

By the Committee on Regulated Industries and Senator Saunders

315-1691A-00

1                                   A bill to be entitled  
 2           An act relating to real estate brokers and  
 3           salespersons; amending s. 475.25, F.S.;  
 4           providing an exception to a requirement that a  
 5           licensee notify the Florida Real Estate  
 6           Commission of certain doubts or conflicting  
 7           demands with respect to a transaction when the  
 8           buyer of a residential condominium unit  
 9           delivers written notice of intent to cancel the  
 10          contract for sale and purchase; permitting the  
 11          return of certain escrowed property; clarifying  
 12          that the giving of a broker price opinion is  
 13          not the practice of appraising; amending s.  
 14          475.278, F.S.; providing requirements for  
 15          disclosure to persons with whom the broker or  
 16          salesperson has no brokerage relationship;  
 17          providing that disclosure requirements do not  
 18          apply in certain circumstances; amending s.  
 19          475.612, F.S.; clarifying that the giving of a  
 20          broker price opinion is not the practice of  
 21          appraising; providing an effective date.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1. Paragraphs (d) and (t) of subsection (1) of  
 26           section 475.25, Florida Statutes, are amended to read:

27           475.25 Discipline.--

28           (1) The commission may deny an application for  
 29           licensure, registration, or permit, or renewal thereof; may  
 30           place a licensee, registrant, or permittee on probation; may  
 31           suspend a license, registration, or permit for a period not

1 exceeding 10 years; may revoke a license, registration, or  
2 permit; may impose an administrative fine not to exceed \$1,000  
3 for each count or separate offense; and may issue a reprimand,  
4 and any or all of the foregoing, if it finds that the  
5 licensee, registrant, permittee, or applicant:

6 (d)1. Has failed to account or deliver to any person,  
7 including a licensee under this chapter, at the time which has  
8 been agreed upon or is required by law or, in the absence of a  
9 fixed time, upon demand of the person entitled to such  
10 accounting and delivery, any personal property such as money,  
11 fund, deposit, check, draft, abstract of title, mortgage,  
12 conveyance, lease, or other document or thing of value,  
13 including a share of a real estate commission if a civil  
14 judgment relating to the practice of the licensee's profession  
15 has been obtained against the licensee and said judgment has  
16 not been satisfied in accordance with the terms of the  
17 judgment within a reasonable time, or any secret or illegal  
18 profit, or any divisible share or portion thereof, which has  
19 come into the licensee's hands and which is not the licensee's  
20 property or which the licensee is not in law or equity  
21 entitled to retain under the circumstances. However, if the  
22 licensee, in good faith, entertains doubt as to what person is  
23 entitled to the accounting and delivery of the escrowed  
24 property, or if conflicting demands have been made upon the  
25 licensee for the escrowed property, which property she or he  
26 still maintains in her or his escrow or trust account, the  
27 licensee shall promptly notify the commission of such doubts  
28 or conflicting demands and shall promptly:

29 a. Request that the commission issue an escrow  
30 disbursement order determining who is entitled to the escrowed  
31 property;

1           b. With the consent of all parties, submit the matter  
2 to arbitration;

3           c. By interpleader or otherwise, seek adjudication of  
4 the matter by a court; or

5           d. With the written consent of all parties, submit the  
6 matter to mediation. The department may conduct mediation or  
7 may contract with public or private entities for mediation  
8 services. However, the mediation process must be successfully  
9 completed within 90 days following the last demand or the  
10 licensee shall promptly employ one of the other escape  
11 procedures contained in this section. Payment for mediation  
12 will be as agreed to in writing by the parties. The  
13 department may adopt rules to implement this section.

14  
15 If the licensee promptly employs one of the escape procedures  
16 contained herein, and if she or he abides by the order or  
17 judgment resulting therefrom, no administrative complaint may  
18 be filed against the licensee for failure to account for,  
19 deliver, or maintain the escrowed property. If the buyer of a  
20 residential condominium unit delivers to a licensee written  
21 notice of the buyer's intent to cancel the contract for sale  
22 and purchase, as authorized by s. 718.503, the licensee may  
23 return the escrowed property to the purchaser without  
24 notifying the commission or initiating any of the procedures  
25 listed in sub-subparagraphs a.-d.

