

CHAPTER 97-42

Committee Substitute for Senate Bill No. 82

An act relating to real estate transactions; amending s. 475.01, F.S.; defining the terms “customer,” “first contact,” and “principal”; redefining the term “transaction broker”; deleting the definitions of the terms “buyer,” “disclosed dual agent,” and “seller”; amending s. 475.25, F.S.; modifying grounds for the imposition of discipline by the Florida Real Estate Commission; conforming a statutory cross-reference; creating ss. 475.2701, 475.272, 475.274, 475.276, 475.278, 475.2801, F.S.; establishing the “Brokerage Relationship Disclosure Act”; providing for notice of nonrepresentation; providing for disclosure of authorized brokerage relationships and the corresponding duties of real estate licensees; authorizing rulemaking by the Florida Real Estate Commission; amending s. 475.5015, F.S.; adding disclosure documents to items to be retained as brokerage business records; amending s. 468.383, F.S.; conforming a statutory cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(1) As used in this part:

~~(a) “Commission” means the Florida Real Estate Commission.~~

~~(b) “Department” means the Department of Business and Professional Regulation.~~

(a)(c) “Broker” means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and

who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a). Where the term “appraise” or “appraising” appears in the definition of the term “broker,” it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered appraiser as defined in part II. The term “broker” also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term “broker” also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

~~(d) “Salesperson” means a person who performs any act specified in the definition of “broker,” but who performs such act under the direction, control, or management of another person. A salesperson renders a professional service and is a professional within the meaning of s. 95.11(4)(a).~~

(b)(e) “Broker-salesperson” means a person who is qualified to be issued a license as a broker but who operates as a salesperson in the employ of another.

(c) “Commission” means the Florida Real Estate Commission.

(d) “Customer” means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship.

(e) “Department” means the Department of Business and Professional Regulation.

(f) “Fiduciary” means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

(g) “First contact” means at the commencement of the initial meeting of or communication between a licensee and a seller or buyer; however, the term does not include:

1. A bona fide “open house” or model home showing that does not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale;

2. Unanticipated casual encounters between a licensee and a seller or buyer that do not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale;

3. Responding to general factual questions from a prospective buyer or seller concerning properties that have been advertised for sale; or

4. Situations in which a licensee's communications with a customer are limited to providing general factual information, oral or written, about the qualifications, background, and services of the licensee or the licensee's brokerage firm.

In any of the situations described in subparagraphs 1.-4., "first contact" occurs when the communications between the licensee and the prospective seller or buyer proceed in any way beyond the conditions or limitations described in subparagraphs 1.-4.

(h) "Involuntarily inactive status" means the licensure status that results when a license is not renewed at the end of the license period prescribed by the department.

(i) "Principal" means the party with whom a real estate licensee has entered into a single agent relationship.

(j)(f) "Real property" or "real estate" means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

(k) "Salesperson" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. A salesperson renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(l) "Single agent" means a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.

~~(g) "Involuntarily inactive status" means the licensure status which results when a license is not renewed at the end of the license period prescribed by the department.~~

~~(h) "Voluntarily inactive status" means the licensure status which results when a licensee has applied to the department to be placed on inactive status and has paid the fee prescribed by rule.~~

~~(i) "Fiduciary" means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.~~

~~(j) "Disclosed dual agent" means a broker who works as an agent for both the buyer and seller. The broker must obtain the informed consent in writing of all parties to the transaction to be a disclosed dual agent. The disclosed dual agent has all the duties of a fiduciary except full disclosure between the buyer and seller.~~

(m)(k) "Transaction broker" means a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does

~~not represent either in a fiduciary capacity or as a single agent. facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent, and no fiduciary duties exist except for the duty of accounting and the duty to use skill, care, and diligence. However, the transaction broker shall treat the buyer and seller with honesty and fairness and shall disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller. The broker's role as a transaction broker must be fully disclosed in writing to the buyer and seller.~~

(n) "Voluntarily inactive status" means the licensure status that results when a licensee has applied to the department to be placed on inactive status and has paid the fee prescribed by rule.

