

By the Committees on Business Regulation & Consumer
Affairs, Real Property & Probate and Representatives Arnall,
Posey, Kosmas and Feeney

1 A bill to be entitled
2 An act relating to real estate transactions;
3 amending s. 475.01, F.S.; defining the terms
4 "customer," "first contact," and "principal";
5 redefining the term "transaction broker";
6 deleting the definition of the terms "buyer,"
7 "disclosed dual agent," and "seller"; amending
8 s. 475.25, F.S.; modifying grounds for the
9 imposition of discipline by the Florida Real
10 Estate Commission; conforming a statutory
11 cross-reference; creating ss. 475.270, 475.272,
12 475.274, 475.276, 475.278, 475.280, F.S.;
13 establishing the "Brokerage Relationship
14 Disclosure Act"; providing for notice of
15 nonrepresentation; providing for disclosure of
16 authorized brokerage relationships and the
17 corresponding duties of real estate licensees;
18 authorizing rulemaking by the Florida Real
19 Estate Commission; amending s. 475.5015, F.S.;
20 adding disclosure documents to items to be
21 retained as brokerage business records;
22 amending s. 468.383, F.S.; conforming a
23 statutory cross-reference; providing an
24 effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (1) of section 475.01, Florida
29 Statutes, is amended to read:

30 475.01 Definitions.--

31 (1) As used in this part:

1 ~~(a)~~ "Commission" means the Florida Real Estate
2 Commission.
3 ~~(b)~~ "Department" means the Department of Business and
4 Professional Regulation.
5 (a)~~(c)~~ "Broker" means a person who, for another, and
6 for a compensation or valuable consideration directly or
7 indirectly paid or promised, expressly or impliedly, or with
8 an intent to collect or receive a compensation or valuable
9 consideration therefor, appraises, auctions, sells, exchanges,
10 buys, rents, or offers, attempts or agrees to appraise,
11 auction, or negotiate the sale, exchange, purchase, or rental
12 of business enterprises or business opportunities or any real
13 property or any interest in or concerning the same, including
14 mineral rights or leases, or who advertises or holds out to
15 the public by any oral or printed solicitation or
16 representation that he is engaged in the business of
17 appraising, auctioning, buying, selling, exchanging, leasing,
18 or renting business enterprises or business opportunities or
19 real property of others or interests therein, including
20 mineral rights, or who takes any part in the procuring of
21 sellers, purchasers, lessors, or lessees of business
22 enterprises or business opportunities or the real property of
23 another, or leases, or interest therein, including mineral
24 rights, or who directs or assists in the procuring of
25 prospects or in the negotiation or closing of any transaction
26 which does, or is calculated to, result in a sale, exchange,
27 or leasing thereof, and who receives, expects, or is promised
28 any compensation or valuable consideration, directly or
29 indirectly therefor; and all persons who advertise rental
30 property information or lists. A broker renders a
31 professional service and is a professional within the meaning

1 of s. 95.11(4)(a). Where the term "appraise" or "appraising"
2 appears in the definition of the term "broker," it
3 specifically excludes those appraisal services which must be
4 performed only by a state-licensed or state-certified
5 appraiser, and those appraisal services which may be performed
6 by a registered appraiser as defined in part II. The term
7 "broker" also includes any person who is a general partner,
8 officer, or director of a partnership or corporation which
9 acts as a broker. The term "broker" also includes any person
10 or entity who undertakes to list or sell one or more timeshare
11 periods per year in one or more timeshare plans on behalf of
12 any number of persons, except as provided in ss. 475.011 and
13 721.20.

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

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

22 (c) "Commission" means the Florida Real Estate
23 Commission.

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

28 (e) "Department" means the Department of Business and
29 Professional Regulation.

30 (f) "Fiduciary" means a broker in a relationship of
31 trust and confidence between that broker as agent and the

1 seller or buyer as principal. The duties of the broker as a
2 fiduciary are loyalty, confidentiality, obedience, full
3 disclosure, and accounting and the duty to use skill, care,
4 and diligence.

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

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

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

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

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

26
27 In any of the situations described in subparagraphs 1.-4.,
28 "first contact" occurs when the communications between the
29 licensee and the prospective seller or buyer proceed in any
30 way beyond the conditions or limitations described in
31 subparagraphs 1.-4.

