

AMENDED IN SENATE MAY 2, 1995

SENATE BILL

No. 467

Introduced by Senator Leonard

February 17, 1995

~~An act to add Article 3 (commencing with Section 2079.13) to Chapter 3 of Title 6 of Part 4 of Division 3 of, and to repeal~~
An act to add Sections 2079.12, 2079.13, 2079.14, 2079.15, 2079.16, 2079.17, 2079.18, 2079.19, 2079.20, 2079.21, 2079.22, 2079.23, and 2079.24 to, and to repeal Article 2.5 (commencing with Section 2373) of Chapter 2 of Title 9, of Part 4 of Division 3 of, the Civil Code, relating to agency.

LEGISLATIVE COUNSEL'S DIGEST

SB 467, as amended, Leonard. Agency: residential property transactions.

Existing law requires persons acting as listing and selling agents, as defined, to provide sellers and buyers with a disclosure form, as prescribed, containing general information on agency relationships in specified residential real property transactions. Existing law requires contracts in these transactions to specify (1) whether the listing agent represents the seller exclusively or both the buyer and seller and (2) whether the listing or selling agent represents the buyer exclusively, the seller exclusively, or both the buyer and seller. Existing law specifies, with respect to these transactions, that neither the payment of compensation nor the obligation of a buyer or seller to pay compensation to a real estate agent is necessarily determinative of a particular agency relationship. Existing law specifies that associate real

estate licensees are agents of the real estate agent and when an associate real estate licensee owes a duty to any principal or to any buyer or seller who is not a principal, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. Existing law expressly precludes dual agents, as defined, from disclosing specified price information to the other party without consent. Existing law specifies that a listing agent is not a dual agent solely by reason of being the selling agent, and expressly precludes a listing agent from acting as an agent for the buyer only. Existing law, with respect to these transactions, specifically authorizes contracts between principal and agent to be modified to change the agency relationship, before performance of the act that is the object of the agency, by the written consent of the parties to the agency relationship.

This bill would repeal and reenact those provisions ~~without substantive change~~ *as part of existing general provisions relating to duties owed to prospective purchasers of residential property.*

Existing law, part of the above described scheme, provides that these provisions specifying the duties of an agent, as defined, to the buyer and seller in a residential real property transaction shall not be construed to diminish the duty of disclosure owed buyers and sellers by agents, as specified, or to relieve them from liability for breach of a fiduciary duty or duty of disclosure.

This bill would repeal and reenact this provision and further provide that a person acting under a license issued pursuant to the Real Estate Law, as specified, is a fiduciary of his or her principal. This bill would provide that a willful breach of an obligation under the license subjecting the agent to discipline, as specified, is rebuttably presumed to be actual or constructive fraud, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 ~~SECTION 1. Article 3 (commencing with Section~~
2 ~~2079.13) is added to Chapter 3 of Title 6 of Part 4 of~~
3 ~~Division 3 of the Civil Code, to read:~~

4
5 ~~Article 3. Agency Relationships in Residential Real~~
6 ~~Property Transactions~~

7
8 ~~2079.13. As used in this article, the following terms~~

9 *SECTION 1. Section 2079.12 is added to the Civil*
10 *Code, to read:*

11 *2079.12. (a) The Legislature hereby finds and*
12 *declares all of the following:*

13 *(1) That the imprecision of terms in the opinion*
14 *rendered in Easton v. Strassburger, 152 Cal. App. 3d 90,*
15 *and the absence of a comprehensive declaration of duties,*
16 *standards, and exceptions, has caused insurers to modify*
17 *professional liability coverage of real estate licensees and*
18 *has caused confusion among real estate licensees as to the*
19 *manner of performing the duty ascribed to them by the*
20 *court.*

21 *(2) That it is necessary to resolve and make precise*
22 *these issues in an expeditious manner.*

23 *(3) That it is desirable to facilitate the issuance of*
24 *professional liability insurance as a resource for aggrieved*
25 *members of the public.*

26 *(4) That the act adding Sections 2079.13 to 2079.24,*
27 *inclusive, to this article should be construed as a definition*
28 *of the duty of care found to exist by the holding of Easton*
29 *v. Strassburger, 152 Cal. App. 3d 90, and the manner of its*
30 *discharge.*

