

By Senator Sullivan

22-802-99

See HB

1 A bill to be entitled
2 An act relating to the Brokerage Relationship
3 Disclosure Act; amending s. 475.272, F.S.;
4 revising intent of the act to eliminate
5 required disclosure of nonrepresentation;
6 repealing s. 475.276, F.S., relating to notice
7 of nonrepresentation; amending s. 475.278,
8 F.S.; providing applicability or
9 nonapplicability of brokerage relationship
10 disclosure requirements under the act to
11 various real estate transactions; amending s.
12 475.01, F.S.; eliminating the definition of the
13 term "first contact," to conform; amending ss.
14 475.25, 475.274, 475.2755, 475.2801, and
15 475.5015, F.S.; conforming cross-references;
16 providing an effective date.

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

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20 Section 1. Section 475.272, Florida Statutes, 1998
21 Supplement, is amended to read:

22 475.272 Purpose.--In order to eliminate confusion and
23 provide for a better understanding on the part of customers in
24 real estate transactions, the Legislature finds that the
25 intent of the Brokerage Relationship Disclosure Act is to
26 provide that:

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

30 ~~(2) Real estate licensees be required to disclose to~~
31 ~~customers upon first contact in residential real estate~~

1 ~~transactions that they are not and will not be represented by~~
2 ~~a licensee in a real estate transaction unless they engage a~~
3 ~~real estate licensee in an authorized form of representation,~~
4 ~~either as a single agent or as a transaction broker;~~

5 (2)~~(3)~~ Disclosure requirements for real estate
6 licensees relating to ~~nonrepresentation and~~ authorized forms
7 of brokerage representation are established;

8 (3)~~(4)~~ Single agents may represent either a buyer or a
9 seller, but not both, in a real estate transaction; and

10 (4)~~(5)~~ Transaction brokers provide a limited form of
11 nonfiduciary representation to a buyer, a seller, or both in a
12 real estate transaction.

13 Section 2. Section 475.276, Florida Statutes, 1998
14 Supplement, is repealed.

15 Section 3. Subsection (5) is added to section 475.278,
16 Florida Statutes, 1998 Supplement, to read:

17 475.278 Authorized brokerage relationships; required
18 disclosures.--

19 (5) APPLICABILITY.--

20 (a) Residential sales.--The real estate licensee
21 disclosure requirements of this section apply to all
22 residential sales. As used in this subsection, the term
23 "residential sale" means the sale of improved residential
24 property of four units or fewer, the sale of unimproved
25 residential property intended for use of four units or fewer,
26 or the sale of agricultural property of 10 acres or fewer.

27 (b) Disclosure limitations.--The real estate licensee
28 disclosure requirements of this section do not apply to:
29 nonresidential transactions; the rental or leasing of real
30 property, unless an option to purchase all or a portion of the
31 property improved with four or fewer residential units is

1 given; auctions; appraisals; and dispositions of any interest
2 in business enterprises or business opportunities, except for
3 property with four or fewer residential units.

4 Section 4. Subsection (1) of section 475.01, Florida
5 Statutes, 1998 Supplement, is amended to read:

6 475.01 Definitions.--

7 (1) As used in this part:

8 (a) "Broker" means a person who, for another, and for
9 a compensation or valuable consideration directly or
10 indirectly paid or promised, expressly or impliedly, or with
11 an intent to collect or receive a compensation or valuable
12 consideration therefor, appraises, auctions, sells, exchanges,
13 buys, rents, or offers, attempts or agrees to appraise,
14 auction, or negotiate the sale, exchange, purchase, or rental
15 of business enterprises or business opportunities or any real
16 property or any interest in or concerning the same, including
17 mineral rights or leases, or who advertises or holds out to
18 the public by any oral or printed solicitation or
19 representation that she or he is engaged in the business of
20 appraising, auctioning, buying, selling, exchanging, leasing,
21 or renting business enterprises or business opportunities or
22 real property of others or interests therein, including
23 mineral rights, or who takes any part in the procuring of
24 sellers, purchasers, lessors, or lessees of business
25 enterprises or business opportunities or the real property of
26 another, or leases, or interest therein, including mineral
27 rights, or who directs or assists in the procuring of
28 prospects or in the negotiation or closing of any transaction
29 which does, or is calculated to, result in a sale, exchange,
30 or leasing thereof, and who receives, expects, or is promised
31 any compensation or valuable consideration, directly or

1 indirectly therefor; and all persons who advertise rental
2 property information or lists. A broker renders a
3 professional service and is a professional within the meaning
4 of s. 95.11(4)(a). Where the term "appraise" or "appraising"
5 appears in the definition of the term "broker," it
6 specifically excludes those appraisal services which must be
7 performed only by a state-licensed or state-certified
8 appraiser, and those appraisal services which may be performed
9 by a registered assistant appraiser as defined in part II.
10 The term "broker" also includes any person who is a general
11 partner, officer, or director of a partnership or corporation
12 which acts as a broker. The term "broker" also includes any
13 person or entity who undertakes to list or sell one or more
14 timeshare periods per year in one or more timeshare plans on
15 behalf of any number of persons, except as provided in ss.
16 475.011 and 721.20.

