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1 A bill to be entitled
2 An act relating to real property sales disclosures;
3 creating s. 475.423, F.S.; specifying the transactions
4 that are subject to the requirements of the act; providing
5 definitions; requiring that certain disclosures be made by
6 the transferor or his or her agent with respect to real
7 property located within a flood hazard area, an area with
8 severe constraints for development, an area having
9 sinkhole activity, a wellhead protection area, a priority
10 wetland zone, a habitat conservation area, an airport
11 influence area, an environmental hazard site, or a radon
12 gas zone; providing that the waiver of such requirements
13 is against public policy; providing certain exceptions;
14 specifying the form to be used as the Property
15 Identification Disclosure Statement; providing
16 requirements for identifying information that accompanies
17 the disclosure statement; prohibiting the use of the
18 disclosure statement by certain entities other than the
19 transferor, the transferor's agents, and the transferee;
20 providing requirements for delivery of the required
21 disclosure statement; providing a limitation with respect
22 to liability for errors, inaccuracy, or omissions;
23 requiring a third party that provides information with
24 respect to the disclosure statement to maintain a
25 specified amount of insurance protection; providing that
26 certain subsequent inaccuracies with respect to the
27 information disclosed are not a violation of the act;
28 requiring that disclosures be made in good faith;
29 providing that the act does not limit or abridge other
30 disclosures required by law; authorizing the amendment of



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31 a disclosure; providing for delivery of disclosures;
32 providing requirements for the licensee or broker acting
33 as an agent in a transaction subject to the act;
34 specifying liability; providing an effective date.
35

36 Be It Enacted by the Legislature of the State of Florida:
37

38 Section 1. Section 475.423, Florida Statutes, is created
39 to read:

40 475.423 Property identification disclosure statement.--

41 (1)(a) Except as provided in subsection (2), this section
42 applies to any transfer by sale, exchange, or installment land
43 sale contract of residential, undeveloped, or commercial land,
44 wherein one party agrees to convey title to real property to
45 another party upon the satisfaction of specified conditions set
46 forth in the contract and which does not require conveyance of
47 title within 1 year after the date of formation of the contract,
48 lease with an option to purchase, any other option to purchase,
49 ground lease coupled with improvements of any real property
50 described in paragraph (c), or residential stock cooperative,
51 improved with or consisting of not less than one or more than
52 four dwelling units.

53 (b) Except as provided in subsection (2), this section
54 applies to a resale transaction for a manufactured home
55 classified as personal property and intended for use as a
56 residence and to a mobile home classified as personal property
57 intended for use as a residence if the real property on which
58 the manufactured home or mobile home is located is real property
59 as described in paragraph (c). As used in this section, the term
60 "manufactured home" means a structure, transportable in one or



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61 more sections, which, in the traveling mode, is 8 body feet or
 62 more in width, or 40 body feet or more in length, or, when
 63 erected on site, is 320 or more square feet, and which is built
 64 on a permanent chassis and designed to be used as a dwelling
 65 with or without a permanent foundation when connected to the
 66 required utilities, and includes the plumbing, heating, air
 67 conditioning, and electrical systems contained therein. In
 68 addition, the term includes any structure that meets all the
 69 requirements of this paragraph except for the size requirements
 70 and with respect to which the manufacturer voluntarily files a
 71 certification and complies with the standards established under
 72 this section. The term "manufactured home" also includes a
 73 mobile home that is subject to the National Manufactured Housing
 74 Construction and Safety Act of 1974, 42 U.S.C. s. 5401, et seq.
 75 The term "mobile home" does not include a commercial coach,
 76 factory-built housing, or a recreational vehicle.

77 (c) This section applies to the transactions described in
 78 paragraphs(a) and (b). The transferor or his or her agent is
 79 required by one or more of the following to disclose the
 80 property's location within an applicable zone:

81 1. A person who is either acting as an agent for a
 82 transferor of real property that is located within a special
 83 flood hazard area, which is any type Zone "A" or "V" as
 84 designated by the Federal Emergency Management Agency, or is the
 85 transferor, if he or she is acting without an agent, shall
 86 disclose to any prospective transferee the fact that the
 87 property is located within a special flood hazard area if:

88 a. The transferor, or the transferor's agent, has actual
 89 knowledge that the property is within a special flood hazard
 90 area; or



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91 b. The local jurisdiction has compiled a list, by parcel,
92 of properties that are within the special flood hazard area and
93 a notice has been posted at the office of the county planning
94 agency which identifies the location of the parcel list.

