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CHAMBER ACTION

The Committee on Judiciary recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to sales disclosures; creating s. 475.423, F.S.; specifying the transactions that are subject to the requirements of the act; providing definitions; requiring that certain disclosures be made by the transferor or his or her agent with respect to real property located within a flood hazard area, an area with severe constraints for development, an area having sinkhole activity, a wellhead protection area, a priority wetland zone, a habitat conservation area, an airport influence area, an environmental hazard site, or a radon gas zone; providing that the waiver of such requirements is against public policy; providing certain exceptions; specifying the form to be used as the Property Identification Disclosure Statement; providing requirements for identifying information that accompanies the disclosure statement; prohibiting the use of the disclosure statement by certain entities other than the transferor, the transferor's agents, and the transferee; providing requirements for



29 delivery of the required disclosure statement; providing a
 30 limitation with respect to liability for errors,
 31 inaccuracy, or omissions; requiring a third party that
 32 provides information with respect to the disclosure
 33 statement to maintain a specified amount of insurance
 34 protection; providing that certain subsequent inaccuracies
 35 with respect to the information disclosed are not a
 36 violation of the act; requiring that disclosures be made
 37 in good faith; providing that the act does not limit or
 38 abridge other disclosures required by law; authorizing the
 39 amendment of a disclosure; providing for delivery of
 40 disclosures; providing requirements for the licensee or
 41 broker acting as an agent in a transaction subject to the
 42 act; specifying liability for willful or negligent
 43 violation or failure to perform; providing an effective
 44 date.

45

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

47

48 Section 1. Section 475.423, Florida Statutes, is created
 49 to read:

50 475.423 Property identification disclosure statement.--

51 (1)(a) Except as provided in subsection (2), this section
 52 applies to any transfer by sale, exchange, or installment land
 53 sale contract of residential properties, wherein one party
 54 agrees to convey title to real property to another party upon
 55 the satisfaction of specified conditions set forth in the
 56 contract and which does not require conveyance of title within 1



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57 year after the date of formation of the contract, lease with an
58 option to purchase, any other option to purchase, ground lease
59 coupled with improvements of any real property described in
60 paragraph (b), or residential stock cooperative, improved with
61 or consisting of not less than one or more than four dwelling
62 units.

63 (b) The transferor or his or her agent is required by one
64 or more of the following to disclose the property's location
65 within an applicable zone:

66 1. A person who is either acting as an agent for a
67 transferor of real property that is located within a special
68 flood hazard area, which is any type Zone "A" or "V" as
69 designated by the Federal Emergency Management Agency, or the
70 transferor, if he or she is acting without an agent, shall
71 disclose to any prospective transferee the fact that the
72 property is located within a special flood hazard area if:

73 a. The transferor, or the transferor's agent, has actual
74 knowledge that the property is within a special flood hazard
75 area; or

76 b. Other readily available and officially adopted
77 governmental information exists regarding the flood zone.

78 2. A person who is acting as an agent for a transferor of
79 real property that is located on soils with very severe
80 constraints for development, or the transferor, if he or she is
81 acting without an agent, shall disclose to any prospective
82 transferee the fact that the property is located on soils with
83 very severe constraints for development pursuant to maps issued
84 by the United States Department of Agriculture or other readily



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85 available and officially adopted governmental maps and
86 information if:

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

90 b. Other readily available and officially adopted
91 governmental information exists regarding the soils with very
92 severe constraints for development.

93 3. A person who is acting as an agent for a transferor of
94 real property that is located in an area impacted by sinkhole
95 activity, or the transferor, if he or she is acting without an
96 agent, shall disclose to any prospective transferee the fact
97 that the property is located in an area impacted by sinkhole
98 activity pursuant to readily available and officially adopted
99 governmental maps and information if:

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

103 b. Other readily available and officially adopted
104 governmental information exists regarding sinkhole activity.

