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**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
LEGISLATIVE AFFAIRS OFFICE  
BILL ANALYSIS FORM**

DATE February 27, 1997

BILL # HB 339

SPONSOR Rep Arnall

**RECEIVED**

SUBJECT Real Estate Transactions

MAR 03 1997

BPR ANALYST ASSIGNED

OFFICE

**Business Regulation &  
Consumer Affairs**

EFFECTIVE DATE October 1, 1997

COMPANION BILL(S) SB 82

**I SUMMARY OF LEGISLATION**

A. STATUTES AFFECTED Chapter 475 19 2824

B PRESENT SITUATION Currently real estate licensees may act as agents for the buyer, seller or as disclosed dual agents Transaction brokerage is also permitted Disclosure of agency status is rather complex and there is considerable confusion on the part of licensees and the public as to who represents whom and when representation occurs as well as when it changes and what specific duties are owed to whom

C EFFECT OF PROPOSED CHANGES The changes would clarify the duties of a single agent and of a transaction broker These duties are to be incorporated in the disclosure to the client and the customer There will no longer be disclosed dual agents Exemptions from disclosure are permitted at 'open houses', unanticipated casual encounters, and responding to general factual questions from prospective buyers, sellers or customers Agency disclosure is limited only for sales of residential property transactions and occurs at the first contact between a licensee and a prospective buyer or seller Notice of non-representation is specifically required to place the customer on notice The required format is statutorily specified The authorized brokerage arrangements - transaction and single agent (buyer or seller) - are also clearly defined and their duties are required to be disclosed to the clients in a format required by statute A transition from single agency to transaction brokerage is permitted by statute This transition notice is also statutorily specified and requires the written consent of the principal-client

II FISCAL IMPACT (Please answer the narrative questions in detail If there is a fiscal impact, return to Legislative Affairs and we will have the Planning and Budget office fill in the numbers based on your response )

A Will this bill have a fiscal impact on the department, negative or positive? If so, explain

The bill will have no fiscal impact

B Will the bill affect workload, require additional positions, staffing, equipment, etc? If so, explain Provide # of FTEs and their classification, whether the positions will need to travel and how often, type of equipment, any one-time expenses, space requirements, etc

No additional FTE anticipated

C Will the bill increase or decrease the number of licensees? If so, how many?

It should have no effect

D Will the bill affect fees? If so, identify number and types of fees required

It should not have an effect

E Identify the funding source (i.e. fees, taxes, general revenue) to cover any fiscal impact created by this bill and what trust fund requires budget authority? N/A

F Will this bill affect any other departmental functions, i.e. complaints, investigations, systems, legal, etc? Please identify

It will only impact the Division of Real Estate

G Please provide any additional information you feel could possibly be relevant to the fiscal analysis of this bill, which has not been discussed above

III FISCAL WORKSHEET (Please fill out this worksheet if this bill has a fiscal impact and you have the correct numbers available to you. It will then be reviewed by the Budget office. If you do not have numbers to fill in here, it will be done by the Budget office, if necessary.)

#### A EXPENDITURES

Funding Source (Trust Fund) N/A

<u>Non-recurring Effects</u>	<u>FY 97-98</u>	<u>FY 98-99</u>	<u>FY 99-00</u>
Operating Capital Outlay	\$	\$	\$
Other Personal Services	\$	\$	\$
Other (identify)	\$	\$	\$
Subtotal	\$	\$	\$
<u>Recurring Effects:</u>			
Salaries/ Benefits (# of FTE's)	\$	\$	\$
Expenses	\$	\$	\$
Other (identify)	\$	\$	\$
Subtotal	\$	\$	\$
TOTAL EXPENDITURES	\$	\$	\$

B REVENUES	<u>FY 97-98</u>	<u>FY 98-99</u>	<u>FY 99-00</u>
License Fees	\$	\$	\$
Taxes	\$	\$	\$
Other (identify)	\$	\$	\$
<b>TOTAL REVENUES</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

C Long Run Effects Other Than Normal Growth

IV IMPACT (FISCAL OR OTHERWISE) ON

- A STATE N/A
- B LOCAL GOVERNMENT N/A
- C PRIVATE SECTOR Would change the current disclosure of agency and simplify the process for licensees and customers.
- D PUBLIC Would change the disclosure for customers to clarify agency representation

V ADMINISTRATIVE IMPACT

- A Will this bill require the promulgation of additional rules? By whom? Explain  
  
The bill would require that existing rules on agency be modified to comply with the changes in this statute
- B Does this bill create a board, council, commission, etc ? If so, who is required to make the appointments? No

VI COMMENTS, CONCERNS, AND RECOMMENDED CHANGES

A DIVISION/BOARD (If more than one Division has reviewed this bill, please list each Division with their comments)

This bill is a result of a three-part compromise between the Florida Real Estate Commission, the Florida Association of Realtors and the Department

B PLANNING & BUDGET

C GENERAL COUNSEL

VII PREPARED BY

Name Henry Solares Title Director

VIII REVISED BY

Name Ashley Grassia

Date 02/27/97

IX APPROVED BY

A handwritten signature in black ink, appearing to read 'Ch. Kent', is written over the text 'APPROVED BY'.

LEGISLATIVE AFFAIRS

g \forms\barf.wpd 1/24/97



A "disclosed dual agent" means a broker who works as an agent for both the seller and the buyer. The broker must first obtain the informed consent in writing of all parties to the transaction to act as a disclosed dual agent. The disclosed dual agent has all the duties of a fiduciary except full disclosure between buyer and seller.

A "transaction broker" means a broker who facilitates a brokerage transaction between a buyer and a seller but does not affirmatively represent either as an agent. No fiduciary duties exist except for the duty to account, and the duty to use skill, care, and diligence. A broker's role as a transaction broker must be fully disclosed in writing to the buyer and the seller.

Chapter 475, part I, F.S., was amended in 1994 to authorize the "transaction broker" and "disclosed dual agent" forms of representation for real estate professionals, in addition to the traditional "single agent" relationship. Since the enactment of that law, FREC has struggled to adopt rules that reflect the intent of the statute and provide sufficient clarity concerning the obligations of the real estate professional under the various forms of authorized relationships. Current FREC rules regarding agency disclosure for real estate professionals working in the capacity of a single agent, disclosed dual agent, or transaction broker are found at 61J2-10.036 & 10.037, Florida Administrative Code. The agency disclosure requirements apply to both commercial and residential transactions.

In addition to the provisions of ch. 475, F.S., the duties and obligations of real estate professionals are in part determined by the common law of agency, as set forth in judicial decisions. *Black's Law Dictionary* defines the term "agency" to mean a relationship between two persons where one (the agent) may act on behalf of the other (the principal) and bind the principal by words or actions. Case law also addresses the disclosures required of sellers and their agents in real estate transactions. In Florida, the applicable case law on required disclosures in residential real estate transactions imposes a duty on the seller of real property to disclose all facts materially affecting the value of the property which are not readily observable and are not known to the buyer (*Johnson v. Davis*, 480 So.2d 625 (Fla. 1985)).

### III. Effect of Proposed Changes:

The bill creates new ss. 475.270 - 475.280, F.S., designated as the "Brokerage Relationship Disclosure Act." The purpose of the act, as set forth in s. 475.272, F.S., is to eliminate confusion and provide a better understanding of the role of real estate professionals in a real estate transaction. To further this goal, the section expressly revokes "disclosed dual agency" as an authorized form of representation by a real estate licensee in Florida. The only forms of representation authorized by the act are "single agent" and "transaction broker." In addition, the section requires real estate licensees to disclose to customers upon first contact in a residential real estate transaction that they will not be represented unless they specifically engage a licensee in an authorized form of representation.

Section 475.272, F.S., provides that a single agent may represent either the seller or buyer in a real estate transaction, but not both. A transaction broker provides a limited form of nonfiduciary

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representation to the buyer, the seller, or both in a real estate transaction. Section 475.274, F.S., specifically provides that the designated authorized brokerage relationships apply to all real estate transactions, both commercial and residential. However, the disclosure requirements apply only to residential real estate transactions.

A "residential sale" is defined in s. 475.276, F.S., as the sale of improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or fewer, or the sale of agricultural property of ten acres or less. The section specifically states that the disclosure provisions do not apply to nonresidential transactions, the rental or lease of real property (unless an option to purchase is given), auctions, appraisals, and dispositions of interests in business enterprises or business opportunities.

Section 475.276, F.S., sets forth the notice requirements for residential real estate transactions. A licensee must provide written notice of nonrepresentation at first contact with a potential buyer or seller, unless the licensee knows that the potential buyer or seller is already represented by a single agent or transaction broker. The section also provides for oral notice, with subsequent written notice, if first contact is over the telephone or in some other manner that does not allow the licensee to provide the required written notice.

Section 475.276, F.S., prescribes the required form of the written notice of nonrepresentation, including the format and contents of the notice. The notice must state that the licensee does not represent the potential seller or buyer and that such representation should not be assumed unless a licensee is engaged by the individual in an authorized broker relationship. The notice must also advise the potential seller or buyer not to disclose any information the individual desires to be confidential until a decision on representation is reached.

Section 475.278, F.S., sets forth the parameters of single agent and transaction broker relationships. Licensees are specifically prohibited from acting as disclosed or nondisclosed dual agents. A dual agent is defined to mean a broker who represents both the seller and buyer as a fiduciary in a real estate transaction.

A licensee is not prohibited from changing from one brokerage relationship to another, provided consent is obtained from the buyer or seller, or both as appropriate, before the change is made. The required disclosure of duties must also be made to the buyer or seller before the change occurs. The section states that a customer is not required to enter into a brokerage relationship with any real estate licensee.

Section 475.278, F.S., describes the transaction brokerage relationship as a limited form of representation of a buyer or seller, or both, in a real estate transaction in which the transaction broker does not represent either the buyer or seller in a fiduciary capacity. The section sets forth the duties of a transaction broker, including: honest and fair dealing; the accounting for all funds; the use of skill, care and diligence; the disclosure of all known facts that materially affect the value of property and are not readily observable to the buyer; the presentation of all offers and counteroffers in a timely manner; and the preservation of limited confidentiality, unless waived



in writing by a party. This limited confidentiality encompasses disclosure that the seller will accept less than the asking price, that the buyer will pay more than the price submitted in a written offer, the motivation of any party for selling or buying property, that a seller or buyer will agree to different financing terms, or any other information the transaction broker has been requested to keep confidential.

Section 475.278, F.S., requires a transaction broker to fully describe and disclose in writing, either as separate document or a part of another document, the licensee's role in the transaction. The disclosure must be made before, or simultaneous with, entering into a listing agreement or agreement for representation. The section sets forth the format for the disclosure document, as well as the contents. The disclosure must include a description of the duties of a transaction broker as well as the limitations of this form of brokerage relationship, that is, that the seller or buyer is not responsible for the acts of the licensee and that the licensee's role is to facilitate the transaction, not to represent one party to the detriment of the other.

Section 475.278, F.S., also enumerates the duties of a licensee in a single agent relationship, including: honest and fair dealing; loyalty; confidentiality; obedience; full disclosure; the accounting for all funds; skill, care, and diligence in the transaction; and the presentation of all offers and counteroffers in a timely manner. The section requires a single agent to describe or disclose these duties in writing. The disclosure must be made at the same point in the transaction as required of a transaction broker, with the same format requirements.

Section 475.278, F.S., allows a single agent to change to a transaction broker at any time during the relationship with a customer, if certain requirements are met. To change to a transaction broker a single agent must provide disclosure of the intent to change and must obtain the consent of the principal (i.e., the seller or buyer) prior to changing the relationship. The section also sets forth requirements for a licensee providing services in a real estate transaction when there is no brokerage relationship. The duties of a licensee when there is no brokerage relationship are: honest and fair dealing; disclosure of all known facts that materially affect the value of property which are not readily observable to the buyer; and the accounting for all funds entrusted to the licensee.

Section 475.280, F.S., authorizes FREC to adopt rules establishing disciplinary guidelines, notices of noncompliance, and citations for violations of the act.

The bill amends s. 475.01, F.S., to add definitions of relevant terms, including "customer," "first contact," and "principal" and to amend the existing definition of "transaction broker" to reflect the bill's provisions. In addition, the definitions of "buyer," "seller," and "disclosed dual agency" are deleted to conform to the changes made in the bill.

The bill also amends s. 475.25, F.S., relating to grounds for disciplinary action against licensees to reflect the new brokerage relationships and disclosure requirements. Section 475.5015, F.S., relating to records' retention requirements for licensees, is amended to require disclosure

documents to be retained in accordance with the provisions of that section. Finally, s. 468.383, F.S., is amended to correct a cross-reference.

The bill provides an effective date of October 1, 1997.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

To the extent the bill's provisions help clear up confusion about authorized broker relationships and the appropriate duties and obligations of each, customers and real estate professionals will benefit. Real estate professionals, in particular, may benefit from a clear statutory definition of their duties through a decrease in successful litigation by customers who are dissatisfied with the outcome of a residential real property transaction.

**C. Government Sector Impact:**

FREC will incur minimal costs to adopt the rules required by bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In 1996, legislation was proposed, but not ultimately adopted, in an effort to resolve the confusion created by the 1994 law and subsequent rules. During the 1996 -1997 interim, representatives of the Florida Association of Realtors, FREC, and DBPR met in the form of the Real Estate Agency Work Group to develop a mutually acceptable solution to the problem of the appropriate relationships between real estate professionals and their customers. This bill reflects the proposal developed by the Real Estate Agency Work Group.

**VIII. Amendments:**

#1 by Regulated Industries:

Technical amendment in the title to correct an erroneous statutory reference.

#2 by Regulated Industries:

Replaces the word "by" with the word "with" for clarity and grammatical correctness.





Bill No. SB 82

Amendment No. 2

Senate

CHAMBER ACTION

House

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The Committee on Regulated Industries recommended the following amendment:

**Senate Amendment**

In title, on page 1, line 19, delete s. 475.015

and insert: s. 475.5015

STORAGE NAME: h0339z.rpp  
DATE: May 7, 1997

**\*\*FAILED TO PASS THE LEGISLATURE\*\***  
**\*\*SEE FINAL ACTION SECTION\*\***

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
REAL PROPERTY & PROBATE  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/CS/HB 339

**RELATING TO:** Real Estate Transactions

**SPONSOR(S):** Committee on Business Regulation and Consumer Affairs, Committee on Real Property & Probate, and Representatives Arnall and Posey

**STATUTE(S) AFFECTED:** Amending sections 475.01, 475.25, 475.5015, and 468.383, F.S., and creating sections 475.270, 475.272, 475.274, 475.276, 475.278, and 475.280, F.S.

**COMPANION BILL(S):** CS/SB 82 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
- (2) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 4 NAYS 0
- (3)
- (4)
- (5)

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**I. SUMMARY:**

CS/CS/HB 339 amends Chapter 475, F.S., to create the "Brokerage Relationship Disclosure Act." This act provides the authorized relationships between real estate brokers and customers and the required disclosures for residential real estate transactions relative to each relationship. In general, agency disclosure is required at the first contact between a licensee and prospective buyer or seller of real property.

Changes within this bill clarify the duties of single agents and transaction brokers. Further, the bill abrogates dual agency as a form of representation and replaces it with transaction brokerage.

This bill does not appear to have a fiscal impact on state or local governments.

**The House took up and passed the Senate companion, SB 82, which was substantially similar to CS/CS/HB 339. The Governor signed the bill May 7, 1997. See 97-42 Laws of Florida.**

**II. SUBSTANTIVE RESEARCH:**

**A. PRESENT SITUATION:**

Chapter 475, F.S., provides regulation of real estate brokers, salespersons, and schools in this state.

In 1994, the Legislature amended Chapter 475, F.S., to authorize the transaction broker and disclosed dual agent forms of representation for real estate professionals, in addition to the traditional single agent relationship. Despite current disclosure requirements, considerable confusion remains on the part of licensees and consumers as to the scope and nature of the various types of agency.

During the 1996 interim, representatives of the Florida Association of Realtors, Florida Real Estate Commission, and the Department of Business & Professional Regulation met in the form of the Real Estate Agency Work Group to develop a solution to the problem of the appropriate relationships between real estate professionals and their customers. This bill reflects the proposal developed by the Real Estate Agency Work Group.

According to section 475.01, F.S.:

- \* A fiduciary is a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence;
- \* A single agent is a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction;
- \* A disclosed dual agent is a broker who works as an agent for both the buyer and seller. The broker must obtain the informed consent in writing of all parties to the transaction to be a disclosed dual agent. The disclosed dual agent has all the duties of a fiduciary except full disclosure between the buyer and seller.
- \* A transaction broker is a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent, and no fiduciary duties exist except for the duty of accounting and the duty to use skill, care, and diligence. However, the transaction broker must treat the buyer and seller with honesty and fairness and must disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller. The broker's role as a transaction broker must be fully disclosed in writing to the buyer and seller.

Section 475.02, F.S., creates the Florida Real Estate Commission (FREC), within the Department of Business & Professional Regulation. Section 475.05, F.S., permits the FREC to enact rules and decide questions of practice arising in the proceedings before it. The FREC has had difficulty in adopting rules to reflect the intent of the statute regarding the obligations of the real estate professionals under the different forms of authorized relationships. See Rules 61J2-10.036 and 10.037, Florida Administrative Code.

Defining the disclosure requirements for real estate professionals has been an ongoing problem. The duties and obligations of real estate professionals are governed by the common law of agency, as well as by statutes and rules. In *Johnson v. Davis*, 480 So.2d 625 (Fla. 1985), the court held that where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer. This duty is equally applicable to all forms of real property, new and used. See *id.* at 629.

**B. EFFECT OF PROPOSED CHANGES:**

CS/CS/HB 339 creates the "Brokerage Relationship Disclosure Act" within Part I of Chapter 475, F.S. The bill provides legislative intent to abrogate disclosed dual agency as an authorized form of representation by a real estate licensee.

The bill provides definitions of terms, and modifies grounds for discipline by the Florida Real Estate Commission.

Finally, the bill provides for notice of nonrepresentation and for disclosure of authorized brokerage relationships and the corresponding duties of real estate licensees. Disclosure documents must be retained as brokerage business records.

See Section-By-Section Analysis for more specificity.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill provides FREC with rulemaking authority, however, FREC has rulemaking authority under the current law. New rules would be necessary to reflect the changes in law.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

There are new responsibilities for real estate brokers since dual agency is revoked and real estate agency relationships are redefined.

(3) any entitlement to a government service or benefit?

No.



b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

FREC will incur minimal costs to adopt the rules required by the bill.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes; the bill removes the dual agency relationship for real estate transactions, and redefines other real estate agency relationships.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Section 475.01(1), F.S., provides definitions. This section is amended as follows:

A definition of "customer" is added in paragraph (1)(d). Customer means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship.

A definition of "first contact" is added in paragraph (1)(g). First contact is defined as the commencement of the initial meeting of, or communication between a licensee and a seller or buyer; however, the term does not include: a bona fide open house or model home showing; unanticipated casual encounters between a licensee and a seller or buyer; responding to general factual questions; and situations in which a licensee's communications with a customer are limited to providing general factual information.

A definition of "principal" is added in paragraph (1)(i). A principal means the party with whom a real estate licensee has entered into a single agent relationship.

The definition of "transaction broker" was revised. A transaction broker means a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent

The following terms and definitions were not changed: broker, broker salesperson, commission, department, salesperson, fiduciary, involuntarily inactive status, real property or real estate, single agent, and voluntarily inactive status.

The terms and definitions of disclosed dual agent, buyer, and seller are deleted from law.

Section 2. Section 475.25(1)(h), F.S., is amended to change a reference.

Section 475.25(1), F.S., currently permits the commission to deny an application for licensure, registration, or permit, or renewal thereof; to place a licensee, registrant, or

permittee on probation, to suspend a license, registration, or permit for a period not exceeding 10 years, to revoke a license, registration, or permit, to impose an administrative fine not to exceed \$1,000 for each count or separate offense, and to issue a reprimand, and any or all of the foregoing if the commission finds the licensee, registrant, permittee, or applicant has committed certain acts as provided by law. Paragraph (q) is amended to permit these same disciplinary measures for violations of any provision of section 475.276, or 475.278, F.S., relating to notice of nonrepresentation, and required disclosures, respectively.

Section 3. Section 475.270, F.S., creates the "Brokerage Relationship Disclosure Act."

Section 475.272, F.S., provides that the purpose of this act is to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions. This section expressly revokes disclosed dual agency in Florida, requires certain disclosures, and permits single agency or transactional brokerage as defined.

Section 475.274, F.S., provides that the authorized brokerage relationships described in s. 475.278 apply in all brokerage activities as defined. The disclosure requirements apply only to residential sales.

Section 475.276, F.S., provides for notice of nonrepresentation.

