

# **Title 5**

## **Businesses and Professions**

### **Chapter 20.6**

#### **Relationships in Residential Real Estate Transactions**

**R.I. Gen. Laws § 5-20.6-1**

##### **§ 5-20.6-1. Legislative purpose.**

- (a) The way that consumers buy, sell, rent, exchange, and otherwise transfer real estate has changed over the years. The purpose of this legislation is to provide consumers with choice.
- (b) This chapter is intended to abrogate the common law of agency relative to relationships in regulated real estate transactions to the extent that they are inconsistent with this chapter.
- (c) Unless otherwise specified by written agreement, a licensee owes only those duties and obligations set forth under this chapter, chapter 20.5 of this title, and the regulations promulgated thereunder. A licensee does not owe a fiduciary duty under the common law of agency to his or her clients and is not subject to equitable remedies for breach of fiduciary duty.
- (d) Nothing in this chapter shall prohibit a principal broker and his or her affiliated licensees from entering into a written representation contract with a buyer, seller, tenant, or landlord that creates a relationship in which the duties and obligations are greater than those provided in this chapter.

History of Section.

P.L. 1989, ch. 141, § 2; P.L. 1990, ch. 425, § 2; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1.

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**R.I. Gen. Laws § 5-20.6-2**

## § 5-20.6-2. Definitions.

As used in this chapter, the following terms shall have the following meanings:

- (1) "Affiliated licensee" means a licensed real estate salesperson or real estate broker as defined in § 5-20.5-1 associated with a particular principal broker.
- (2) "Brokerage" means a principal broker as defined in § 5-20.5-8 and his or her affiliated licensees.
- (3) "Buyer" means a person who acquires or seeks to acquire an ownership interest in real estate.
- (4) "Client" means a buyer, seller, tenant, or landlord who has agreed to representation by a licensee in a real estate transaction, evidenced by an executed, mandatory relationship disclosure, to whom a licensee owes the duties set forth in § 5-20.6-5.
- (5) "Client representation contract" means an express, written contract between a principal broker or his or her affiliated licensees and a client who authorizes the principal broker or his or her affiliated licensees to act as a client representative for a buyer, seller, landlord, or tenant and meets the requirements of § 5-20.6-10.
- (6) "Confidential information" means the following information:
  - (i) A buyer's or tenant's willingness to pay more than the offered price;
  - (ii) A seller's or landlord's willingness to accept less than the asking price;
  - (iii) A buyer's or tenant's previous offers made to purchase or lease real estate;
  - (iv) A seller's or landlord's previous offers received to purchase or lease real estate;
  - (v) Any parties' motivating factors;
  - (vi) Any parties' willingness to agree to other financing terms;
  - (vii) Any facts or suspicions regarding circumstances, other than known, material defects of a property that a licensee must in all cases disclose, that may psychologically impact or stigmatize any real estate; or
  - (viii) Any information about a party's assets, liabilities, income, or expenses.
- (7) "Customer" means a buyer, seller, tenant, or landlord who has agreed to certain assistance by a licensee in a real estate transaction, evidenced by an executed, mandatory relationship disclosure, to whom a licensee owes the duties set forth in § 5-20.6-4.

(8) "Designated client representative" means an affiliated licensee appointed by the principal broker or his or her designee to represent a buyer, seller, tenant, or landlord in a real estate transaction. The affiliated licensee so designated shall obtain the informed, written consent of the buyer, seller, tenant, or landlord with a signed mandatory relationship disclosure pursuant to § 5-20.6-8.

(9) "Designee" means an associate broker as defined in § 5-20.5-1 whom a principal broker authorizes to act on his or her behalf.

(10) "Director" means the director of business regulation for the state.

(11) "Dual facilitator" means a single licensee who, with the prior written consent of both parties, assists a seller client and a buyer client in the same transaction subject to the limitations set forth in § 5-20.6-6.

(12) "Landlord" means a person who leases or attempts to lease his or her ownership interest in real estate to another person.

(13) "Lease" means an express written or oral contract between a landlord and tenant for the use or occupancy by the tenant of real estate that is owned by another person.

(14) "Licensee" means an individual licensed by the director as a real estate broker or real estate salesperson pursuant to chapter 20.5 of this title.

(15) "Mandatory relationship disclosure" means a form that describes the relationship between a consumer and a principal broker and his or her affiliated licensees that meets the requirements of § 5-20.6-8.