105 4. A person who is acting as an agent for a transferor of
106 real property that is located within a quarter of a mile of a
107 wellhead protection area, or the transferor, if he or she is
108 acting without an agent, shall disclose to any prospective
109 transferee the fact that the property is located within a
110 quarter of a mile of a wellhead protection area according to
111 maps issued by the Department of Environmental Protection or a



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112 water management district or other readily available and
113 officially adopted governmental maps and information if:

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

117 b. Other readily available and officially adopted
118 governmental information exists regarding a wellhead protection
119 area.

120 5. A person who is acting as an agent for a transferor of
121 real property that is located in a priority wetland zone, or the
122 transferor, if he or she is acting without an agent, shall
123 disclose to any prospective transferee the fact that the
124 property is located in a priority wetland zone pursuant to maps
125 issued by the Fish and Wildlife Conservation Commission or other
126 readily available and officially adopted governmental maps and
127 information if:

128 a. The transferor, or the transferor's agent, has actual
129 knowledge that the property is located in a priority wetland
130 zone; or

131 b. Other readily available and officially adopted
132 governmental information exists regarding a priority wetland
133 zone.

134 6. A person who is acting as an agent for a transferor of
135 real property that is located in a strategic habitat
136 conservation area, or the transferor, if he or she is acting
137 without an agent, shall disclose to any prospective transferee
138 the fact that the property is located in a strategic habitat
139 conservation area pursuant to maps issued by the Fish and



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140 Wildlife Conservation Commission or other readily available and
141 officially adopted governmental maps and information if:

142 a. The transferor, or the transferor's agent, has actual
143 knowledge that the property is located in a strategic habitat
144 conservation area; or

145 b. Other readily available and officially adopted
146 governmental information exists regarding a strategic habitat
147 conservation area.

148 7. A person who is acting as an agent for a transferor of
149 real property that is located within 2 statute miles of an
150 airport influence area or a landing facility approved by the
151 Federal Aviation Administration, or the transferor, if he or she
152 is acting without an agent, shall disclose to any prospective
153 transferee the fact that the property is located within 2
154 statute miles of an airport influence area or a landing facility
155 approved by the Federal Aviation Administration, the Department
156 of Transportation, Division of Aeronautics, and the local land
157 use commission if:

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

162 b. Other readily available and officially adopted
163 governmental information exists regarding an airport influence
164 area or a landing facility approved by the Federal Aviation
165 Administration.

166 8. A person who is acting as an agent for a transferor of
167 real property that is located within a quarter of a mile of an



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168 environmental hazard site, limited to filed governmental
169 reports, or the transferor, if he or she is acting without an
170 agent, shall disclose to any prospective transferee the fact
171 that the property is located within a quarter of a mile of an
172 environmental hazard site, including leaking underground storage
173 tanks, solid waste landfills, incinerators or transfer stations,
174 national priority list sites, or CERCLIS sites under review by
175 the United States Environmental Protection Agency if:

176 a. The transferor, or the transferor's agent, has actual
177 knowledge that the property is located within a quarter of a
178 mile of an environmental site; or

179 b. Other readily available and officially adopted
180 governmental information exists regarding environmental hazard
181 sites.

182 9. A person who is acting as an agent for a transferor of
183 real property that is located within a mapped radon gas
184 potential zone pursuant to maps issued by the United States
185 Environmental Protection Agency or other readily available and
186 officially adopted governmental maps and information, or the
187 transferor, if he or she is acting without an agent, shall
188 disclose to any prospective transferee the fact that the
189 property is located within a mapped radon gas potential zone if:

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

193 b. Other readily available and officially adopted
194 governmental information exists regarding radon gas.



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195 (c) Any waiver of the requirements of this section is void
196 as against public policy.

197 (2)(a) This section does not apply to the following
198 transfers:

199 1. Transfers pursuant to court order, including, but not
200 limited to, transfers ordered by a probate court in
201 administration of an estate, transfers pursuant to a writ of
202 execution, transfers by any foreclosure sale, transfers by a
203 trustee in bankruptcy, transfers by eminent domain, and
204 transfers resulting from a decree for specific performance.