~~(l) "Single agent" means a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.~~

~~(m) "Buyer" means a transferee or lessee in a real property transaction and includes a person who executes an offer to purchase or lease real property from a seller.~~

~~(n) "Seller" means the transferor or lessor in a real property transaction and includes an owner who lists real property for sale or lease with a broker, whether or not a purchase agreement or lease results, or who receives an offer to purchase or lease real property.~~

Section 2. Paragraphs (h) and (q) of subsection (1) of section 475.25, Florida Statutes, are amended to read:

475.25 Discipline.—

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$1,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker-salesperson, or salesperson under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a) ~~s. 475.01(1)(e)~~. For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state.

(q) Has violated any provision of s. 475.276 or s. 475.278, including the duties owed under those sections.

~~1. Has failed in a single agency to give written notice to all parties to a sale, exchange, purchase, or lease of real property or any interest in real property, revealing the party or parties for whom the licensee is an agent. Disclosure to the party for whom the licensee is an agent must be made at or before the time an agreement for representation is entered into. Disclosure to the party for whom the licensee is not an agent must be made at the time of the first substantive contact.~~

~~2. Has failed in a dual agency to obtain the informed written consent of all parties to a sale, exchange, purchase, or lease of real property or any interest in real property that the licensee intends to operate as a disclosed dual agent. Unless all parties to the transaction grant their written informed consent prior to or at the time of formalization of the dual agency by the licensee, the licensee shall be deemed to be an undisclosed dual agent. The licensee must inform all parties that the licensee is acting as agent for all parties and of the effect of dual agency, including, but not limited to, the fact that, by consenting to the dual agency relationship, the parties are giving up their rights to the undivided loyalty of the licensee, as required by the rules of the commission. When single agency exists, the licensee may change to a disclosed dual agent by making full written disclosure to and obtaining the informed written consent of all the parties. A disclosed dual agent may not disclose among other items:~~

~~a. To the buyer that the seller will accept a price less than the asking or listed price, unless otherwise instructed in writing by the seller;~~

~~b. To the seller that the buyer will pay a price greater than the price submitted in a written offer to the seller, unless otherwise instructed in writing by the buyer;~~

~~c. The motivation of any party for selling, buying, or leasing a property, unless otherwise instructed in writing by the respective party; or~~

~~d. That a seller or buyer will agree to financing terms other than those offered.~~

~~3. Has failed in a transaction brokerage capacity to give written notice to all parties to a sale, exchange, purchase, or lease of real property or an interest in real property prior to or at the time of the licensee becoming a transaction broker or first substantive contact, whichever occurs first, of the licensee's role as a transaction broker. Unless the buyer and seller are given written notice prior to the licensee's acting in a transaction brokerage capacity, the licensee is deemed to be an agent of either the buyer or seller, or both. The licensee shall treat the buyer and seller honestly and fairly and shall disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller.~~

~~For the purposes of this paragraph, the payment or promise of payment of compensation to a licensee does not determine whether an agency or transactional brokerage relationship has been created between any licensee and a seller, landlord, buyer, or tenant. The commission shall implement this paragraph by rule. For purposes of this paragraph, the commission shall~~

also define by rule forms for agency disclosure. The forms provided for in this rule shall be written in plain language and shall provide to the buyer or seller or both, as appropriate, an explanation of the agency relationships and shall offer the buyer or seller or both the explicit right to choose or refuse among these agency relationships.

Section 3. Sections 475.2701, 475.272, 475.274, 475.276, 475.278, and 475.2801, Florida Statutes, are created to read:

475.2701 Short title.—Sections 475.2701-475.2801 may be cited as the “Brokerage Relationship Disclosure Act.”

475.272 Purpose.—In order to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions, the Legislature finds that the intent of the Brokerage Relationship Disclosure Act is to provide that:

(1) Disclosed dual agency as an authorized form of representation by a real estate licensee in this state is expressly revoked;

(2) Real estate licensees be required to disclose to customers upon first contact in residential real estate transactions that they are not and will not be represented by a licensee in a real estate transaction unless they engage a real estate licensee in an authorized form of representation, either as a single agent or as a transaction broker;

(3) Disclosure requirements for real estate licensees relating to nonrepresentation and authorized forms of brokerage representation are established;

(4) Florida law provides that real estate licensees will operate as single agents or in a limited representative capacity known as transaction brokers;

(5) Single agents may represent either a buyer or a seller, but not both, in a real estate transaction; and

(6) Transaction brokers provide a limited form of nonfiduciary representation to a buyer, a seller, or both in a real estate transaction.

