

**Rhode Island Association of REALTORS**  
**New Agency Law Effective May 1, 2008**  
**Frequently Asked Questions**  
**February 20, 2008**

**General Questions**

**1.1 Why was the Rhode Island agency law changed?**

ANSWER: The old agency law was confusing for many real estate licensees and consumers and no longer was consistent with changing market conditions and business practices. Rhode Island was the only state with a law that presumed that all real estate licensees represent the seller unless there was an agreement in writing to the contrary. Practices under the old law, such as subagency and vicarious liability, placed real estate licensees and consumer at risk. Both Massachusetts and Connecticut successfully updated their agency laws in recent years.

**1.2 Who filed this legislation?**

ANSWER: The Rhode Island Association of REALTORS Agency Task force spent two years researching and discussing laws from other states. The Rhode Island Real Estate Commission, Rhode Island Department of Business Regulation, individual REALTORS, real estate companies, in-house counsel, the Rhode Island General Assembly and the United States Justice Department all had input in the final legislation.

**1.3 When will the new agency law go into effect?**

ANSWER: The new agency law will go into effect on May 1, 2008.

**1.4 Why is the new law an improvement?**

ANSWER: The new agency law eliminates subagency and a seller's or listing broker's vicarious liability for the acts of cooperating brokers.

**1.5 What is "vicarious liability"?**

ANSWER: "Vicarious liability" occurs when one person is legally liable for the negligent or wrongful actions of another person even though the first person did not cause the injury. Under the old agency law, if a seller's subagent from another company gave the buyer incorrect information about the property, the buyer could file a lawsuit against the listing company and the seller in addition to the subagent even though neither the seller nor listing broker provided the incorrect information.

**1.6 What are the major changes?**

ANSWER: The new law will do the following:

- Eliminate subagency and vicarious liability for the acts of cooperating brokers.
- Add a new category that allows real estate licensees to work with consumers as a neutral transaction facilitator who provides basic level services, such as handling paperwork and showings, without representing the consumer as a buyer's agent or seller's agent.
- Replace existing legal presumption that all real estate licensees represent the seller with the presumption that real estate licensees are acting as a neutral transaction facilitators unless otherwise agreed.
- Replace company dual agency with "designated representation" (which Massachusetts and Connecticut have also adopted), which allows a seller or buyer to choose to receive full representation and help with negotiations and advice from a designated licensee even when his or her representative and the listing broker work for the same company. The new law will allow the listing broker to represent the seller; a buyer's agent affiliated with the same company to represent the buyer without creating dual agency in the same transaction; further, any licensee who is not specifically designated by the principal will act as a neutral transaction coordinator.
- Abrogate the common law of agency by replacing court decisions with statutorily-defined concepts.
- Eliminate the need to require consumers to sign a separate agency disclosure form for each property that he or she views.
- Require real estate licensees to provide a disclosure form to all consumers earlier in the process. The disclosure will be updated by the Rhode Island Department of Business Regulation to make it consistent with the new law.

### **1.7 What types of transactions are covered by the new law?**

ANSWER: The new law applies to all purchases, sales, and leasing of vacant land or land with structures of any kind on it. This includes both commercial and residential transactions as well as sales and rentals.

### **1.8 Does the new law apply to sales of mobile homes?**

ANSWER: The new agency law applies to a sale of a mobile home only if the lease or sale of land is also involved. The sale of a mobile home without land is not considered a real estate transaction.

### **1.9 Does the new law apply to sales of businesses?**

ANSWER: The new agency law applies to a sale of a business only if the lease or sale of land is also involved. The sale of a business without land is not considered a real estate transaction.

#### **1.10 Does the new law apply to vacation rentals?**

ANSWER: Yes. It applies to all real estate rentals, include year-round, student rentals, vacation rentals, military rentals, and others.

#### **1.11 I've heard that this law abrogates the common law of agency. What does this mean?**

ANSWER: "Common law" refers to requirements imposed by court decisions rather than laws adopted by the legislature. For example, over the years, courts have determined that real estate licensees can have liability for acting like seller's agent or buyer's agent even if they didn't intend or agree to do so. In other states, courts have decided that a buyer's agent has a duty to investigate physical defects of a property. The new agency law replaces court decisions with state law.