(16) "Ministerial acts" means acts of an administrative nature that licensees perform for client or customers, including, but not limited to, showing property; preparing offers or agreements to sell, purchase, exchange, rent, or lease; conveying offers or agreements to the parties; and providing information and assistance.

(17) "Principal broker" means a real estate broker licensed by the director who is designated by the brokerage to be responsible for the supervision and activities of his or her affiliated licensees in accordance with this chapter and chapter 20.5 of this title.

(18) "Real estate" refers to vacant land on which a building is intended to be constructed for use as one or two (2) residential dwellings or land with physical improvements consisting of a house and/or structure comprised of four (4) or fewer residential units.

(19) "Sales agreement" means an express written contract signed by the buyer and seller for the purchase and sale of the real estate.

(20) "Sell," "sale," or "sold" means a transaction for the transfer of real estate from a seller to a buyer, including, but not limited to, exchanges of real estate between the seller and buyer and

transactions involving the creation of a sales agreement.

(21) "Seller" means a person who sells or attempts to sell an ownership interest in real estate to another person.

(22) "Tenant" means a person who acquired or seeks to acquire an interest in real estate that entitles him or her to occupy or use a property that is owned by another person.

(23) "Transaction coordinator" means a principal broker or his or her designee who supervises a real estate transaction in a capacity in which one affiliated licensee represents a buyer or tenant as a designated client representative and another affiliated licensee represents a seller or landlord as a designated client representative in the same transaction. A transaction coordinator does not owe any fiduciary duties to any party in a transaction except the duties to protect the confidential information of the parties and to properly account for money placed in his or her care.

(24) "Transaction facilitator" means a licensee who provides assistance to a buyer, seller, tenant, or landlord, or both, in a real estate transaction. A transaction facilitator does not owe any fiduciary duties to any party in a transaction but does owe the duties set forth in § 5-20.6-4.

#### History of Section.

P.L. 1989, ch. 141, § 2; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1; P.L. 2009, ch. 310, § 28; P.L. 2011, ch. 352, § 1; P.L. 2011, ch. 364, § 1; P.L. 2013, ch. 27, § 2; P.L. 2013, ch. 38, § 2; P.L. 2014, ch. 528, § 2.

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##### R.I. Gen. Laws § 5-20.6-3

##### § 5-20.6-3. Relationships — Creation and presumption.

- (a) It shall be presumed that all licensees in a real estate transaction are transaction facilitators unless the licensee obtains the informed, written consent of a buyer, seller, tenant, or landlord with an executed mandatory relationship disclosure to represent that person as a designated client representative.
- (b) The provisions of this chapter are expressly intended to abrogate the common law of agency; no type of agency representation shall be assumed by a brokerage, principal broker, licensee, buyer, seller, tenant, or landlord nor shall agency representation be created by implication.
- (c) **Types of relationships.** The following types of relationships are recognized:
- (1) Assistance as a transaction facilitator to assist one or more customers; and
  - (2) Representation of a buyer, seller, tenant, or landlord as a designated client representative.

##### History of Section.

P.L. 1989, ch. 141, § 2; P.L. 1990, ch. 425, § 2; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1; P.L. 2013, ch. 27, § 2; P.L. 2013, ch. 38, § 2; P.L. 2014, ch. 528, § 2.

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##### R.I. Gen. Laws § 5-20.6-4

**§ 5-20.6-4. Duties owed by a transaction facilitator to a customer.**

(a) A transaction facilitator owes the following duties to a customer:

- (1) To perform agreed-upon ministerial acts timely and competently;
- (2) To perform these acts with honesty, good faith, reasonable skill, and care;
- (3) To properly account for money or property placed in the care and responsibility of the principal broker; and
- (4) To protect confidential information when assisting customers as a dual facilitator.

(b) A licensee acting as a transaction facilitator does not owe any fiduciary duties to a customer except those duties specified in subsection (a).

History of Section.

P.L. 1989, ch. 141 § 2; P.L. 1990, ch. 425, § 2; P.L. 1993, ch. 397, § 1; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1; P.L. 2013, ch. 27, § 2; P.L. 2013, ch. 38, § 2; P.L. 2014, ch. 528, § 2.