205 2. Transfers to a mortgagee by a mortgagor or successor in
206 interest who is in default, transfers to a beneficiary of a deed
207 of trust by a trustor or successor in interest who is in
208 default, transfers by any foreclosure sale after default,
209 transfers by any foreclosure sale after default in an obligation
210 secured by a mortgage, transfers by a sale under a power of sale
211 or any foreclosure sale under a decree of foreclosure after
212 default in an obligation secured by a deed of trust or secured
213 by any other instrument containing a power of sale, or transfers
214 by a mortgagee or a beneficiary under a deed of trust who has
215 acquired the real property at a sale conducted pursuant to a
216 power of sale under a mortgage or deed of trust or a sale
217 pursuant to a decree of foreclosure or has acquired the real
218 property by a deed in lieu of foreclosure.

219 3. Transfers by a fiduciary in the course of the
220 administration of a decedent's estate, guardianship,
221 conservatorship, or trust.



222 4. Transfers from one coowner to one or more other
 223 coowners.

224 5. Transfers made to a spouse or to a person or persons in
 225 the lineal line of consanguinity of one or more of the
 226 transferors.

227 6. Transfers between spouses resulting from a judgment of
 228 dissolution of marriage or of legal separation of the parties or
 229 from a property settlement agreement incidental to that
 230 judgment.

231 7. Transfers or exchanges to or from any governmental
 232 entity.

233 8. Transfers by sale, resale, exchange, or installment
 234 land sales contract of any manufactured mobile home, mobile home
 235 park, or residential manufactured building.

236 (b) Transfers not subject to this section may be subject
 237 to other disclosure requirements. In transfers that are not
 238 subject to this section, agents may make required disclosures in
 239 a separate writing.

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

243
 244 PROPERTY IDENTIFICATION DISCLOSURE STATEMENT

245
 246 This statement applies to the following property:

247 _____

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249 The transferor and his or her agent(s) disclose the following
 250 information with the knowledge that even though this is not a
 251 warranty, prospective transferees may rely on this information
 252 in deciding whether and on what terms to purchase the subject
 253 property.

254
 255 Transferor hereby authorizes any agent(s) representing any
 256 principal(s) in this action to provide a copy of this statement
 257 to any person or entity in connection with any actual or
 258 anticipated sale of the property.

259
 260 The following are representations made by the transferor and his
 261 or her agent(s) based on their knowledge and official maps and
 262 information prepared by the state and federal governments. This
 263 information is a disclosure and is not intended to be part of
 264 any contract between the transferee and transferor.

265
 266 THIS REAL PROPERTY LIES WITHIN THE FOLLOWING AREA(S):

267
 268 (1) A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V")
 269 designated by the Federal Emergency Management Agency.

270
 271 Yes _____ No _____ Do not know and information not available
 272 _____ Pending _____

273
 274 (2) ON SOILS WITH VERY SEVERE CONSTRAINTS FOR DEVELOPMENT
 275 pursuant to maps issued by the United States Department of



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276 Agriculture or other readily available and officially adopted
 277 governmental maps and information.

278
 279 Yes _____ No _____ Do not know and information not available
 280 _____ Pending _____

281
 282 (3) AN AREA IMPACTED BY SINKHOLE ACTIVITY pursuant to
 283 readily available and officially adopted governmental maps and
 284 information.

285
 286 Yes _____ No _____ Do not know and information not available
 287 _____ Pending _____

288
 289 (4) WITHIN A QUARTER OF A MILE OF A WELLHEAD PROTECTION
 290 AREA pursuant to maps issued by the Department of Environmental
 291 Protection or a water management district or other readily
 292 available and officially adopted governmental maps and
 293 information.

294
 295 Yes _____ No _____ Do not know and information not available
 296 _____ Pending _____

297
 298 (5) A PRIORITY WETLAND ZONE pursuant to maps issued by the
 299 Fish and Wildlife Conservation Commission or other readily
 300 available and officially adopted governmental maps and
 301 information.

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303 Yes _____ No _____ Do not know and information not available
 304 _____ Pending _____

305
 306 (6) A STRATEGIC HABITAT CONSERVATION AREA pursuant to maps
 307 issued by the Fish and Wildlife Conservation Commission or other
 308 readily available and officially adopted governmental maps and
 309 information.