#### **1.12 Does the new agency law permit subagency?**

ANSWER: Subagency does not exist under the new agency law.

#### **1.13 How can I learn more about the new agency law?**

ANSWER: The Rhode Island Association of REALTORS is offering classes for principal brokers and managers as well as classes for salespeople. The majority of our instructors helped write the new agency law, and all went through special training, and passed a test about the new law. RIAR is offering cooperative classes with local REALTOR associations in locations across the state. The class is approved for three hours of core, continuing education credit. Register on-line <http://www.riareducation.com/> or telephone the Rhode Island Association of REALTORS Education Department at 401-785-3650 ext. 1. Contact the Education Department about the possibility of holding a class in your office.

#### **1.14 If I have a relationship with a customer or client that starts before May 1, 2008 and will continue after that date, am I required to have the customer or client sign a new disclosure form under the new agency law?**

ANSWER: According to the Real Estate Commission and Department of Business Regulation, relationships and contracts that are entered into prior to May 1, 2008 will be grandfathered. The new agency law and new disclosure forms will apply to relationships that are entered into on or after May 1, 2008. Also, if a listing or other relationship is entered into prior to May 1 but it is renewed on or after May 1, new disclosure forms must be provided, and the new agency law will apply.

## **Mandatory Real Estate Relationship Disclosure form**

### **2.1 What is a Mandatory Real Estate Relationship Disclosure form?**

ANSWER: This form replaces the Agency Disclosure Form under the old agency law. The new agency law requires the Real Estate Commission to adopt an official state mandatory relationship disclosure that must be provided to buyers, sellers, tenants, and landlords in real estate transactions. The official form is called a Mandatory Real Estate Relationship Disclosure form.

### **2.2 When must I provide a consumer a Mandatory Real Estate Relationship Disclosure form?**

ANSWER: A real estate licensee must provide a Mandatory Real Estate Relationship Disclosure form to a prospective buyer, seller, tenant or landlord at the first personal contact or prior to an offer to purchase, whichever comes first.

### **2.3 Must I provide a Mandatory Real Estate Relationship Disclosure form to a person who contacts me on my web site?**

ANSWER: It would be wise to do so until the Department of Business Regulation defines what a “personal contact” is in its regulations.

### **2.4 If I am acting as a designated client representative for a seller and am holding an open house, must I provide everyone who comes to an open house with a Mandatory Real Estate Relationship Disclosure form?**

ANSWER: Mandatory Real Estate Relationship Disclosure forms must be made available at open houses and displayed separately from the listing packet to make it more noticeable to consumers. The listing broker is not required to sit down and explain the form at the time. If a buyer wishes to buy the property or arrange for another showing, the listing broker would present the disclosure form at this time.

### **2.5 If there is more than one buyer, seller, tenant or landlord must I have all sellers sign the Mandatory Real Estate Relationship Disclosure form?**

ANSWER: Yes. Any seller whose name appears on the deed must sign unless one of the sellers has given written power of attorney or has some other legal authority to act on behalf of the other seller.

### **2.6 In special cases, such as a trust or estate, who should sign the disclosure form?**

ANSWER: The trustees of a trust would sign the disclosure form. In the case of an estate, the executor(s) or administrator(s) of an estate would sign. The heirs of the estate would not sign unless they are also an executor or administrator.

**2.7 Must a buyer or tenant sign a separate disclosure form for every property that he or she tours?**

ANSWER: No. Only one form for each relationship is required. For example, when you first meet a buyer, you might give the buyer a disclosure form stating that you are a transaction facilitator, regardless of how many properties you show. If you, the buyer, and your principal broker agree to have you act as a designated client representative, you would provide the buyer with a new disclosure stating that you are acting as a designated client representative.

**2.8 Must I provide a disclosure form to every listing broker when I show a property?**

ANSWER: No. The new law does not require a cooperating broker to provide a signed disclosure form to every listing broker at the time of showing. The new disclosure requirements are based on the relationship with a consumer not tied to each property that is shown.