Subsection (1)(a) of s. 475.276, F.S., provides that the real estate licensee disclosure requirements of this section and section 475.278, F.S., apply to all residential sales, i.e., improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or less, or the sale of agricultural property of 10 acres or less.

Subsection (1)(b) of s. 475.276, F.S., provides that the disclosure requirements of this section and section 475.278, F.S., do not apply to nonresidential transactions, the rental or leasing of real property (unless an option to purchase property improved with four or less residential units is given), auctions, appraisals, and dispositions of any interest in business enterprises or business opportunities, except for property with four or less residential units.

Subsection (2) of s. 475.276, F.S., sets out the notice of nonrepresentation requirement at first contact.

Subsection (3) of s. 475.276, F.S., prescribes the contents and format of the notice of nonrepresentation.

Section 475.278, F.S., outlines the authorized brokerage relationships and accompanying disclosure requirements.

Section 475.278(1), F.S., sets out the authorized brokerage relationships. A real estate licensee may enter into a brokerage relationship as either a single agent or as a transaction broker with potential buyers and sellers. The licensee may not, however, operate as a disclosed or nondisclosed dual agent. A licensee may change from one brokerage relationship to the other as long as the buyer or the seller, or both, gives consent as provided in the statute.

Subsection (2) of s. 475.278, F.S., is created to provide the duties and disclosure requirements of the transaction broker. A transaction broker provides a limited form of representation to a buyer, a seller, or both in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent. The duties of the real estate licensee in this limited form are specified in subparagraphs 1 through 7 of paragraph (a).

Section 475.278(2)(b), F.S., provides disclosure requirements and that the transaction broker must fully describe and disclose the broker's duties in writing. Paragraph (c) of this section specifies the contents of the disclosure.

Section 475.278(3), F.S., is created to provide the duties of the single agent and to provide for the single agent's disclosure requirements.

Section 475.278(3)(a), F.S., provides the single agent's duties in subparagraphs 1 through 8. The single agent's duties include: dealing honestly and fairly; loyalty; confidentiality; obedience; full disclosure; accounting for all funds; skill, care, and diligence in the transaction; and presenting all offers and counteroffers in a timely manner.

Section 475.278(3)(b), F.S., provides the single agent's disclosure requirements, which include the written disclosure of the transaction broker's duties. Subparagraph 2 of paragraph (b) provides the disclosure requirements when a broker is transitioning from a single agent to a transaction broker relationship.

Section 475.278(3)(c)1, F.S., provides the contents of disclosure notice by the single agent.

Section 475.278(3)(c)2, F.S., provides the contents of the disclosure notice required when a transition is occurring from a single agent to a transaction broker relationship.

Section 475.278(4), F.S., provides the duties a real estate licensee owes to a customer with whom the licensee has no brokerage relationship.

Section 475.2801, F.S., provides that the commission may adopt rules establishing disciplinary guidelines, notices of noncompliance, and citations for violations of sections 475.276 and 475.278, F.S.

Section 4. Section 475.5015, F.S., is amended to require that disclosure documents required under sections 475.276 and 475.278, F.S., must be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.

Section 5. Section 468.383(7), F.S., is amended to change a reference.

Section 6. This act will take effect October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

FREC will incur minimal costs to adopt the rules required by the bill.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Nominal.

2. Direct Private Sector Benefits:

This bill is intended to avoid the current confusion regarding broker relationships and their appropriate duties and obligations. The bill should benefit both customers and real estate brokers.

3. Effects on Competition, Private Enterprise and Employment Markets:

See 2. above.

D FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Section 475.278(1), F.S., as created in the bill, provides that a licensee may change from one brokerage relationship to the other so long as the "buyer or the seller, or both, gives consent as required by subparagraph (3)(c)2." Subparagraph (3)(c)2. provides for transition disclosure when a licensee changes from a single agent relationship to a transaction brokerage relationship. This does not appear to permit a transition from a seller broker to a buyer broker, or vice versa. However, the statute as drafted, leaves the broker with the option of obtaining the consent of either buyer or seller, or the broker may obtain the consent of both when he or she transitions from a single agent to a transaction broker, representing both parties to a transaction.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

CS/HB 339 corrects a technical error existing in the original bill on page 15, line 2. The bill provides, "7. Any additional duties that are mutually agreed to by a party," but should provide "*with* a party." This amendment was adopted in the Senate companion, and was adopted by the Committee on Real Property & Probate to be incorporated into the CS/HB 339.

CS/CS/HB 339 clarifies the duties owed by and disclosures required of transaction brokers and single agents. Specifically, the licensee's duty to present all offers and counteroffers to a buyer or seller is qualified by an earlier written agreement which directs the licensee otherwise. CS/CS/HB 339 also provides a technical amendment to clarify to whom the broker owes duties in the event no brokerage relationship has been established.

**VII. FINAL ACTION:**

The House took up and passed the Senate companion, SB 82, which was identical to CS/CS/HB 339, with two exceptions. Sections 475.270 and 475.280 of the House Bill are renumbered in the Senate Bill as sections 475.2701 and 475.2801, respectively.

CS/CS/HB 339 was laid on the table and CS/1st Eng/SB 82 was substituted therefore.

**VIII. SIGNATURES:**

**COMMITTEE ON REAL PROPERTY & PROBATE:**

Prepared by:

Legislative Research Director:

P.K. Jameson

P.K. Jameson

**AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:**

Prepared by:

Legislative Research Director:

Peter M. Rodnite

Lucretia Shaw Collins

**FINAL RESEARCH PREPARED BY COMMITTEE ON REAL PROPERTY & PROBATE:**

Prepared by:

Legislative Research Director:

P.K. Jameson

P.K. Jameson



1996

SB 502

J Gen. Ref. Com

4/11/96

13/2139 ✓

HB 649

H. Bus. Ref.

subcom. 3/13/96

Full 3/20

19/2934 ✓

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By Representative Posey

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A bill to be entitled  
An act relating to real estate sales, amending  
s. 475 01, F.S.; redefining the terms  
"fiduciary," "disclosed dual agent,"  
"transaction broker," and "single agent" and  
defining the term "first substantive contact"  
with respect to real estate brokers and  
salespersons; creating s. 475 012, F S.;  
providing legislative findings and intent on  
presumption of transaction broker relationship;  
creating ss. 475 015, 475.016, and 475 017,  
F S , providing requirements with respect to  
disclosed dual agents, transaction brokers, and  
single agents, respectively; prohibiting  
certain causes of action; amending s. 475 15,  
F.S., eliminating a provision that requires the  
automatic cancellation of the registration of a  
real estate broker partnership upon the lapse  
in licensure or registration of any of its  
partners; amending s. 475.25, F S ; revising a  
ground for disciplinary action to exempt  
licensees from the reporting of certain  
violators; revising disciplinary provisions  
with respect to single agency, dual agency, and  
transaction brokerage, for which there are  
penalties; providing that violations of certain  
standards of the Appraisal Foundation are  
grounds for the Florida Real Estate Commission  
to deny, revoke, or suspend the license of, or  
to fine, real estate brokers or salespersons;  
providing a penalty for failure to disclose,

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1 creating s. 475.256, F.S.; providing for the  
2 abrogation of common law agency with respect to  
3 pt I of ch 475, F.S., relating to real estate  
4 brokers, salespersons, and schools; creating s.  
5 475 257, F.S.; authorizing the use of  
6 electronic or facsimile signatures or writing;  
7 creating s. 475 258, F.S ; providing that  
8 certain disclosure to an agent, broker, or  
9 transaction broker is deemed to satisfy the  
10 disclosure requirements of pt I of ch 475,  
11 F S ; creating s 475.259, F S ; providing that  
12 certain ministerial acts performed by a real  
13 estate broker are not to be construed as  
14 forming a transaction brokerage or agency  
15 agreement; creating s. 475 261, F.S ; providing  
16 clarification with respect to duty of broker to  
17 act with reasonable skill, care, and diligence;  
18 amending s. 475 451, F.S.; revising provisions  
19 relating to the permitting of instructors for  
20 proprietary real estate schools or state  
21 institutions; providing permit renewal  
22 requirements; amending s. 475 452, F S :  
23 providing restrictions applicable to advance  
24 fees for brokers auctioning real property;  
25 creating s. 475.6145, F.S.; providing for a  
26 seal for the Florida Real Estate Appraisal  
27 Board to authenticate its proceedings, records,  
28 and acts; providing an effective date.

29  
30 Be It Enacted by the Legislature of the State of Florida:  
31

1 Section 1 Paragraphs (i), (j), (k), and (l) of  
2 subsection (1) of section 475.01, Florida Statutes, are  
3 amended, and paragraph (o) is added to said subsection, to  
4 read:

5 475.01 Definitions --

6 (1) As used in this part:

7 (i) "Fiduciary" means a broker in a relationship of  
8 trust and confidence between that broker as agent and the  
9 seller or buyer as principal. The duties of the broker as a  
10 fiduciary are loyalty, confidentiality, obedience, full  
11 disclosure, and accounting, and the duty to use skill, care,  
12 and diligence

(j) "Disclosed dual agent" means a broker who works as  
an agent for both the buyer and seller. The broker must  
15 obtain the informed consent in writing of all parties to the  
16 transaction to be a disclosed dual agent. The role of a  
17 disclosed dual agent must be fully described and disclosed in  
18 writing to the buyer and seller. The disclosed dual agent has  
19 all the duties of a fiduciary except full disclosure between  
20 the buyer and seller

21 (k) "Transaction broker" means a broker who  
22 facilitates a brokerage transaction between a buyer and a  
23 seller. The transaction broker does not affirmatively  
24 represent either the buyer or seller as an agent, and no  
25 fiduciary duties exist except for the duty of accounting and  
26 the duty to use skill, care, and diligence. However, the  
27 transaction broker shall treat the buyer and seller with  
28 honesty and fairness and shall disclose all known facts  
29 materially affecting the value of the property in residential  
30 transactions to both the buyer and seller. A transaction  
31 broker may keep the identity of a buyer or seller confidential

1 if requested to do so by the buyer or seller. The broker's  
2 role of as a transaction broker must be fully described and  
3 disclosed in writing to the buyer and seller.

4 (1) "Single agent" means a broker who represents, as a  
5 fiduciary, either the buyer or seller but not both in the same  
6 transaction. The role of a single agent must be fully  
7 described and disclosed in writing to the buyer or seller.

8 (o) "First substantive contact" means the first  
9 face-to-face contact between a licensee and a buyer, a seller,  
10 the agent of a buyer or seller, or a transaction broker  
11 working with a buyer or seller or, in the case of written  
12 communications, any written communication between a licensee  
13 and a buyer, a seller, the agent of a buyer or seller, or a  
14 transaction broker working with a buyer or seller prior to the  
15 execution of any other property-specific legally required  
16 written disclosures. Nothing in this chapter is intended to  
17 require a licensee to provide any written notice to property  
18 owners whose properties are being shown for the first time by  
19 the licensee.

20 Section 2. Section 475.012, Florida Statutes, is  
21 created to read:

22 475.012 Presumption of transaction broker  
23 relationship; legislative findings and intent.--The  
24 Legislature finds that the public will best be served by a  
25 clear statement of the public's legal and working  
26 relationships with real estate brokers and salespersons and  
27 that, through an understanding of such agency relationships,  
28 the public will engage real estate brokers and salespersons on  
29 terms and conditions that are mutually acceptable. The  
30 Legislature also finds that, in order to eliminate confusion  
31 and provide for a better understanding on the part of the

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1 public in real estate transactions, a presumption as to the  
2 agency relationship of a real estate broker or salesperson  
3 should be declared. Therefore, for purposes of this part, it  
4 shall be presumed that a real estate broker or salesperson is  
5 acting in the capacity of a transaction broker as defined in  
6 and subject to such duties as specified in this part unless  
7 another relationship with the buyer, seller, or other customer  
8 is established pursuant to a written agreement with the broker  
9 or salesperson. If another relationship is established  
10 between the buyer, seller, or other customer and the broker or  
11 salesperson, then the duties and obligations of that  
12 relationship shall be as specified in the contract and as  
13 required under the terms of this part regarding agency  
14 relationships. When engaged in any of the activities  
15 regulated under this part, a broker or salesperson may act in  
16 any transaction as a single agent, disclosed dual agent, or  
17 transaction broker, however, the duties and obligations of the  
18 broker or salesperson arising from each such relationship must  
19 be disclosed as required by this part. Nothing in this part  
20 shall prohibit a buyer, seller, or other customer from  
21 entering into a written contract with any broker or  
22 salesperson which contains duties, obligations, or  
23 responsibilities that are in addition to those specified in  
24 this part for the particular relationship desired.

25 Section 3 Section 475.015, Florida Statutes, is  
26 created to read

475.015 Disclosed dual agent requirements.--

27 (1) A real estate broker may act as a disclosed dual  
28 agent only with the written consent of all parties. Consent  
29 of a party is presumed if the party signs an agreement that  
30 contains the following.  
31

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1           (a) A description of the situation or circumstances,  
2 during representation of a client, in which the real estate  
3 broker will serve as a disclosed dual agent.

4           (b) A statement that, in serving as a disclosed dual  
5 agent, the real estate broker represents two or more clients  
6 whose interests are adverse and that the agency duties are  
7 limited.

8           (c) A statement that the disclosed dual agent may  
9 disclose any information to one party that the agent gains  
10 from the other party if that information is relevant to the  
11 transaction, except:

12           1. To the buyer that the seller will accept a price  
13 less than the asking or listed price, unless otherwise  
14 instructed by the seller;

15           2. To the seller that the buyer will pay a price  
16 greater than the price submitted in a written offer to the  
17 seller, unless otherwise instructed by the buyer;

18           3. The motivation of any party, if adverse to the  
19 party's interest, for selling, buying, or leasing a property,  
20 unless otherwise instructed by the respective party; or

21           4. That a seller or buyer will agree to financing  
22 terms other than those offered.

23           (d) A statement that the client may choose to consent  
24 or not consent to the disclosed dual agency.

25           (e) A statement that the consent of the client has  
26 been given voluntarily and that the agreement has been read  
27 and understood.

28           (2) A cause of action may not be brought on behalf of  
29 any person against a disclosed dual agent for making  
30 disclosures permitted or required by this part, and the  
31 disclosed dual agent does not terminate any real estate broker

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1 agency relationship by making disclosures permitted or  
2 required by this part.

3       (3) In a disclosed dual agent relationship, each  
4 client and the real estate broker and its associated licensees  
5 are considered to possess only actual knowledge and  
6 information. There is no imputation of knowledge or  
7 information by operation of law among or between the clients  
8 and the real estate broker and its associated licensees.

9       (4) A disclosed dual agent has no duty to conduct an  
10 independent inspection of or discover latent defects in the  
11 property. Nothing in this section limits the obligation of a  
12 buyer to inspect the physical condition of the property.

13       (5) A disclosed dual agent has no duty to disclose any  
14 fact or suspicion concerning the property, including, but not  
15 limited to, any fact or suspicion that the property was, or  
16 was suspected to have been, the site of a homicide or other  
17 felony or a suicide, which if known by a party might cause  
18 that party to suffer adverse psychological effects. Such fact  
19 or suspicion is not a material fact that must be disclosed in  
20 a real estate transaction. No cause of action shall arise  
21 against an owner of real estate or a real estate licensee for  
22 the failure to disclose such fact or suspicion to the  
23 transferee.

24       (6) Nothing in this section alters or eliminates the  
25 responsibility of a broker, as set forth in this part, for the  
26 conduct and actions of a salesperson operating under the  
27 broker's license.

28       Section 4   Section 475.016, Florida Statutes, is  
29 created to read:

30       475.016 Transaction broker requirements --  
31



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1           (1) A transaction broker shall have the following  
2 obligations and responsibilities:

3           (a) To perform the terms of any written or oral  
4 agreement made with any party to the transaction.

5           (b) To exercise reasonable skill, care, and diligence  
6 as a transaction broker, including, but not limited to:

7           1 Presenting all offers and counteroffers in a timely  
8 manner regardless of whether the property is subject to a  
9 contract for sale or lease or a letter of intent, unless  
10 otherwise provided in the agreement entered with the party.

11           2. Advising the parties regarding the transaction and  
12 suggesting that such parties obtain expert advice as to  
13 material matters about which the transaction broker knows but  
14 the specifics of which are beyond the expertise of such  
15 broker.

16           3 Accounting in a timely manner for all money and  
17 property received.

18           4. Keeping the parties informed regarding the  
19 transaction

20           5 Assisting the parties in complying with the terms  
21 and conditions of any contract.

22           6. Informing the parties that as seller and buyer they  
23 shall not be vicariously liable for any acts of the  
24 transaction broker.

25           (2) The following information shall not be disclosed  
26 by a transaction broker without the informed consent of the  
27 party or parties disclosing such information to the broker:

28           (a) That a buyer is willing to pay more than the  
29 purchase price or lease rate offered for the property.

30           (b) That a seller is willing to accept less than the  
31 asking price or lease rate for the property.

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1 (c) What the motivating factors are for any party  
2 buying, selling, or leasing the property.

3 (d) That a seller or buyer will agree to financing  
4 terms other than those offered.

5 (e) Any material information about the other party,  
6 unless disclosure of such information is required by law or  
7 failure to disclose such information would constitute fraud or  
8 dishonest dealing.

9 (3) A transaction broker has no duty to conduct an  
10 independent inspection of or discover latent defects in the  
11 property. Nothing in this section limits the obligation of  
12 the buyer to inspect the physical condition of the property.

(4) A transaction broker has no duty to conduct an  
independent investigation of the buyer's financial condition.

15 (5) A transaction broker may do the following without  
16 breaching any obligation or responsibility.

17 (a) Show alternative properties not owned by the  
18 seller or landlord to a prospective buyer or tenant.

19 (b) List competing properties for sale or lease.

20 (c) Show properties in which the buyer or tenant is  
21 interested to other prospective buyers or tenants.

22 (d) Serve as a single agent, subagent, or disclosed  
23 dual agent for the same or for different parties in other real  
24 estate transactions.

25 (6) In a transaction broker relationship, each party  
26 and the transaction broker, including all persons within an  
27 entity engaged as the transaction broker if the transaction  
28 broker is an entity, are considered to possess only actual  
29 knowledge and information. There is no imputation of  
30 knowledge or information by operation of law between any party  
31 and the transaction broker or between any party and any person

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1 within an entity engaged as the transaction broker if the  
2 transaction broker is an entity.

3 (7) A transaction broker has no duty to disclose any  
4 fact or suspicion concerning the property, including, but not  
5 limited to, any fact or suspicion that the property was, or  
6 was suspected to have been, the site of a homicide or other  
7 felony or a suicide, which if known by a party might cause  
8 that party to suffer adverse psychological effects. Such fact  
9 or suspicion is not a material fact that must be disclosed in  
10 a real estate transaction. No cause of action shall arise  
11 against an owner of real estate or a real estate licensee for  
12 the failure to disclose such fact or suspicion to the  
13 transferee.

14 (8) A transaction broker may cooperate with other  
15 brokers, and such cooperation does not establish an agency or  
16 subagency relationship.

17 (9) Nothing in this section prohibits a transaction  
18 broker from acting as a single agent, whether on behalf of a  
19 buyer or seller, or acting as a disclosed dual agent in  
20 separate transactions as long as the requirements of this part  
21 governing disclosure are met.

22 (10) Nothing in this section alters or eliminates the  
23 responsibility of a broker, as set forth in this part, for the  
24 conduct and actions of a salesperson operating under the  
25 broker's license.

26 Section 5. Section 475 017, Florida Statutes, is  
27 created to read:

28 475.017 Single agent requirements.--

29 (1) A single agent who represents a seller:

30 (a) Shall perform the terms of the brokerage agreement  
31 entered into with the seller.

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1       **(b) Shall promote the interests of the seller by**  
2 **exercising agency duties, including:**

3       **1. Seeking a sale at the price and terms stated in the**  
4 **brokerage agreement or at a price and terms acceptable to the**  
5 **seller, except that the licensee is not obligated to seek**  
6 **additional offers to purchase the property while the property**  
7 **is subject to a contract of sale unless the brokerage**  
8 **agreement so provides.**

9       **2. Presenting, in a timely manner, all offers to and**  
10 **from the seller, even when the property is subject to a**  
11 **contract of sale, unless the brokerage agreement provides**  
12 **otherwise.**

13       **3. Advising the seller to obtain expert advice on**  
14 **material matters that are beyond the expertise of the**  
15 **licensee.**

16       **4. Accounting, in a timely manner, for all money and**  
17 **property received.**

18       **(c) Has an obligation to preserve confidential**  
19 **information provided by the seller during the course of the**  
20 **relationship that would have a negative impact on the seller's**  
21 **real estate transaction, unless:**

22       **1. The seller to whom the information pertains grants**  
23 **consent to disclose the information;**

24       **2. Disclosure of the information by the licensee is**  
25 **required by law;**

26       **3. The information is made public or becomes public**  
27 **from a source other than the licensee, or**

28       **4. Disclosure is necessary to defend the licensee**  
29 **against an accusation of wrongful conduct in a judicial**  
30 **proceeding before the commission, a professional committee, or**  
31

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1 any court or courts of this state or in any administrative  
2 proceeding.