31 *(b) It is the intent of the Legislature to codify and*
32 *make precise the holding of Easton v. Strassburger, 152*
33 *Cal. App. 3d 90.*

34 *SEC. 2. Section 2079.13 is added to the Civil Code, to*
35 *read:*

36 *2079.13. As used in Sections 2079.14 to 2079.24,*
37 *inclusive, the following terms have the following*
38 *meanings:*



1 (a) “Agent” means a person acting under provisions of
2 Title 9 (commencing with Section 2295) in a real
3 property transaction, and includes a person who is
4 licensed as a real estate broker under Chapter 3
5 (commencing with Section 10130) of Part 1 of Division 4
6 of the Business and Professions Code, and under whose
7 license a listing is executed or an offer to purchase is
8 obtained.

9 (b) “Associate licensee” means a person who is
10 licensed as a real estate broker or salesperson under
11 Chapter 3 (commencing with Section 10130) of Part 1 of
12 Division 4 of the Business and Professions Code and who
13 is either licensed under a broker or has entered into a
14 written contract with a broker to act as the broker’s agent
15 in connection with acts requiring a real estate license and
16 to function under the broker’s supervision in the capacity
17 of an associate licensee.

18 The agent in the real property transaction bears
19 responsibility for his or her associate licensees who
20 perform as agents of the agent. When an associate
21 licensee owes a duty to any principal, or to any buyer or
22 seller who is not a principal, in a real property transaction,
23 that duty is equivalent to the duty owed to that party by
24 the broker for whom the associate licensee functions.

25 (c) “Buyer” means a transferee in a real property
26 transaction, and includes a person who executes an offer
27 to purchase real property from a seller through an agent,
28 or who seeks the services of an agent in more than a
29 casual, transitory, or preliminary manner, with the object
30 of entering into a real property transaction. “Buyer”
31 includes vendee or lessee.

32 (d) “Dual agent” means an agent acting, either
33 directly or through an associate licensee, as agent for both
34 the seller and the buyer in a real property transaction.

35 (e) “Listing agreement” means a contract between an
36 owner of real property and an agent, by which the agent
37 has been authorized to sell the real property or to find or
38 obtain a buyer.



1 (f) “Listing agent” means a person who has obtained
2 a listing of real property to act as an agent for
3 compensation.

4 (g) “Listing price” is the amount expressed in dollars
5 specified in the listing for which the seller is willing to sell
6 the real property through the listing agent.

7 (h) “Offering price” is the amount expressed in dollars
8 specified in an offer to purchase for which the buyer is
9 willing to buy the real property.

10 (i) “Offer to purchase” means a written contract
11 executed by a buyer acting through a selling agent which
12 becomes the contract for the sale of the real property
13 upon acceptance by the seller.

14 (j) “Real property” means any estate specified by
15 subdivision (1) or (2) of Section 761 in property which
16 constitutes or is improved with one to four dwelling units,
17 any leasehold in this type of property exceeding one
18 year’s duration, and mobilehomes, when offered for sale
19 or sold through an agent pursuant to the authority
20 contained in Section 10131.6 of the Business and
21 Professions Code.

22 (k) “Real property transaction” means a transaction
23 for the sale of real property in which an agent is employed
24 by one or more of the principals to act in that transaction,
25 and includes a listing or an offer to purchase.

26 (l) “Sell,” “sale,” or “sold” refers to a transaction for
27 the transfer of real property from the seller to the buyer,
28 and includes exchanges of real property between the
29 seller and buyer, transactions for the creation of a real
30 property sales contract within the meaning of Section
31 2985, and transactions for the creation of a leasehold
32 exceeding one year’s duration.

33 (m) “Seller” means the transferor in a real property
34 transaction, and includes an owner who lists real property
35 with an agent, whether or not a transfer results, or who
36 receives an offer to purchase real property of which he or
37 she is the owner from an agent on behalf of another.
38 “Seller” includes both a vendor and a lessor.