26           2. Has failed to deposit money in an escrow account  
27 when the licensee is the purchaser of real estate under a  
28 contract where the contract requires the purchaser to place  
29 deposit money in an escrow account to be applied to the  
30 purchase price if the sale is consummated.

31

1           (t) Has violated any standard for the development or  
2 communication of a real estate appraisal or other provision of  
3 the Uniform Standards of Professional Appraisal Practice, as  
4 defined in s. 475.611, as approved and adopted by the  
5 Appraisal Standards Board of the Appraisal Foundation, as  
6 defined in s. 475.611. This paragraph does not apply to a real  
7 estate broker or salesperson who, in the ordinary course of  
8 business, performs a comparative market analysis, gives a  
9 broker price opinion, or gives an opinion of value of real  
10 estate. However, in no event may this comparative market  
11 analysis, broker price opinion, or opinion of value of real  
12 estate be referred to as an appraisal, as defined in s.  
13 475.611.

14           Section 2. Section 475.278, Florida Statutes, is  
15 amended to read:

16           475.278 Authorized brokerage relationships; required  
17 disclosures.--

18           (1) AUTHORIZED BROKERAGE RELATIONSHIPS.--A real estate  
19 licensee in this state may enter into a brokerage relationship  
20 as either a single agent or as a transaction broker with  
21 potential buyers and sellers. A real estate licensee may not  
22 operate as a disclosed or nondisclosed dual agent. As used in  
23 this section, the term "dual agent" means a broker who  
24 represents as a fiduciary both the prospective buyer and the  
25 prospective seller in a real estate transaction. Once a  
26 brokerage relationship is established, this part does not  
27 prevent a licensee from changing from one brokerage  
28 relationship to the other as long as the buyer or the seller,  
29 or both, gives consent as required by subparagraph (3)(c)2.  
30 before the change and the appropriate disclosure of duties as  
31 provided in this part is made to the buyer or seller. This

1 part does not require a customer to enter into a brokerage  
2 relationship with any real estate licensee.

3 (2) TRANSACTION BROKER RELATIONSHIP.--

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

11 1. Dealing honestly and fairly;

12 2. Accounting for all funds;

13 3. Using skill, care, and diligence in the  
14 transaction;

15 4. Disclosing all known facts that materially affect  
16 the value of residential real property and are not readily  
17 observable to the buyer;

18 5. Presenting all offers and counteroffers in a timely  
19 manner, unless a party has previously directed the licensee  
20 otherwise in writing;

21 6. Limited confidentiality, unless waived in writing  
22 by a party. This limited confidentiality will prevent  
23 disclosure that the seller will accept a price less than the  
24 asking or listed price, that the buyer will pay a price  
25 greater than the price submitted in a written offer, of the  
26 motivation of any party for selling or buying property, that a  
27 seller or buyer will agree to financing terms other than those  
28 offered, or of any other information requested by a party to  
29 remain confidential; and

30 7. Any additional duties that are mutually agreed to  
31 with a party.



1  
2 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS  
3 TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE  
4 AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.  
5  
6 As a transaction broker, ..... (insert name of Real  
7 Estate Firm and its Associates), provides to you a limited  
8 form of representation that includes the following duties:  
9       1. Dealing honestly and fairly;  
10       2. Accounting for all funds;  
11       3. Using skill, care, and diligence in the  
12 transaction;  
13       4. Disclosing all known facts that materially affect  
14 the value of residential real property and are not readily  
15 observable to the buyer;  
16       5. Presenting all offers and counteroffers in a timely  
17 manner, unless a party has previously directed the licensee  
18 otherwise in writing;  
19       6. Limited confidentiality, unless waived in writing  
20 by a party. This limited confidentiality will prevent  
21 disclosure that the seller will accept a price less than the  
22 asking or listed price, that the buyer will pay a price  
23 greater than the price submitted in a written offer, of the  
24 motivation of any party for selling or buying property, that a  
25 seller or buyer will agree to financing terms other than those  
26 offered, or of any other information requested by a party to  
27 remain confidential; and  
28       7. Any additional duties that are entered into by this  
29 or by separate written agreement.  
30  
31