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

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

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

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

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

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

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

29 ~~(i) "Fiduciary" means a broker in a relationship of~~
30 ~~trust and confidence between that broker as agent and the~~
31 ~~seller or buyer as principal. The duties of the broker as a~~

1 fiduciary are loyalty, confidentiality, obedience, full
2 disclosure, and accounting and the duty to use skill, care,
3 and diligence.

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

10 (m)(k) "Transaction broker" means a broker who
11 provides limited representation to a buyer, a seller, or both,
12 in a real estate transaction, but does not represent either in
13 a fiduciary capacity or as a single agent. ~~facilitates a~~
14 ~~brokerage transaction between a buyer and a seller. The~~
15 ~~transaction broker does not affirmatively represent either the~~
16 ~~buyer or seller as an agent, and no fiduciary duties exist~~
17 ~~except for the duty of accounting and the duty to use skill,~~
18 ~~care, and diligence. However, the transaction broker shall~~
19 ~~treat the buyer and seller with honesty and fairness and shall~~
20 ~~disclose all known facts materially affecting the value of the~~
21 ~~property in residential transactions to both the buyer and~~
22 ~~seller. The broker's role as a transaction broker must be~~
23 ~~fully disclosed in writing to the buyer and seller.~~

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

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

31

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

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

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

11 475.25 Discipline.--

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

21 (h) Has shared a commission with, or paid a fee or
22 other compensation to, a person not properly licensed as a
23 broker, broker-salesperson, or salesperson under the laws of
24 this state, for the referral of real estate business, clients,
25 prospects, or customers, or for any one or more of the
26 services set forth in s. 475.01(1)(a)~~s. 475.01(1)(c)~~. For
27 the purposes of this section, it is immaterial that the person
28 to whom such payment or compensation is given made the
29 referral or performed the service from within this state or
30 elsewhere; however, a licensed broker of this state may pay a
31 referral fee or share a real estate brokerage commission with

1 a broker licensed or registered under the laws of a foreign
2 state so long as the foreign broker does not violate any law
3 of this state.

4 (q) Has violated any provision of s. 475.276 or s.
5 475.278, including the duties owed under those sections.

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

15 ~~2. Has failed in a dual agency to obtain the informed~~
16 ~~written consent of all parties to a sale, exchange, purchase,~~
17 ~~or lease of real property or any interest in real property~~
18 ~~that the licensee intends to operate as a disclosed dual~~
19 ~~agent. Unless all parties to the transaction grant their~~
20 ~~written informed consent prior to or at the time of~~
21 ~~formalization of the dual agency by the licensee, the licensee~~
22 ~~shall be deemed to be an undisclosed dual agent. The licensee~~
23 ~~must inform all parties that the licensee is acting as agent~~
24 ~~for all parties and of the effect of dual agency, including,~~
25 ~~but not limited to, the fact that, by consenting to the dual~~
26 ~~agency relationship, the parties are giving up their rights to~~
27 ~~the undivided loyalty of the licensee, as required by the~~
28 ~~rules of the commission. When single agency exists, the~~
29 ~~licensee may change to a disclosed dual agent by making full~~
30 ~~written disclosure to and obtaining the informed written~~

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1 ~~consent of all the parties. A disclosed dual agent may not~~
2 ~~disclose among other items:~~
3 ~~a. To the buyer that the seller will accept a price~~
4 ~~less than the asking or listed price, unless otherwise~~
5 ~~instructed in writing by the seller;~~
6 ~~b. To the seller that the buyer will pay a price~~
7 ~~greater than the price submitted in a written offer to the~~
8 ~~seller, unless otherwise instructed in writing by the buyer;~~
9 ~~c. The motivation of any party for selling, buying, or~~
10 ~~leasing a property, unless otherwise instructed in writing by~~
11 ~~the respective party; or~~
12 ~~d. That a seller or buyer will agree to financing~~
13 ~~terms other than those offered.~~
14 ~~3. Has failed in a transaction brokerage capacity to~~
15 ~~give written notice to all parties to a sale, exchange,~~
16 ~~purchase, or lease of real property or an interest in real~~
17 ~~property prior to or at the time of the licensee becoming a~~
18 ~~transaction broker or first substantive contact, whichever~~
19 ~~occurs first, of the licensee's role as a transaction broker.~~
20 ~~Unless the buyer and seller are given written notice prior to~~
21 ~~the licensee's acting in a transaction brokerage capacity, the~~
22 ~~licensee is deemed to be an agent of either the buyer or~~
23 ~~seller, or both. The licensee shall treat the buyer and seller~~
24 ~~honestly and fairly and shall disclose all known facts~~
25 ~~materially affecting the value of the property in residential~~
26 ~~transactions to both the buyer and seller.~~
27
28 ~~For the purposes of this paragraph, the payment or promise of~~
29 ~~payment of compensation to a licensee does not determine~~
30 ~~whether an agency or transactional brokerage relationship has~~
31 ~~been created between any licensee and a seller, landlord,~~