**2.9 What happens if a customer refuses to sign a disclosure form?**

ANSWER: If a customer refuses to sign a disclosure form, a real estate licensee may continue to work with the customer as a transaction facilitator. Under the old agency law, a real estate licensee automatically was presumed to represent the seller if the consumer refused to sign the form.

However, the real estate licensee cannot act as a designated client representative for the consumer or a dual facilitator unless the customer agrees to sign the form. The licensee must check the refusal box at the bottom of Mandatory Real Estate Relationship Disclosure form and print the reason that the consumer gave for refusing to sign the form.

**2.10 Why doesn't this form have a box for the consumer to select a dual facilitator relationship?**

ANSWER: The new agency law requires a dual facilitator to obtain the written, informed consent of both parties and the principal broker or designee on a separate disclosure that meets the legal requirements of the new law. The Mandatory Real Estate Relationship Disclosure form cannot be used for this purpose just as the old agency disclosure could not be used to select dual agency and required a separate consent form when the dual agency actually occurred. The Rhode Island Association of REALTORS Board of Directors has adopted a "Dual Facilitator Consent Form" that will be made available on Transit and in print form.

**2.11 Can my office use its own version of Mandatory Real Estate Relationship Disclosure form?**

ANSWER: The law requires the Real Estate Commission to approve the disclosure form. Unless the Real Estate Commission is willing to approve different versions of the form, your office cannot write and use its own version of the disclosure form.

**2.12 What are the penalties if I don't provide a consumer with a Mandatory Real Estate Relationship Disclosure form?**

ANSWER: Real estate license laws allows the RI Department of Business Regulation to suspend or revoke a license, place a licensee on probation for a period not to exceed one year, and/or impose a maximum fine of \$1,000 per offense for any violation of license, include the failure to provide a disclosure form. These penalties are not new.

**2.13 How long am I required to keep a copy of Mandatory Real Estate Relationship Disclosure form?**

ANSWER: Rhode Island real estate license law requires records to be preserved for three years after the "consummation" of a real estate transaction. The law imposes a special duty on principal brokers to keep records of all funds and property of others received by him or her for a minimum of three years from the date of receipt of any such funds or property. These are not new requirements.

A principal broker is responsible for keeping a signed Mandatory Real Estate Relationship Disclosure Form for three years from the "consummation" of the transaction. "Consummation" includes such as activities as a closing, when a property is sold, or a signing of a lease. The agency law, according to the Real Estate Commission and Department of Business Regulation, does not require a principal broker to keep a disclosure form unless the transaction is actually "consummated".

**2.14 May I retain signed disclosure forms and other documents electronically?**

ANSWER: Yes. The Rhode Island Department of Business Regulation does not specifically require that hard copies be retained.

**Transaction Facilitators**

**3.1 What is a transaction facilitator?**

ANSWER: A Transaction Facilitator is a real estate licensee who provides assistance to a buyer, seller, tenant, or landlord, or both, in a real estate transaction as a neutral facilitator who does not represent either party.

**3.2 What duties does a transaction facilitator owe to a consumer?**

ANSWER: A transaction facilitator owes the following legal duties to a customer: to perform agreed upon ministerial acts timely and competently; to perform these acts with honesty, good faith, reasonable skill and care; and properly account for money or

property placed in the care and responsibility of the principal broker. A licensee acting as a transaction facilitator does not owe confidentiality or any other fiduciary duties to a customer. A transaction facilitator does not represent either party and cannot negotiate on your behalf.

### **3.3 What are “ministerial acts”?**

ANSWER: Ministerial acts" are basic duties that licensees perform for customers, such as showing property, preparing offers, presenting offers, and providing assessment and tax information.

### **3.4 How can I become a transaction facilitator?**

ANSWER: All real estate licensees will be automatically and legally presumed to be acting as transaction facilitators unless they agree to a different relationship by signing a Mandatory Real Estate Relationship Disclosure form that states otherwise.

### **3.5 If I’m on floor duty, and a consumer phones with a question about a listing, am I a transaction facilitator?**

ANSWER: Yes, you would be a transaction facilitator unless you are already acting as a designated client representative for the seller of that listing. Even though the listing belongs to the company, unless you personally have been designated to represent the seller, you would be a transaction facilitator.