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##### R.I. Gen. Laws § 5-20.6-5

##### § 5-20.6-5. Duties owed by a designated client representative to client.

(a) If an affiliated licensee is appointed by the principal broker or his or her designee to represent a buyer, seller, tenant, or landlord in a real estate transaction and obtains the written consent of a buyer, seller, tenant, or landlord with an executed, mandatory relationship disclosure to represent that person as a designated client representative, the licensee owes the following legal duties and obligations to his or her client:

- (1) To perform the terms of the client representation contract, if any, with reasonable skill and care;
- (2) To promote the client's best interest in good faith and honesty;
- (3) To protect the client's confidential information during the relationship and after its termination;
- (4) To perform agreed-upon ministerial acts timely and competently;
- (5) To perform these acts with honesty, good faith, reasonable care, and skill; and
- (6) To properly account for money or property placed in the care and responsibility of the principal broker.

(b) A principal broker or his or her designee may appoint one or more affiliated licensees to act as the designated client representative(s) of a seller or landlord and one or more affiliated licensees to act as the designated client representative(s) of a buyer or tenant in the same transaction; provided; that, all parties to the transaction receive written notice that an inherent conflict of interest may exist when designated client representatives are affiliated with the same principal broker.

(c) A designated client representative of a seller client or landlord client shall have no duty to protect the confidential information of a buyer customer or tenant customer involved in a transaction with his or her client. Conversely, a designated client representative of a buyer client or tenant client shall have no duty to protect the confidential information of a seller customer or

landlord customer involved in a transaction with his or her client.

(d) In the event that one or more affiliated licensees represent a seller as a designated client representative and one or more affiliated licensees represent the buyer as a designated client representative in the same transaction, the principal broker or his or her designee shall act in a capacity as the transaction coordinator and shall protect the confidential information of all parties to the transaction and properly account for funds.

(e) No affiliated licensees of the principal broker, other than those licensee(s) specifically designated to represent the client as a designated client representative, shall represent the client or owe any other duties except that affiliated licensees not appointed to represent a client in a transaction shall have the duty to protect the client's confidential information.

(f) All other affiliated licensees of the principal broker not appointed as a designated client representative for a party in a real estate transaction may represent another party with conflicting interests in the same transaction.

(g) A designated client representative is exclusively responsible for the performance of any duties owed to the client.

(h) An appointment of a designated client representative by a principal broker or his or her designee to represent a client shall not limit the principal broker's liability or responsibility for any breach of duty owed to a client by the designated client representative.

#### History of Section.

P.L. 1989, ch. 141, § 2; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1; P.L. 2013, ch. 27, § 2; P.L. 2013, ch. 38, § 2; P.L. 2014, ch. 528, § 2.



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##### R.I. Gen. Laws § 5-20.6-6

##### § 5-20.6-6. Dual facilitator.

- (a) A licensee may assist both the buyer client and the seller client or tenant client and landlord client in the same transaction only as a neutral dual facilitator.
- (b) The dual facilitator relationship between the licensee and buyer and seller, or between the licensee and tenant client and landlord client, exists solely for the specific transaction between the parties. In the event the transaction is not completed or fails to close, then the dual facilitator remains the designated client representative for the respective buyer and the seller or tenant and landlord in all future, separate transactions where there is no relationship with the other party.
- (c) A licensee may be a neutral dual facilitator only after he or she has obtained the informed, written consent of his or her principal broker and all parties involved in the transaction before presenting an offer to a seller client on behalf of a buyer client or to a landlord client on behalf of a tenant client. Such consent shall specifically inform all parties to the transaction of the following:
- (1) The dual facilitator is authorized to assist both parties in a transaction but shall be neutral as to any conflicting interests between the parties to the transaction;
  - (2) A dual facilitator shall owe a duty to protect the confidential information of all parties and a duty to account for funds;
  - (3) Confidential information obtained by a dual facilitator from either party may not be disclosed except:
    - (i) If disclosure is expressly authorized;
    - (ii) If such disclosure is required by law;
    - (iii) If such disclosure is intended to prevent illegal conduct; or

(iv) If such disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the licensee. The duty to protect confidential information shall continue after the completion of the transaction; and

(4) If a comparative market analysis was prepared for a seller client or a buyer client and a dual facilitation situation subsequently arises, the dual facilitator may only provide the comparative market analysis to the other party with the prior consent of the party for whom it was initially prepared. A dual facilitator shall not be able to prepare a comparative market analysis for either party after a dual facilitation situation arises as it may adversely affect one party's bargaining position relative to the other party.