95 2. A person who is acting as an agent for a transferor of
96 real property that is located on soils with very severe
97 constraints for development, or the transferor, if he or she is
98 acting without an agent, shall disclose to any prospective
99 transferee the fact that the property is located on soils with
100 very severe constraints for development pursuant to maps issued
101 by the United States Department of Agriculture or other readily
102 available and officially adopted governmental maps and
103 information if:

104 a. The transferor, or the transferor's agent, has actual
105 knowledge that the property is on soils with very severe
106 constraints for development; or

107 b. The local jurisdiction has maps that identify
108 properties that are located on soils with very severe
109 constraints for development.

110 3. A person who is acting as an agent for a transferor of
111 real property that is located in an area impacted by sinkhole
112 activity, or the transferor if he or she is acting without an
113 agent, shall disclose to any prospective transferee the fact
114 that the property is located in an area impacted by sinkhole
115 activity pursuant to readily available and officially adopted
116 governmental maps and information if:

117 a. The transferor, or the transferor's agent, has actual
118 knowledge that the property is in an area impacted by sinkhole
119 activity; or



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120 b. The local jurisdiction has maps that identify
121 properties that are located in an area impacted by sinkhole
122 activity.

123 4. A person who is acting as an agent for a transferor of
124 real property that is located within a quarter of a mile of a
125 wellhead protection area, or the transferor if he or she is
126 acting without an agent, shall disclose to any prospective
127 transferee the fact that the property is located within a
128 quarter of a mile of a wellhead protection area according to
129 maps issued by the Department of Environmental Protection or a
130 water management district or other readily available and
131 officially adopted governmental maps and information if:

132 a. The transferor, or the transferor's agent, has actual
133 knowledge that the property is located within a quarter of a
134 mile of a wellhead protection area; or

135 b. The local jurisdiction has maps that identify
136 properties that are located within a quarter of a mile of a
137 wellhead protection area.

138 5. A person who is acting as an agent for a transferor of
139 real property that is located in a priority wetland zone, or the
140 transferor if he or she is acting without an agent, shall
141 disclose to any prospective transferee the fact that the
142 property is located in a priority wetland zone pursuant to maps
143 issued by the Fish and Wildlife Conservation Commission or other
144 readily available and officially adopted governmental maps and
145 information if:

146 a. The transferor, or the transferor's agent, has actual
147 knowledge that the property is located in a priority wetland
148 zone; or



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149 b. The local jurisdiction has maps that identify
150 properties that are located in a priority wetland zone.

151 6. A person who is acting as an agent for a transferor of
152 real property that is located in a strategic habitat
153 conservation area, or the transferor if he or she is acting
154 without an agent, shall disclose to any prospective transferee
155 the fact that the property is located in a strategic habitat
156 conservation area pursuant to maps issued by the Fish and
157 Wildlife Conservation Commission or other readily available and
158 officially adopted governmental maps and information if:

159 a. The transferor, or the transferor's agent, has actual
160 knowledge that the property is located in a strategic habitat
161 conservation area; or

162 b. The local jurisdiction has maps that identify
163 properties that are located in a strategic habitat conservation
164 area.

165 7. A person who is acting as an agent for a transferor of
166 real property that is located within 2 statute miles of an
167 airport influence area or a landing facility approved by the
168 Federal Aviation Administration, or the transferor if he or she
169 is acting without an agent, shall disclose to any prospective
170 transferee the fact that the property is located within 2
171 statute miles of an airport influence area or a landing facility
172 approved by the Federal Aviation Administration, the Department
173 of Transportation, Division of Aeronautics, and local land use
174 commission if:

175 a. The transferor, or the transferor's agent, has actual
176 knowledge that the property is located within 2 statute miles of
177 an airport influence area or a landing facility approved by the
178 Federal Aviation Administration; or



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179 b. The local jurisdiction has maps that identify
180 properties that are located within 2 statute miles of an airport
181 influence area or a landing facility approved by the Federal
182 Aviation Administration.