### **3.6 Can I show a property to a buyer as a transaction facilitator then become a designated client representative for a buyer?**

ANSWER: Yes. You must have the buyer sign a Mandatory Real Estate Relationship Disclosure Form stating that you and the buyer agree that you will be acting as a designated client representative for the buyer.

### **3.7 How will I know what compensation will be offered to transaction facilitators?**

ANSWER: State-Wide Multiple Listing Service will have one box for compensation for cooperating brokers regardless of whether you are acting as a transaction facilitator or designated client representative for a buyer.

### **3.8 Why will there only be one box for compensation to cooperating brokers instead of two boxes in MLS?**

ANSWER: Offering two boxes for compensation – one for a buyer’s agent and one for a seller’s subagent – gave listing brokers (and sellers) a choice as to whether they wanted to risk vicarious liability for working with a seller’s subagent. However, under the new agency law, a listing broker will not have vicarious liability for either a transaction

facilitator or designated client representative for a buyer, the justification for offering two boxes no longer exists.

### **3.9 Why would a consumer work with a transaction facilitator?**

ANSWER: Why would a consumer work with a disclosed dual agent under the old agency law? Experienced consumers, such as investors, may not require full-fledged representation but are still willing to pay a real estate broker to handle the paperwork, deadlines, and other basics of a transaction. As of 2007, half of all states, including Massachusetts and Maine, have permitted some form of transaction facilitator relationship.

### **3.10 Can I list property as a transaction facilitator?**

ANSWER: Yes, as long as you act as a neutral rather than as an advocate for the seller.

### **3.11 Can a transaction facilitator perform a comparative market analysis (CMA) for a buyer or seller?**

ANSWER: Yes.

## **Designated Client Representative**

### **4.1 What is a designated client representative?**

ANSWER: A designated client representative is a real estate licensee who is designated by his or her principal broker or principal broker's designee to represent a buyer, tenant, seller or landlord in a real estate transaction. The duties of a designated client representative are like those of a seller's agent or buyer's agent under the old agency law. The difference is that only the licensee or specific licensees who are designated will owe any duties to the client.

### **4.2 How do I become a designated client representative?**

ANSWER: Your principal broker or principal broker's designee will need to agree to appoint you to act as a designated client representative for a particular party, such as a landlord. The party would then need to sign a Mandatory Real Estate Relationship Disclosure form stating that he or she agrees to the relationship. In addition, you may choose to sign a written representation contract with the client.

### **4.3 Can more than one salesperson or associate broker in the same office act as a designated representative for the same client?**

ANSWER: Yes. The principal broker or principal broker's designee can appoint one or more affiliated licensees, a team, or everyone in the office to act as a designated representative for the same client.

**4.4 If I am a designated client representative, can I ask another salesperson to help my clients while I'm on vacation?**

ANSWER: You can ask another salesperson in the same company to assist your clients as long as the principal broker or principal broker's designee authorizes the appointment and the consumer agrees to it.

**4.5 Does the new agency law require me to use a written contract to act as a designated client representative for a buyer?**

ANSWER: No; however if you choose to use a written representation agreement, it must:

- be a clear, written contract;
- include terms of compensation;
- describe all services and limitations on services to be performed by the principal broker and his or her affiliated licensees;
- 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 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
- be signed by all parties.

The contract must also have a definite starting and termination date to comply with license law and general legal requirements.

**4.6 If a seller signs a listing contract before the new agency law goes into effect on May 1, 2008, which disclosure forms should I use?**

ANSWER: If the contract is signed before May 1, 2008, the seller would sign the old agency disclosure form.

**4.7 Will there be any changes to the Multiple Listing Service Exclusive Right to Sell Listing Agreement and Buyer Agency Agreement that are on Transit?**

ANSWER: Yes. State-Wide Multiple Listing Service and the Rhode Island Association of REALTORS is in the process of updating these and other forms to comply with the new agency law.

**4.8 Can one licensee represent the buyer as a designated client representative while another licensee in the same office represents the seller as a designated client representative in the same transaction without creating dual agency?**

ANSWER: Yes. Under the old agency law, having one salesperson represent a seller while salesperson affiliated with the same company represented the buyer would create a disclosed dual agency if both the buyer and seller consented. Under the new agency law, the buyer's representative and seller's representative can continue to advise and advocate for their clients without creating disclosed dual agency.