310
 311 Yes _____ No _____ Do not know and information not available
 312 _____ Pending _____

313
 314 (7) WITHIN 2 STATUTE MILES OF AN AIRPORT INFLUENCE AREA OR
 315 A LANDING FACILITY approved by the Federal Aviation
 316 Administration.

317
 318 Yes _____ No _____ Do not know and information not available
 319 _____ Pending _____

320
 321 (8) WITHIN A QUARTER OF A MILE OF AN ENVIRONMENTAL HAZARD
 322 SITE, including leaking underground storage tanks, solid waste
 323 landfills, incinerators or transfer stations, national priority
 324 list sites, and/or CERCLIS sites under review by the United
 325 States Environmental Protection Agency.

326
 327 Yes _____ No _____ Do not know and information not available
 328 _____ Pending _____

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330 (9) WITHIN A MAPPED RADON GAS POTENTIAL ZONE pursuant to
 331 maps issued by the United States Environmental Protection Agency
 332 or other readily available and officially adopted governmental
 333 maps and information.

334
 335 Yes _____ No _____ Do not know and information not available
 336 _____ Pending _____

337
 338 THESE ZONES MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY,
 339 TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

340
 341 THE MAPS AND INFORMATION ON WHICH THESE DISCLOSURES ARE BASED
 342 ARE ESTIMATES WHERE THE APPLICABLE ZONES AND PROTECTED LANDS
 343 EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A
 344 PROPERTY WILL BE AFFECTED BY A NATURAL OR ENVIRONMENTAL
 345 DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN
 346 PROFESSIONAL ADVICE REGARDING THESE AND OTHER HAZARDS AND
 347 PROTECTION ZONES THAT MAY AFFECT THE PROPERTY.

348
 349 Transferor represents that the information herein is true and
 350 correct to the best of the transferor's knowledge as of the date
 351 signed by the transferor.

352
 353 Signature of Transferor: _____ Date: _____

354
 355 Signature of Transferor: _____ Date: _____

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357 Agent represents that the information herein is true and correct
 358 to the best of the agent's knowledge as of the date signed by
 359 the agent.

361 Signature of Transferor's Agent: _____ Date: _____

363 Signature of Transferor's Agent: _____ Date: _____

365 Transferee represents that he or she has read and understands
 366 this document.

368 Signature of Transferee: _____ Date: _____

370 Signature of Transferee: _____ Date: _____

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



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

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

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

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

403 1. In the case of a sale, as soon as practicable before
404 transfer of title.

405 2. In the case of transfer by a real property sales
406 contract or by a lease together with an option to purchase, or a
407 ground lease coupled with improvements, as soon as practicable
408 before execution of the contract. For the purpose of this
409 subparagraph, "execution" means the making or acceptance of an
410 offer.



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

415 (c) If any disclosure, or any material amendment of any
416 disclosure, required to be made pursuant to this section is
417 delivered after the execution of an offer to purchase, the
418 transferee shall have 3 days after delivery in person or 5 days
419 after delivery by deposit in the mail to terminate his or her
420 offer by delivery of a written notice of termination to the
421 transferor or the transferor's agent.

422 (5)(a) Neither the transferor nor any listing or selling
423 agent shall be liable for any error, inaccuracy, or omission of
424 any information delivered pursuant to this section if the error,
425 inaccuracy, or omission was not within the personal knowledge of
426 the transferor or the listing or selling agent and was based on
427 information timely provided by public agencies or by other
428 persons providing information as specified in paragraph (c)
429 which is required to be disclosed pursuant to this section and
430 if ordinary care was exercised in obtaining and transmitting the
431 information.

432 (b) The delivery of any information required to be
433 disclosed by this section to a prospective transferee by a third
434 party providing information required to be disclosed pursuant to
435 this section shall be deemed to comply with the requirements of
436 this section and shall relieve the transferor or any listing or
437 selling agent of any further duty under this section with
438 respect to that item of information.