183 8. A person who is acting as an agent for a transferor of
184 real property that is located within a quarter of a mile of an
185 environmental hazard site, limited to filed governmental
186 reports, or the transferor if he or she is acting without an
187 agent, shall disclose to any prospective transferee the fact
188 that the property is located within a quarter of a mile of an
189 environmental hazard site, including leaking underground storage
190 tanks, solid waste landfills, incinerators or transfer stations,
191 national priority list sites, or CERCLIS sites under review by
192 the United States Environmental Protection Agency if:

193 a. The transferor, or the transferor's agent, has actual
194 knowledge that the property is located within a quarter of a
195 mile of an environmental hazard site; or

196 b. The local jurisdiction has maps that identify
197 properties that are within a quarter of a mile of an
198 environmental hazard site.

199 9. A person who is acting as an agent for a transferor of
200 real property that is located within a mapped radon gas
201 potential zone pursuant to maps issued by the United States
202 Environmental Protection Agency or other readily available and
203 officially adopted governmental maps and information shall
204 disclose to any prospective transferee the fact that the
205 property is located within a mapped radon gas potential zone if:

206 a. The transferor, or the transferor's agent, has actual
207 knowledge that the property is located in a mapped radon gas
208 potential zone; or



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209 b. The local jurisdiction has maps that identify
 210 properties that are mapped in a radon gas potential zone.

211 (d) Any waiver of the requirements of this section is void
 212 as against public policy.

213 (2)(a) This section does not apply to the following
 214 transfers:

215 1. Transfers pursuant to court order, including, but not
 216 limited to, transfers ordered by a probate court in
 217 administration of an estate, transfers pursuant to a writ of
 218 execution, transfers by any foreclosure sale, transfers by a
 219 trustee in bankruptcy, transfers by eminent domain, and
 220 transfers resulting from a decree for specific performance.

221 2. Transfers to a mortgagee by a mortgagor or successor in
 222 interest who is in default, transfers to a beneficiary of a deed
 223 of trust by a trustor or successor in interest who is in
 224 default, transfers by any foreclosure sale after default,
 225 transfers by any foreclosure sale after default in an obligation
 226 secured by a mortgage, transfers by a sale under a power of sale
 227 or any foreclosure sale under a decree of foreclosure after
 228 default in an obligation secured by a deed of trust or secured
 229 by any other instrument containing a power of sale, or transfers
 230 by a mortgagee or a beneficiary under a deed of trust who has
 231 acquired the real property at a sale conducted pursuant to a
 232 power of sale under a mortgage or deed of trust or a sale
 233 pursuant to a decree of foreclosure or has acquired the real
 234 property by a deed in lieu of foreclosure.

235 3. Transfers by a fiduciary in the course of the
 236 administration of a decedent's estate, guardianship,
 237 conservatorship, or trust.



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238 4. Transfers from one coowner to one or more other
 239 coowners.

240 5. Transfers made to a spouse, or to a person or persons
 241 in the lineal line of consanguinity of one or more of the
 242 transferors.

243 6. Transfers between spouses resulting from a judgment of
 244 dissolution of marriage or of legal separation of the parties or
 245 from a property settlement agreement incidental to that
 246 judgment.

247 7. Transfers or exchanges to or from any governmental
 248 entity.

249 (b) Transfers not subject to this section may be subject
 250 to other disclosure requirements. In transfers that are not
 251 subject to this section, agents may make required disclosures in
 252 a separate writing.

253 (3)(a) The disclosures required by this section are set
 254 forth in, and shall be made on a copy of, the following Property
 255 Identification Disclosure Statement:

256
 257 PROPERTY IDENTIFICATION DISCLOSURE STATEMENT

258
 259 This statement applies to the following property:

260 _____

261
 262 The transferor and his or her agent(s) disclose the following
 263 information with the knowledge that even though this is not a
 264 warranty, prospective transferees may rely on this information
 265 in deciding whether and on what terms to purchase the subject
 266 property.

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268 Transferor hereby authorizes any agent(s) representing any
 269 principal(s) in this action to provide a copy of this statement
 270 to any person or entity in connection with any actual or
 271 anticipated sale of the property.

