

Relative to changes to the Real Estate Practice Act

1 1. Add definitions to 331-A:2 Definitions:

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3 “Appointing Agent” is a broker named by the principal broker who appoints individual  
4 real estate licensee(s) to represent either the buyer/tenant or the seller/landlord in an  
5 office(s) of a firm that practices designated agency.  
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7 “Designated Agent” is a real estate licensee who has been appointed to represent one  
8 party of a real estate transaction and who owes that party full fiduciary duties, whether or  
9 not the other party to the same transaction is represented by another individual licensee  
10 associated with the same brokerage firm.  
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12 "Facilitator" means an individual licensed under this chapter who assists one or more  
13 parties during all or a portion of a real estate transaction without being an agent or  
14 advocate for the interests of any party to such transaction.  
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16 “Firm” means any sole proprietorship, partnership, association, corporation, limited  
17 liability company, or other business association engaged in the sale or lease of real estate  
18 or which employs licensees under this chapter.  
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21 2. Amend RSA 331-A:2 VI-b

22 ~~"Non-agent" means an individual licensed under this chapter who assists one or~~  
23 ~~more parties throughout a real estate transaction without being an agent or~~  
24 ~~advocate for the interests of any party to such transaction. See “Facilitator”~~  
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27 3. New Sections; Amend RSA 331-A by inserting after section 25-d the following:  
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29 Duty of a Designated Agent:  
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- 31 I. A licensee appointed to represent a seller/landlord shall comply with all duties  
32 as required in RSA 331-A:25-b.  
33 II. A licensee appointed to represent a buyer/tenant shall comply with all duties  
34 as required in RSA 331-A:25-c.  
35 III. Appointment of a designated agent shall not be made without the written  
36 consent of the party at the commencement of the party’s agency relationship  
37 with the real estate brokerage firm. There shall be a conclusive presumption  
38 that a seller/landlord or buyer/tenant has consented to a designated agency  
39 relationship, if they have signed a brokerage agreement containing an  
40 explanation of designated agency.  
41 IV. Upon appointment of a designated agent, the responsibility to satisfy agency  
42 duties owed to a buyer/tenant or seller/landlord shall be the responsibility of  
43 the designated agent, and not other non-designated licensees affiliated with  
44 the same firm.  
45 V. Substitutions of designated agents shall not be made without informed written  
46 consent of the party being represented.

- 1 VI. When a designated agent is appointed, information known or acquired by the  
2 designated agent shall not be deemed to be imputed to the appointing agent or  
3 to other licensees within the same firm.
- 4 VII. When an appointing agent has appointed designated agents for both the  
5 buyer/tenant and the seller/landlord in the same transaction, the appointing  
6 agent is a dual agent, and does not exclusively represent either the  
7 seller/landlord or the buyer/tenant. The appointing agent is neutral as to any  
8 conflicting interests of the seller/landlord and buyer/tenant but will continue to  
9 owe the seller/landlord and buyer/tenant the duties of confidentiality,  
10 disclosure of material information and accounting for funds.
- 11 VIII. a. Once consent to designated agency has been given by the seller/landlord  
12 and buyer/tenant, written notice shall also be provided to the seller/landlord  
13 and buyer/tenant that designated agency has occurred with both the  
14 seller/landlord and buyer/tenant in the transaction. This notice must be  
15 provided no later than prior to the execution of the purchase and sale/lease  
16 agreement.
- 17 b. If the designated seller's agent and the designated buyer's agent in a  
18 transaction are affiliated with the same broker and the seller/landlord and the  
19 buyer/tenant each have consented to designated agency, a separate consent to  
20 dual agency of the appointing agent shall not be required.
- 21 c. If the designated seller/landlord agent is also the designated buyer/tenant  
22 agent in the same transaction, the designated agent is a dual agent and a  
23 separate informed consent to dual agency shall be required in accordance with  
24 331-A:25-d.
- 25 IX. Appointment of a designated agent shall not limit the liability or responsibility  
26 of the appointing agent and principal broker for breach of duty by the  
27 designated agent.
- 28 X. Designated agents who are affiliated with the same managing broker in the  
29 same transaction shall not be considered dual agents, unless the same  
30 designated agent has agreed to represent both buyer and seller.
- 31 XI. Dual agency does not occur between appointing agents who have separately  
32 appointed the designated sellers' agent and the designated buyers' agent  
33 within the same firm. Appointing agents receipt of confidential information  
34 shall not be imputed to any other appointing or affiliated agents from the same  
35 firm.

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37 4. Amend RSA 331-A:25-a, II to read as follows:

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39 II. A licensee may be a seller agent, a buyer agent, a disclosed dual agent, **designated**  
40 **buyer agent, designated seller agent, facilitator**, or a subagent. If another relationship  
41 between the licensee who performs the services and the seller, landlord, buyer, or tenant  
42 is intended, it must be described in writing and signed by all parties to the relationship  
43 prior to services being rendered.

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1 5. New Section: 331-A:25-f

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3 Facilitator: Duties.

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5 I. A licensee acts as a facilitator when that licensee assists but does not represent  
6 either the seller/landlord or the buyer/tenant in a transaction.

7 II. A licensee shall disclose to a prospective buyer/tenant any material physical,  
8 regulatory, mechanical or on-site environmental condition affecting the subject property  
9 of which the licensee has actual knowledge. Such disclosure shall occur any time prior to  
10 the time the buyer/tenant makes a written offer to purchase or lease the subject property.  
11 This shall not create an affirmative obligation on the part of the licensee to investigate  
12 material defects.

13 III. Unless otherwise agreed, the licensee acting as a Facilitator has no duty to keep  
14 information received from the seller/landlord or buyer/tenant confidential.

15 IV. The parties in the facilitation relationship may or may not enter into a contractual  
16 relationship.

17 V. The role of the Facilitator applies only to the seller/landlord and buyer/tenant in  
18 the particular property transaction involving the seller/landlord and buyer/tenant.

19 VI. Treat all prospective sellers/landlord and buyer/tenant honestly.

20 VII. Performing ministerial acts for the seller/landlord or buyer/tenant shall not be  
21 construed as forming an agency relationship with the seller or landlord.

22 6. Add after: 331-A:25-b-II-b

23  
24 (c) A licensee shall disclose to a prospective buyer/tenant any material physical,  
25 regulatory, mechanical or on-site environmental condition affecting the subject property  
26 of which the licensee has actual knowledge. Such disclosure shall occur any time prior to  
27 the time the buyer/tenant makes a written offer to purchase or lease the subject property.  
28 This shall not create an affirmative obligation on the part of the licensee to investigate  
29 material defects.

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32 7. Add after 331-A:25-c-I-d

33 (e) A licensee shall disclose to a prospective buyer/tenant any material physical,  
34 regulatory, mechanical or on-site environmental condition affecting the subject property  
35 of which the licensee has actual knowledge. Such disclosure shall occur any time prior to  
36 the time the buyer/tenant makes a written offer to purchase or lease the subject property.  
37 This shall not create an affirmative obligation on the part of the licensee to investigate  
38 material defects.