1 ~~buyer, or tenant. The commission shall implement this~~
2 ~~paragraph by rule. For purposes of this paragraph, the~~
3 ~~commission shall also define by rule forms for agency~~
4 ~~disclosure. The forms provided for in this rule shall be~~
5 ~~written in plain language and shall provide to the buyer or~~
6 ~~seller or both, as appropriate, an explanation of the agency~~
7 ~~relationships and shall offer the buyer or seller or both the~~
8 ~~explicit right to choose or refuse among these agency~~
9 ~~relationships.~~

10 Section 3. Sections 475.270, 475.272, 475.274,
11 475.276, 475.278, and 475.280, Florida Statutes, are created
12 to read:

13 475.270 Short title.--Sections 475.270-475.280 may be
14 cited as the "Brokerage Relationship Disclosure Act."

15 475.272 Purpose.--In order to eliminate confusion and
16 provide for a better understanding on the part of customers in
17 real estate transactions, the Legislature finds that the
18 intent of the Brokerage Relationship Disclosure Act is to
19 provide that:

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

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

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

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

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

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

9 475.274 Scope of coverage.--The authorized brokerage
10 relationships described in s. 475.278 apply in all brokerage
11 activities as defined in s. 475.01(1)(a). The disclosure
12 requirements of ss. 475.276 and 475.278 apply only to
13 residential sales as defined in s. 475.276.

14 475.276 Notice of nonrepresentation.--

15 (1) APPLICABILITY.--

16 (a) Residential sales.--The real estate licensee
17 disclosure requirements of this section and s. 475.278 apply
18 to all residential sales. As used in this section, the term
19 "residential sales" means the sale of improved residential
20 property of four units or fewer, the sale of unimproved
21 residential property intended for use of four units or less,
22 or the sale of agricultural property of 10 acres or less.

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

31

1 advised not to disclose any information you want to be held in
2 confidence until you make a decision on representation.
3 Your signature below acknowledges receipt of this form and
4 does not establish a brokerage relationship.
5
6
7 Date (Signature Optional)
8
9
10 (Signature Optional)
11 (b) Required format.--The notice required under
12 subsection (2) must be printed as a separate and distinct form
13 on paper no smaller than 8 1/2 inches by 11 inches. Nothing
14 may be added to the form except a brokerage firm logo
15 containing only the firm name, address, and relevant phone
16 numbers. The form title and first sentence are to be in bold
17 typeface of no less than 16-point type. The remainder of the
18 form must be of 12-point type or larger.
19 475.278 Authorized brokerage relationships; required
20 disclosures.--
21 (1) AUTHORIZED BROKERAGE RELATIONSHIPS.--A real estate
22 licensee in this state may enter into a brokerage relationship
23 as either a single agent or as a transaction broker with
24 potential buyers and sellers. A real estate licensee may not
25 operate as a disclosed or nondisclosed dual agent. As used in
26 this section, the term "dual agent" means a broker who
27 represents as a fiduciary both the prospective buyer and the
28 prospective seller in a real estate transaction. Once a
29 brokerage relationship is established, this part does not
30 prevent a licensee from changing from one brokerage
31 relationship to the other as long as the buyer or the seller,