3 (d) Shall be permitted to promote alternative  
4 properties not owned by the seller to prospective buyers as  
5 well as list competing properties for sale without breaching  
6 any duty to the client.

7 (e) Shall have the duty to a buyer to treat all  
8 prospective buyers honestly and may not knowingly give false  
9 information and shall disclose in a timely manner to a  
10 prospective buyer all known material facts pertaining to the  
11 condition of a residential property. A single agent is not  
12 liable to a buyer for providing false information to the buyer  
13 if the false information was provided to the agent by the  
14 seller-client and the agent did not know that the information  
15 was false. A cause of action may not arise on behalf of any  
16 person against a single agent for revealing information in  
17 compliance with this part.

18 (f) Has no duty to conduct an independent inspection  
19 of or discover latent defects in the property. Nothing in  
20 this section limits the obligation of a buyer to inspect the  
21 physical condition of the property.

22 (2) A single agent who represents a buyer:

23 (a) Shall perform the terms of the brokerage agreement  
24 entered into with the buyer.

25 (b) Shall promote the interests of the buyer by  
26 exercising agency duties, including:

27 1. Seeking a property at a price and terms specified  
28 by the buyer, except that the licensee is not obligated to  
29 seek other properties for the buyer while the buyer is a party  
30 to a contract to purchase that property unless the brokerage  
31 agreement so provides.

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1           2. Presenting, in a timely manner, all offers to and  
2 from the buyer.

3           3. Disclosing to the buyer known facts pertaining to  
4 the condition of residential property.

5           4. Advising the buyer to obtain expert advice on  
6 material matters that are beyond the expertise of the  
7 licensee.

8           5. Accounting, in a timely manner, for all money and  
9 property received.

10           (c) Has an obligation to preserve confidential  
11 information provided by the buyer during the course of the  
12 relationship that would have a negative impact on the buyer's  
13 real estate transaction, unless.

14           1. The buyer to whom the information pertains grants  
15 consent to disclose the information;

16           2. Disclosure of the information by the licensee is  
17 required by law,

18           3. The information is made public or becomes public  
19 from a source other than the licensee; or

20           4. Disclosure is necessary to defend the licensee  
21 against an accusation of wrongful conduct in a judicial  
22 proceeding before the commission, a professional committee, or  
23 any court or courts of this state or in any administrative  
24 proceeding.

25           (d) Shall be permitted to promote other properties in  
26 which the buyer is interested to other buyers who might also  
27 be clients of the agent without breaching any duty or  
28 obligation.

29           (e) Is not liable to a seller for providing false  
30 information to the seller if the false information was  
31 provided to the agent by the agent's buyer-client and the

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1 agent did not know that the information was false. A cause of  
2 action may not arise on behalf of any person against a single  
3 agent for revealing information in compliance with this part.

4 (f) Has no duty to conduct an independent inspection  
5 of or discover latent defects in the property. Nothing in  
6 this section limits the obligation of a buyer to inspect the  
7 physical condition of the property.

8 (3) A single agent who represents either a buyer or a  
9 seller has no duty to disclose any fact or suspicion  
10 concerning the property, including, but not limited to, any  
11 fact or suspicion that the property was, or was suspected to  
12 have been, the site of a homicide or other felony or a  
13 suicide, which if known by a party might cause that party to  
14 suffer adverse psychological effects. Such fact or suspicion  
15 is not a material fact that must be disclosed in a real estate  
16 transaction. No cause of action shall arise against an owner  
17 of real estate or a real estate licensee for the failure to  
18 disclose such fact or suspicion to the transferee.

19 (4) In a single agent relationship, the client or  
20 clients and the real estate broker and its associated  
21 licensees are considered to possess only actual knowledge and  
22 information. There is no imputation of knowledge or  
23 information by operation of law among or between the client or  
24 clients and the real estate broker and its associated  
25 licensees.

26 (5) Nothing in this section alters or eliminates the  
27 responsibility of a broker, as set forth in this part, for the  
28 conduct and actions of a salesperson operating under the  
29 broker's license.

30 Section 6. Section 475.15, Florida Statutes, is  
31 amended to read:

1           475.15 Registration and licensing of general partners,  
2 members, officers, and directors of a firm.--Each partnership  
3 or corporation which acts as a broker shall register with the  
4 commission and shall renew the licenses or registrations of  
5 its members, officers, and directors for each license period.  
6 ~~The registration of a partnership is canceled automatically~~  
7 ~~during any period of time that the license or registration of~~  
8 ~~any one or more of its partners is not in force:~~ However, if  
9 the partnership is a limited partnership, only the general  
10 partners must be licensed brokers or brokerage corporations  
11 registered pursuant to this part. If the license or  
12 registration of at least one active broker member is not in  
13 force, the registration of a corporation or partnership is  
14 canceled automatically during that period of time.

15           Section 7. Paragraphs (a) and (q) of subsection (1) of  
16 section 475 25, Florida Statutes, are amended, paragraph (t)  
17 is added to said subsection, and subsection (4) is added to  
18 said section, to read:

19           475 25 Discipline.--

20           (1) The commission may deny an application for  
21 licensure, registration, or permit, or renewal thereof; may  
22 place a licensee, registrant, or permittee on probation; may  
23 suspend a license, registration, or permit for a period not  
24 exceeding 10 years; may revoke a license, registration, or  
25 permit; may impose an administrative fine not to exceed \$1,000  
26 for each count or separate offense; and may issue a reprimand,  
27 and any or all of the foregoing, if it finds that the  
28 licensee, registrant, permittee, or applicant:

29           (a) Has violated any provision of s 455.227(1) or of  
30 s. 475.42. However, licensees under this part are exempt from  
31 the provisions of s. 455.227(1)(i).



1 (q)1. Has failed in a single agency to give written  
2 disclosure in a sale, exchange, purchase, or lease of real  
3 property or any interest in real property to the party for  
4 whom the licensee is not an agent revealing that the broker is  
5 an agent of another party. The disclosure shall be given at  
6 first substantive contact.

7 2. Has failed in a single agency to perform any duty  
8 specified in s. 475 017 notice-to-all-parties-to-a-sale;  
9 exchange;-purchase;-or-lease-of-real-property-or-any-interest  
10 in-real-property;-revealing-the-party-or-parties-for-whom-the  
11 licensee-is-an-agent:--Disclosure-to-the-party-for-whom-the  
12 licensee-is-an-agent-must-be-made-at-or-before-the-time-an  
13 agreement-for-representation-is-entered-into:--Disclosure-to  
14 the-party-for-whom-the-licensee-is-not-an-agent-must-be-made  
15 at-the-time-of-the-first-substantive-contact.

16 3.2: Has failed in a dual agency to obtain the  
17 informed written consent of all parties to a sale, exchange,  
18 purchase, or lease of real property or any interest in real  
19 property that the licensee intends to operate as a disclosed  
20 dual agent. Unless all parties to the transaction grant their  
21 written informed consent prior to or at the time of  
22 formalization of the dual agency by the licensee, the licensee  
23 shall be deemed to be an undisclosed dual agent The licensee  
24 must inform all parties that the licensee is acting as agent  
25 for all parties and of the effect of dual agency, including,  
26 but not limited to, the fact that, by consenting to the dual  
27 agency relationship, the parties are giving up their rights to  
28 the undivided loyalty of the licensee;~~as required by the~~  
29 ~~rules of the commission.~~ When single agency exists, the  
30 licensee may change to a disclosed dual agent by making full  
31 written disclosure to and obtaining the informed written

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1 consent of all the parties Written consent of the parties  
2 may be obtained at the time of entry of the listing agreement  
3 or agreement for representation whether the agent is acting as  
4 a buyer agent, disclosed dual agent, or transaction broker. A  
5 disclosed dual agent may not disclose among other items:  
6       a. To the buyer that the seller will accept a price  
7 less than the asking or listed price, unless otherwise  
8 instructed in-writing by the seller;  
9       b. To the seller that the buyer will pay a price  
10 greater than the price submitted in a written offer to the  
11 seller, unless otherwise instructed in-writing by the buyer;  
12       c. The motivation of any party, if adverse to the  
13 party's interest, for selling, buying, or leasing a property,  
14 unless otherwise instructed in-writing by the respective  
15 party; or  
16       d. That a seller or buyer will agree to financing  
17 terms other than those offered.  
18       4. Has failed in a dual agency to perform any duty  
19 specified in s. 475.015.  
20       5.3: Has failed in a transaction brokerage capacity to  
21 give written notice to all parties to a sale, exchange,  
22 purchase, or lease of real property or an interest in real  
23 property prior to or at the time of the licensee's licensee  
24 becoming a transaction broker or first substantive contact,  
25 whichever occurs first, of the licensee's role as a  
26 transaction broker Unless the buyer and seller are given  
27 written notice prior to the licensee's acting in a transaction  
28 brokerage capacity, the licensee is deemed to be an agent of  
29 either the buyer or seller, or both. The licensee shall treat  
30 the buyer and seller honestly and fairly and shall disclose  
31

1 all known facts materially affecting the value of the property  
2 in residential transactions to both the buyer and seller.

3 6. Has failed while acting as a transaction broker to  
4 perform any duty specified in s. 475.016.  
5

6 For the purposes of this paragraph, the payment or promise of  
7 payment of compensation to a licensee does not determine  
8 whether an agency or transactional brokerage relationship has  
9 been created between any licensee and a seller, landlord,  
10 buyer, or tenant. The commission shall implement this  
11 paragraph by rule. ~~For purposes of this paragraph, the~~  
12 ~~commission shall also define by rule forms for agency~~  
13 ~~disclosure:--The forms provided for in this rule shall be~~  
14 ~~written in plain language and shall provide to the buyer or~~  
15 ~~seller or both, as appropriate, an explanation of the agency~~  
16 ~~relationships and shall offer the buyer or seller or both the~~  
17 ~~explicit right to choose or refuse among these agency~~  
18 ~~relationships:~~

19 (t) Has violated any standard for the development or  
20 communication of a real estate appraisal or other provision of  
21 the Uniform Standards of Professional Appraisal Practice, as  
22 defined in s. 475.611, as approved and adopted by the  
23 Appraisal Standards Board of the Appraisal Foundation, as  
24 defined in s. 475.611. This paragraph does not apply to a  
25 real estate broker or salesperson who, in the ordinary course  
26 of business, performs a comparative market analysis or makes  
27 an evaluation of real estate. However, in no event may this  
28 opinion of value be referred to or construed as an appraisal.

29 (4) For any finding under this section of a failure to  
30 disclose by a person who has not previously been found to have  
31 violated this section, the commission may only impose an

1 administrative fine in an amount not to exceed \$100 for each  
2 count or separate offense or may issue a reprimand for failure  
3 to disclose if each of the following conditions is met:

4 (a) There is no showing of intentional failure to  
5 disclose

6 (b) The failure to disclose has not been a  
7 contributing factor that caused harm to any consumer.

8 Section 8. Section 475.256, Florida Statutes, is  
9 created to read:

10 475.256 Abrogation of common law agency --It is the  
11 intent of the Legislature that the duties and responsibilities  
12 of brokers as agents or transaction brokers as set forth in  
13 this part shall abrogate and supersede the duties and  
14 responsibilities of agents and transaction brokers under the  
15 common law. This abrogation of agency law shall apply only to  
16 persons licensed pursuant to this part while performing the  
17 duties of a real estate broker or transaction broker on behalf  
18 of any buyer, seller, or other party to a real estate  
19 transaction. This abrogation shall not be construed to limit  
20 or extinguish any civil cause of action based on a breach of  
21 the duties and responsibilities of agents and transaction  
22 brokers set forth in this part, nor shall this abrogation  
23 limit or extinguish any civil remedy in law or equity that is  
24 based on a breach of the duties and responsibilities of agents  
25 and transaction brokers set forth in this part.

26 Section 9. Section 475.257, Florida Statutes, is  
27 created to read:

28 475.257 Facsimile signatures or writing  
29 accepted.--When any act performed pursuant to the terms of  
30 this part must be performed in writing or acknowledged with a  
31 signature, the provision of an instrument or writing by

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1 electronic means or facsimile, including a signature  
2 transmitted by electronic means or facsimile, shall be deemed  
3 binding and sufficient.

4 Section 10. Section 475.258, Florida Statutes, is  
5 created to read:

6 475.258 Disclosure to agent, broker, or transaction  
7 broker authorized.--In any disclosure of agency or transaction  
8 brokerage performed pursuant to the terms of this part,  
9 disclosure by an agent, broker, or transaction broker to the  
10 agent, broker, or transaction broker representing or working  
11 with another party shall be sufficient and shall satisfy the  
12 disclosure requirements.

13 Section 11. Section 475 259, Florida Statutes, is  
14 created to read:

15 475.259 Ministerial acts not a violation --A real  
16 estate broker engaged by any buyer or seller in a real estate  
17 transaction or engaged by any buyer or seller as a transaction  
18 broker may provide assistance to any party to the transaction  
19 by performing ministerial acts such as preparing and conveying  
20 offers; preparing, completing, and conveying contracts for the  
21 sale, lease, exchange, or other conveyance of real property or  
22 any interest in real property; and providing information and  
23 assistance concerning professional services not related to  
24 real estate broker services Performing ministerial acts may  
25 not be construed as violating the real estate broker agreement  
26 or transaction broker agreement with a buyer or seller, and  
27 performing ministerial acts may not be construed as forming a  
28 transaction brokerage or agency agreement

29 Section 12. Section 475.261, Florida Statutes, is  
30 created to read:

31

1           475.261 Duty of broker to act with reasonable skill,  
2 care, and diligence.--Nothing in this part shall be construed  
3 to relieve any licensee from the duty to act with reasonable  
4 skill, care, and diligence while performing the duties of a  
5 real estate broker, salesperson, or transaction broker on  
6 behalf of any buyer, seller, or other party to a real estate  
7 transaction.

8           Section 13. Subsections (2), (6), and (7) of section  
9 475.451, Florida Statutes, are amended to read.

10           475.451 Schools teaching real estate practice.--

11           (2) An applicant for a permit to operate a proprietary  
12 real estate school, to be a chief administrator of a  
13 proprietary real estate school or a state institution, or to  
14 be an instructor for a proprietary real estate school or a  
15 state institution must meet the qualifications for practice  
16 set forth in s. 475 17(1) and the following minimal  
17 requirements:

18           (a) "School permitholder" means the is-defined-as-that  
19 individual who is responsible for directing the overall  
20 operation of a proprietary real estate school. A school  
21 permitholder He must be the holder of a license as a broker,  
22 either active or voluntarily inactive, or must have passed an  
23 instructor's examination administered by the department. A  
24 school permitholder must also meet the requirements of a  
25 school instructor if he is actively engaged in teaching.

26           (b) "Chief administrative person" means the is-defined  
27 as-that individual who is responsible for the administration  
28 of the overall policies and practices of the institution or  
29 proprietary real estate school. A chief administrative person  
30 He must also meet the requirements of a school instructor if  
31 he is actively engaged in teaching.

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1 (c) "School instructor" ~~means an~~ is defined as that  
2 individual who actively instructs persons in the classroom in  
3 noncredit college courses in a college, university, or  
4 community college or courses in an area vocational-technical  
5 center or proprietary real estate school.

6 1 Before commencing to provide such instruction, the  
7 applicant instruct noncredit college courses in a college;  
8 university; or community college; or courses in an area  
9 technical center or proprietary real estate school; he must  
10 certify his or her competency and obtain an instructor permit  
11 by meeting one of the following requirements:

12 a. Hold a bachelor's degree in a business-related  
13 subject, such as real estate, finance, accounting, business  
14 administration, or its equivalent and hold a valid broker's  
15 license in this state.

16 b. Hold a bachelor's degree, have extensive real  
17 estate experience, as defined by rule, and hold a valid  
18 broker's license in this state.

19 c Pass an instructor's examination administered by  
20 the Division of Real Estate.

21 2. Any requirement by the commission for a teaching  
22 demonstration or practical examination must apply to all  
23 school instructor applicants.

24 3. The department shall renew an instructor permit  
25 upon receipt of a renewal application and fee. The renewal  
26 application shall include proof that the permitholder has,  
27 since the issuance or renewal of the current permit, Every  
28 second year, each instructor must recertify his competency by  
29 presenting to the commission evidence of his having  
30 successfully completed a minimum of 15 classroom hours of  
31 instruction in real estate subjects or instructional

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1 techniques, as prescribed by the commission. The commission  
2 shall adopt rules providing for the renewal of instructor  
3 permits at least every 2 years. Any permit which is not  
4 renewed at the end of the permit period established by the  
5 department shall automatically revert to involuntarily  
6 inactive status.

7

8 The department may require an applicant to submit names of  
9 persons having knowledge concerning the applicant and the  
10 enterprise; may propound interrogatories to such persons and  
11 to the applicant concerning the character of the applicant,  
12 including the taking of fingerprints for processing through  
13 the Federal Bureau of Investigation; and shall make such  
14 investigation of the applicant him or the school or  
15 institution as it may deem necessary to the granting of the  
16 permit. If an objection is filed, it shall be considered in  
17 the same manner as objections or administrative complaints  
18 against other applicants for licensure by the department.

19

20 (6) Any course prescribed by the commission as a  
21 condition precedent to any person's becoming initially  
22 licensed as a salesperson may be taught in any real estate  
23 school through the use of a video tape of instruction by a  
24 currently permitted licensed instructor from any such school.  
25 The commission may require that any such video tape course  
26 have a single session of live instruction by a currently  
27 permitted licensed instructor from any such school; however,  
28 this requirement shall not exceed 3 classroom hours. All  
29 other prescribed courses, except the continuing education  
30 course required by s. 475.182, shall be taught by a currently  
31 permitted licensed school instructor personally in attendance  
at such course. The continuing education course required by



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1 s. 475.182 may be taught by an equivalent correspondence  
2 course; however, any such course of correspondence shall be  
3 required to have a final examination, prepared and  
4 administered by the school issuing the correspondence course  
5 The continuing education requirements provided in this section  
6 or provided in any other section in this chapter do not apply  
7 with respect to any attorney who is otherwise qualified under  
8 the provisions of this chapter.

9 (7) Any person holding a school instructor permit on  
10 October 1, 1983, is exempt from the instructor examination  
11 requirements of paragraph (2)(c) as long as the person he  
12 continuously holds such a permit and complies with all other  
13 requirements of this chapter.

14 Section 14 Subsection (6) is added to section  
15 475 452, Florida Statutes, to read.

16 475 452 Advance fees; deposit; accounting; penalty,  
17 damages.--

18 (6) A broker auctioning real property for a seller may  
19 receive anticipated expenses prior to the auction only in  
20 accordance with a written agreement previously concluded  
21 between the broker and the seller A broker may receive funds  
22 in advance of the auction only in accordance with the  
23 requirements of this section applicable to advance fees for  
24 the listing of real property.

25 Section 15. Section 475.6145, Florida Statutes, is  
26 created to read:

27 475.6145 Seal.--The board shall adopt a seal by which  
28 it shall authenticate its proceedings, records, and acts.  
29 Copies of the proceedings, records, and acts of the board, and  
30 certificates purporting to relate the facts concerning such  
31 proceedings, records, and acts, which are signed by the board

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1 chair, the custodian of such records, or any other person  
2 authorized to make such certification and which are  
3 authenticated by such seal, shall be prima facie evidence of  
4 such proceedings, records, and acts in all the courts of this  
5 state.

6           Section 16   This act shall take effect October 1,  
7 1996.

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HOUSE SUMMARY

Revises various provisions relating to real estate sales.

Redefines the terms "fiduciary," "disclosed dual agent," "transaction broker," and "single agent" and defines the term "first substantive contact" with respect to real estate brokers and salespersons. Provides legislative findings and intent on presumption of transaction broker relationship. Provides requirements with respect to disclosed dual agents, transaction brokers, and single agents, and prohibits certain causes of action with respect thereto.

Eliminates a provision that requires the automatic cancellation of the registration of a real estate broker partnership upon the lapse in licensure or registration of any of its partners

Revises a ground for disciplinary action to exempt licensees from reporting certain violators. Revises disciplinary provisions with respect to single agency, dual agency, and transaction brokerage. Provides that violations of certain standards of the Appraisal Foundation are grounds for the Florida Real Estate Commission to deny, revoke, or suspend the license of, or to fine, real estate brokers or salespersons. Provides a penalty for failure to disclose

Provides for the abrogation of common law agency with respect to pt. I of ch. 475, F.S., relating to real estate brokers, salespersons, and schools. Authorizes the use of electronic or facsimile signatures or writing. Provides that certain disclosure to an agent, broker, or transaction broker is deemed to satisfy the disclosure requirements of pt. I of ch. 475, F.S. Provides that certain ministerial acts performed by a real estate broker are not to be construed as forming a transaction brokerage or agency agreement. Provides clarification with respect to the duty of a broker to act with reasonable skill, care, and diligence.

