent with the duties specified in chapter 543B or the  
10 32 rules adopted pursuant to that chapter, except that the  
10 33 licensee's duty under common law as to negligent or fraudulent  
10 34 misrepresentation of material information is not modified.  
10 35 New section 543B.63 provides that a broker is not  
11 1 considered to be a subagent of a client of another broker  
11 2 solely by reason of membership or other affiliation by the  
11 3 broker in a multiple listing service or other similar  
11 4 information source.  
11 5 New section 543B.64 provides that the duties imposed  
11 6 pursuant to chapter 543B do not limit any duty or  
11 7 responsibility to disclose created in other applicable law or  
11 8 agreement.  
11 9 Section 11 provides that the real estate commission is to  
11 10 adopt rules as required by the bill to be effective by July 1,  
11 11 1995.  
11 12 LSB 1788HC 76  
11 13 mj/sc/14