1 or both, gives consent as required by subparagraph (3)(c)2.
2 before the change and the appropriate disclosure of duties as
3 provided in this part is made to the buyer or seller. This
4 part does not require a customer to enter into a brokerage
5 relationship with any real estate licensee.
6 (2) TRANSACTION BROKER RELATIONSHIP.--
7 (a) Transaction broker; duties of limited
8 representation.--A transaction broker provides a limited form
9 of representation to a buyer, a seller, or both in a real
10 estate transaction but does not represent either in a
11 fiduciary capacity or as a single agent. The duties of the
12 real estate licensee in this limited form of representation
13 include the following:
14 1. Dealing honestly and fairly;
15 2. Accounting for all funds;
16 3. Using skill, care, and diligence in the
17 transaction;
18 4. Disclosing all known facts that materially affect
19 the value of real property and are not readily observable to
20 the buyer;
21 5. Presenting all offers and counteroffers in a timely
22 manner, unless a party has previously directed the licensee
23 otherwise in writing;
24 6. Limited confidentiality, unless waived in writing
25 by a party. This limited confidentiality will prevent
26 disclosure that the seller will accept a price less than the
27 asking or listed price, that the buyer will pay a price
28 greater than the price submitted in a written offer, of the
29 motivation of any party for selling or buying property, that a
30 seller or buyer will agree to financing terms other than those
31

1 offered, or of any other information requested by a party to
2 remain confidential; and
3 7. Any additional duties that are mutually agreed to
4 with a party.
5 (b) Disclosure requirements.--Duties of a transaction
6 broker must be fully described and disclosed in writing to a
7 buyer or seller either as a separate and distinct disclosure
8 document or included as part of another document such as a
9 listing agreement or agreement for representation. The
10 disclosure must be made before, or at the time of, entering
11 into a listing agreement or an agreement for representation.
12 When incorporated into other documents the required notice
13 must be of the same size type, or larger, as other provisions
14 of the document and must be conspicuous in its placement so as
15 to advise customers of the duties of limited representation,
16 except that the first sentence of the information identified
17 in paragraph (c) must be printed in uppercase and bold type.
18 (c) Contents of disclosure.--The required notice given
19 under paragraph (b) must include the following information in
20 the following form:
21
22 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
23 TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE
24 AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.
25
26 As a transaction broker, (insert name of Real
27 Estate Firm and its Associates), provides to you a limited
28 form of representation that includes the following duties:
29 1. Dealing honestly and fairly;
30 2. Accounting for all funds;
31

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

18 (c) Contents of disclosure.--

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

22
23 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
24 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

25
26 As a single agent, (insert name of
27 Real Estate Entity and its Associates) owe to you the
28 following duties:

- 29 1. Dealing honestly and fairly;
30 2. Loyalty;
31 3. Confidentiality;

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

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

6 475.280 Rules.--The commission may adopt rules
7 establishing disciplinary guidelines, notices of
8 noncompliance, and citations for violations of ss. 475.276 and
9 475.278.

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

12 475.5015 Brokerage business records.--Each broker
13 shall keep and make available to the department such books,
14 accounts, and records as will enable the department to
15 determine whether such broker is in compliance with the
16 provisions of this chapter. Each broker shall preserve at
17 least one legible copy of all books, accounts, and records
18 pertaining to his real estate brokerage business for at least
19 5 years from the date of receipt of any money, fund, deposit,
20 check, or draft entrusted to the broker or, in the event no
21 funds are entrusted to the broker, for at least 5 years from
22 the date of execution by any party of any listing agreement,
23 offer to purchase, rental property management agreement,
24 rental or lease agreement, or any other written or verbal
25 agreement which engages the services of the broker. If any
26 brokerage record has been the subject of or has served as
27 evidence for litigation, relevant books, accounts, and records
28 must be retained for at least 2 years after the conclusion of
29 the civil action or the conclusion of any appellate
30 proceeding, whichever is later, but in no case less than a
31 total of 5 years as set above. Disclosure documents required

1 under ss. 475.276 and 475.278 shall be retained by the real
2 estate licensee in all transactions that result in a written
3 contract to purchase and sell real property.

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

6 468.383 Exemptions.--This act does not apply to the
7 following:

8 (7) Auctions conducted as a part of the sale of real
9 property by a real estate broker, as defined in s.
10 475.01(1)(a)~~s. 475.01(1)(c)~~.

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