272
 273 The following are representations made by the transferor and his
 274 or her agent(s) based on their knowledge and official maps and
 275 information prepared by the state and federal governments. This
 276 information is a disclosure and is not intended to be part of
 277 any contract between the transferee and transferor.

278
 279 THIS REAL PROPERTY LIES WITHIN THE FOLLOWING AREA(S):

280
 281 (1) A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V")
 282 designated by the Federal Emergency Management Agency.

283
 284 Yes _____ No _____ Do not know and information not available
 285 from local jurisdiction _____ Pending _____

286
 287 (2) ON SOILS WITH VERY SEVERE CONSTRAINTS FOR DEVELOPMENT,
 288 pursuant to maps issued by the United States Department of
 289 Agriculture or other readily available and officially adopted
 290 governmental maps and information.

291
 292 Yes _____ No _____ Do not know and information not available
 293 from local jurisdiction _____ Pending _____

294
 295 (3) AN AREA IMPACTED BY SINKHOLE ACTIVITY, pursuant to
 296 readily available and officially adopted governmental maps and
 297 information.



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Yes _____ No _____ Do not know and information not available
from local jurisdiction _____ Pending _____

(4) WITHIN A QUARTER OF A MILE OF A WELLHEAD PROTECTION
AREA, pursuant to maps issued by the Department of Environmental
Protection or a water management district or other readily
available or officially adopted governmental maps and
information.

Yes _____ No _____ Do not know and information not available
from local jurisdiction _____ Pending _____

(5) A PRIORITY WETLAND ZONE, pursuant to maps issued by
the Fish and Wildlife Conservation Commission or other readily
available and officially adopted governmental maps and
information.

Yes _____ No _____ Do not know and information not available
from local jurisdiction _____ Pending _____

(6) A STRATEGIC HABITAT CONSERVATION AREA, pursuant to
maps issued by the Fish and Wildlife Conservation Commission or
other readily available and officially adopted governmental maps
and information.

Yes _____ No _____ Do not know and information not available
from local jurisdiction _____ Pending _____



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327 (7) WITHIN TWO STATUTE MILES OF AN AIRPORT INFLUENCE AREA,
 328 approved by the Federal Aviation Administration, the Department
 329 of Transportation, Division of Aeronautics, and local land use
 330 commission or other readily available and officially adopted
 331 governmental maps and information.

332
 333 Yes _____ No _____ Do not know and information not available
 334 from local jurisdiction _____ Pending _____

336 (8) WITHIN A QUARTER OF A MILE OF AN ENVIRONMENTAL HAZARD
 337 SITE, including leaking underground storage tanks, solid waste
 338 landfills, incinerators or transfer stations, national priority
 339 list sites, and/or CERCLIS Sites under review by the United
 340 States Environmental Protection Agency.

341
 342 Yes _____ No _____ Do not know and information not available
 343 from local jurisdiction _____ Pending _____

344
 345 (9) WITHIN A MAPPED RADON GAS POTENTIAL ZONE, pursuant to
 346 maps issued by the United States Environmental Protection Agency
 347 or other readily available and officially adopted governmental
 348 maps and information.

349
 350 Yes _____ No _____ Do not know and information not available
 351 from local jurisdiction _____ Pending _____

352
 353 THESE ZONES MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY,
 354 TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

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356 THE MAPS AND INFORMATION ON WHICH THESE DISCLOSURES ARE BASED
 357 ESTIMATE WHERE THE APPLICABLE ZONES AND PROTECTED LANDS EXIST.
 358 THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY
 359 WILL BE AFFECTED BY A NATURAL OR ENVIRONMENTAL DISASTER.
 360 TRANSFeree(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL
 361 ADVICE REGARDING THESE AND OTHER HAZARDS AND PROTECTION ZONES
 362 THAT MAY AFFECT THE PROPERTY.

363
 364 Transferor represents that the information herein is true and
 365 correct to the best of the transferor's knowledge as of the date
 366 signed by the transferor.

367
 368
 369 Signature of Transferor _____ Date _____

370
 371
 372 Signature of Transferor _____ Date _____

373
 374 Agent represents that the information herein is true and correct
 375 to the best of the agent's knowledge as of the date signed by
 376 the agent.