Revises provisions relating to the permitting of instructors for proprietary real estate schools or state institutions, and provides permit renewal requirements. Provides restrictions applicable to advance fees for brokers auctioning real property.

Provides for a seal for the Florida Real Estate Appraisal Board to authenticate its proceedings, records, and acts. See bill for details.

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This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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By the Committee on Business & Professional Regulation and  
Representatives Posey and Constantine

A bill to be entitled

2 An act relating to real estate sales; amending  
3 s. 475.01, F.S.; redefining the terms  
4 "fiduciary," "disclosed dual agent,"  
5 "transaction broker," and "single agent" and  
6 defining the term "first substantive contact"  
7 with respect to real estate brokers and  
8 salespersons; creating s. 475.012, F.S.;  
9 providing legislative findings and intent on  
10 presumption of transaction broker relationship;  
11 creating ss. 475.015, 475.016, and 475.017,  
12 F.S.; providing requirements with respect to  
13 disclosed dual agents, transaction brokers, and  
14 single agents, respectively; prohibiting  
certain causes of action; amending s. 475.15,  
F.S.; eliminating a provision that requires the  
17 automatic cancellation of the registration of a  
18 real estate broker partnership upon the lapse  
19 in licensure or registration of any of its  
20 partners; amending s. 475.25, F.S.; revising a  
21 ground for disciplinary action to exempt  
22 licensees from the reporting of certain  
23 violators; revising disciplinary provisions  
24 with respect to single agency, dual agency, and  
25 transaction brokerage, for which there are  
26 penalties; providing that violations of certain  
27 standards of the Appraisal Foundation are  
28 grounds for the Florida Real Estate Commission  
to deny, revoke, or suspend the license of, or  
to fine, real estate brokers or salespersons;  
31 providing a penalty for failure to disclose;

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1 creating s. 475.256, F.S.; providing for the  
2 abrogation of common law agency with respect to  
3 pt. I of ch. 475, F.S., relating to real estate  
4 brokers, salespersons, and schools; creating s.  
5 475.257, F.S.; authorizing the use of  
6 electronic or facsimile signatures or writing;  
7 creating s. 475.258, F.S.; providing that  
8 certain disclosure to an agent, broker, or  
9 transaction broker is deemed to satisfy the  
10 disclosure requirements of pt. I of ch. 475,  
11 F.S.; creating s. 475.259, F.S.; providing that  
12 certain ministerial acts performed by a real  
13 estate broker are not to be construed as  
14 forming a transaction brokerage or agency  
15 agreement; creating s. 475.261, F.S.; providing  
16 clarification with respect to duty of broker to  
17 act with reasonable skill, care, and diligence;  
18 amending s. 475.451, F.S.; revising provisions  
19 relating to the permitting of instructors for  
20 proprietary real estate schools or state  
21 institutions; providing permit renewal  
22 requirements; amending s. 475.452, F.S.;  
23 providing restrictions applicable to advance  
24 fees for brokers auctioning real property;  
25 creating s. 475.6145, F.S.; providing for a  
26 seal for the Florida Real Estate Appraisal  
27 Board to authenticate its proceedings, records,  
28 and acts; providing an effective date.

29  
30 Be It Enacted by the Legislature of the State of Florida:

31

Section 1. Paragraphs (i), (j), (k), and (l) of subsection (1) of section 475.01, Florida Statutes, are amended, and paragraph (o) is added to said subsection, to read:

475.01 Definitions.--

(1) As used in this part:

(i) "Fiduciary" means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting, and the duty to use reasonable skill, care, and diligence.

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

(k) "Transaction broker" means a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent, and no fiduciary duties exist except for the duty of accounting and the duty to use reasonable skill, care, and diligence. However, the transaction broker shall treat the buyer and seller with honesty and fairness and ~~shall disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller.~~ A transaction broker may keep the identity of a buyer or seller

1 confidential if requested to do so by the buyer or seller.

2 The broker's role of as a transaction broker must be fully  
3 described and disclosed in writing to the buyer and seller.

4 (1) "Single agent" means a broker who represents, as a  
5 fiduciary, either the buyer or seller but not both in the same  
6 transaction. The role of a single agent must be fully  
7 described and disclosed in writing to the buyer or seller.

8 (a) "First substantive contact" means either the first  
9 face-to-face contact between a licensee and a buyer, a seller,  
10 the agent of a buyer or seller, or a transaction broker  
11 working with a buyer or seller or written communications prior  
12 to the execution of any other property-specific legally  
13 required written disclosures. Nothing in this chapter is  
14 intended to require a licensee to provide any written notice  
15 to property owners whose properties are being shown for the  
16 first time by the licensee.

17 Section 2. Section 475.012, Florida Statutes, is  
18 created to read:

19 475.012 Presumption of transaction broker  
20 relationship; legislative findings and intent.--The  
21 Legislature finds that the public will best be served by a  
22 clear statement of the public's legal and working  
23 relationships with real estate brokers and salespersons and  
24 that, through an understanding of such agency relationships,  
25 the public will engage real estate brokers and salespersons on  
26 terms and conditions that are mutually acceptable. The  
27 Legislature also finds that, in order to eliminate confusion  
28 and provide for a better understanding on the part of the  
29 public in real estate transactions, a presumption as to the  
30 agency relationship of a real estate broker or salesperson  
31 should be declared. Therefore, for purposes of this part, it



2 shall be presumed that a real estate broker or salesperson is  
3 acting in the capacity of a transaction broker as defined in  
4 and subject to such duties as specified in this part unless  
5 another relationship with the buyer, seller, or other customer  
6 is established pursuant to a written agreement with the broker  
7 or salesperson. If another relationship is established  
8 between the buyer, seller, or other customer and the broker or  
9 salesperson, then the duties and obligations of that  
10 relationship shall be as specified in the contract and as  
11 required under the terms of this part regarding agency  
12 relationships. When engaged in any of the activities  
13 regulated under this part, a broker or salesperson may act in  
14 any transaction as a single agent, disclosed dual agent, or  
15 transaction broker; however, the duties and obligations of the  
16 broker or salesperson arising from each such relationship must  
17 be disclosed as required by this part. Nothing in this part  
18 shall prohibit a buyer, seller, or other customer from  
19 entering into a written contract with any broker or  
20 salesperson which contains duties, obligations, or  
21 responsibilities that are in addition to those specified in  
22 this part for the particular relationship desired.

23 Section 3. Section 475.015, Florida Statutes, is  
24 created to read:

25 475.015 Disclosed dual agent requirements.--

26 (1) A real estate broker may act as a disclosed dual  
27 agent only with the written consent of all parties. Consent  
28 of a party is presumed if the party signs an agreement that  
29 contains the following:

30 (a) A description of the situation or circumstances,  
31 during representation of a client, in which the real estate  
32 broker will serve as a disclosed dual agent.

1        (b) A statement that, in serving as a disclosed dual  
2 agent, the real estate broker represents two or more clients  
3 whose interests are adverse and that the agency duties are  
4 limited.

5        (c) A statement that the disclosed dual agent may  
6 disclose any information to one party that the agent gains  
7 from the other party if that information is relevant to the  
8 transaction, except:

9            1. To the buyer that the seller will accept a price  
10 less than the asking or listed price, unless otherwise  
11 instructed by the seller;

12            2. To the seller that the buyer will pay a price  
13 greater than the price submitted in a written offer to the  
14 seller, unless otherwise instructed by the buyer;

15            3. The motivation of any party, if adverse to the  
16 party's interest, for selling, buying, or leasing a property,  
17 unless otherwise instructed by the respective party; or

18            4. That a seller or buyer will agree to financing  
19 terms other than those offered.

20        (d) A statement that the client may choose to consent  
21 or not consent to the disclosed dual agency.

22        (e) A statement that the consent of the client has  
23 been given voluntarily and that the agreement has been read  
24 and understood.

25        (2) A disclosed dual agent has the duty to disclose in  
26 a timely manner to a buyer all personally known facts which  
27 materially affect the value of a residential property, Facts  
28 which are readily observable or are known to the buyer do not  
29 need to be disclosed.

30        (3) A cause of action may not be brought on behalf of  
31 any person against a disclosed dual agent for making

2 disclosures permitted or required by this part, and the  
3 disclosed dual agent does not terminate any real estate broker  
4 agency relationship by making disclosures permitted or  
5 required by this part.

6 (4) In a disclosed dual agent relationship, each  
7 client and the real estate broker and its associated licensees  
8 are considered to possess only actual knowledge and  
9 information. There is no imputation of knowledge or  
10 information by operation of law among or between the clients  
11 and the real estate broker and its associated licensees.

12 (5) A disclosed dual agent has no duty to conduct an  
13 independent inspection of or discover latent defects in the  
14 property. Nothing in this section limits the obligation of a  
15 buyer to inspect the physical condition of the property.

16 (6) A disclosed dual agent has no duty to disclose any  
17 fact or suspicion concerning the property, including, but not  
18 limited to, any fact or suspicion that the property was, or  
19 was suspected to have been, the site of a homicide or other  
20 felony or a suicide, which if known by a party might cause  
21 that party to suffer adverse psychological effects. Such fact  
22 or suspicion is not a material fact that must be disclosed in  
23 a real estate transaction. No cause of action shall arise  
24 against an owner of real estate or a real estate licensee for  
25 the failure to disclose such fact or suspicion to the  
26 transferee.

27 (7) Nothing in this section alters or eliminates the  
28 responsibility of a broker, as set forth in this part, for the  
29 conduct and actions of a salesperson operating under the  
30 broker's license.

31 Section 4. Section 475.016, Florida Statutes, is  
created to read:

1        475.016 Transaction broker requirements.--

2        (1) A transaction broker shall have the following  
3 obligations and responsibilities:

4        (a) To perform the terms of any written or oral  
5 agreement made with any party to the transaction.

6        (b) To exercise reasonable skill, care, and diligence  
7 as a transaction broker, including, but not limited to:

8        1. Presenting all offers and counteroffers in a timely  
9 manner regardless of whether the property is subject to a  
10 contract for sale or lease or a letter of intent, unless  
11 otherwise provided in the agreement entered with the party.

12        2. Advising the parties regarding the transaction and  
13 suggesting that such parties obtain expert advice as to  
14 material matters about which the transaction broker knows but  
15 the specifics of which are beyond the expertise of such  
16 broker.

17        3. Accounting in a timely manner for all money and  
18 property received.

19        4. Keeping the parties informed regarding the  
20 transaction.

21        5. Assisting the parties in complying with the terms  
22 and conditions of any contract.

23        6. Informing the parties that as seller and buyer they  
24 shall not be vicariously liable for any acts of the  
25 transaction broker.

26        (c) To disclose in a timely manner to both the buyer  
27 and seller all personally known facts which materially affect  
28 the value of a residential property. Facts which are readily  
29 observable or are known to the buyer do not need to be  
30 disclosed.

31

2 (2) The following information shall not be disclosed  
3 by a transaction broker without the informed consent of the  
4 party or parties disclosing such information to the broker:

5 (a) That a buyer is willing to pay more than the  
6 purchase price or lease rate offered for the property.

7 (b) That a seller is willing to accept less than the  
8 asking price or lease rate for the property.

9 (c) What the motivating factors are for any party  
10 buying, selling, or leasing the property.

11 (d) That a seller or buyer will agree to financing  
12 terms other than those offered.

13 (e) Any material information about the other party,  
14 unless disclosure of such information is required by law or  
15 failure to disclose such information would constitute fraud or  
16 dishonest dealing.

17 (3) A transaction broker has no duty to conduct an  
18 independent inspection of or discover latent defects in the  
19 property. Nothing in this section limits the obligation of  
20 the buyer to inspect the physical condition of the property.

21 (4) A transaction broker has no duty to conduct an  
22 independent investigation of the buyer's financial condition.

23 (5) A transaction broker may do the following without  
24 breaching any obligation or responsibility:

25 (a) Show alternative properties not owned by the  
26 seller or landlord to a prospective buyer or tenant.

27 (b) List competing properties for sale or lease.

28 (c) Show properties in which the buyer or tenant is  
29 interested to other prospective buyers or tenants.

30 (d) Serve as a single agent, subagent, or disclosed  
31 dual agent for the same or for different parties in other real  
32 estate transactions.

1           (6) In a transaction broker relationship, each party  
2 and the transaction broker, including all persons within an  
3 entity engaged as the transaction broker if the transaction  
4 broker is an entity, are considered to possess only actual  
5 knowledge and information. There is no imputation of  
6 knowledge or information by operation of law between any party  
7 and the transaction broker or between any party and any person  
8 within an entity engaged as the transaction broker if the  
9 transaction broker is an entity.

10           (7) A transaction broker has no duty to disclose any  
11 fact or suspicion concerning the property, including, but not  
12 limited to, any fact or suspicion that the property was, or  
13 was suspected to have been, the site of a homicide or other  
14 felony or a suicide, which if known by a party might cause  
15 that party to suffer adverse psychological effects. Such fact  
16 or suspicion is not a material fact that must be disclosed in  
17 a real estate transaction. No cause of action shall arise  
18 against an owner of real estate or a real estate licensee for  
19 the failure to disclose such fact or suspicion to the  
20 transferee.

21           (8) A transaction broker may cooperate with other  
22 brokers, and such cooperation does not establish an agency or  
23 subagency relationship.

24           (9) Nothing in this section prohibits a transaction  
25 broker from acting as a single agent, whether on behalf of a  
26 buyer or seller, or acting as a disclosed dual agent in  
27 separate transactions as long as the requirements of this part  
28 governing disclosure are met.

29           (10) Nothing in this section alters or eliminates the  
30 responsibility of a broker, as set forth in this part, for the  
31

1 conduct and actions of a salesperson operating under the  
2 broker's license.

3 Section 5. Section 475.017, Florida Statutes, is  
4 created to read:

5 475.017 Single agent requirements.--

6 (1) A single agent who represents a seller:

7 (a) Shall perform the terms of the brokerage agreement  
8 entered into with the seller.

9 (b) Shall promote the interests of the seller by  
10 exercising agency duties, including:

11 1. Seeking a sale at the price and terms stated in the  
12 brokerage agreement or at a price and terms acceptable to the  
13 seller, except that the licensee is not obligated to seek  
14 additional offers to purchase the property while the property  
is subject to a contract of sale unless the brokerage  
agreement so provides.

17 2. Presenting, in a timely manner, all offers to and  
18 from the seller, even when the property is subject to a  
19 contract of sale, unless the brokerage agreement provides  
20 otherwise.

21 3. Advising the seller to obtain expert advice on  
22 material matters that are beyond the expertise of the  
23 licensee.

24 4. Accounting, in a timely manner, for all money and  
25 property received.

26 (c) Has an obligation to preserve confidential  
27 information provided by the seller during the course of the  
28 relationship that would have a negative impact on the seller's  
real estate transaction, unless:

31 1. The seller to whom the information pertains grants  
consent to disclose the information;

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1 2. Disclosure of the information by the licensee is  
2 required by law;

3 3. The information is made public or becomes public  
4 from a source other than the licensee; or

5 4. Disclosure is necessary to defend the licensee  
6 against an accusation of wrongful conduct in a proceeding  
7 before the commission, a professional committee, or any court  
8 of this state or in any administrative proceeding.

9 (d) Shall be permitted to promote alternative  
10 properties not owned by the seller to prospective buyers as  
11 well as list competing properties for sale without breaching  
12 any duty to the client.

13 (e) Shall treat buyers honestly and may not knowingly  
14 give false information. A single agent shall also disclose in  
15 a timely manner to a buyer all personally known facts which  
16 materially affect the value of a residential property. Facts  
17 which are readily observable or are known to the buyer do not  
18 need to be disclosed. A single agent is not liable to a buyer  
19 for providing false information to the buyer if the false  
20 information was provided to the agent by the seller-client and  
21 the agent did not know that the information was false. A  
22 cause of action may not arise on behalf of any person against  
23 a single agent for revealing information in compliance with  
24 this part.

25 (f) Has no duty to conduct an independent inspection  
26 of or discover latent defects in the property. Nothing in  
27 this section limits the obligation of a buyer to inspect the  
28 physical condition of the property.

29 (2) A single agent who represents a buyer;

30 (a) Shall perform the terms of the brokerage agreement  
31 entered into with the buyer.



2 (b) Shall promote the interests of the buyer by  
3 exercising agency duties, including:

4 1. Seeking a property at a price and terms specified  
5 by the buyer, except that the licensee is not obligated to  
6 seek other properties for the buyer while the buyer is a party  
7 to a contract to purchase that property unless the brokerage  
8 agreement so provides.

9 2. Presenting, in a timely manner, all offers to and  
10 from the buyer.

11 3. Disclosing to the buyer all personally known facts  
12 which materially affect the value of a residential property.  
13 Facts which are readily observable or are known to the buyer  
14 do not need to be disclosed.

15 4. Advising the buyer to obtain expert advice on  
16 material matters that are beyond the expertise of the  
17 licensee.

18 5. Accounting, in a timely manner, for all money and  
19 property received.

20 (c) Has an obligation to preserve confidential  
21 information provided by the buyer during the course of the  
22 relationship that would have a negative impact on the buyer's  
23 real estate transaction, unless:

24 1. The buyer to whom the information pertains grants  
25 consent to disclose the information;

26 2. Disclosure of the information by the licensee is  
27 required by law;

28 3. The information is made public or becomes public  
29 from a source other than the licensee; or

30 4. Disclosure is necessary to defend the licensee  
31 against an accusation of wrongful conduct in a proceeding

1 before the commission, a professional committee, or any court  
2 of this state or in any administrative proceeding.

3 (d) Shall be permitted to promote other properties in  
4 which the buyer is interested to other buyers who might also  
5 be clients of the agent without breaching any duty or  
6 obligation.

7 (e) Is not liable to a seller for providing false  
8 information to the seller if the false information was  
9 provided to the agent by the agent's buyer-client and the  
10 agent did not know that the information was false. A cause of  
11 action may not arise on behalf of any person against a single  
12 agent for revealing information in compliance with this part.

13 (f) Has no duty to conduct an independent inspection  
14 of or discover latent defects in the property. Nothing in  
15 this section limits the obligation of a buyer to inspect the  
16 physical condition of the property.

17 (3) A single agent who represents either a buyer or a  
18 seller has no duty to disclose any fact or suspicion  
19 concerning the property, including, but not limited to, any  
20 fact or suspicion that the property was, or was suspected to  
21 have been, the site of a homicide or other felony or a  
22 suicide, which if known by a party might cause that party to  
23 suffer adverse psychological effects. Such fact or suspicion  
24 is not a material fact that must be disclosed in a real estate  
25 transaction. No cause of action shall arise against an owner  
26 of real estate or a real estate licensee for the failure to  
27 disclose such fact or suspicion to the transferee.

28 (4) In a single agent relationship, the client or  
29 clients and the real estate broker and its associated  
30 licensees are considered to possess only actual knowledge and  
31 information. There is no imputation of knowledge or

1 information by operation of law among or between the client or  
2 clients and the real estate broker and its associated  
3 licensees.

4 (5) Nothing in this section alters or eliminates the  
5 responsibility of a broker, as set forth in this part, for the  
6 conduct and actions of a salesperson operating under the  
7 broker's license.

8 Section 6. Section 475.15, Florida Statutes, is  
9 amended to read:

10 475.15 Registration and licensing of general partners,  
11 members, officers, and directors of a firm.--Each partnership  
12 or corporation which acts as a broker shall register with the  
13 commission and shall renew the licenses or registrations of  
14 its members, officers, and directors for each license period.  
15 ~~The registration of a partnership is canceled automatically~~  
16 ~~during any period of time that the license or registration of~~  
17 ~~any one or more of its partners is not in force. However, if~~  
18 the partnership is a limited partnership, only the general  
19 partners must be licensed brokers or brokerage corporations  
20 registered pursuant to this part. If the license or  
21 registration of at least one active broker member is not in  
22 force, the registration of a corporation or partnership is  
23 canceled automatically during that period of time.

24 Section 7. Paragraphs (a) and (q) of subsection (1) of  
25 section 475.25, Florida Statutes, are amended, paragraph (t)  
26 is added to said subsection, and subsection (4) is added to  
27 said section, to read:

28 475.25 Discipline.--

29 (1) The commission may deny an application for  
1 licensure, registration, or permit, or renewal thereof; may  
21 place a licensee, registrant, or permittee on probation; may

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

7 (a) Has violated any provision of s. 455.227(1) or of  
8 s. 475.42. However, licensees under this part are exempt from  
9 the provisions of s. 455.227(1)(i).

10 (q)1. Has failed in a single agency to give written  
11 disclosure in a sale, exchange, purchase, or lease of real  
12 property or any interest in real property to the party for  
13 whom the licensee is not an agent revealing that the broker is  
14 an agent of another party. The disclosure shall be given at  
15 first substantive contact.