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

9  
10 .....  
11 Date Signature  
12  
13 .....  
14 Signature  
15

- 16 (3) SINGLE AGENT RELATIONSHIP.--  
17 (a) Single agent - duties.--The duties of a real  
18 estate licensee owed to a buyer or seller who engages the real  
19 estate licensee as a single agent include the following:  
20 1. Dealing honestly and fairly;  
21 2. Loyalty;  
22 3. Confidentiality;  
23 4. Obedience;  
24 5. Full disclosure;  
25 6. Accounting for all funds;  
26 7. Skill, care, and diligence in the transaction;  
27 8. Presenting all offers and counteroffers in a timely  
28 manner, unless a party has previously directed the licensee  
29 otherwise in writing; and  
30  
31

1           9. Disclosing all known facts that materially affect  
2 the value of residential real property and are not readily  
3 observable.

4           (b) Disclosure requirements.--

5           1. Single agent disclosure.--Duties of a single agent  
6 must be fully described and disclosed in writing to a buyer or  
7 seller either as a separate and distinct disclosure document  
8 or included as part of another document such as a listing  
9 agreement or other 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 or  
12 before the showing of property, whichever occurs first. When  
13 incorporated into other documents, the required notice must be  
14 of the same size type, or larger, as other provisions of the  
15 document and must be conspicuous in its placement so as to  
16 advise customers of the duties of a single agent, except that  
17 the first sentence of the information identified in paragraph  
18 (c) must be printed in uppercase and bold type.

19           2. Transition to transaction broker disclosure.--A  
20 single agent relationship may be changed to a transaction  
21 broker relationship at any time during the relationship  
22 between an agent and principal, provided the agent gives the  
23 disclosure required under paragraph (2)(b) and the principal  
24 gives to the agent consent as required under subparagraph  
25 (c)2. before a change in relationship. This disclosure must be  
26 in writing to the principal either as a separate and distinct  
27 document or included as part of other documents such as a  
28 listing agreement or other agreements for representation. When  
29 incorporated into other documents, the required notice must be  
30 of the same size type, or larger, as other provisions of the  
31 document and must be conspicuous in its placement so as to

1 advise customers of the duties of limited representation,  
2 except that the first sentence of the information identified  
3 in subparagraph (c)2. must be printed in uppercase and bold  
4 type.

5 (c) Contents of disclosure.--

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

9

10 IMPORTANT NOTICE

11

12 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS  
13 NOTICE TO ~~ALL~~ POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

14

15 You should not assume that any real estate broker or  
16 salesperson represents you unless you agree to engage a real  
17 estate licensee in an authorized brokerage relationship,  
18 either as a single agent or as a transaction broker. You are  
19 advised not to disclose any information you want to be held in  
20 confidence until you make a decision on representation.

21

22 SINGLE AGENT NOTICE

23

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

26

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

30

1. Dealing honestly and fairly;

31

2. Loyalty;



1  
2 .....I agree that my agent may assume the role and duties  
3 of a transaction broker. [must be initialed or signed]  
4

5 (4) NO BROKERAGE RELATIONSHIP~~-DUTIES~~.--

6 (a) No brokerage relationship-duties.--A real estate  
7 licensee owes to a potential seller or buyer customer with  
8 whom the licensee has no brokerage relationship the following  
9 duties:

10 1.(a) Dealing honestly and fairly;

11 2.(b) Disclosing all known facts that materially  
12 affect the value of the residential real property which are  
13 not readily observable to the buyer; and

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

16 (b) Disclosure requirements.--Duties of a licensee who  
17 has no brokerage relationship with a buyer or seller must be  
18 fully described and disclosed in writing to the buyer or  
19 seller. The disclosure must be made before or at the time of  
20 the showing of property. When incorporated into other  
21 documents, the required notice must be of the same size type,  
22 or larger, as other provisions of the document and must be  
23 conspicuous in its placement so as to advise customers of the  
24 duties of a licensee that has no brokerage relationship with a  
25 buyer or seller, except that the first sentence of the  
26 information identified in paragraph (c) must be printed in  
27 uppercase bold type.