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439 (c) The delivery of a report or opinion prepared by a
440 licensed engineer, land surveyor, or expert in locating the
441 applicable zones on readily available official governmental maps
442 and information concerning matters within the scope of the
443 professional's license or expertise is sufficient compliance for
444 application of the exemption provided by paragraph (a) if the
445 information is provided to the prospective transferee pursuant
446 to a request therefor, whether written or oral. In responding to
447 that request, an expert may indicate, in writing, an
448 understanding that the information provided will be used in
449 fulfilling the requirements of subsection (3) and, if so, shall
450 indicate the required disclosures, or parts thereof, to which
451 the information being furnished is applicable. If that statement
452 is furnished, the expert is not responsible for any items of
453 information, or parts thereof, other than those expressly set
454 forth in the statement.

455 (d) A third party providing the information on behalf of
456 the transferor and the transferor's agent fulfilling the
457 requirements of subsection (3) to be disclosed by this section
458 shall maintain a minimum of \$20 million of insurance protection
459 to protect the transferor and the transferor's agent for any
460 errors or omissions made by the third party.

461 (6)(a) After a transferor and his or her agent comply with
462 subsection (3), they are relieved of further duty under this
463 section with respect to those items of information. The
464 transferor and his or her agent are not required to provide
465 notice to the transferee if the information provided
466 subsequently becomes inaccurate as a result of any governmental



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467 action, map revision, changed information, or other act or
468 occurrence, unless the transferor or the transferor's agent has
469 actual knowledge that the information has become inaccurate.

470 (b) If information disclosed in accordance with this
471 section is subsequently rendered inaccurate as a result of any
472 governmental action, map revision, changed information, or other
473 act or occurrence subsequent to the delivery of the required
474 disclosures, the inaccuracy resulting therefrom does not
475 constitute a violation of this section.

476 (7) Each disclosure required by this section and each act
477 that may be performed in making the disclosure shall be made in
478 good faith. For purposes of this section, "good faith" means
479 honesty in fact in the conduct of the transaction.

480 (8) The specification of items for disclosure in this
481 section does not limit or abridge any obligation for disclosure
482 created by any other provision of law or that may exist in order
483 to avoid fraud, misrepresentation, or deceit in the transfer
484 transaction. The Legislature does not intend to affect the
485 existing obligations of the parties to a real estate contract,
486 or their agents, or to disclose any fact materially affecting
487 the value and desirability of the property, including, but not
488 limited to, the physical condition of the property and
489 previously received reports of physical inspection.

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

493 (10) Delivery of disclosures required by this section
494 shall be by personal delivery to the transferee or by mail to



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495 the prospective transferee. For the purposes of this section,
496 delivery to the spouse of a transferee shall be deemed delivery
497 to the transferee, unless provided otherwise by contract.

498 (11) Any person or entity, other than a real estate
499 licensee licensed in this state and acting in the capacity of an
500 escrow agent for the transfer of real property subject to this
501 section, shall not be deemed the agent of the transferor or
502 transferee for purposes of the disclosure requirements of this
503 section unless the person or entity is empowered to so act by an
504 express written agreement to that effect. The extent of that
505 agency shall be governed by the written agreement.

506 (12)(a) If more than one licensed real estate broker is
507 acting as an agent in a transaction subject to this section, the
508 broker who has obtained the offer made by the transferee shall,
509 except as otherwise provided in this section, deliver the
510 disclosure required by this section to the transferee, unless
511 the transferor has given other written instructions for
512 delivery.

513 (b) If a licensed real estate broker responsible for
514 delivering the disclosure under this section cannot obtain the
515 disclosure document required and does not have written assurance
516 from the transferee that the disclosure has been received, the
517 broker shall advise the transferee in writing of his or her
518 rights to the disclosure. A licensed real estate broker
519 responsible for delivering disclosures under this section shall
520 maintain a record of the action taken to effect compliance of
521 the transaction.



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522 (13) A transfer subject to this section may not be
523 invalidated solely because of the failure of any person to
524 comply with any provision of this section. However, any person
525 who willfully or negligently violates or fails to perform any
526 duty prescribed by any provision of this section shall be liable
527 in the amount of actual damages suffered by a transferee.

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

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

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