39 (n) “Selling agent” means a listing agent who acts
40 alone, or an agent who acts in cooperation with a listing



1 agent, and who sells or finds and obtains a buyer for the
2 real property, or an agent who locates property for a
3 buyer or who finds a buyer for a property for which no
4 listing exists and presents an offer to purchase to the
5 seller.

6 (o) “Subagent” means a person to whom an agent
7 delegates agency powers as provided in Article 5
8 (commencing with Section 2349) of Chapter 1 of Title 9.
9 However, “subagent” does not include an associate
10 licensee who is acting under the supervision of an agent
11 in a real property transaction.

12 *SEC. 3. Section 2079.14 is added to the Civil Code, to*
13 *read:*

14 2079.14. Listing agents and selling agents shall
15 provide the seller and buyer in a real property transaction
16 with a copy of the disclosure form specified in Section
17 ~~2079.15~~, 2079.16, and, except as provided in subdivision
18 (c), shall obtain a signed acknowledgment of receipt
19 from that seller or buyer, except as provided in this
20 section or Section ~~2079.145~~, 2079.15, as follows:

21 (a) The listing agent, if any, shall provide the
22 disclosure form to the seller prior to entering into the
23 listing agreement.

24 (b) The selling agent shall provide the disclosure form
25 to the seller as soon as practicable prior to presenting the
26 seller with an offer to purchase, unless the selling agent
27 previously provided the seller with a copy of the
28 disclosure form pursuant to subdivision (a).

29 (c) Where the selling agent does not deal on a
30 face-to-face basis with the seller, the disclosure form
31 prepared by the selling agent may be furnished to the
32 seller (and acknowledgment of receipt obtained for the
33 selling agent from the seller) by the listing agent, or the
34 selling agent may deliver the disclosure form by certified
35 mail addressed to the seller at his or her last known
36 address, in which case no signed acknowledgment of
37 receipt is required.

38 (d) The selling agent shall provide the disclosure form
39 to the buyer as soon as practicable prior to execution of
40 the buyer’s offer to purchase, except that if the offer to



1 purchase is not prepared by the selling agent, the selling
2 agent shall present the disclosure form to the buyer not
3 later than the next business day after the selling agent
4 receives the offer to purchase from the buyer.

5 ~~2079.145.—~~

6 *SEC. 4. Section 2079.15 is added to the Civil Code, to*
7 *read:*

8 *2079.15.* In any circumstance in which the seller or
9 buyer refuses to sign an acknowledgment of receipt
10 pursuant to Section 2079.14, the agent, or an associate
11 licensee acting for an agent, shall set forth, sign, and date
12 a written declaration of the facts of the refusal.

13 ~~2079.15.—~~

14 *SEC. 5. Section 2079.16 is added to the Civil Code, to*
15 *read:*

16 *2079.16.* The disclosure form required by Section
17 2079.14 shall have this article, excluding this section,
18 printed on the back, and on the front of the disclosure
19 form the following shall appear:

20
21 **DISCLOSURE REGARDING**
22 **REAL ESTATE AGENCY RELATIONSHIP**

23
24 (As required by the Civil Code)

25
26 When you enter into a discussion with a real estate
27 agent regarding a real estate transaction, you should from
28 the outset understand what type of agency relationship or
29 representation you wish to have with the agent in the
30 transaction.

31
32 **SELLER’S AGENT**

33
34 A Seller’s agent under a listing agreement with the
35 Seller acts as the agent for the Seller only. A Seller’s agent
36 or a subagent of that agent has the following affirmative
37 obligations:

38 To the Seller:



1 A fiduciary duty of utmost care, integrity, honesty, and
2 loyalty in dealings with the Seller.

3 To the Buyer and the Seller:

4 (a) Diligent exercise of reasonable skill and care in
5 performance of the agent’s duties.

6 (b) A duty of honest and fair dealing and good faith.

7 (c) A duty to disclose all facts known to the agent
8 materially affecting the value or desirability of the
9 property that are not known to, or within the diligent
10 attention and observation of, the parties.

11 An agent is not obligated to reveal to either party any
12 confidential information obtained from the other party
13 that does not involve the affirmative duties set forth
14 above.