**4.9 Can one team member represent the buyer as a designated client representative while another team member represents the seller as a designated client representative in the same transaction?**

ANSWER: Yes, if the principal broker or principal broker's designee agrees. The principal broker may wish to adopt an office policy as to whether members of the same team may represent clients with conflicting interests.

**4.10 When does a relationship with a consumer terminate?**

ANSWER: Termination occurs when the parties agree to end the relationship, a contract expires; the transaction has closed or been completed or performed of the transaction or other termination of the brokerage relationship and any other definition that the Department of Business Regulation includes in its regulations.

**4.11 What duties does a designated client representative owe to a former client after termination?**

ANSWER: A designated client representative owes confidentiality to her or her former after the termination of a relationship.

**4.12 May real estate licensees refer to themselves as “designated buyer representative” and “designated seller representative” instead of the longer “designated client representative for the buyer” or “designated client representative for a seller”?**

ANSWER: Yes, according to the Real Estate Commission and DBR.

### **Dual Facilitator**

**5.1 What is a dual facilitator?**

ANSWER: A dual facilitator is an individual real estate licensee real estate licensee who assists both a buyer and seller or tenant and landlord in the same transaction and is neutral regarding as conflicting interests between the parties.

## **5.2 What duties does a dual facilitator owe to a consumer?**

ANSWER: A dual facilitator owes the following duties to all parties: protecting the confidential information of all parties except where disclosure is required or permitted by state law; and accounting for funds. A dual facilitator cannot satisfy fully the following duties to one or both parties: loyalty, full disclosure, reasonable care, and obedience to lawful instructions.

## **5.3 How do I become a dual facilitator?**

ANSWER: If you are representing a buyer or tenant as a designated client representative and the buyer is interesting in the property of a seller or landlord whom you are representing as a designated client representative, you would become a dual facilitator if both parties and your principal broker or principal broker's designee give their written, informed consent. The Rhode Island Association of REALTORS has approved a copyrighted Dual Facilitator Consent form for this purpose.

## **5.4 Can a dual facilitator provide a buyer with a CMA (comparative market analysis?)**

ANSWER: It depends. If the dual facilitator previously prepared a CMA for the seller in the same transaction, the dual facilitator may provide this information to the buyer only with the consent of the seller. A dual facilitator cannot prepare a new CMA for a buyer or seller once the parties give their consent to the dual facilitation.

## **5.5 What is the legal definition of a CMA (comparative market analysis)?**

ANSWER: Commercial Licensing Regulation 11, Rule 26(c) defines a "Comparative Market Analysis" ("CMA") as an analysis, opinion, or conclusion prepared by a person licensed under R. I. Gen. Laws § 5-20.5-1 *et seq.* in the ordinary course of his or her business relating the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently *sold* in the marketplace for the purpose of listing, purchase, or sale."

All CMA's must include this disclaimer to ensure that the CMA is not confused with an appraisal.

*This opinion or analysis is not a certified appraisal or an appraisal that conforms to the Uniform Standards of Professional Appraisal Practice (USPAP). It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing offering, or sale price of the real property and not for any other purpose, including but not limited to, lending purpose excepting that specifically provided under R.I. Gen. Laws 5-20.7-3.*

## **5.6 Can a dual facilitator tell a buyer that a property is priced correctly?**

ANSWER: No. The role of a dual facilitator is to act as a neutral intermediary between the parties. Advising the buyer as to whether a property is priced correctly is the role of a designated client representative.

**5.7 I am a designated client representative for a buyer who is interested in a FSBO (“For Sale By Owner”). Must I become a dual facilitator?**

ANSWER: No. You could continue to act as a designated client representative for a buyer.

**5.8 If I am representing a tenant who wants to see a property that I formerly listed for a landlord as a designated client representative, must I become a dual facilitator?**

ANSWER: No. You would continue to act as a designated client representative for the tenant. Your only duty to the landlord would be confidentiality.

