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## DESIGNATED AGENCY AGREEMENTS

House Bill 5719

Sponsor: Rep. Andrew Richner

Committee: Family and Civil Law

Complete to 5-3-00

### A SUMMARY OF HOUSE BILL 5719 AS INTRODUCED 5-2-00

Generally, a real estate licensee works for the seller of real property, as the seller's agent, assisting an owner of real property with the marketing and sale of that property, and in these cases the real estate licensee will disclose any information known about the buyer that will help the seller. However, a real estate licensee can also work on behalf of a would-be buyer of real property, assisting that person with finding the right property. As a buyer's agent, the real estate licensee must disclose any information known about the seller that could benefit the buyer. In addition, a real estate licensee may act as a dual agent where he or she works for both the seller and the buyer and is unable to disclose known information to either the buyer or seller. In order to act as a dual agent, both he seller and buyer must be aware of the dual agency and consent to it in writing. Under current law, a real estate licensee is required to explain these types of relationships by providing potential buyers or sellers with a disclosure form explaining the nature of the agency relationships and disclosing the type of relationship that the licensee would have with that individual seller or buyer.

House Bill 5719 would amend the Occupational Code to allow a particular salesperson or associate broker to be designated as the agent of an individual client, specifying the nature of such a relationship and the duties of the designated agent with regard to other salespersons or associate brokers employed by the same broker.

Under the bill, a broker and a client could enter into a written "designated agency agreement." A designated agency agreement would be an agreement between a broker and a client wherein an individual salesperson or associate broker employed by the broker was named as a particular client's designated agent. (A designated agent would be defined in the bill as an individual salesperson or associate broker who was designated by the broker as the client's legal agent under a designated agency agreement). A designated agency agreement would have to include the names of any associate brokers who would be authorized to act as supervisory brokers (designated in a written agency agreement to act in a supervisory role in an agency relationship).

If there was no written designated agency agreement between a client and a broker, the client would be presumed to have an agency relationship with the broker and all of his or her "affiliated licensees." An existing listing agreement or a buyer's agency agreement could be amended to establish a designated agency relationship, to change a designated agent, or to change supervisory brokers at any time by way of a written addendum, signed by the parties.

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In addition, the currently required licensee disclosure statement (“Disclosure regarding real estate relationships”) would have to include an “affiliated licensee disclosure.” This section would be used to indicate the relationship between the client and the “affiliated licensees” (defined in the bill as the other licensed salespersons or associate brokers who are employed by the same broker as the designated agent). The disclosure statement would have to contain language specifying that either: “Only the licensee’s broker and a named supervisory broker have the same agency relationship as the licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee’s broker and all named supervisory brokers shall be considered disclosed consensual dual agents.” Or “All affiliated licensees have the same agency relationship as the licensee named below.”

If two designated agents, employed by the same broker, were representing different parties in the same real estate transaction, the broker and all supervisory brokers would be considered disclosed consensual dual agents for that real estate transaction. Otherwise, a client with a designated agency agreement would not be considered to have an agency relationship with any of the other licensed salespersons or associate brokers employed by the same broker as the designated agent. A designated agent who was an affiliated licensee could represent different parties in the same transaction without being considered a dual agent. A designated agent’s knowledge of confidential information of a client would not be imputed to an affiliated licensee who did not have an agency relationship with that client.

A designated agent would be barred from disclosing a client’s confidential information to any licensee, whether or not that licensee was affiliated with the agent. However, a designated agent could disclose confidential information to a supervisory broker for the purpose of seeking advice or assistance for the client’s benefit. A licensee who was representing a client as an agent would not be in breach of any duty or obligation for failing to disclose information that had been obtained through a present or prior agency relationship to that client.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.