15

16 BUYER’S AGENT

17

18 A selling agent can, with a Buyer’s consent, agree to act
19 as agent for the Buyer only. In these situations, the agent
20 is not the Seller’s agent, even if by agreement the agent
21 may receive compensation for services rendered, either
22 in full or in part from the Seller. An agent acting only for
23 a Buyer has the following affirmative obligations:

24 To the Buyer:

25 A fiduciary duty of utmost care, integrity, honesty, and
26 loyalty in dealings with the Buyer.

27 To the Buyer and the Seller:

28 (a) Diligent exercise of reasonable skill and care in
29 performance of the agent’s duties.

30 (b) A duty of honest and fair dealing and good faith.

31 (c) A duty to disclose all facts known to the agent
32 materially affecting the value or desirability of the
33 property that are not known to, or within the diligent
34 attention and observation of, the parties. An agent is not
35 obligated to reveal to either party any confidential
36 information obtained from the other party that does not
37 involve the affirmative duties set forth above.

38



1 AGENT REPRESENTING BOTH SELLER AND
2 BUYER
3

4 A real estate agent, either acting directly or through
5 one or more associate licensees, can legally be the agent
6 of both the Seller and the Buyer in a transaction, but only
7 with the knowledge and consent of both the Seller and
8 the Buyer.

9 In a dual agency situation, the agent has the following
10 affirmative obligations to both the Seller and the Buyer:

11 (a) A fiduciary duty of utmost care, integrity, honesty
12 and loyalty in the dealings with either Seller or the Buyer.

13 (b) Other duties to the Seller and the Buyer as stated
14 above in their respective sections.

15 In representing both Seller and Buyer, the agent may
16 not, without the express permission of the respective
17 party, disclose to the other party that the Seller will
18 accept a price less than the listing price or that the Buyer
19 will pay a price greater than the price offered.

20 The above duties of the agent in a real estate
21 transaction do not relieve a Seller or Buyer from the
22 responsibility to protect his or her own interests. You
23 should carefully read all agreements to assure that they
24 adequately express your understanding of the
25 transaction. A real estate agent is a person qualified to
26 advise about real estate. If legal or tax advice is desired,
27 consult a competent professional.

28 Throughout your real property transaction you may
29 receive more than one disclosure form, depending upon
30 the number of agents assisting in the transaction. The law
31 requires each agent with whom you have more than a
32 casual relationship to present you with this disclosure
33 form. You should read its contents each time it is
34 presented to you, considering the relationship between
35 you and the real estate agent in your specific transaction.

36 This disclosure form includes the provisions of ~~Article~~
37 ~~3 (commencing with Section 2079.13) of Chapter 3 of~~
38 ~~Title 6 of Part 4 of Division 3 of the Civil Code set forth~~
39 ~~Sections 2079.13 to 2079.24, inclusive, of the Civil Code set~~
40 ~~forth~~ on the reverse hereof. Read it carefully.

1	_____	_____
2	Agent	Buyer/Seller (date)
3		(Signature)
4	_____	_____
5	Associate Licensee (date)	Buyer/Seller (date)
6	(Signature)	(Signature)

7
8 ~~2079.155.—~~

9 *SEC. 6. Section 2079.17 is added to the Civil Code, to*
10 *read:*

11 *2079.17. (a) As soon as practicable, the selling agent*
12 *shall disclose to the buyer and seller whether the selling*
13 *agent is acting in the real property transaction exclusively*
14 *as the buyer’s agent, exclusively as the seller’s agent, or as*
15 *a dual agent representing both the buyer and the seller.*
16 *This relationship shall be confirmed in the contract to*
17 *purchase and sell real property or in a separate writing*
18 *executed or acknowledged by the seller, the buyer, and*
19 *the selling agent prior to or coincident with execution of*
20 *that contract by the buyer and the seller, respectively.*

21 *(b) As soon as practicable, the listing agent shall*
22 *disclose to the seller whether the listing agent is acting in*
23 *the real property transaction exclusively as the seller’s*
24 *agent, or as a dual agent representing both the buyer and*
25 *seller. This relationship shall be confirmed in the contract*
26 *to purchase and sell real property or in a separate writing*
27 *executed or acknowledged by the seller and the listing*
28 *agent prior to or coincident with the execution of that*
29 *contract by the seller.*

30 *(c) The confirmation required by subdivisions (a) and*
31 *(b) shall be in the following form:*

32 _____ is the agent of (check one):
33
34 (Name of Listing Agent)
35 [] the seller exclusively; or
36 [] both the buyer and seller.