16 2. Has failed in a single agency to perform any duty  
17 specified in s. 475.017 notice-to-all-parties-to-a-sale;  
18 exchange;-purchase;-or-lease-of-real-property-or-any-interest  
19 in-real-property;-revealing-the-party-or-parties-for-when-the  
20 licensee-is-an-agent;--Disclosure-to-the-party-for-when-the  
21 licensee-is-an-agent-must-be-made-at-or-before-the-time-an  
22 agreement-for-representation-is-entered-into;--Disclosure-to  
23 the-party-for-when-the-licensee-is-not-an-agent-must-be-made  
24 at-the-time-of-the-first-substantive-contact.

25 3.2: Has failed in a dual agency to obtain the  
26 informed written consent of all parties to a sale, exchange,  
27 purchase, or lease of real property or any interest in real  
28 property that the licensee intends to operate as a disclosed  
29 dual agent. Unless all parties to the transaction grant their  
30 written informed consent prior to or at the time of  
31 finalization of the dual agency by the licensee, the licensee

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1 shall be deemed to be an undisclosed dual agent. The licensee  
2 must inform all parties that the licensee is acting as agent  
3 for all parties and of the effect of dual agency, including,  
4 but not limited to, the fact that, by consenting to the dual  
5 agency relationship, the parties are giving up their rights to  
6 the undivided loyalty of the licensee; ~~as required by the~~  
7 ~~rules of the commission.~~ When single agency exists, the  
8 licensee may change to a disclosed dual agent by making full  
9 written disclosure to and obtaining the informed written  
10 consent of all the parties. Written consent of the parties  
11 may be obtained at the time of entry of the listing agreement  
12 or agreement for representation whether the agent is acting as  
13 a buyer agent, disclosed dual agent, or transaction broker. A

14 disclosed dual agent may not disclose among other items:

15 a. To the buyer that the seller will accept a price  
16 less than the asking or listed price, unless otherwise  
17 instructed in-writing by the seller;

18 b. To the seller that the buyer will pay a price  
19 greater than the price submitted in a written offer to the  
20 seller, unless otherwise instructed in-writing by the buyer;

21 c. The motivation of any party, if adverse to the  
22 party's interest, for selling, buying, or leasing a property,  
23 unless otherwise instructed in-writing by the respective  
24 party; or

25 d. That a seller or buyer will agree to financing  
26 terms other than those offered.

27 4. Has failed in a dual agency to perform any duty  
28 specified in s. 475.015.

29 5.3: Has failed in a transaction brokerage capacity to  
30 give written notice to all parties to a sale, exchange,  
31 purchase, or lease of real property or an interest in real

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1 property prior to or at the time of the licensee's licensee  
2 becoming a transaction broker or first substantive contact,  
3 whichever occurs first, of the licensee's role as a  
4 transaction broker. ~~Unless the buyer and seller are given~~  
5 ~~written notice prior to the licensee's acting in a transaction~~  
6 ~~brokerage capacity; the licensee is deemed to be an agent of~~  
7 ~~either the buyer or seller; or both:--The licensee shall treat~~  
8 ~~the buyer and seller honestly and fairly and shall disclose~~  
9 ~~all known facts materially affecting the value of the property~~  
10 ~~in residential transactions to both the buyer and seller:~~

11 f. Has failed while acting as a transaction broker to  
12 perform any duty specified in s. 475.016.

13  
14 For the purposes of this paragraph, the payment or promise of  
15 payment of compensation to a licensee does not determine  
16 whether an agency or transactional brokerage relationship has  
17 been created between any licensee and a seller, landlord,  
18 buyer, or tenant. The commission shall implement this  
19 paragraph by rule. ~~For purposes of this paragraph; the~~  
20 ~~commission shall also define by rule forms for agency~~  
21 ~~disclosure:--The forms provided for in this rule shall be~~  
22 ~~written in plain language and shall provide to the buyer or~~  
23 ~~seller or both; as appropriate; an explanation of the agency~~  
24 ~~relationships and shall offer the buyer or seller or both the~~  
25 ~~explicit right to choose or refuse among these agency~~  
26 ~~relationships:~~

27 (t) Has violated any standard for the development or  
28 communication of a real estate appraisal or other provision of  
29 the Uniform Standards of Professional Appraisal Practice, as  
30 defined in s. 475.611, as approved and adopted by the  
31 Appraisal Standards Board of the Appraisal Foundation, as

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1 defined in s. 475.611. This paragraph does not apply to a  
2 real estate broker or salesperson who, in the ordinary course  
3 of business, performs a comparative market analysis or makes  
4 an evaluation of real estate. However, in no event may this  
5 opinion of value be referred to or construed as an appraisal.

6 (4) For any finding under this section of a failure to  
7 disclose by a person who has not previously been found to have  
8 violated this section, the commission may only impose an  
9 administrative fine in an amount not to exceed \$100 for each  
10 count or separate offense or may issue a reprimand for failure  
11 to disclose if each of the following conditions is met:

12 (a) There is no showing of intentional failure to  
13 disclose.

14 (b) The failure to disclose has not been a  
15 contributing factor that caused harm to any consumer.

6 Section 8. Section 475.256, Florida Statutes, is  
17 created to read:

18 475.256 Abrogation of common law agency.--It is the  
19 intent of the Legislature that the duties and responsibilities  
20 of brokers as agents or transaction brokers as set forth in  
21 this part shall abrogate and supersede the duties and  
22 responsibilities of agents and transaction brokers under the  
23 common law. This abrogation of agency law shall apply only to  
24 persons licensed pursuant to this part while performing the  
25 duties of a real estate broker or transaction broker on behalf  
26 of any buyer, seller, or other party to a real estate  
27 transaction. This abrogation shall not be construed to limit  
28 or extinguish any civil cause of action based on a breach of  
29 the duties and responsibilities of agents and transaction  
0 brokers set forth in this part, nor shall this abrogation  
31 limit or extinguish any civil remedy in law or equity that is

1 based on a breach of the duties and responsibilities of agents  
2 and transaction brokers set forth in this part.

3 Section 9. Section 475.257, Florida Statutes, is  
4 created to read:

5 475.257 Facsimile signatures or writing  
6 accepted.--When any act performed pursuant to the terms of  
7 this part must be performed in writing or acknowledged with a  
8 signature, the provision of an instrument or writing by  
9 electronic means or facsimile, including a signature  
10 transmitted by electronic means or facsimile, shall be deemed  
11 binding and sufficient.

12 Section 10. Section 475.258, Florida Statutes, is  
13 created to read:

14 475.258 Disclosure to agent, broker, or transaction  
15 broker authorized.--In any disclosure of agency or transaction  
16 brokerage performed pursuant to the terms of this part,  
17 disclosure by an agent, broker, or transaction broker to the  
18 agent, broker, or transaction broker representing or working  
19 with another party shall be sufficient and shall satisfy the  
20 disclosure requirements.

21 Section 11. Section 475.259, Florida Statutes, is  
22 created to read:

23 475.259 Ministerial acts not a violation.--A real  
24 estate broker engaged by any buyer or seller in a real estate  
25 transaction or engaged by any buyer or seller as a transaction  
26 broker may provide assistance to any party to the transaction  
27 by performing ministerial acts such as preparing and conveying  
28 offers; preparing, completing, and conveying contracts for the  
29 sale, lease, exchange, or other conveyance of real property or  
30 any interest in real property; and providing information and  
31 assistance concerning professional services not related to



1 real estate broker services. Performing ministerial acts may  
2 not be construed as violating the real estate broker agreement  
3 or transaction broker agreement with a buyer or seller, and  
4 performing ministerial acts may not be construed as forming a  
5 transaction brokerage or agency agreement.

6 Section 12. Section 475.261, Florida Statutes, is  
7 created to read:

8 475.261 Duty of broker to act with reasonable skill,  
9 care, and diligence.--Nothing in this part shall be construed  
10 to relieve any licensee from the duty to act with reasonable  
11 skill, care, and diligence while performing the duties of a  
12 real estate broker, salesperson, or transaction broker on  
13 behalf of any buyer, seller, or other party to a real estate  
14 transaction.

15 Section 13. Subsections (2), (6), and (7) of section  
16 475.451, Florida Statutes, are amended to read:

17 475.451 Schools teaching real estate practice.--

18 (2) An applicant for a permit to operate a proprietary  
19 real estate school, to be a chief administrator of a  
20 proprietary real estate school or a state institution, or to  
21 be an instructor for a proprietary real estate school or a  
22 state institution must meet the qualifications for practice  
23 set forth in s. 475.17(1) and the following minimal  
24 requirements:

25 (a) "School permitholder" means the is-defined-as-that  
26 individual who is responsible for directing the overall  
27 operation of a proprietary real estate school. A school  
28 permitholder He must be the holder of a license as a broker,  
29 either active or voluntarily inactive, or must have passed an  
30 instructor's examination administered by the department. A  
31

1 school permitholder must also meet the requirements of a  
2 school instructor if he-is actively engaged in teaching.

3 (b) "Chief administrative person" means the is-defined  
4 ~~as-that~~ individual who is responsible for the administration  
5 of the overall policies and practices of the institution or  
6 proprietary real estate school. A chief administrative person  
7 He must also meet the requirements of a school instructor if  
8 he-is actively engaged in teaching.

9 (c) "School instructor" means an is-defined-as-that  
10 individual who actively instructs persons in the classroom in  
11 noncredit college courses in a college, university, or  
12 community college or courses in an area vocational-technical  
13 center or proprietary real estate school.

14 1. Before commencing to provide such instruction, the  
15 applicant instruct-~~noncredit-college-courses-in-a-college;~~  
16 ~~university;-er-community-college;-or-courses-in-an-area~~  
17 ~~technical-center-er-prepropriary-real-estate-school;-~~he must  
18 certify his or her competency and obtain an instructor permit  
19 by meeting one of the following requirements:

20 a. Hold a bachelor's degree in a business-related  
21 subject, such as real estate, finance, accounting, business  
22 administration, or its equivalent and hold a valid broker's  
23 license in this state.

24 b. Hold a bachelor's degree, have extensive real  
25 estate experience, as defined by rule, and hold a valid  
26 broker's license in this state.

27 c. Pass an instructor's examination administered by  
28 the Division of Real Estate.

29 2. Any requirement by the commission for a teaching  
30 demonstration or practical examination must apply to all  
31 school instructor applicants.

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1           3. The department shall renew an instructor permit  
2 upon receipt of a renewal application and fee. The renewal  
3 application shall include proof that the permit holder has,  
4 since the issuance or renewal of the current permit, Every  
5 second-year; each instructor must recertify his competency by  
6 presenting to the commission evidence of his having  
7 successfully completed a minimum of 15 classroom hours of  
8 instruction in real estate subjects or instructional  
9 techniques, as prescribed by the commission. The commission  
10 shall adopt rules providing for the renewal of instructor  
11 permits at least every 2 years. Any permit which is not  
12 renewed at the end of the permit period established by the  
13 department shall automatically revert to involuntarily  
14 inactive status.

15  
16           The department may require an applicant to submit names of  
17 persons having knowledge concerning the applicant and the  
18 enterprise; may propound interrogatories to such persons and  
19 to the applicant concerning the character of the applicant,  
20 including the taking of fingerprints for processing through  
21 the Federal Bureau of Investigation; and shall make such  
22 investigation of the applicant him or the school or  
23 institution as it may deem necessary to the granting of the  
24 permit. If an objection is filed, it shall be considered in  
25 the same manner as objections or administrative complaints  
26 against other applicants for licensure by the department.

27           (6) Any course prescribed by the commission as a  
28 condition precedent to any person's becoming initially  
29 licensed as a salesperson may be taught in any real estate  
30 school through the use of a video tape of instruction by a  
31 currently permitted licensed instructor from any such school.

1 The commission may require that any such video tape course  
2 have a single session of live instruction by a currently  
3 ~~permitted~~ licensed instructor from any such school; however,  
4 this requirement shall not exceed 3 classroom hours. All  
5 other prescribed courses, except the continuing education  
6 course required by s. 475.182, shall be taught by a currently  
7 ~~permitted~~ licensed school instructor personally in attendance  
8 at such course. The continuing education course required by  
9 s. 475.182 may be taught by an equivalent correspondence  
10 course; however, any such course of correspondence shall be  
11 required to have a final examination, prepared and  
12 administered by the school issuing the correspondence course.  
13 The continuing education requirements provided in this section  
14 or provided in any other section in this chapter do not apply  
15 with respect to any attorney who is otherwise qualified under  
16 the provisions of this chapter.

17 (7) Any person holding a school instructor permit on  
18 October 1, 1983, is exempt from the instructor examination  
19 requirements of paragraph (2)(c) as long as the person he  
20 continuously holds such a permit and complies with all other  
21 requirements of this chapter.

22 Section 14. Subsection (6) is added to section  
23 475.452, Florida Statutes, to read:

24 475.452 Advance fees; deposit; accounting; penalty;  
25 damages.--

26 (6) A broker auctioning real property for a seller may  
27 receive anticipated expenses prior to the auction only in  
28 accordance with a written agreement previously concluded  
29 between the broker and the seller. A broker may receive funds  
30 in advance of the auction only in accordance with the  
31

1 requirements of this section applicable to advance fees for  
2 the listing of real property.

3 Section 15. Section 475.6145, Florida Statutes, is  
4 created to read:

5 475.6145 Seal.--The board shall adopt a seal by which  
6 it shall authenticate its proceedings, records, and acts.  
7 Copies of the proceedings, records, and acts of the board, and  
8 certificates purporting to relate the facts concerning such  
9 proceedings, records, and acts, which are signed by the board  
10 chair, the custodian of such records, or any other person  
11 authorized to make such certification and which are  
12 authenticated by such seal, shall be prima facie evidence of  
13 such proceedings, records, and acts in all the courts of this  
14 state.

5 Section 16. This act shall take effect October 1,  
1996.

17  
18  
19  
20  
21  
22 This publication was produced at an average cost of 1.12 cents  
23 per single page in compliance with the Rules and for the  
24 information of members of the Legislature and the public.  
25  
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27  
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29

STORAGE NAME: h0649a bpr  
DATE March 14, 1996

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS AND PROFESSIONAL REGULATION  
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 649

**RELATING TO:** Real Estate Sales, Brokers, and Agents

**SPONSOR(S):** Representative Posey and others

**STATUTE(S) AFFECTED:** Chapter 475, F S

**COMPANION BILL(S):** SB 502(s), HB 711(c), HB 2425(c), and SB 1194(c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**

(1) BUSINESS AND PROFESSIONAL REGULATION

(2) APPROPRIATIONS

(3)

(4)

(5)

19 2904

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**I. SUMMARY**

This bill clarifies the roles and duties contained in ch 475, F.S relating to real estate sales, brokers, and agents. The bill focuses on the issue of real estate agency. Agency, in this context, refers to the duty of the real estate broker to disclose who he represents (who he is an agent for) during the course of the transaction between the seller and a buyer. The crux of the matter is who the agent represents. Representing someone places on a party certain obligations and duties that are absent if the agent is not representing that person. This bill sets forth the duties and obligations in each scenario

Duties of a real estate broker acting as a disclosed dual agent are specified (a "disclosed dual agent" works for both parties, but must disclose that dual relationship to both parties). A disclosed dual agent's duties may be performed only with written consent of all parties. The consent is presumed if the parties sign an agreement containing certain information.

Duties and obligations of transaction brokers are specified (a "transaction broker" works for neither party, only facilitates the transaction) Specific duties include exercise of skill, care and diligence, presentation of all offers in timely manner; accounting for funds, keeping parties informed and advising to seek expert help in areas beyond broker expertise; and not share confidential information without the consent of parties.

A presumption of transaction brokerage is created wherein a real estate broker is considered a transaction broker unless another relationship with a customer is created pursuant to written agreement.

Duties of a single agent (one who works for either the seller or the buyer, but not both) are listed. The bill amends the disciplinary provisions, and provides that agency must be disclosed at "first substantive contact" to the party the licensee does not represent

The bill provides for an abrogation of the common law regarding real estate agency  
The bill does not have a fiscal impact on state or local government

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION.

Chapter 475, F S., addresses the issue of whom the real estate broker represents. The real estate broker may work for both parties (a dual agent), he may work for either party (either a seller's agent or a buyer's agent, but in both cases a single agent), or he may work for neither party (a transaction agent). Depending on what type of agent the real estate broker is acting as, he has different responsibilities and duties. In addition, there are requirements relating to the agent's responsibility to disclose to each of the parties (the home buyer and home seller) exactly whom the broker represents in the course of their transaction.

This area of concern was brought to the fore when a 1983 Federal Trade Commission (FTC) survey found that 70% of potential home buyers believed and acted as though the real estate agent working with them was their agent. This perception is contrary to common business practice, and the real estate broker, in fact, usually represents the seller.

In 1991, the National Association of Realtors (NAR) appointed a Presidential Advisory Group (PAG) on agency, its charge being to study the evolving agency issues and make recommendations to assist state realtor associations. The recommendations included making subagency optional in the realtor Multiple Listing Service (MLS), creating corresponding standards of conduct for buyer's agents in the realtor Code of Ethics; and having NAR provide education and information for its members on a variety of agency laws providing for mandatory, written, timely and meaningful agency disclosure.

In 1992, a Presidential Advisory Group on the Facilitator/Non-Agency Concept was appointed. At the time, the concept of a non-agency relationship (a.k.a. facilitator) was being explored by several states, and some NAR members were interested in further evaluating the possibilities of such relationships, in part, because it was felt by some that it might eliminate some of the potential legal liabilities facing licensees.

This PAG was charged with attempting to identify the various definitions of facilitator then in use in various states, assessing the benefits and drawbacks to consumers and licensees of this type of relationship, and recommending whether a pure facilitator/non-agency relationship with consumers should be further developed and promoted by NAR. The facilitator concept also has been referred to by other names, and it can mean a variety of things, depending upon its specific definition. In Florida, the term is analogous with "transaction broker."

The PAG report offered specific recommendations for a legislative framework to clarify the law of agency as applied to real estate brokerage. The PAG's recommendations were adopted by NAR's Board of Directors in November, 1993, thereby becoming NAR policy.

The 1993 legislation was included as a part of the Department of Business and Professional Regulation's legislative package. However, that package was not adopted. In 1994, that legislation was again made part of the Department's legislative package and was enacted in ch. 94-119, Laws of Florida. The agency law portions were effective July 1, 1994.

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In 1995, real estate legislation was introduced in HB 1629 and was later engrossed in HB 2721. HB 2721 passed both the House and Senate, but was vetoed by the Governor for reasons unrelated to this issue. Identical language has been reintroduced in 1996 in HB 711

#### B. EFFECT OF PROPOSED CHANGES:

This bill elaborates and expands on current law regarding the duties and obligations of the real estate broker, as determined by whom "he is an agent for". It clarifies the duties and obligations of a "transactional broker" (who works for neither party), a "disclosed dual agent" (who works for both parties), and a "single agent" (who may work for either the seller or the buyer). Provides for a presumption that an agent is a "transaction broker" in the absence of a written agreement.

It rewrites the grounds for discipline, providing specific disclosure requirements.

It provides that all duties and responsibilities of real estate brokers with regard to the "agency issue," shall be limited to those established in the real estate practice act (chapter 475, F.S.), and that those duties or requirements that were established by court cases are no longer applicable. This is called "abrogation of common law."

HB 649 is substantially the same as the provisions in HB 711, with the following exceptions: HB 649 adds the presumption of transaction brokerage language; redefines and defines the terms "school permitholder", "chief administrative person", and "school instructor"; adds a provision regarding a seal; and requires a written agreement for advancement of fees by a seller to a broker in the context of auctioning of the seller's real property.

#### C. SECTION-BY-SECTION ANALYSIS

Section 1 Amends s. 475.01, F.S., requiring the roles of "dual agent" and "single agent" to be fully described and disclosed in writing to the buyer and seller, providing that a "transaction broker" may keep the identity of the buyer or seller confidential, if requested, and defines the term "first substantive contact".

Section 2 Creates s. 475.012, F.S., establishing legislative intent and a presumption of transaction brokerage. A real estate broker or salesperson is considered a transaction broker unless another relationship with a customer is created pursuant to written agreement.

Section 3 Creates s. 475.015, F.S., providing the duties of a "disclosed dual agent," and specifying that a disclosed dual agent's duties may be performed only with written consent.



of all parties. The consent is presumed if the parties sign an agreement containing certain information. The information which must be contained in the agreement is specified including disclosure of information, acknowledgment that a disclosed dual agent is serving parties with adverse interests and a statement that the client has read and voluntarily signed the agreement. In this situation, licensees are considered to possess only actual knowledge and there is no knowledge acquired by operation of legal principles between the broker or his licensees. Provides that a disclosed dual agent has no duty to disclose facts or suspicions about the property which could adversely psychologically impact the potential buyer.