475.274 Scope of coverage.—The authorized brokerage relationships described in s. 475.278 apply in all brokerage activities as defined in s. 475.01(1)(a). The disclosure requirements of ss. 475.276 and 475.278 apply only to residential sales as defined in s. 475.276.

475.276 Notice of nonrepresentation.—

(1) APPLICABILITY.—

(a) Residential sales.—The real estate licensee disclosure requirements of this section and s. 475.278 apply to all residential sales. As used in this section, the term “residential sales” means the sale of improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or less, or the sale of agricultural property of 10 acres or less.

(b) Disclosure limitations.—The real estate licensee disclosure requirements of this section and s. 475.278 do not apply to: nonresidential transactions; the rental or leasing of real property, unless an option to purchase all or a portion of the property improved with four or less residential units is given; auctions; appraisals; and dispositions of any interest in business enterprises or business opportunities, except for property with four or less residential units.

(2) NOTICE REQUIREMENT.—Unless otherwise exempted by this part, all real estate licensees are required to provide to any potential seller or buyer at first contact the notice of nonrepresentation as outlined in subsection (3), except in situations where a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker. If first contact between a licensee and a customer occurs during the course of a telephone conversation or any other communication in which the licensee is unable to provide the required notice of nonrepresentation, the licensee shall provide an oral notice and thereafter provide the required notice of nonrepresentation at the time of the first face-to-face contact, execution of a brokerage relationship agreement, or execution of a contractual agreement for purchase and sale, whichever occurs first.

(3) CONTENTS OF NOTICE.—

(a) Required information.—The notice required under subsection (2) must contain the following information:

NOTICE OF NONREPRESENTATION

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE AT FIRST CONTACT TO ALL POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You are hereby notified that (insert name of brokerage firm) and I do not represent you in any capacity. You should not assume that any real estate broker or salesperson represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

Your signature below acknowledges receipt of this form and does not establish a brokerage relationship.

.....
Date

.....
(Signature Optional)

.....
(Signature Optional)

(b) Required format.—The notice required under subsection (2) must be printed as a separate and distinct form on paper no smaller than 8 ½ inches by 11 inches. Nothing may be added to the form except a brokerage firm logo containing only the firm name, address, and relevant phone numbers. The

form title and first sentence are to be in bold typeface of no less than 16-point type. The remainder of the form must be of 12-point type or larger.

475.278 Authorized brokerage relationships; required disclosures.—

(1) AUTHORIZED BROKERAGE RELATIONSHIPS.—A real estate licensee in this state may enter into a brokerage relationship as either a single agent or as a transaction broker with potential buyers and sellers. A real estate licensee may not operate as a disclosed or nondisclosed dual agent. As used in this section, the term “dual agent” means a broker who represents as a fiduciary both the prospective buyer and the prospective seller in a real estate transaction. Once a brokerage relationship is established, this part does not prevent a licensee from changing from one brokerage relationship to the other as long as the buyer or the seller, or both, gives consent as required by subparagraph (3)(c)2. before the change and the appropriate disclosure of duties as provided in this part is made to the buyer or seller. This part does not require a customer to enter into a brokerage relationship with any real estate licensee.

(2) TRANSACTION BROKER RELATIONSHIP.—

(a) Transaction broker - duties of limited representation.—A transaction broker provides a limited form of representation to a buyer, a seller, or both in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent. The duties of the real estate licensee in this limited form of representation include the following:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are mutually agreed to with a party.

(b) Disclosure requirements.—Duties of a transaction broker must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or agreement for representation. The disclosure must be made before, or at the time of, entering into a listing

agreement or an agreement for representation. When incorporated into other documents the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type.