In the event that either the seller client or buyer client in the case of a sale of property, or the landlord client and the tenant client in the case of a rental of property, does not consent to dual facilitation, then the principal broker or his or her designee, may, with the consent of the party(ies) withholding consent designate another licensee to represent one of the parties as a designated client representative.

In the event that an affiliated licensee is acting as a dual facilitator, the principal broker or his or her designee shall act as a transaction coordinator in the transaction and shall protect the parties' confidential information. In the event that the clients of a principal broker consent to his or her acting as a disclosed dual facilitator, the principal broker may also oversee the transaction as a transaction coordinator.

History of Section.

P.L. 1989, ch. 141, § 2; P.L. 1990, ch. 425, § 2; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1; P.L. 2013, ch. 27, § 2; P.L. 2013, ch. 38, § 2; P.L. 2014, ch. 528, § 2.

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**R.I. Gen. Laws § 5-20.6-7**

#### **§ 5-20.6-7. Duty to protect confidential information.**

(a) Unless otherwise authorized in subsection (b), a licensee may not disclose the confidential information of: (i) A client, in the case of a designated client representative; or (ii) A customer, in the case of a dual facilitator or transaction coordinator; or (iii) Any represented party, in the case of

an affiliated licensee who is not appointed a designated client representative, without the client or customer's consent.

(b) A licensee may disclose confidential information that is a matter of general knowledge or a part of a public record or file to which access is authorized, or when necessary to defend the licensee against a claim brought by the client, or is otherwise subject to disclosure by law.

(c) A principal broker shall implement reasonable procedures to protect the confidential information of all clients of designated client representatives and, as required by this chapter, to protect the confidential information of customers of transaction facilitators. A designated client representative shall have no duty to protect confidential information of a party not a client unless the confidential information of the party was previously acquired by the designated client representative as a result of a prior client or transaction facilitator relationship with the party.

History of Section.

P.L. 1989, ch. 141, § 2; P.L. 1990, ch. 425, § 2; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1.

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**R.I. Gen. Laws § 5-20.6-8**

### **§ 5-20.6-8. Mandatory relationship disclosure.**

(a) The Rhode Island real estate commission shall approve a mandatory relationship disclosure that conforms to the requirements of this section.

(b) A licensee shall provide a prospective buyer, seller, tenant, or landlord in a real estate transaction with a copy of the mandatory relationship disclosure and shall obtain a signed acknowledgement of receipt from the buyer, seller, tenant, or landlord prior to the disclosure of any confidential information. If a buyer, seller, tenant, or landlord refuses to sign an acknowledgement of receipt, the licensee shall set forth, sign, and date a written declaration of the facts of the refusal.

(c) The mandatory relationship disclosure shall contain the following information:

- (1) A list of the types of representation or assistance available to a prospective buyer, seller, tenant, or landlord consistent with § 5-20.6-3;
- (2) A statement that a principal broker and his or her affiliated licensees must disclose their relationship as a designated client representative, transaction facilitator, or transaction coordinator to the buyer, seller, tenant, or landlord in any transaction;
- (3) The legal duties and obligations owed to the buyer, seller, tenant, or landlord in each type of relationship as set forth in this chapter and chapter 20.5 of this title;
- (4) A conspicuous notice that a licensee cannot act as a client representative for a prospective buyer, seller, tenant, or landlord unless the licensee obtains the informed, written consent of a prospective buyer, seller, tenant, or landlord with a signed, mandatory relationship disclosure;
- (5) A box for the client or customer to select the type of representation or assistance that he or she desires;
- (6) A box for the client or customer to acknowledge the type of representation or assistance that a real estate licensee is offering to the other party in the same transaction.
- (7) A statement that a principal broker may designate one or more affiliated licensees to act as the designated client representative(s) of a seller or landlord and one or more affiliated licensees to act as the designated client representative(s) of a buyer or tenant in the same transaction; provided, that the licensee obtains the consent from the client being represented;
- (8) A statement that, when the principal broker or his or her designee appoints designated client representatives to represent clients on different sides of a transaction, he or she shall: (i) Act in a neutral capacity as a transaction coordinator; (ii) Protect all parties' confidential information; and (iii) Properly account for funds;
- (9) A statement that all affiliated licensees not appointed as a designated client representative for the client may represent another party in a transaction with conflicting interests;
- (10) An explanation of the potential conflicts of interest that exist if a licensee acts for more than one party in the same transaction;
- (11) A statement that a principal broker and his or her affiliated licensees must disclose their relationship as a designated client representative, transaction facilitator, or transaction coordinator to the buyer, seller, tenant, or landlord in any transaction;
- (12) A statement that the failure of a licensee to timely give a prospective buyer, seller, tenant, or landlord the mandatory relationship disclosure, or the failure of a licensee to obtain any other written consent required by this chapter, shall be a violation of Rhode Island real estate license law and may subject the licensee to disciplinary action;
- (13) A statement that if a consumer desires to change the nature of a relationship with a licensee