Section 4. Creates s. 475.016, F.S., providing the duties of a "transaction broker." Specific duties include: exercise of skill, care and diligence, presentation of all offers in timely manner, accounting for funds; keeping parties informed and advising to seek expert help in areas beyond broker expertise, and not share confidential information without consent of parties. Transaction broker has no duty to conduct independent inspection of property, or verify information. There is no imputed knowledge between transaction broker and any party. Transaction broker may act in other capacities in other transactions. Provides that a transaction broker has no duty to disclose facts or suspicions about the property which could adversely psychologically impact the potential buyer.

Section 5. Creates s. 475.017, F.S., providing the duties of a "single agent." The broker representing the seller must seek a sale price at terms stated, present offers in a timely manner, disclose material facts, advise on any expert advice necessary, account for all monies received, and exercise skill, care and diligence in the transaction. Seller's agent must preserve confidential information except in certain circumstances where necessary to protect seller, and defend the licensee if information is made public. There is no imputation of knowledge between agent and any parties or other licensees in firm. A real estate agent representing a seller has specified duties to a buyer. Must treat all buyers honestly and not give false information. Broker not liable for providing false information if such information was provided by the seller. Real estate broker not obligated to discover hidden defects in property. Buyer must perform own physical inspection of the property. Broker not liable for provision of false information if provided by client.

Real estate agent representing a buyer has specific duties. Must present all offers in a timely manner, disclose material facts of which agent has knowledge, advise the buyer on the need for expert advice, account for monies, exercise reasonable skill, care and diligence. Broker not obligated to discover hidden defects. Buyer is still obligated to perform physical inspection. Buyer agent must preserve confidential information except in certain circumstances where disclosure is necessary to defend licensee, information is made public or information is disclosed as required by law. Broker not liable for provision of false information if provided by client. Provides that a single agent broker has no duty to disclose facts or suspicions about the property which could adversely psychologically impact the potential buyer.

Section 6. Amends s. 475.15, F.S., to delete a provision that provides for the cancellation of the registration of a partnership during any time that the license or registration of any one or more of the partners is not in force.

Section 7. Amends s. 475.25, F.S., modifying disciplinary grounds. Exempts licensees under this part from the provisions of s. 455.227(1)(l) which provides a penalty for failure

to report a licensee to the department who is in violation of the law or agency rules. Provides that agency must be disclosed at first substantive contact to party the licensee does not represent. Also provides for discipline of licensee for failing to meet the specified duties of an agent in single agency. Law amended to allow written consent at any time to dual agency. Expressly provides for written consent of the parties to dual agency at time of listing agreement. Clarifies items dual agent may disclose. Omits requirements that instructions to disclosed dual agent need be in writing. Provides for discipline of disclosed dual agent for failing to meet new specified duties of agency. Amends disciplinary statute governing transaction brokers to include failure to perform new specified duties of a transaction broker. Deletes authority of Real Estate Commission to specify by rule the forms for agency disclosure. Provides discipline for any violation of a standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice. This provision does not apply to a real estate broker who merely performs a comparative market analysis that does not constitute an appraisal. Provides for a maximum \$100 administrative fine for failure to disclose for a licensee who is a first time offender and the offense is unintentional and is not a contributing factor that caused harm to a consumer.

Section 8. Creates s. 475.256, F.S., to provide that duties and responsibilities of brokers as set forth in this part shall abrogate and supersede any duties or responsibilities that have been established by court decisions made in the absence of these statutory provisions.

Section 9. Creates s. 475.257, F.S., providing that facsimile documents are acceptable as documents under the part.

Section 10. Creates s. 475.258, F.S., providing that disclosure by an agent, broker, or transaction broker to an agent for another party shall be sufficient for satisfying disclosure requirements.

Section 11. Creates s. 475.259, F.S., providing that administrative acts provided to any party to the transaction do not constitute having assumed an agent relationship with the party the acts are performed to assist.

Section 12. Creates s. 475.261, F.S., providing that notwithstanding other specific provisions in the practice act, the real estate broker retains a responsibility to act with reasonable skill, care, and diligence.

Section 13. Amends s. 475.451, F.S., providing technical changes to the definitions of "school permitholder" and "chief administrative person". Redefines "school instructor", and requires such instructor to obtain an instructor permit. Revises the process for renewal of instructor permit so that a permit not renewed every 2 years will automatically revert to involuntary inactive status.

Section 14. Amends s. 475.452, F.S. to require a written agreement between a broker and seller for a broker to receive anticipated expenses in the form of an advance fee prior to the broker auctioning real property of the seller.

Section 15. Creates s. 475.6145, F.S. requiring the Florida Real Estate Appraisal Board to adopt the use of a seal to authenticate its proceedings, records, and acts. Copies of all

board records that are authenticated by seal will be prima facia evidence of authenticity in all courts of this state.

Section 16. Provides an effective date of October 1, 1996.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1. Non-recurring Effects:

Negligible.

2. Recurring Effects

Negligible

3. Long Run Effects Other Than Normal Growth

None

4. Total Revenues and Expenditures

None

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

1. Non-recurring Effects:

None.

2. Recurring Effects

None.

3. Long Run Effects Other Than Normal Growth

None.

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs

None.

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets

Undetermined.

D FISCAL COMMENTS

The abrogation of common law is a controversial measure that may limit the liability of real estate agents and brokers thus depriving aggrieved consumers of traditional causes of action

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A APPLICABILITY OF THE MANDATES PROVISION

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B REDUCTION OF REVENUE RAISING AUTHORITY.

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Florida Association of Realtors (FAR) indicated that one of the most important points in the legislation is the abrogation of common law duties regarding agency. They stated

The need for this arose from a court case against the Edina REALTY Corporation of Minnesota. In Edina, the court found that while the real estate company had complied with all statutory obligations regarding agency, English common law imposed other duties which they had failed to follow. Thus, in a class action lawsuit, Edina was found to have violated the agency law concept and was liable in the class action suit. The case was eventually settled. (This) legislation was designed to abrogate the common law and avoid the imposition of these duties which may be arcane or lost in English common law concepts. The idea is to then reimpose on realtors specific statutory duties as set out in law and to provide for discipline or civil liability if they fail to comply with those specific duties

The Department of Business and Professional Regulation has significant concerns about the potential impact on the public of the abrogation of the common law of agency. Although FAR states that the bill is intended to include all the known bases for action under common law within the duties and responsibilities of the various types of agency relationships, the scope of the potential impact of this abrogation is essentially unknown.

The Association has not provided this committee an analysis of the current state of the common law. They do not have this information although they believe that the statutory language in this bill provides the consumer adequate relief.

The Division of Real Estate recommends opposing major changes to agency since this has proven only to confuse the licensees who have seen the rules change three times in the last two years. The public would be adversely affected by the repeal of the common law of agency. The Division recommends that these issues be addressed by a joint Industry-Department-Commission Task Force and that the Foundation Advisory Committee be requested to issue a request for proposals to review the needs and advisability of legislative changes to statutory agency relationships.

On February 21, 1996, the Florida Real Estate Commission, (FREC), rejected the Florida Association of Realtors' proposal which is encompassed in this bill. The FREC voted 6 to 1 for an alternative proposal which is a partial repeal of the existing statute.

The Florida Real Estate Commission has only recommended sections 6, 13, and 14, as introduced, and the Florida Real Estate Appraisal Board has only recommended section 15, as introduced.

A March 7, 1996, opinion from the Florida Attorney General, (#96-20) provides interesting information relating to this bill. The opinion concerns a clause that the Florida Association of Realtors (FAR) has placed in their standard contract. Historically, FAR has consulted and prepared their contracts for residential sale and purchase in conjunction with the Florida Bar with the product being a standard contract referred to as the "FARBAR" contract. However, FAR has recently created a new contract without the Bar's input and approval that has created some question as to its legality. The controversial provision purports to limit the liability of a real estate broker for "loss or damage, whether caused by broker's negligence or otherwise, in connection with (1) seller's failure to disclose material facts in accordance with [the FAR contract]; (2) broker's representations regarding the property's condition or square footage ."

The Attorney General has ruled that this liability limiting provision is contrary to the public policy established by the Legislature through the enactment of the professional practice acts and the court decisions that prescribe the professional responsibility that real estate brokers and salespersons owe to their clients and the public. The Supreme Court of Florida ruled in Zichlin v. Dill, 25 So.2d 4 (Fla. 1946), that real estate brokers in Florida occupy a status with recognized privileges and responsibilities, and enjoy a monopoly to engage in a lucrative business. The court also stated that the old rule of caveat emptor is cast aside due to the monopolistic environment in which real estate agents operate. Further, the Second District Court of Appeal in Ellis v. Flink, 301 So.2d 493, 494 (Fla.2d DCA 1974), recognized that real estate brokers and salesmen owed the appellees a duty of honesty, candor, and fair dealing...even if there were no principal-agent relationship at all. The FAR contract appears to seek avoidance of the courts' prescriptions and circumvents legislative and court imposed

duty. The Attorney General asserts that the courts have held that an agreement that violates a statute or is contrary to public policy is illegal, void, and unenforceable.

Thus, a legislative abrogation of common law would denigrate the importance of the aforementioned court cases and render this bill the definitive rule of law on real estate agency. This bill contains several provisions that attempt to limit liability in much the same way as the FAR contract does. For instance, the bill provides that brokers have no duty to disclose facts or suspicions about the property which could adversely psychologically impact the potential buyer. Brokers are not liable for providing false information if such information was provided by the seller or client. Buyers are obligated to perform a physical inspection and brokers are not obligated to discover hidden defects.

An abrogation of common law and statutory modification of broker's duties could effectively make the recent Attorney General opinion obsolete as old court cases will no longer have precedence and the courts and administrative bodies will have only the practice act to turn to for interpretation. If there is an abrogation of common law, then the courts will be forced to look only to the statute for guidance. This could open an avenue to pass laws that will limit the liability of the brokers and deprive the courts of the ability to look to established public policy as grounds for invalidating suspect provisions of law. Thus, the courts may not be able to rely on established law to invalidate a controversial measure such as the liability limiting FAR contract.

#### VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Fourteen amendments were adopted in the Business Regulation Subcommittee meeting on March 13, 1996


1. Modifies duties of skill and care to mean reasonable skill and care
2. Same changes as #1 but in a different part of the bill (Technical)
3. Deletes extraneous language to clarify the definition of "first substantive contact".
4. Clarifies a requirement of "disclosed dual agents" Provides that a disclosed dual agent has the duty to disclose personally known facts which materially affect the value of the property of the buyer in a timely manner. Facts that are readily observable or known to the buyer do not need to be disclosed
5. Same addition as #4 but in a different part of the bill (Technical)
6. Deletes provision in the definition of "transaction broker" that requires transaction brokers to disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller
7. Deletes extraneous language that states transaction brokers are considered to possess only actual knowledge and information

8. Clarifies language regarding a situation where transaction broker may disclose information that will have a negative impact on the seller's real estate transaction. (Technical)
9. Clarifies the same language as #8 (Technical)
10. Clarifies a requirement of "single agents". Provides that a single agent has the duty to disclose personally known facts which materially affect the value of the property to the buyer in a timely manner. Facts that are readily observable or known to the buyer do not need to be disclosed
11. Provides that a cause of action may not arise on behalf of any person against a single agent for revealing information in compliance with the proposed law
12. A technical amendment to conform the part with the requirements of single agents as provided in amendment #10
13. Clarifies language regarding a situation where a single agent may disclose information that will have a negative impact on the seller's real estate transaction. (Technical)
14. Deletes language that is now unnecessary due to the proposal for a presumption of transaction brokerage.


VII. SIGNATURES

COMMITTEE ON BUSINESS AND PROFESSIONAL REGULATION:

Prepared by:

  
Conal Doyle

Staff Director

  
Lucretia Shaw Collins

STORAGE NAME h0649s1z.bpr  
DATE May 8, 1996

**\*\*FAILED TO PASS THE LEGISLATURE\*\***  
**\*\*SEE FINAL ACTION SECTION\*\***

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
BUSINESS AND PROFESSIONAL REGULATION  
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 649 19 2904  
**RELATING TO** Real Estate Sales, Brokers, and Agents  
**SPONSOR(S)** Committee on Business & Professional Regulation, and Representative Posey and others  
**STATUTE(S) AFFECTED** Chapter 475, F S  
**COMPANION BILL(S)** SB 502(s), HB 711(c), HB 2425(c), and SB 1194(c)  
**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**  
(1) BUSINESS AND PROFESSIONAL REGULATION YEAS 19 NAYS 0  
(2) JUDICIARY (W/D)  
(3) APPROPRIATIONS (W/D)

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**I SUMMARY**

This bill clarifies the roles and duties contained in ch. 475, F S relating to real estate sales, brokers, and agents. The bill focuses on the issue of real estate agency. Agency, in this context, refers to the duty of the real estate broker to disclose who he represents (who he is an agent for) during the course of the transaction between the seller and a buyer. The crux of the matter is who the agent represents. Representing someone places on a party certain obligations and duties that are absent if the agent is not representing that person. This bill sets forth the duties and obligations in each scenario.

Duties of a real estate broker acting as a disclosed dual agent are specified (a "disclosed dual agent" works for both parties, but must disclose that dual relationship to both parties). A disclosed dual agent's duties may be performed only with written consent of all parties. The consent is presumed if the parties sign an agreement containing certain information.

Duties and obligations of transaction brokers are specified (a "transaction broker" works for neither party, only facilitates the transaction). Specific duties include exercise of skill, care and diligence; presentation of all offers in timely manner, accounting for funds, keeping parties informed and advising to seek expert help in areas beyond broker expertise, and not share confidential information without the consent of parties. A presumption of transaction brokerage is created wherein a real estate broker is considered a transaction broker unless another relationship with a customer is created pursuant to written agreement.

Duties of a single agent (one who works for either the seller or the buyer, but not both) are listed. The bill amends the disciplinary provisions, and provides that agency must be disclosed at "first substantive contact" to the party the licensee does not represent.

The bill provides for an abrogation of the common law regarding real estate agency.

The bill does not have a fiscal impact on state or local government.

**CS/HB 649 died on the House Calendar.**



## II SUBSTANTIVE ANALYSIS

### A PRESENT SITUATION

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It rewrites the grounds for discipline, providing specific disclosure requirements.

It provides that all duties and responsibilities of real estate brokers with regard to the "agency issue," shall be limited to those established in the real estate practice act (chapter 475, F.S.), and that those duties or requirements that were established by court cases are no longer applicable. This is called "abrogation of common law."

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Section 7 Amends s 475.25, F.S., modifying disciplinary grounds. Exempts licensees under this part from the provisions of s 455.227(1)(l) which provides a penalty for failure to report a licensee to the department who is in violation of the law or agency rules. Provides that agency must be disclosed at first substantive contact to party the licensee does not represent. Also provides for discipline of licensee for failing to meet the specified duties of an agent in single agency. Law amended to allow written consent at any time to dual agency. Expressly provides for written consent of the parties to dual agency at time of listing agreement. Clarifies items dual agent may disclose. Omits requirements that instructions to disclosed dual agent need be in writing. Provides for discipline of disclosed dual agent for failing to meet new specified duties of agency. Amends disciplinary statute governing transaction brokers to include failure to perform new specified duties of a transaction broker. Deletes authority of Real Estate Commission to specify by rule the forms for agency disclosure. Provides discipline for any violation of a standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice. This provision does not apply to a real estate broker who merely performs a comparative market analysis that does not constitute an appraisal. Provides for a maximum \$100 administrative fine for failure to disclose for a licensee who is a first time offender and the offense is unintentional and is not a contributing factor that caused harm to a consumer.

Section 8 Creates s 475.256, F.S., to provide that duties and responsibilities of brokers as set forth in this part shall abrogate and supersede any duties or responsibilities that have been established by court decisions made in the absence of these statutory provisions.

Section 9 Creates s 475.257, F.S., providing that facsimile documents are acceptable as documents under the part.

Section 10 Creates s 475.258, F.S., providing that disclosure by an agent, broker, or transaction broker to an agent for another party shall be sufficient for satisfying disclosure requirements.

Section 11 Creates s. 475.259, F.S., providing that administrative acts provided to any party to the transaction do not constitute having assumed an agent relationship with the party the acts are performed to assist.

Section 12 Creates s 475.261, F.S., providing that notwithstanding other specific provisions in the practice act, the real estate broker retains a responsibility to act with reasonable skill, care, and diligence.

Section 13 Amends s 475.451, F.S., providing technical changes to the definitions of "school permitholder" and "chief administrative person". Redefines "school instructor", and requires such instructor to obtain an instructor permit. Revises the process for renewal of instructor permit so that a permit not renewed every 2 years will automatically revert to involuntary inactive status.

Section 14 Amends s 475 452, F S to require a written agreement between a broker and seller for a broker to receive anticipated expenses in the form of an advance fee prior to the broker auctioning real property of the seller

to Section 15 Creates s 475 6145, F S requiring the Florida Real Estate Appraisal Board adopt the use of a seal to authenticate its proceedings, records, and acts Copies of all board records that are authenticated by seal will be prima facia evidence of authenticity in all courts of this state.

Section 16 Provides an effective date of October 1, 1996

### III FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1. Non-recurring Effects

Negligible

2. Recurring Effects

Negligible

3. Long Run Effects Other Than Normal Growth

None

4. Total Revenues and Expenditures

Negligible

#### B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring Effects

None

2. Recurring Effects

None.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

1. Direct Private Sector Costs.

None.

2. Direct Private Sector Benefits

Could benefit realtors by limiting liability and clearly delineating duties and responsibilities

3. Effects on Competition, Private Enterprise and Employment Markets.

Undetermined.

D. FISCAL COMMENTS

The abrogation of common law is a controversial measure that may limit the liability of real estate agents and brokers thus depriving aggrieved consumers of traditional causes of action.

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A. APPLICABILITY OF THE MANDATES PROVISION

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds

B. REDUCTION OF REVENUE RAISING AUTHORITY

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

This bill does not reduce the percentage of a state tax shared with counties or municipalities

V COMMENTS.

The Florida Association of Realtors (FAR) indicated that one of the most important points in the legislation is the abrogation of common law duties regarding agency. They stated

The need for this arose from a court case against the Edina REALTY Corporation of Minnesota. In Edina, the court found that while the real estate company had complied with all statutory obligations regarding agency, English common law imposed other duties which they had failed to follow. Thus, in a class action lawsuit, Edina was found

to have violated the agency law concept and was liable in the class action suit. The case was eventually settled. (This) legislation was designed to abrogate the common law and avoid the imposition of these duties which may be arcane or lost in English common law concepts. The idea is to then reimpose on realtors specific statutory duties as set out in law and to provide for discipline or civil liability if they fail to comply with those specific duties.

The Department of Business and Professional Regulation has significant concerns about the potential impact on the public of the abrogation of the common law of agency. Although FAR states that the bill is intended to include all the known bases for action under common law within the duties and responsibilities of the various types of agency relationships, the scope of the potential impact of this abrogation is essentially unknown.

The Association has not provided this committee an analysis of the current state of the common law. They do not have this information although they believe that the statutory language in this bill provides the consumer adequate relief.

The Division of Real Estate recommends opposing major changes to agency since this has proven only to confuse the licensees who have seen the rules change three times in the last two years. The public would be adversely affected by the repeal of the common law of agency. The Division recommends that these issues be addressed by a joint Industry-Department-Commission Task Force and that the Foundation Advisory Committee be requested to issue a request for proposals to review the needs and advisability of legislative changes to statutory agency relationships.

On February 21, 1996, the Florida Real Estate Commission, (FREC), rejected the Florida Association of Realtors' proposal which is encompassed in this bill. The FREC voted 6 to 1 for an alternative proposal which is a partial repeal of the existing statute.

The Florida Real Estate Commission has only recommended sections 6, 13, and 14, as introduced, and the Florida Real Estate Appraisal Board has only recommended section 15, as introduced.

A March 7, 1996, opinion from the Florida Attorney General, (#96-20) provides interesting information relating to this bill. The opinion concerns a clause that the Florida Association of Realtors (FAR) has placed in their standard contract. Historically, FAR has consulted and prepared their contracts for residential sale and purchase in conjunction with the Florida Bar with the product being a standard contract referred to as the "FARBAR" contract. However, FAR has recently created a new contract without the Bar's input and approval that has created some question as to its legality. The controversial provision purports to limit the liability of a real estate broker for "loss or damage, whether caused by broker's negligence or otherwise, in connection with (1) seller's failure to disclose material facts in accordance with [the FAR contract], (2) broker's representations regarding the property's condition or square footage."