(c) Contents of disclosure.—The required notice given under paragraph (b) must include the following information in the following form:

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

As a transaction broker, (insert name of Real Estate Firm and its Associates), provides to you a limited form of representation that includes the following duties:

- 1. Dealing honestly and fairly;
- 2. Accounting for all funds;
- 3. Using skill, care, and diligence in the transaction;
- 4. Disclosing all known facts that materially affect the value of real property and are not readily observable to the buyer;
- 5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
- 6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
- 7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party.

.....
Date

.....
Signature

.....
Signature

(3) SINGLE AGENT RELATIONSHIP.—

(a) Single agent - duties.—The duties of a real estate licensee owed to a buyer or seller who engages the real estate licensee as a single agent include the following:

- 1. Dealing honestly and fairly;
- 2. Loyalty;
- 3. Confidentiality;
- 4. Obedience;
- 5. Full disclosure;
- 6. Accounting for all funds;
- 7. Skill, care, and diligence in the transaction; and
- 8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing.

(b) Disclosure requirements.—

1. Single agent disclosure.—Duties of a single agent must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation. When incorporated into other documents the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a single agent, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type.

2. Transition to transaction broker disclosure.—A single agent relationship may be changed to a transaction broker relationship at any time during the relationship between an agent and principal, provided the agent gives the disclosure required under paragraph (2)(b) and the principal gives to the agent consent as required under subparagraph (c)2. before a change in relationship. This disclosure must be in writing to the principal either as a separate and distinct document or included as part of other documents such as a listing agreement or other agreements for representation. When incorporated into other documents the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in subparagraph (c)2. must be printed in uppercase and bold type.

(c) Contents of disclosure.—

1. Single agent duties disclosure.—The notice required under subparagraph (b)1. must include the following information in the following form:

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, (insert name of Real Estate Entity and its Associates) owe to you the following duties:

- 1. Dealing honestly and fairly;
- 2. Loyalty;
- 3. Confidentiality;
- 4. Obedience;
- 5. Full disclosure;
- 6. Accounting for all funds;
- 7. Skill, care, and diligence in the transaction; and
- 8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing.

.....
Date

.....
Signature

2. Transition disclosure.—The notice required under subparagraph (b)2. must include the following information in the following form as well as the information required in paragraph (2)(c):

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

.....I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

(4) NO BROKERAGE RELATIONSHIP - DUTIES.—A real estate licensee owes to a customer with whom the licensee has no brokerage relationship the following duties:

- (a) Dealing honestly and fairly;

(b) Disclosing all known facts that materially affect the value of the property which are not readily observable to the buyer; and

(c) Accounting for all funds entrusted to the licensee.

475.2801 Rules.—The commission may adopt rules establishing disciplinary guidelines, notices of noncompliance, and citations for violations of ss. 475.276 and 475.278.

Section 4. Section 475.5015, Florida Statutes, is amended to read:

475.5015 Brokerage business records.—Each broker shall keep and make available to the department such books, accounts, and records as will enable the department to determine whether such broker is in compliance with the provisions of this chapter. Each broker shall preserve at least one legible copy of all books, accounts, and records pertaining to his real estate brokerage business for at least 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker or, in the event no funds are entrusted to the broker, for at least 5 years from the date of execution by any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker. If any brokerage record has been the subject of or has served as evidence for litigation, relevant books, accounts, and records must be retained for at least 2 years after the conclusion of the civil action or the conclusion of any appellate proceeding, whichever is later, but in no case less than a total of 5 years as set above. Disclosure documents required under ss. 475.276 and 475.278 shall be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.

Section 5. Subsection (7) of section 468.383, Florida Statutes, is amended to read:

468.383 Exemptions.—This act does not apply to the following:

(7) Auctions conducted as a part of the sale of real property by a real estate broker, as defined in s. 475.01(1)(a) ~~s. 475.01(1)(c)~~.

Section 6. This act shall take effect October 1, 1997.

Approved by the Governor May 7, 1997.

Filed in Office Secretary of State May 7, 1997.