37 _____
38 (Name of Selling Agent if not the same as the Listing Agent)
39 is the agent of (check one):
40 [] the buyer exclusively; or



- 1 [] the seller exclusively; or
- 2 [] both the buyer and seller.

3
4 (d) The disclosures and confirmation required by this
5 section shall be in addition to the disclosure required by
6 Section 2079.14.

7 ~~2079.16.—~~

8 *SEC. 7. Section 2079.18 is added to the Civil Code, to*
9 *read:*

10 2079.18. No selling agent in a real property
11 transaction may act as an agent for the buyer only, when
12 the selling agent is also acting as the listing agent in the
13 transaction.

14 ~~2079.17.—~~

15 *SEC. 8. Section 2079.19 is added to the Civil Code, to*
16 *read:*

17 2079.19. The payment of compensation or the
18 obligation to pay compensation to an agent by the seller
19 or buyer is not necessarily determinative of a particular
20 agency relationship between an agent and the seller or
21 buyer. A listing agent and a selling agent may agree to
22 share any compensation or commission paid, or any right
23 to any compensation or commission for which an
24 obligation arises as the result of a real estate transaction,
25 and the terms of any such agreement shall not necessarily
26 be determinative of a particular relationship.

27 ~~2079.18.—~~

28 *SEC. 9. Section 2079.20 is added to the Civil Code, to*
29 *read:*

30 2079.20. Nothing in this article prevents an agent
31 from selecting, as a condition of the agent's employment,
32 a specific form of agency relationship not specifically
33 prohibited by this article if the requirements of Section
34 2079.14 and Section ~~2079.155~~ 2079.17 are complied with.

35 ~~2079.19.—~~

36 *SEC. 10. Section 2079.21 is added to the Civil Code, to*
37 *read:*

38 2079.21. A dual agent shall not disclose to the buyer
39 that the seller is willing to sell the property at a price less
40 than the listing price, without the express written consent



1 of the seller. A dual agent shall not disclose to the seller
2 that the buyer is willing to pay a price greater than the
3 offering price, without the express written consent of the
4 buyer.

5 This section does not alter in any way the duty or
6 responsibility of a dual agent to any principal with respect
7 to confidential information other than price.

8 ~~2079.20.—~~

9 *SEC. 11. Section 2079.22 is added to the Civil Code, to*
10 *read:*

11 *2079.22.* Nothing in this article precludes a listing
12 agent from also being a selling agent, and the
13 combination of these functions in one agent does not, of
14 itself, make that agent a dual agent.

15 ~~2079.21.—~~

16 *SEC. 12. Section 2079.23 is added to the Civil Code, to*
17 *read:*

18 *2079.23.* A contract between the principal and agent
19 may be modified or altered to change the agency
20 relationship at any time before the performance of the act
21 which is the object of the agency with the written consent
22 of the parties to the agency relationship.

23 ~~2079.22.—~~

24 *SEC. 13. Section 2079.24 is added to the Civil Code, to*
25 *read:*

26 *2079.24.* (a) Nothing in this article shall be construed
27 to either diminish the duty of disclosure owed buyers and
28 sellers by agents and their associate licensees, subagents,
29 and employees or to relieve agents and their associate
30 licensees, subagents, and employees from liability for
31 their conduct in connection with acts governed by this
32 article or for any breach of a fiduciary duty or a duty of
33 disclosure.

34 (b) A person licensed pursuant to Division 4
35 (commencing with Section 10000) of the Business and
36 Professions Code and acting within the course and scope
37 of that license with regard to his or her principal is
38 deemed to be acting in a fiduciary capacity. A willful
39 breach of the licensee's obligations that will subject him
40 or her to discipline under Section 10176 of the Business



1 and Professions Code is rebuttably presumed to be actual
2 or constructive fraud within the meaning of Section 1572
3 or 1573.

4 SEC. 2. Article 2.5 (commencing with Section 2373)
5 of Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil
6 Code is repealed.

O