The Attorney General has ruled that this liability limiting provision is contrary to the public policy established by the Legislature through the enactment of the professional practice acts and the court decisions that prescribe the professional responsibility that real estate brokers and salespersons owe to their clients and the public. The Supreme Court of Florida ruled in Zichlin v. Dill, 25 So 2d 4 (Fla 1946), that real estate brokers in Florida occupy a status with recognized privileges and responsibilities, and enjoy a monopoly to engage in a lucrative

business. The court also stated that the old rule of caveat emptor is cast aside due to the monopolistic environment in which real estate agents operate. Further, the Second District Court of Appeal in Ellis v Flink, 301 So 2d 493, 494 (Fla 2d DCA 1974), recognized that real estate brokers and salesmen owed the appellees a duty of honesty, candor, and fair dealing. even if there were no principal-agent relationship at all. The FAR contract appears to seek avoidance of the courts' prescriptions and circumvents legislative and court imposed duty. The Attorney General asserts that the courts have held that an agreement that violates a statute or is contrary to public policy is illegal, void, and unenforceable.

Thus, a legislative abrogation of common law would denigrate the importance of the aforementioned court cases and render this bill the definitive rule of law on real estate agency. This bill contains several provisions that attempt to limit liability in much the same way as the FAR contract does. For instance, the bill provides that brokers have no duty to disclose facts or suspicions about the property which could adversely psychologically impact the potential buyer. Brokers are not liable for providing false information if such information was provided by the seller or client. Buyers are obligated to perform a physical inspection and brokers are not obligated to discover hidden defects.

An abrogation of common law and statutory modification of broker's duties could effectively make the recent Attorney General opinion obsolete as old court cases will no longer have precedence and the courts and administrative bodies will have only the practice act to turn to for interpretation. If there is an abrogation of common law, then the courts will be forced to look only to the statute for guidance. This could open an avenue to pass laws that will limit the liability of the brokers and deprive the courts of the ability to look to established public policy as grounds for invalidating suspect provisions of law. Thus, the courts may not be able to rely on established law to invalidate a controversial measure such as the liability limiting FAR contract.

The Committee Substitute codifies the rule in Johnson v Davis, 480 So 2d 625 (Fla 1985), that provides that brokers have the duty to disclose in a timely manner to a buyer all personally known facts which materially affect the value of a residential property. Facts which are readily observable or are known to the buyer do not need to be disclosed.

## VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

The CS clarifies that a disclosed dual agent, single agent, or transaction broker has the duty to disclose in a timely manner to a buyer all personally known facts which materially affect the value of a residential property. Facts which are readily observable or are known to the buyer do not need to be disclosed.

The CS also deletes a provision in the definition of "transaction broker" that requires transaction brokers to disclose all known facts materially affecting the value of the property in residential transaction to both the buyer and seller.

Provides that a cause of action may not arise on behalf of any person against a single agent for revealing information in compliance with the proposed law.



VII. FINAL ACTION.

CS/HB 649 died on the House Calendar Similar provisions were engrossed in HB 711, which died on the Senate Calendar

VIII SIGNATURES:

COMMITTEE ON BUSINESS AND PROFESSIONAL REGULATION

Prepared by

Staff Director

Conal Doyle

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON Judiciary  
Prepared by

Staff Director

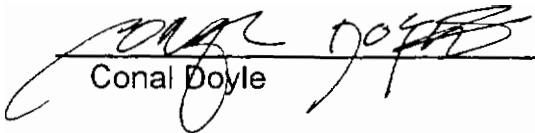
Lori E. H. Killinger

Carol Gregg

FINAL ANALYSIS PREPARED BY COMMITTEE ON BUSINESS AND PROFESSIONAL REGULATION

Prepared by

Staff Director

  
Conal Doyle

  
Lucretia Shaw Collins

BY Senator Childers

1-455-96

1 A bill to be entitled

2 An act relating to the regulation of real  
3 estate transactions; amending s. 475.01, F.S.;  
4 redefining the terms "fiduciary," "disclosed  
5 dual agent," "transaction broker," and "single  
6 agent" and defining the term "first substantive  
7 contact" with respect to real estate brokers  
8 and salespersons; creating s. 475.0125, F.S.;  
9 providing a legislative presumption of a  
10 transaction-broker relationship; creating s.  
11 475.015, F.S.; providing requirements with  
12 respect to disclosed dual agents; prohibiting  
13 certain causes of action; creating s. 475.016,  
14 F.S.; providing requirements for transaction  
15 brokers; creating s. 475.017, F.S.; providing  
16 requirements for single agents; amending s.  
17 475.15, F.S.; eliminating the automatic  
18 cancellation of the registration of a real  
19 estate broker partnership upon the lapse in  
20 licensure or registration of any of its  
21 partners; amending s. 475.25, F.S.; revising a  
22 ground for disciplinary action; revising  
23 disciplinary provisions with respect to single  
24 agency, dual agency, and transaction brokerage;  
25 providing that violations of certain standards  
26 of the Appraisal Foundation are grounds for the  
27 Florida Real Estate Commission to deny, revoke,  
28 or suspend the license of, or to fine, real  
29 estate brokers or salespersons; providing a  
30 penalty for failure to disclose; creating s.  
31 475.256, F.S.; providing for the abrogation of

1 the common law of agency with respect to the  
2 chapter; creating s. 475.257, F.S.; authorizing  
3 the use of facsimile signatures or writing;  
4 creating s. 475.258, F.S.; providing that  
5 certain disclosure to an agent, broker, or  
6 transaction broker satisfies the disclosure  
7 requirements of the chapter; creating s.  
8 475.259, F.S.; providing that certain  
9 ministerial acts performed by a real estate  
10 broker do not form a transaction brokerage or  
11 agency agreement; creating s. 475.261, F.S.;  
12 providing for duties of a broker; amending s.  
13 475.451, F.S.; revising provisions relating to  
14 the permitting of instructors for proprietary  
15 real estate schools or state institutions;  
16 providing permit renewal requirements; amending  
17 s. 475.452, F.S.; providing restrictions  
18 applicable to advance fees for brokers  
19 auctioning real property; creating s. 475.6145,  
20 F.S.; providing for a seal for the Florida Real  
21 Estate Appraisal Board to use for  
22 authenticating its proceedings, records, and  
23 acts; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Paragraphs (i), (j), (k), and (l) of  
28 subsection (1) of section 475.01, Florida Statutes, are  
29 amended, and subsection (4) is added to that section, to read:

30 475.01 Definitions.--

31 (1) As used in this part:

1           (i) "Fiduciary" means a broker in a relationship of  
2 trust and confidence between that broker as agent and the  
3 seller or buyer as principal. The duties of the broker as a  
4 fiduciary are loyalty, confidentiality, obedience, full  
5 disclosure, and accounting, and the duty to use skill, care,  
6 and diligence.

7           (j) "Disclosed dual agent" means a broker who works as  
8 an agent for both the buyer and seller. The broker must obtain  
9 the informed consent in writing of all parties to the  
10 transaction to be a disclosed dual agent. The role of a  
11 disclosed dual agent must be fully described and disclosed in  
12 writing to the buyer and seller. The disclosed dual agent has  
13 all the duties of a fiduciary except full disclosure between  
14 the buyer and seller.

15           (k) "Transaction broker" means a broker who  
16 facilitates a brokerage transaction between a buyer and a  
17 seller. The transaction broker does not affirmatively  
18 represent either the buyer or seller as an agent, and no  
19 fiduciary duties exist except for the duty of accounting and  
20 the duty to use skill, care, and diligence. However, the  
21 transaction broker shall treat the buyer and seller with  
22 honesty and fairness and shall disclose all known facts  
23 materially affecting the value of the property in residential  
24 transactions to both the buyer and seller. A transaction  
25 broker may keep the identity of a buyer or seller confidential  
26 if requested to do so by the buyer or seller. The broker's  
27 role of ~~as~~ a transaction broker must be fully described and  
28 disclosed in writing to the buyer and seller.

29           (l) "Single agent" means a broker who represents, as a  
30 fiduciary, either the buyer or seller but not both in the same  
31

1 transaction. The role of a single agent must be fully  
2 described and disclosed in writing to the buyer or seller.

3 (4) "First substantive contact" means the first  
4 face-to-face contact between a licensee and a buyer, a seller,  
5 the agent of a buyer or seller, or a transaction broker  
6 working with a buyer or seller or, in the case of written  
7 communications, prior to the execution of any other  
8 property-specific legally required written disclosures. This  
9 chapter does not require a licensee to provide any written  
10 notice to property owners whose properties are being shown for  
11 the first time by the licensee.

12 Section 2. Section 475.0125, Florida Statutes, is  
13 created to read:

14 475.0125 Legislative presumption of transaction-broker  
15 relationship.--

16 (1) The Legislature finds that the public will best be  
17 served through a complete understanding and a statement of the  
18 public's legal and working relationships with real estate  
19 brokers and salespersons. Through this full understanding of  
20 agency relationships, the public can engage real estate  
21 brokers and salespersons on mutually acceptable terms and  
22 conditions. The Legislature finds that, in order to eliminate  
23 confusion and to provide for a better understanding on the  
24 part of the public, a presumption of agency relationship of a  
25 real estate agent should be declared.

26 (2) It is presumed for purposes of this chapter that a  
27 real estate broker or salesperson acts in the capacity of a  
28 transaction broker as defined in this chapter and must perform  
29 the duties of a transaction broker under this chapter unless  
30 another relationship with the customer, buyer, or seller is  
31 created under a written agreement with the broker or

1 salesperson. If another relationship is created between the  
2 buyer, seller, or customer and the broker or salesperson, the  
3 duties and obligations of that relationship are as specified  
4 in the contract and according to the requirements of this  
5 chapter regarding agency relationships. When engaged in any of  
6 the activities enumerated in part I of this chapter, a broker  
7 or salesperson may act in any transaction as a single agent,  
8 dual agent, or transaction broker. The broker or salesperson  
9 duties and obligations arising from these relationships must  
10 be disclosed according to the terms of this chapter. A  
11 customer, buyer, or seller may enter into written contracts  
12 with any broker or salesperson which prescribe duties,  
13 obligations, or responsibilities that are in addition to those  
14 specified in this chapter.

15 Section 3. Section 475.015, Florida Statutes, is  
16 created to read:

17 475.015 Disclosed-dual-agent requirements.--

18 (1) A real estate broker may act as a disclosed dual  
19 agent only with the written consent of all parties. A party's  
20 consent is presumed if that party signs an agreement that  
21 contains the following:

22 (a) A description of the situation or circumstances  
23 during representation of a client in which the real estate  
24 broker will serve as a disclosed dual agent.

25 (b) A statement that, in serving as a disclosed dual  
26 agent, the real estate broker represents two or more clients  
27 whose interests are adverse and that the agency duties are  
28 limited.

29 (c) A statement that the disclosed dual agent may  
30 disclose any information to one party that the agent gains  
31

1 from the other party if that information is relevant to the  
2 transaction, except:

3 1. To the buyer that the seller will accept a price  
4 less than the asking or listed price, unless otherwise  
5 instructed by the seller;

6 2. To the seller that the buyer will pay a price  
7 greater than the price submitted in a written offer to the  
8 seller, unless otherwise instructed by the buyer;

9 3. The motivation of any party, if adverse to the  
10 party's interest, for selling, buying, or leasing a property,  
11 unless otherwise instructed by the respective party; or

12 4. That a seller or buyer will agree to financing  
13 terms other than those offered.

14 (d) A statement that the client may choose to consent  
15 or not consent to the disclosed dual agency.

16 (e) A statement that the consent of the client has  
17 been given voluntarily and that the agreement has been read  
18 and understood.

19 (2) A cause of action may not be brought on behalf of  
20 any person against a disclosed dual agent for making  
21 disclosures permitted or required by this chapter, and the  
22 disclosed dual agent does not terminate any real estate broker  
23 agency relationship by making disclosures permitted or  
24 required by this chapter.

25 (3) In a disclosed-dual-agent situation, each client  
26 and the real estate broker and its associated licensees are  
27 considered to possess only actual knowledge and information.  
28 There is no imputation of knowledge or information by  
29 operation of law among or between the clients, the real estate  
30 broker, or its associated licensees.

1 (4) A disclosed dual agent has no duty to conduct an  
2 independent inspection of or to discover latent defects in the  
3 property. This section does not limit the obligation of a  
4 buyer to inspect the physical condition of the property.

5 (5) A disclosed dual agent has no duty to disclose any  
6 fact or suspicion concerning the property, including, but not  
7 limited to, any fact or suspicion that the property was, or  
8 was at any time suspected to have been, the site of a homicide  
9 or other felony or a suicide, which if known by a party might  
10 cause that party to suffer adverse psychological effects.  
11 Such a fact or suspicion is not a material fact that must be  
12 disclosed in a real estate transaction. A cause of action may  
13 not arise against an owner of real estate or a real estate  
14 licensee for the failure to disclose such a fact or suspicion  
15 to the transferee.

16 (6) This section does not alter or eliminate the  
17 responsibility of a broker, as set forth in this part, for the  
18 conduct and actions of a salesperson who is operating under  
19 the broker's license.

20 Section 4. Section 475.016, Florida Statutes, is  
21 created to read:

22 475.016 Transaction-broker requirements.--

23 (1) A transaction broker shall:

24 (a) Perform the terms of any written or oral agreement  
25 made with any party to the transaction.

26 (b) Exercise reasonable skill, care, and diligence as  
27 a transaction broker, including, but not limited to:

28 1. Presenting all offers and counteroffers in a timely  
29 manner regardless of whether the property is subject to a  
30 contract for sale or lease or letter of intent unless  
31



1 otherwise provided in the agreement between the party and the  
2 transaction broker.

3           2. Advising the parties regarding the transaction and  
4 suggesting that such parties obtain expert advice as to  
5 material matters about which the transaction broker knows but  
6 the specifics of which are beyond the expertise of the  
7 transaction broker.

8           3. Accounting in a timely manner for all money and  
9 property received.

10           4. Keeping the parties informed regarding the  
11 transaction.

12           5. Assisting the parties in complying with the terms  
13 and conditions of any contract.

14           6. Informing the parties that as seller and buyer they  
15 are not vicariously liable for any acts of the transaction  
16 broker.

17           (2) The following information must not be disclosed by  
18 a transaction broker without the informed consent of the party  
19 or parties who disclosed the information to the broker:

20           (a) That a buyer is willing to pay more than the  
21 purchase price or lease rate offered for the property.

22           (b) That a seller is willing to accept less than the  
23 asking price or lease rate for the property.

24           (c) What the motivating factors are for any party  
25 buying, selling, or leasing the property.

26           (d) That a seller or buyer will agree to financing  
27 terms other than those offered.

28           (e) Any material information about the other party  
29 unless disclosure is required by law or unless failure to  
30 disclose the information would constitute fraud or dishonest  
31 dealing.

1 (3) A transaction broker has no duty to conduct an  
2 independent inspection of or to discover latent defects in the  
3 property. This section does not limit the obligation of the  
4 buyer to inspect the physical condition of the property.

5 (4) A transaction broker has no duty to conduct an  
6 independent investigation of the buyer's financial condition.

7 (5) A transaction broker may, without breaching any  
8 obligation or responsibility:

9 (a) Show alternative properties that are not owned by  
10 the seller or landlord to a prospective buyer or tenant.

11 (b) List competing properties for sale or lease.

12 (c) Show properties in which the buyer or tenant is  
13 interested to other prospective buyers or tenants.

14 (d) Serve as a single agent, subagent, or dual agent  
15 for the same or for different parties in other real estate  
16 transactions.

17 (6) There shall be no imputation of knowledge or  
18 information between any party and the transaction broker or  
19 among persons within an entity engaged as a transaction  
20 broker.

21 (7) Any fact or suspicion concerning the property,  
22 including, but not limited to, any fact or suspicion that the  
23 property was, or was suspected to have been, the site of a  
24 homicide or other felony or a suicide, which if known by a  
25 party might cause that party to suffer adverse psychological  
26 effects is not a material fact that must be disclosed in a  
27 real estate transaction. A cause of action may not arise  
28 against an owner of real estate or a real estate licensee for  
29 the failure to disclose such a fact or suspicion to the  
30 transferee.

31

1 (8) A transaction broker may cooperate with other  
2 brokers; however, this cooperation does not create an agency  
3 or subagency relationship.

4 (9) A transaction broker may act as a single agent  
5 whether on behalf of a buyer or seller or may act as a  
6 disclosed dual agent in separate transactions as long as the  
7 requirements of this chapter governing disclosure are met.

8 (10) This section does not alter or eliminate the  
9 responsibility of a broker, as set forth in this part, for the  
10 conduct and actions of a salesperson who is operating under  
11 the broker's license.

12 Section 5. Section 475.017, Florida Statutes, is  
13 created to read:

14 475.017 Single-agent requirements.--

15 (1) A real estate broker who represents a seller:

16 (a) Shall perform the terms of the brokerage agreement  
17 between the seller and the broker.

18 (b) Shall promote the interests of the seller by  
19 exercising agency duties, including:

20 1. Seeking a sale at the price and terms stated in the  
21 brokerage agreement or at a price and terms acceptable to the  
22 seller, except that the licensee is not obligated to seek  
23 additional offers to purchase the property while the property  
24 is subject to a contract of sale unless the brokerage  
25 agreement so provides.

26 2. Presenting, in a timely manner, all offers to and  
27 from the seller, even when the property is subject to a  
28 contract of sale, unless the brokerage agreement provides  
29 otherwise.

1           3. Advising the seller to obtain expert advice on  
2 material matters that are beyond the expertise of the  
3 licensee.

4           4. Accounting, in a timely manner, for all money and  
5 property received.

6           (c) Has an obligation to preserve confidential  
7 information that the seller provides during the course of the  
8 relationship and that would have a negative impact on the  
9 seller's real estate transaction unless:

10           1. The seller to whom the information pertains grants  
11 consent to disclose the information;

12           2. Disclosure by the broker of the information is  
13 required by law;

14           3. The information is made public by or becomes public  
15 through a source other than the licensee; or

16           4. Disclosure is necessary to defend the licensee  
17 against an accusation of wrongful conduct in a proceeding  
18 before the commission, before a professional committee, or  
19 before any court of this state, or in any administrative  
20 proceeding.

21           (d) May, without breaching any duty to the client,  
22 promote alternative properties that are not owned by the  
23 seller to prospective buyers and may list competing properties  
24 for sale.

25           (e) Also has the duty to a buyer to treat all  
26 prospective buyers honestly, may not knowingly give false  
27 information, and shall disclose in a timely manner to a  
28 prospective buyer all known material facts pertaining to the  
29 condition of a residential property. A real estate broker is  
30 not liable to a buyer for providing false information to the  
31 buyer if the false information was provided to the real estate

1 broker by the seller-client and the real estate broker did not  
2 know that the information was false.

3 (f) Has no duty to conduct an independent inspection  
4 of or to discover latent defects in the property. This  
5 section does not limit the obligation of a buyer to inspect  
6 the physical condition of the property. A cause of action may  
7 not arise on behalf of any person against a real estate broker  
8 for revealing information in compliance with this chapter.

9 (2) A real estate broker who represents a buyer:

10 (a) Shall perform the terms of the brokerage agreement  
11 between the buyer and the broker.

12 (b) Shall promote the interests of the buyer by  
13 exercising agency duties including:

14 1. Seeking a property at a price and terms specified  
15 by the buyer, except that the licensee is not obligated to  
16 seek other properties for the buyer while the buyer is a party  
17 to a contract to purchase that property unless the brokerage  
18 agreement so provides.

19 2. Presenting, in a timely manner, all offers to and  
20 from the buyer.

21 3. Disclosing to the buyer known facts pertaining to  
22 the condition of residential property.

23 4. Advising the buyer to obtain expert advice on  
24 material matters that are beyond the expertise of the  
25 licensee.

26 5. Accounting, in a timely manner, for all money and  
27 property received.

28 (c) Has no duty to conduct an independent inspection  
29 of or to discover latent defects in the property. This  
30 section does not limit the obligation of a buyer to inspect  
31 the physical condition of the property.

1 (d) Has an obligation to preserve confidential  
2 information that the buyer provides during the course of the  
3 relationship and that would have a negative impact on the  
4 buyer's real estate transaction unless:

5 1. The buyer to whom the information pertains grants  
6 consent to disclose the information;

7 2. Disclosure of the information by the broker is  
8 required by law;

9 3. The information is made public by or becomes public  
10 through a source other than the licensee; or

11 4. Disclosure is necessary to defend the licensee  
12 against an accusation of wrongful conduct in a proceeding  
13 before the commission, before a professional committee, or  
14 before any court of this state, or in any administrative  
15 proceeding.

16 (e) May, without breaching any duty or obligation,  
17 promote other properties in which the buyer is interested to  
18 other buyers who might also be clients of the real estate  
19 agent.

20 (f) Is not liable to a seller for providing false  
21 information to the seller if the false information was  
22 provided to the real estate broker by the real estate broker's  
23 buyer-client and the real estate broker did not know that the  
24 information was false. A cause of action may not arise on  
25 behalf of any person against a real estate broker for  
26 revealing information in compliance with this chapter.