from a customer relationship to a client relationship that a licensee's relationship with a buyer, seller, tenant, or landlord as a designated client representative must be established no later than the preparation of a sales agreement, offer to purchase, or lease; and

(14) Written confirmation from each party signing the mandatory relationship disclosure that he or she has received, read, and understood this mandatory relationship disclosure and has consented to the relationship confirmed above.

(d) In all instances, a licensee's relationship with a buyer, seller, tenant, or landlord as a designated client representative must be established, and the mandatory relationship disclosure executed, no later than the preparation of a sales agreement, offer to purchase, or lease.

History of Section.

P.L. 1993, ch. 397, § 3; P.L. 2007, ch. 344, § 1; P.L. 2007, ch. 403, § 1; P.L. 2013, ch. 27, § 2; P.L. 2013, ch. 38, § 2; P.L. 2014, ch. 528, § 2.

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**R.I. Gen. Laws § 5-20.6-9**

### **§ 5-20.6-9. Written requirement for representation of a client.**

(a) A licensee shall not act as a designated client representative until the licensee has complied with § 5-20.6-8.

(b) Each principal broker shall keep a receipt of the executed, mandatory relationship disclosure in accordance with § 5-20.5-8(b).

History of Section.

P.L. 2007, ch. 344, § 2; P.L. 2007, ch. 403, § 2.

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##### **R.I. Gen. Laws § 5-20.6-10**

###### **§ 5-20.6-10. Client representation contract — Minimum requirements.**

If a seller, buyer, landlord, or tenant and principal broker elect to enter into a client representation contract, the contract shall meet the following requirements:

- (1) Be an express, written contract;
- (2) Include terms of compensation;
- (3) Describe all services and limitations on services to be performed by the principal broker and his or her affiliated licensees;
- (4) State that a principal broker may appoint one or more affiliated licensees to act as the designated client representative(s) for a seller or landlord and one or more affiliated licensees to act as the designated client representative(s) for a buyer or tenant in the same transaction after a licensee has obtained consent from the client being represented; and
- (5) Be signed by all parties.

History of Section.

P.L. 2007, ch. 344, § 2; P.L. 2007, ch. 403, § 2.

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**R.I. Gen. Laws § 5-20.6-11**

**§ 5-20.6-11. Relationship and compensation.**

The payment or promise of payment or compensation to a licensee does not create an agency relationship between any licensee and buyer, seller, tenant, or landlord.

History of Section.

P.L. 2007, ch. 344, § 2; P.L. 2007, ch. 403, § 2.

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**R.I. Gen. Laws § 5-20.6-12**

**§ 5-20.6-12. Rules and regulations.**

The director shall issue reasonable rules and regulations with the consent of the majority of the Rhode Island real estate commission governing the relationships of licensed real estate brokers and salespersons. These rules and regulations shall be designed to implement the laws and policies of this state and to protect the interests of the public.

History of Section.

P.L. 2007, ch. 344, § 2; P.L. 2007, ch. 403, § 2.

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**R.I. Gen. Laws § 5-20.6-13**

**§ 5-20.6-13. Penalty for violation.**

(a) Each violation of this chapter by a licensee shall constitute a violation of law pursuant to chapter 20.5 of this title and the regulations promulgated thereunder and may subject the licensee to disciplinary action.

(b) Failure to provide the mandatory relationship disclosure in accordance with § 5-20.6-8 does not void the sales agreement nor create any defect in title.

History of Section.

P.L. 2007, ch. 344, § 2; P.L. 2007, ch. 403, § 2.