

CHAPTER 16

MILITARY DENTISTS AND DENTAL HYGIENISTS - LICENSING EXEMPTION H.F. 154

AN ACT relating to the exemption of certain dentists and dental hygienists from state licensing requirements.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 153.14, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Dentists and dental hygienists who are licensed in another state and who are active or reserve members of the United States military service when acting in the line of duty in this state.

Approved April 11, 1995

CHAPTER 17

REGULATION OF REAL ESTATE SALESPERSONS AND BROKERS - TRANSACTION REQUIREMENTS H.F. 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.~~ 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.

~~2.~~ 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.

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.

Approved April 11, 1995

CHAPTER 18

REST AREAS

H.F. 115

AN ACT relating to rest areas by permitting refreshments during holiday periods and concerning the promotion of Iowa agricultural products.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 314.27 REFRESHMENTS AT REST AREAS ON CERTAIN HOLIDAYS.

1. As used in this section, unless the context otherwise requires:

a. "Free refreshments" means water, coffee, cookies, any nonintoxicating, noncarbonated beverage which is not already bottled or canned, doughnuts, or baked dessert goods dispensed by a nonprofit organization, provided that the refreshments are furnished to motorists by a nonprofit organization without charge.