28 (c) Contents of disclosure.--The notice required under  
29 paragraph (b) must include the following information in the  
30 following form:

31 IMPORTANT NOTICE

1  
2 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS  
3 NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

4  
5 You should not assume that any real estate broker or  
6 salesperson represents you unless you agree to engage a real  
7 estate licensee in an authorized brokerage relationship,  
8 either as a single agent or as a transaction broker. You are  
9 advised not to disclose any information you want to be held in  
10 confidence until you decide on representation.

11  
12 NO BROKERAGE RELATIONSHIP NOTICE

13  
14 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO  
15 HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR  
16 BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

17  
18 As a real estate licensee who has no brokerage  
19 relationship with you, .....(insert name of Real Estate  
20 Entity and its Associates).... owe to you the following  
21 duties:

- 22 1. Dealing honestly and fairly;  
23 2. Disclosing all known facts that materially affect  
24 the value of residential real property which are not readily  
25 observable to the buyer.  
26 3. Accounting for all funds entrusted to the licensee.

27  
28 ....(Date)....

....(Signature)....

29 (5) APPLICABILITY.--

30 (a) Residential sales.--The real estate licensee  
31 disclosure requirements of this section apply to all

1 residential sales. As used in this subsection, the term  
2 "residential sale" means the sale of improved residential  
3 property of four units or fewer, the sale of unimproved  
4 residential property intended for use of four units or fewer,  
5 or the sale of agricultural property of 10 acres or fewer.

6 (b) Disclosure limitations.--

7 1. The real estate disclosure requirements of this  
8 section do not apply when a licensee knows that the potential  
9 seller or buyer is represented by a single agent or a  
10 transaction broker; or when an owner is selling new  
11 residential units built by the owner and the circumstances or  
12 setting should reasonably inform the potential buyer that the  
13 owner's employee or single agent is acting on behalf of the  
14 owner, whether because of the location of the sales office or  
15 because of office signage or placards or identification badges  
16 worn by the owner's employee or single agent.

17 2. The real estate licensee disclosure requirements of  
18 this section do not apply to: nonresidential transactions; the  
19 rental or leasing of real property, unless an option to  
20 purchase all or a portion of the property improved with four  
21 or fewer residential units is given; a bona fide "open house"  
22 or model home showing that does not involve eliciting  
23 confidential information, the execution of a contractual offer  
24 or an agreement for representation, or negotiations concerning  
25 price, terms, or conditions of a potential sale; unanticipated  
26 casual conversations between a licensee and a seller or buyer  
27 which do not involve eliciting confidential information, the  
28 execution of a contractual offer or agreement for  
29 representation, or negotiations concerning price, terms, or  
30 conditions of a potential sale; responding to general factual  
31 questions from a potential buyer or seller concerning

1 properties that have been advertised for sale; situations in  
2 which a licensee's communications with a potential buyer or  
3 seller are limited to providing general factual information,  
4 oral or written, about the qualifications, background, and  
5 services of the licensee or the licensee's brokerage firm;  
6 auctions; appraisals; and dispositions of any interest in  
7 business enterprises or business opportunities, except for  
8 property with four or fewer residential units.

9 Section 3. Subsection (3) of section 475.612, Florida  
10 Statutes, is amended to read:

11 475.612 Certification, licensure, or registration  
12 required.--

13 (3) This section does not apply to a real estate  
14 broker or salesperson who, in the ordinary course of business,  
15 performs a comparative market analysis, gives a broker price  
16 opinion, and/or gives an opinion of the value of real estate.  
17 However, in no event may this comparative market analysis,  
18 broker price opinion, or opinion of value of real estate be  
19 referred to or construed as an appraisal.

20 Section 4. This act shall take effect July 1, 2000.

21  
22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
23 COMMITTEE SUBSTITUTE FOR  
24 Senate Bill 326

25 The Proposed Committee Substitute for SB 326 contains the  
26 following substantial differences from the original bill:

- 27 - Clarifies that appraisal statutes do not apply to a real  
28 estate broker or salesperson who performs a comparative  
29 market analysis or gives an opinion of the value of real  
30 estate.  
31 - Creates a requirement of and a form for a no brokerage  
relationship notice.  
- Establishes exceptions for all real estate agency  
relationship disclosure requirements.