**5.9 If I list a house as a designated client representative for the seller, must I become a dual facilitator when buyers come to see the property at my open house?**

ANSWER: No. You would act as a designated client representative for the seller. The only time that you would be a dual facilitator would be if you were already a designated client representative for one of the buyers who comes to the open house. In that case, you would need written consent from the buyer, seller, and principal broker or principal broker’s designee to act as a dual facilitator.

**5.10 If I represent the buyer as a designated client representative and want to show the listing of a different office of the company where I work, do the other licensee and I need permission from the buyer and seller to act as dual facilitators?**

ANSWER: No. Company dual agency will no longer exist.

**5.11 Must I act as a dual facilitator when I show a buyer property that I previously listed as a designated client representative for the seller?**

ANSWER: No. Once a relationship terminates, the only duty that a real estate licensee owes to a former client is confidentiality. If you no longer represent the seller, you would show the property as either a transaction facilitator or designated client representative for the buyer if the buyer and principal broker or principal broker’s designee agree.

**5.12 Must I act as a dual facilitator when I show a buyer property for which I previously made a listing presentation to the seller?**

ANSWER: No. If you made the listing presentation to the seller as a transaction facilitator, you would owe no duties to the seller, nor would you need permission to act as a disclosed dual facilitator. If you disclosed during the listing presentation to the seller

that you would be acting as a designated client representative for the seller, the only duty that you would owe the seller would be confidentiality.

**5.13 Who may act as a principal broker’s designee for purposes of consenting to dual facilitation and appointing designated client representatives?**

ANSWER: According to Michael Jolin, the intent of this provision was to allow the principal broker of a company with multiple offices to permit a branch manager to appoint a real estate licensee to act as a designated client representative or to consent to a licensee’s acting as a dual facilitator. DBR will also permit an associate broker who is affiliated with an office to fill this role if the principal broker is unavailable. The principal broker will still have the ultimate responsibility for a transaction even if an associate broker signs a form. However, according to DBR and the Real Estate Commission, after a lengthy discussion about small offices, the new agency law does not permit a principal broker to delegate his/her duties to a salesperson. Appointment of a designated client representative can be addressed as a matter of office policy.

DBR’s interpretation is consistent with Commercial Licensing Regulation 11, Rule 22, which states “The Real Estate Section of the Department may grant the authority to sign applications for licensure or the transfer of Licenses to one other Licensed Broker not the Principal Broker and/or the designated Office Supervisor in an office. In the case of a sole proprietorship partnership, association, trust or corporation the additional designated Broker must be an officer of the partnership, association, trust or corporation. A power of attorney must be on file with the Real Estate Section delegating such authority”.

**Transaction Coordinators**

**6.1 What is a transaction coordinator?**

ANSWER: A transaction coordinator is a principal broker or his or her designee who supervises a real estate transaction 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 or one affiliated licensee assists both the buyer and seller as a dual facilitator.

**6.2 What duties does a transaction coordinator owe to a consumer?**

ANSWER: A transaction coordinator owes only the duties to protect the confidential information of the parties and to properly account for money placed in his or her care.

**6.3 Is there an exclusive listing contract for a transaction facilitator?**

ANSWER: There is no standard exclusive listing contract for a transaction facilitator. Companies who wish to use one will need to develop their own. The State-Wide Multiple Listing Service exclusive listing contract is in the process of being updated for use by a designated client representative for a seller.

#### **6.4 Is a principal broker still liable for the wrongful acts of affiliated licensees?**

ANSWER: Yes. A principal broker is still obligated to supervise affiliated licensees and can still be held liable for their wrongful acts.

### **Confidentiality**

#### **7.1 What is considered “confidential information”?**

ANSWER: The following information must be treated as confidential, according to the new law.

- a buyer or tenant's willingness to pay more than the offered price;
- a seller or landlord's willingness to accept less than the asking price;
- a buyer or tenant's previous offers made to purchase or lease real estate;
- a seller or landlord's previous offers received to purchase or lease real estate;
- any parties' motivating factors;
- any parties' willingness to agree to other financing terms;
- 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
- any information about a party's assets, liabilities, income, or expenses.

