
**Consumer Protection & Business
Committee**

HB 1316

Brief Description: Prohibiting dual agency in certain real estate transactions.

Sponsors: Representatives Valdez and Ryu.

Brief Summary of Bill

- Establishes as a conflict of interest a broker acting in a dual agent capacity in certain commercial real estate transaction.
- Requires parties and legal counsel to sign a conflict-of-interest waiver in a dual agent real estate transactions.

Hearing Date: 1/30/19

Staff: Serena Dolly (786-7150).

Background:

Within real estate transactions, a dual agent is defined in statute as a broker who has entered into an agency relationship with both the buyer and seller in the same transaction. An agent may act as a dual agent with written consent by both the buyer and seller of the property. Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to the duties of a broker as defined in statute.

Under statute, a dual agent must:

- take no action that is adverse or detrimental to either party's interest in a transaction;
- disclose in a timely manner to both parties any conflict of interest;
- advise both parties to seek expert advice on matters relating to transactions that are beyond the dual agent's expertise;
- not disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship; and

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- make a good faith and continuous effort to find a buyer for the property and a property for the buyer.

Summary of Bill:

In a county with a population of 100,000 or more, a conflict of interest is established for a broker serving as a dual agent in a commercial real estate transaction. A conflict of interest exists if:

- The representation of one party will be directly or indirectly adverse to another party in the transaction, including the simultaneous representation of the landlord and prospective tenant or the property seller and prospective buyer.
- There is a significant risk that representation of a party will be limited by the broker's fiduciary statutory duties.
- The brokerage firm or an affiliate, partnership, or subsidiary has a direct or indirect interest in any property that may be a viable potential alternative for the buyer or lessee.

If a broker is prohibited from representing a party to a transaction under this bill, no broker in the same firm may represent the party, unless the prohibition is based on a personal interest and there is not a significant risk of limiting the representation of the party. Disciplinary statutes for unprofessional conduct with respect to brokers is amended to include a broker's conflict of interest in commercial real estate transactions.

A broker in any real estate transaction may only serve as a dual agent with a written conflict-of-interest waiver signed by both parties and their respective legal counsel. A conflict-of-interest waiver must show that each party is waiving their right to legal remedies against the dual agent broker, managing broker, and brokerage firm. A dual agent must disclose to both parties any additional conflicts that arise during the transaction. The waiver provisions do not apply in commercial real estate transactions in counties with a population of 100,000 or less or in transactions involving multiple-unit housing of four or more dwelling units.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.