377
 378 Signature of Transferor's Agent _____
 379 Date _____

380
 381 Signature of Transferor's Agent _____
 382 Date _____

383
 384 Transferee represents that he or she has read and understands
 385 this document.



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Signature of Transferee _____

Date _____

Signature of Transferee _____

Date _____

(b) If a map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in an applicable area, the transferor or transferor's agent shall mark "Yes" on the Property Identification Disclosure Statement. The transferor or transferor's agent may mark "No" on the Property Identification Disclosure Statement if he or she attaches a report prepared pursuant to paragraph (5)(c) which verifies that the property is not in the applicable zone. This paragraph does not limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subsection.

(c) If the Federal Emergency Management Agency has issued a Letter of Map Revision confirming that a property is no longer within a special flood hazard area, the transferor or transferor's agent may mark "No" on the Property Identification Disclosure Statement, even if the map has not yet been updated.

(d) If the Federal Emergency Management Agency has issued a Letter of Map Revision confirming that a property is within a special flood hazard area and the location of the letter has been posted then the transferor or transferor's agent shall mark "Yes" on the Property Identification Disclosure Statement, even if the map has not yet been updated.



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415 (e) The disclosure required by this section is a
416 disclosure only between the transferor, the transferor's agents,
417 and the transferee, and may not be used by any other party,
418 including, but not limited to, insurance companies, lenders, or
419 governmental agencies, for any purpose.

420 (f) In any transaction in which a transferor has accepted,
421 prior to the effective date of this section, an offer to
422 purchase, the transferor, or his or her agent, shall be deemed
423 to have complied with the requirements of paragraph (a) if the
424 transferor or agent delivers to the prospective transferee a
425 statement that includes substantially the same information and
426 warning as the Property Identification Disclosure Statement.

427 (4)(a) The transferor of any real property subject to this
428 section shall deliver to the prospective transferee the written
429 statement required by this section, as follows:

430 1. In the case of a sale, as soon as practicable before
431 transfer of title.

432 2. In the case of transfer by a real property sales
433 contract or by a lease together with an option to purchase, or a
434 ground lease coupled with improvements, as soon as practicable
435 before execution of the contract. For the purpose of this
436 subparagraph, "execution" means the making or acceptance of an
437 offer.

438 (b) The transferor shall indicate compliance with this
439 section either on the receipt for deposit, the real property
440 sales contract, the lease, any addendum attached thereto, or on
441 a separate document.

442 (c) If any disclosure, or any material amendment of any
443 disclosure, required to be made pursuant to this section is
444 delivered after the execution of an offer to purchase, the



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445 transferee shall have 3 days after delivery in person or 5 days
446 after delivery by deposit in the mail to terminate his or her
447 offer by delivery of a written notice of termination to the
448 transferor or the transferor's agent.

449 (5)(a) Neither the transferor nor any listing or selling
450 agent shall be liable for any error, inaccuracy, or omission of
451 any information delivered pursuant to this section if the error,
452 inaccuracy, or omission was not within the personal knowledge of
453 the transferor or the listing or selling agent, and was based on
454 information timely provided by public agencies or by other
455 persons providing information as specified in paragraph (c)
456 which is required to be disclosed pursuant to this section, and
457 ordinary care was exercised in obtaining and transmitting the
458 information.

459 (b) The delivery of any information required to be
460 disclosed by this section to a prospective transferee by a third
461 party providing information required to be disclosed pursuant to
462 this section shall be deemed to comply with the requirements of
463 this section and shall relieve the transferor or any listing or
464 selling agent of any further duty under this section with
465 respect to that item of information.

466 (c) The delivery of a report or opinion prepared by a
467 licensed engineer, land surveyor, or expert in locating the
468 applicable zones on readily available official governmental maps
469 and information concerning matters within the scope of the
470 professional's license or expertise is sufficient compliance for
471 application of the exemption provided by paragraph (a) if the
472 information is provided to the prospective transferee pursuant
473 to a request therefor, whether written or oral. In responding to
474 that request, an expert may indicate, in writing, an



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475 understanding that the information provided will be used in
476 fulfilling the requirements of subsection (3) and, if so, shall
477 indicate the required disclosures, or parts thereof, to which
478 the information being furnished is applicable. If that statement
479 is furnished, the expert is not responsible for any items of
480 information, or parts thereof, other than those expressly set
481 forth in the statement.