#### **7.2 When can I legally disclose confidential information?**

ANSWER: If you are a transaction facilitator, you do not owe a duty of confidentiality to either party and may disclose the party's information. However, if you are a transaction coordinator, designated client representative or dual facilitator you may disclose confidential information if disclosure is

- expressly authorized by the client;
- required by law;
- disclosure is intended to prevent illegal conduct; or
- disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the licensee.

#### **7.3 If other licensees in my office and I represent different parties in the same real estate transaction, how do I protect my client's confidentiality?**

ANSWER: The law requires your principal broker to adopt policies to enforce the confidential information of consumers. You also have the duty not to share files with other real estate licensees who do not represent your client. Also, avoid discussing issues that could hurt your client's bargaining position.

#### **7.4 Will companies need to adopt new office policies about confidentiality to comply with the new agency law?**

ANSWER: Yes. The new law requires principal brokers to adopt and enforce procedures to protect the confidential information of consumers. Principal brokers may wish to adopt new policies regarding compensation to cooperating brokers and in-house compensation as well as policies regarding dual facilitators and designated client representatives. The Rhode Island Association of REALTORS will make sample policies available to help brokers develop their own.

### **Compensation**

#### **8.1 If I receive compensation from a seller, does that mean that I am the designated client representative for the seller?**

ANSWER: No. According to the new agency law, the payment or promise of payment or compensation to a real estate licensee does not create a relationship between any licensee and buyer, seller, tenant or landlord.

#### **8.2 How will the fields for compensation to cooperating brokers change in the Multiple Listing Service?**

ANSWER: When the new agency law takes effect, MLS will offer one box for compensation for cooperating brokers instead of two. Offering two boxes for compensation – one for a buyer's agent and one for a seller's subagent – gave listing brokers (and sellers) a choice as to whether they wanted to risk vicarious liability for working with a seller's subagent. However, under the new agency law, a listing broker will not have vicarious liability for either a transaction facilitator or designated client representative for a buyer, the justification for offering two boxes no longer exists.

### **Rentals/Property Management:**

#### **9.1 Does the new agency law apply to rentals?**

ANSWER: Yes. The law applies to real estate licensees who assist landlords and/or tenants with rentals of any type of real estate, including commercial and residential properties..

#### **9.2 Does the new agency law apply to weekly or nightly summer rentals?**

ANSWER: Yes. The law would apply to all rentals of any length if a real estate licensee is assisting the landlord or tenant.

#### **9.3 Does the new agency law apply to a student rental for one or two semesters?**

ANSWER: Yes:

**9.4 Does the new agency law apply when a property owner rents his/her property without the assistance of a real estate licensee?**

ANSWER: No. The law applies to real estate licensees.

**9.5 Must a real estate licensee who rents property owned by him/her provide a Mandatory Real Estate Relationship Disclosure form to a prospective tenant?**

ANSWER: No. While the licensee must disclose that the property is broker-owned, he or she has no duty to provide a Mandatory Real Estate Relationship Disclosure form to a prospective tenant.

**9.6 Is a property manager automatically a disclosed dual facilitator because he/she represents the landlord but also obtains financial information from tenants and handles their questions and complaints?**

ANSWER: No. Even though a property manager may obtain financial or personal information from a tenant or assist the tenant, this does not mean that the property manager must represent both the landlord and tenant as a dual facilitator. Typically, the property manager would act as a designated landlord representative. If the property manager does act as a disclosed dual facilitator, he/she would owe confidentiality to both parties, which means that he/she could not tell the landlord that the tenant confides that he/she is planning to break the lease, has pets in the unit in violation of the lease, etc. nor could the property manager tell the tenants that the landlord is behind on his/her mortgage, plans to sell the building, etc. if the landlord confides this information.

**9.7 If a tenant for a rental that starts after May 1, 2008 signs the lease and any other paper work, paid for the rental, etc. prior to May 1, 2008, must the rental agent provide the tenant with a Mandatory Real Estate Relationship Disclosure form?**

ANSWER: No. According to the RI Dept. of Business Regulation, the rental agent would not be required to provide the tenant with a Mandatory Real Estate Relationship Disclosure form under these circumstances. However, rental agents must provide a Mandatory Real Estate Relationship Disclosure form a tenant/prospective tenant who signs a new lease, renews an existing lease, submits a rental application, view rental property, etc. on or after May 1, 2008.