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

20 (c) "Commission" means the Florida Real Estate
21 Commission.

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

26 (e) "Department" means the Department of Business and
27 Professional Regulation.

28 (f) "Fiduciary" means a broker in a relationship of
29 trust and confidence between that broker as agent and the
30 seller or buyer as principal. The duties of the broker as a
31 fiduciary are loyalty, confidentiality, obedience, full

1 disclosure, and accounting and the duty to use skill, care,
2 and diligence.

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

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

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

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

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

24
25 ~~In any of the situations described in subparagraphs 1.-4.,~~
26 ~~"first contact" occurs when the communications between the~~
27 ~~licensee and the prospective seller or buyer proceed in any~~
28 ~~way beyond the conditions or limitations described in~~
29 ~~subparagraphs 1.-4.~~

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

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

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

22 (l)~~(m)~~ "Transaction broker" means a broker who
23 provides limited representation to a buyer, a seller, or both,
24 in a real estate transaction, but does not represent either in
25 a fiduciary capacity or as a single agent.

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

30 Section 5. Paragraph (q) of subsection (1) of section
31 475.25, Florida Statutes, 1998 Supplement, is amended to read:

1 475.25 Discipline.--

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

11 (q) Has violated any provision of ~~s. 475.276~~ or s.
12 475.278, including the duties owed under that section ~~those~~
13 ~~sections~~.

14 Section 6. Section 475.274, Florida Statutes, 1998
15 Supplement, is amended to read:

16 475.274 Scope of coverage.--The authorized brokerage
17 relationships described in ss. 475.2755 and 475.278 apply in
18 all brokerage activities as defined in s. 475.01(1)(a). The
19 disclosure requirements of ~~s. ss. 475.276~~ and 475.278 apply
20 only to residential sales as defined in s. 475.278(5)(a)
21 ~~475.276~~.

22 Section 7. Subsection (1) of section 475.2755, Florida
23 Statutes, 1998 Supplement, is amended to read:

24 475.2755 Designated salesperson.--

25 (1) For purposes of this part, in any real estate
26 transaction other than a residential sale as defined in s.
27 475.278(5)(a)~~475.276~~, and where the buyer and seller have
28 assets of \$1 million or more, the broker at the request of the
29 customers may designate salespersons to act as single agents
30 for different customers in the same transaction. Such
31 designated salespersons shall have the duties of a single

1 agent as outlined in s. 475.278(3), including disclosure
2 requirements in s. 475.278(3)(b) and (c). In addition to
3 disclosure requirements in s. 475.278(3)(b) and (c), the buyer
4 and seller as customers shall both sign disclosures stating
5 that their assets meet the threshold described in this
6 subsection and requesting that the broker use the designated
7 salesperson form of representation. In lieu of the transition
8 disclosure requirement in s. 475.278(3)(c)2., the required
9 disclosure notice shall include the following:

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11 FLORIDA LAW PROHIBITS A DESIGNATED SALESPERSON FROM
12 DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE
13 BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE
14 INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALESPERSON IS
15 REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED
16 SALESPERSON TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR
17 REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED
18 SALESPERSON TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS
19 SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A
20 CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR
21 THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION.
22 FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS
23 INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH INFORMATION TO
24 THE DETRIMENT OF THE OTHER PARTY.

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26 Section 8. Section 475.2801, Florida Statutes, 1998
27 Supplement, is amended to read:

28 475.2801 Rules.--The commission may adopt rules
29 establishing disciplinary guidelines, notices of
30 noncompliance, and citations for violations of ss. 475.2755,
31 ~~475.276~~, and 475.278.

1 Section 9. Section 475.5015, Florida Statutes, 1998
2 Supplement, is amended to read:

3 475.5015 Brokerage business records.--Each broker
4 shall keep and make available to the department such books,
5 accounts, and records as will enable the department to
6 determine whether such broker is in compliance with the
7 provisions of this chapter. Each broker shall preserve at
8 least one legible copy of all books, accounts, and records
9 pertaining to her or his real estate brokerage business for at
10 least 5 years from the date of receipt of any money, fund,
11 deposit, check, or draft entrusted to the broker or, in the
12 event no funds are entrusted to the broker, for at least 5
13 years from the date of execution by any party of any listing
14 agreement, offer to purchase, rental property management
15 agreement, rental or lease agreement, or any other written or
16 verbal agreement which engages the services of the broker. If
17 any brokerage record has been the subject of or has served as
18 evidence for litigation, relevant books, accounts, and records
19 must be retained for at least 2 years after the conclusion of
20 the civil action or the conclusion of any appellate
21 proceeding, whichever is later, but in no case less than a
22 total of 5 years as set above. Disclosure documents required
23 under ss. 475.2755, ~~475.276~~, and 475.278 shall be retained by
24 the real estate licensee in all transactions that result in a
25 written contract to purchase and sell real property.

26 Section 10. This act shall take effect October 1,
27 1999.

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LEGISLATIVE SUMMARY

Eliminates the requirement of disclosure of nonrepresentation under the Brokerage Relationship Disclosure Act. Provides applicability or nonapplicability of brokerage relationship disclosure requirements under the act to various real estate transactions. (See bill for details.)