482 (d) A third party providing the information on behalf of
483 the transferor and the transferor's agent fulfilling the
484 requirements of subsection (3) to be disclosed by this section
485 shall maintain a minimum of \$20 million of insurance protection
486 to protect the transferor and the agents for any errors or
487 omissions made by the third party.

488 (6)(a) After a transferor and his or her agent comply with
489 subsection (3), they are relieved of further duty under this
490 section with respect to those items of information. The
491 transferor and his or her agent are not required to provide
492 notice to the transferee if the information provided
493 subsequently becomes inaccurate as a result of any governmental
494 action, map revision, changed information, or other act or
495 occurrence, unless the transferor or agent has actual knowledge
496 that the information has become inaccurate.

497 (b) If information disclosed in accordance with this
498 section is subsequently rendered inaccurate as a result of any
499 governmental action, map revision, changed information, or other
500 act or occurrence subsequent to the delivery of the required
501 disclosures, the inaccuracy resulting therefrom does not
502 constitute a violation of this section.

503 (7) Each disclosure required by this section and each act
504 that may be performed in making the disclosure shall be made in



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505 good faith. For purposes of this section, "good faith" means
506 honesty in fact in the conduct of the transaction.

507 (8) The specification of items for disclosure in this
508 section does not limit or abridge any obligation for disclosure
509 created by any other provision of law or that may exist in order
510 to avoid fraud, misrepresentation, or deceit in the transfer
511 transaction. The Legislature does not intend to affect the
512 existing obligations of the parties to a real estate contract,
513 or their agents, or to disclose any fact materially affecting
514 the value and desirability of the property, including, but not
515 limited to, the physical condition of the property and
516 previously received reports of physical inspection.

517 (9) Any disclosure made pursuant to this section may be
518 amended in writing by the transferor or his or her agent, but
519 the amendment shall be subject to subsection (4).

520 (10) Delivery of disclosures required by this section
521 shall be by personal delivery to the transferee or by mail to
522 the prospective transferee. For the purposes of this section,
523 delivery to the spouse of a transferee shall be deemed delivery
524 to the transferee, unless provided otherwise by contract.

525 (11) Any person or entity, other than a real estate
526 licensee licensed in this state and acting in the capacity of an
527 escrow agent for the transfer of real property subject to this
528 section, shall not be deemed the agent of the transferor or
529 transferee for purposes of the disclosure requirements of this
530 section unless the person or entity is empowered to so act by an
531 express written agreement to that effect. The extent of that
532 agency shall be governed by the written agreement.

533 (12)(a) If more than one licensed real estate broker is
534 acting as an agent in a transaction subject to this section, the



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535 broker who has obtained the offer made by the transferee shall,
536 except as otherwise provided in this section, deliver the
537 disclosure required by this section to the transferee, unless
538 the transferor has given other written instructions for
539 delivery.

540 (b) If a licensed real estate broker responsible for
541 delivering the disclosures under this section cannot obtain the
542 disclosure document required and does not have written assurance
543 from the transferee that the disclosure has been received, the
544 broker shall advise the transferee in writing of his or her
545 rights to the disclosure. A licensed real estate broker
546 responsible for delivering disclosures under this section shall
547 maintain a record of the action taken to effect compliance of
548 the transaction.

549 (13) A transfer subject to this section may not be
550 invalidated solely because of the failure of any person to
551 comply with any provision of this section. However, any person
552 who willfully or negligently violates or fails to perform any
553 duty prescribed by any provision of this section shall be liable
554 in the amount of actual damages suffered by a transferee.

555 (14)(a) As used in this section, the term "listing agent"
556 means an individual who has obtained a listing of property of
557 the kind in respect of which he or she is authorized by law to
558 act as an agent for compensation.

559 (b) As used in this section, the term "selling agent"
560 means an individual who acts in cooperation with a listing agent
561 and who sells, or finds and obtains a buyer for, the property.

562 Section 2. This act shall take effect July 1, 2003.