27 (3) A real estate broker who represents either a buyer  
28 or a seller has no duty to disclose any fact or suspicion  
29 concerning the property, including, but not limited to, any  
30 fact or suspicion that the property was, or was at any time  
31 suspected to have been, the site of a homicide or other felony

1 or a suicide, which if known by a party might cause that party  
2 to suffer adverse psychological effects. Such a fact or  
3 suspicion is not a material fact that must be disclosed in a  
4 real estate transaction. A cause of action may not arise  
5 against an owner of real estate or a real estate licensee for  
6 the failure to disclose such a fact or suspicion to the  
7 transferee.

8 (4) In a single-agent relationship, the client or  
9 clients and the real estate broker and its associated  
10 licensees are considered to possess only actual knowledge and  
11 information. There is no imputation of knowledge or  
12 information by operation of law among or between the clients,  
13 the real estate broker, or its associated licensees.

14 (5) This section does not alter or eliminate the  
15 responsibility of a broker for the conduct and actions of a  
16 salesperson operating under the broker's license.

17 Section 6. Section 475.15, Florida Statutes, is  
18 amended to read:

19 475.15 Registration and licensing of general partners,  
20 members, officers, and directors of a firm.--Each partnership  
21 or corporation which acts as a broker shall register with the  
22 commission and shall renew the licenses or registrations of  
23 its members, officers, and directors for each license period.  
24 ~~The registration of a partnership is canceled automatically~~  
25 ~~during any period of time that the license or registration of~~  
26 ~~any one or more of its partners is not in force.~~ However, if  
27 the partnership is a limited partnership, only the general  
28 partners must be licensed brokers or brokerage corporations  
29 registered pursuant to this part. If the license or  
30 registration of at least one active broker member is not in  
31

1 force, the registration of a corporation or partnership is  
2 canceled automatically during that period of time.

3 Section 7. Paragraphs (a) and (q) of subsection (1) of  
4 section 475.25, Florida Statutes, are amended, paragraph (t)  
5 is added to that subsection, and subsection (4) is added to  
6 that section, to read:

7 475.25 Discipline.--

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

17 (a) Has violated any provision of s. 455.227(1) or of  
18 s. 475.42. However, licensees are exempt from s.  
19 455.227(1)(1).

20 (q)1. Has failed in a single agency to give written  
21 disclosure in a sale, exchange, purchase, or lease of real  
22 property or any interest in real property to the party for  
23 whom the licensee is not an agent revealing that the broker is  
24 an agent of another party. The disclosure must be given at the  
25 first substantive contact.

26 2. Has failed in a single agency to perform any duty  
27 specified in s. 475.017. ~~notice-to-all-parties-to-a-sale~~  
28 ~~exchange, purchase, or lease of real property or any interest~~  
29 ~~in real property, revealing the party or parties for whom the~~  
30 ~~licensee is an agent, --Disclosure to the party for whom the~~  
31 ~~licensee is an agent must be made at or before the time an~~



1 ~~agreement-for-representation-is-entered-into--Disclosure-to~~  
2 ~~the-party-for-whom-the-licensee-is-not-an-agent-must-be-made~~  
3 ~~at-the-time-of-the-first-substantive-contact;~~

4       3.2- Has failed in a dual agency to obtain the  
5 informed written consent of all parties to a sale, exchange,  
6 purchase, or lease of real property or any interest in real  
7 property that the licensee intends to operate as a disclosed  
8 dual agent. Unless all parties to the transaction grant their  
9 written informed consent prior to or at the time of  
10 formalization of the dual agency by the licensee, the licensee  
11 shall be deemed to be an undisclosed dual agent. The licensee  
12 must inform all parties that the licensee is acting as agent  
13 for all parties and of the effect of dual agency, including,  
14 but not limited to, the fact that, by consenting to the dual  
15 agency relationship, the parties are giving up their rights to  
16 the undivided loyalty of the licensee~~-as-required-by-the~~  
17 ~~rules-of-the-commission~~. When single agency exists, the  
18 licensee may change to a disclosed dual agent by making full  
19 written disclosure to and obtaining the informed written  
20 consent of all the parties. Written consent of the parties may  
21 be obtained at the time of entry of the listing agreement or  
22 agreement for representation whether the agent is acting as a  
23 buyer agent, dual agent, or transaction broker. A disclosed  
24 dual agent may not disclose among other items:

25       a. To the buyer that the seller will accept a price  
26 less than the asking or listed price, unless otherwise  
27 instructed ~~in-writing~~ by the seller;

28       b. To the seller that the buyer will pay a price  
29 greater than the price submitted in a written offer to the  
30 seller, unless otherwise instructed ~~in-writing~~ by the buyer;

1 c. The motivation of any party, if adverse to the  
2 party's interest, for selling, buying, or leasing a property,  
3 unless otherwise instructed ~~in-writing~~ by the respective  
4 party; or

5 d. That a seller or buyer will agree to financing  
6 terms other than those offered.

7 4. Has failed in a dual agency to perform any duty  
8 specified in s. 475.015.

9 5.37 Has failed in a transaction brokerage capacity to  
10 give written notice to all parties to a sale, exchange,  
11 purchase, or lease of real property or an interest in real  
12 property prior to or at the time of the licensee becoming a  
13 transaction broker or first substantive contact, whichever  
14 occurs first, of the licensee's role as a transaction broker.  
15 Unless the buyer and seller are given written notice prior to  
16 the licensee's acting in a transaction brokerage capacity, the  
17 licensee is deemed to be an agent of either the buyer or  
18 seller, or both. The licensee shall treat the buyer and seller  
19 honestly and fairly and shall disclose all known facts  
20 materially affecting the value of the property in residential  
21 transactions to both the buyer and seller.

22 6. Has failed while acting as a transaction broker to  
23 perform any duty specified in s. 475.016.

24  
25 For the purposes of this paragraph, the payment or promise of  
26 payment of compensation to a licensee does not determine  
27 whether an agency or transactional brokerage relationship has  
28 been created between any licensee and a seller, landlord,  
29 buyer, or tenant. The commission shall implement this  
30 paragraph by rule. ~~For purposes of this paragraph, the~~  
31 ~~commission shall also define by rule forms for agency~~

1 ~~disclosure. The forms provided for in this rule shall be~~  
2 ~~written in plain language and shall provide to the buyer or~~  
3 ~~seller or both, as appropriate, an explanation of the agency~~  
4 ~~relationships and shall offer the buyer or seller or both the~~  
5 ~~explicit right to choose or refuse among these agency~~  
6 ~~relationships.~~

7 (t) Has violated any standard for the development or  
8 communication of a real estate appraisal or has violated any  
9 other provision of the Uniform Standards of Professional  
10 Appraisal Practice, as defined in s. 475.611, as approved and  
11 adopted by the Appraisal Standards Board of the Appraisal  
12 Foundation, as defined in s. 475.611. This paragraph does not  
13 apply to a real estate broker or salesperson who, in the  
14 ordinary course of business, performs a comparative market  
15 analysis or makes an evaluation of real estate. However, this  
16 opinion of value may not be referred to or construed as an  
17 appraisal.

18 (4) If the commission makes a finding under this  
19 section of a failure to disclose and the person who failed to  
20 disclose has not previously been found to have violated this  
21 section, the commission may impose only an administrative fine  
22 in an amount not to exceed \$100 for each count or separate  
23 offense, or may issue a reprimand for failure to disclose, if:

24 (a) There is no showing of intentional failure to  
25 disclose; and

26 (b) The failure to disclose has not been a  
27 contributing factor that caused harm to any consumer.

28 Section 8. Section 475.256, Florida Statutes, is  
29 created to read:

30 475 256 Abrogation of common law agency.--It is the  
31 intent of the Legislature that the duties and responsibilities

1 of brokers as agents or transaction brokers as set forth in  
2 this chapter abrogates and supersedes the duties and  
3 responsibilities of agents and transaction brokers under the  
4 common law. This abrogation of agency law applies only to  
5 persons licensed under part I of this chapter while they are  
6 performing the duties of a real estate broker or transaction  
7 broker on behalf of any buyer, seller, or other party to a  
8 real estate transaction. This abrogation does not limit or  
9 extinguish any civil cause of action based on a breach of the  
10 duties and responsibilities of agents and transaction brokers  
11 set forth in this chapter, nor does this abrogation limit or  
12 extinguish any civil remedy in law or equity that is based on  
13 a breach of the duties and responsibilities of agents and  
14 transaction brokers set forth in this chapter.

15 Section 9. Section 475.257, Florida Statutes, is  
16 created to read:

17 475.257 Facsimile signatures or writing  
18 accepted.--When any act performed under this chapter must be  
19 performed in writing or acknowledged with a signature, the  
20 provision of an instrument or writing by electronic means or  
21 facsimile, including a signature transmitted by electronic  
22 means or facsimile, is binding and sufficient.

23 Section 10. Section 475.258, Florida Statutes, is  
24 created to read:

25 475.258 Disclosure to agent, broker, or transaction  
26 broker authorized.--In any disclosure of agency or transaction  
27 brokerage performed under this chapter, disclosure by an  
28 agent, broker, or transaction broker to the agent, broker, or  
29 transaction broker representing or working with another party  
30 is sufficient and satisfies the disclosure requirements.

1 Section 11. Section 475.259, Florida Statutes, is  
2 created to read:

3 475.259 Ministerial acts not a violation.--A real  
4 estate broker who is engaged by any buyer or seller in a real  
5 estate transaction or engaged by any buyer or seller as a  
6 transaction broker may provide assistance to any party to the  
7 transaction by performing ministerial acts such as preparing  
8 and conveying offers; preparing, completing, and conveying  
9 contracts for the sale, lease, exchange, or other conveyance  
10 of real property or any interest in real property; and  
11 providing information and assistance concerning professional  
12 services that are not related to real estate broker services.  
13 The performing of ministerial acts does not violate the real  
14 estate broker agreement or transaction broker agreement with a  
15 buyer or seller nor does the performing of ministerial acts  
16 form a transaction brokerage or agency agreement.

17 Section 12. Section 475.261, Florida Statutes, is  
18 created to read:

19 475.261 Duties of broker.--This part does not relieve  
20 any licensee from the duty to act with reasonable skill, care,  
21 and diligence while performing the duties of a real estate  
22 broker, salesperson, or transaction broker on behalf of any  
23 buyer, seller, or other party to a real estate transaction.

24 Section 13. Subsections (2), (6), and (7) of section  
25 475.451, Florida Statutes, are amended to read:

26 475.451 Schools teaching real estate practice.--

27 (2) An applicant for a permit to operate a proprietary  
28 real estate school, to be a chief administrator of a  
29 proprietary real estate school or a state institution, or to  
30 be an instructor for a proprietary real estate school or a  
31 state institution must meet the qualifications for practice

1 set forth in s. 475.17(1) and the following minimal  
2 requirements:

3 (a) "School permitholder" means the ~~is defined as that~~  
4 individual who is responsible for directing the overall  
5 operation of a proprietary real estate school. A school  
6 permitholder He must be the holder of a license as a broker,  
7 either active or voluntarily inactive, or must have passed an  
8 instructor's examination administered by the department. A  
9 school permitholder who is actively engaged in teaching must  
10 also meet the requirements for ~~of~~ a school instructor ~~if he is~~  
11 ~~actively engaged in teaching.~~

12 (b) "Chief administrative person" means the ~~is defined~~  
13 ~~as that~~ individual who is responsible for the administration  
14 of the overall policies and practices of the institution or  
15 proprietary real estate school. A chief administrative person  
16 who is actively engaged in teaching He must also meet the  
17 requirements for ~~of~~ a school instructor ~~if he is actively~~  
18 ~~engaged in teaching.~~

19 (c) "School instructor" means an ~~is defined as that~~  
20 individual who ~~actively~~ instructs persons in the classroom in  
21 noncredit college courses in a college, university, or  
22 community college or courses in an area vocational-technical  
23 center or proprietary real estate school.

24 1. Before commencing to provide such instruction, the  
25 applicant ~~instruct noncredit college courses in a college,~~  
26 ~~university, or community college, or courses in an area~~  
27 ~~technical center or proprietary real estate school, he~~ must  
28 certify his or her competency and obtain an instructor's  
29 permit ~~by meeting one of the following requirements:~~

30 a. Holding ~~Hold~~ a bachelor's degree in a  
31 business-related subject, such as real estate, finance,

1 accounting, business administration, or its equivalent and  
2 holding hold a valid broker's license in this state;=

3       b. Holding Hold a bachelor's degree, having have  
4 extensive real estate experience, as defined by rule, and  
5 holding hold a valid broker's license in this state; or=

6       c. Passing Pass an instructor's examination  
7 administered by the Division of Real Estate.

8           2. Any requirement by the commission for a teaching  
9 demonstration or practical examination must apply to all  
10 school instructor applicants.

11           3. The department must renew an instructor's permit  
12 upon receipt of a renewal application and fee. The renewal  
13 application must include proof that the permitholder has,  
14 since the issuance or renewal of the current permit, Every  
15 second-year, each instructor must recertify his competency by  
16 presenting to the commission evidence of his having  
17 successfully completed a minimum of 15 classroom hours of  
18 instruction in real estate subjects or instructional  
19 techniques, as prescribed by the commission. The commission  
20 shall adopt rules providing for the renewal of instructors'  
21 permits at least every 2 years. Any permit that is not renewed  
22 at the end of the permit period established by the department  
23 automatically reverts to involuntarily inactive status.

24  
25 The department may require an applicant to submit names of  
26 persons having knowledge concerning the applicant and the  
27 enterprise; may propound interrogatories to such persons and  
28 to the applicant concerning the character of the applicant,  
29 including the taking of fingerprints for processing through  
30 the Federal Bureau of Investigation; and shall make such  
31 investigation of the applicant him or the school or

1 institution as it considers ~~may-deem~~ necessary to the granting  
2 of the permit. If an objection is filed, it must ~~shall~~ be  
3 considered in the same manner as objections or administrative  
4 complaints against other applicants for licensure by the  
5 department.

6 (6) Any course prescribed by the commission as a  
7 condition precedent to any person's becoming initially  
8 licensed as a salesperson may be taught in any real estate  
9 school through the use of a video tape of instruction by a  
10 currently permitted ~~licensed~~ instructor from any such school.  
11 The commission may require that any such videotaped ~~video-tape~~  
12 course have a single session of live instruction by a  
13 currently permitted ~~licensed~~ instructor from any such school;  
14 however, this requirement must ~~shall~~ not exceed 3 classroom  
15 hours. All other prescribed courses, except the continuing  
16 education course required by s. 475.182, must ~~shall~~ be taught  
17 by a currently permitted ~~licensed~~ school instructor who is  
18 personally in attendance at such course. The continuing  
19 education course required by s. 475.182 may be taught by an  
20 equivalent correspondence course; however, any such  
21 correspondence course must ~~of-correspondence-shall-be-required~~  
22 to have a final examination that is ~~7~~ prepared and administered  
23 by the school issuing the correspondence course. The  
24 continuing education requirements provided in this section or  
25 provided in any other section in this chapter do not apply  
26 with-respect to any attorney who is otherwise qualified under  
27 the-provisions-of this chapter.

28 (7) Any person holding a school instructor permit on  
29 October 1, 1983, is exempt from the instructor examination  
30 requirements of paragraph (2)(c) as long as the person he  
31



1 continuously holds such a permit and complies with all other  
2 requirements of this chapter.

3 Section 14. Subsection (6) is added to section  
4 475.452, Florida Statutes, to read:

5 475.452 Advance fees; deposit; accounting; penalty;  
6 damages.--

7 (6) A broker auctioning real property for a seller may  
8 receive payment for anticipated expenses in advance of the  
9 auction only in accordance with a written agreement previously  
10 concluded between the broker and the seller. A broker may  
11 receive funds in advance of the auction only in accordance  
12 with the requirements of this section applicable to advance  
13 fees for the listing of real property.

14 Section 15. Section 475.6145, Florida Statutes, is  
15 created to read:

16 475.6145 Seal.--The board shall adopt a seal by which  
17 it shall authenticate its proceedings, records, and acts.  
18 Copies of the proceedings, records, and acts of the board, and  
19 certificates purporting to relate the facts concerning such  
20 proceedings, records, and acts, which are signed by the board  
21 chair, the custodian of such records, or any other person who  
22 is authorized to make such certification and which are  
23 authenticated by the seal, are prima facie evidence of the  
24 board's proceedings, records, and acts in all the courts of  
25 this state.

26 Section 16. This act shall take effect October 1,  
27 1996.

\*\*\*\*\*

SENATE SUMMARY

Amends provisions relating to the regulation of real estate transactions. Amends definitions. Provides a legislative presumption that a real estate broker or salesperson acts as a transaction broker unless a different relationship is specified in writing. Provides requirements with respect to disclosed dual agents. Provides requirements for transaction brokers. Eliminates the automatic cancellation of the registration of a real estate broker partnership upon the lapse in licensure or registration of any of its partners. Revises a ground for disciplinary action. Revises disciplinary provisions with respect to single agency, dual agency, and transaction brokerage. Provides that violations of certain standards of the Appraisal Foundation are grounds for the Florida Real Estate Commission to deny, revoke, or suspend the license of, or to fine, real estate brokers or salespersons. Provides a penalty for failure to disclose. Provides for abrogating the common law of agency with respect to ch. 475, F.S. Authorizes the use of facsimile signatures or writing. Provides that certain disclosures to an agent, broker, or transaction broker satisfy the disclosure requirements of the chapter. Provides that certain ministerial acts performed by a real estate broker do not form a transaction brokerage or agency agreement. Provides for duties of a broker. Revises provisions relating to the permitting of instructors for proprietary real estate schools or state institutions. Provides permit renewal requirements. Provides restrictions applicable to advance fees for brokers auctioning real property. Provides for a seal for the Florida Real Estate Appraisal Board to use in authenticating its proceedings, records, and acts.

By the Committee on Governmental Reform and Oversight and  
Senator Childers

302-2147-96

1 A bill to be entitled

2 An act relating to real estate sales; amending  
3 s. 475.01, F.S.; redefining the terms  
4 "fiduciary," "disclosed dual agent,"  
5 "transaction broker," and "single agent" and  
6 defining the term "first substantive contact"  
7 with respect to real estate brokers and  
8 salespersons; creating s. 475.012, F.S.;  
9 providing legislative findings and intent on  
10 presumption of transaction broker relationship,  
11 creating ss. 475.015, 475.016, 475.017, F.S.;  
12 providing requirements with respect to  
13 disclosed dual agents, transaction brokers, and  
14 single agents, respectively; prohibiting  
15 certain causes of action; amending s. 475.15,  
16 F.S.; eliminating a provision that requires the  
17 automatic cancellation of the registration of a  
18 real estate broker partnership upon the lapse  
19 in licensure or registration of any of its  
20 partners; amending s. 475.25, F.S.; revising a  
21 ground for disciplinary action to exempt  
22 licensees from the reporting of certain  
23 violators; revising disciplinary provisions  
24 with respect to single agency, dual agency, and  
25 transaction brokerage, for which there are  
26 penalties; providing that violations of certain  
27 standards of the Appraisal Foundation are  
28 grounds for the Florida Real Estate Commission  
29 to deny, revoke, or suspend the license of, or  
30 to fine, real estate brokers or salespersons;  
31 providing a penalty for failure to disclose;

1 creating s. 475.256, F.S.; providing for the  
2 abrogation of common law agency with respect to  
3 pt. I of ch. 475, F.S., relating to real estate  
4 brokers, salespersons, and schools; creating s.  
5 475.257, F.S.; authorizing the use of  
6 electronic or facsimile signatures or writing;  
7 creating s. 475.258, F.S.; providing that  
8 certain disclosure to an agent, broker, or  
9 transaction broker is deemed to satisfy the  
10 disclosure requirements of pt. I of ch. 475,  
11 F.S.; creating s. 475.259, F.S.; providing that  
12 certain ministerial acts performed by a real  
13 estate broker are not to be construed as  
14 forming a transaction brokerage or agency  
15 agreement; creating s. 475.261, F.S.; providing  
16 clarification with respect to duty of broker to  
17 act with reasonable skill, care, and diligence;  
18 amending s. 475.451, F.S.; revising provisions  
19 relating to the permitting of instructors for  
20 proprietary real estate schools or state  
21 institutions, providing permit renewal  
22 requirements; amending s. 475.452, F.S.;

23 providing restrictions applicable to advance  
24 fees for brokers auctioning real property;  
25 creating s. 475.6145, F.S.; providing for a  
26 seal for the Florida Real Estate Appraisal  
27 Board to authenticate its proceedings, records,  
28 and acts; amending s. 475.624, F.S.; revising a  
29 ground for disciplinary action; providing an  
30 effective date.

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

2  
3 Section 1. Paragraphs (i), (j), (k), and (l) of  
4 subsection (1) of section 475.01, Florida Statutes, are  
5 amended, and paragraph (o) is added to that subsection, to  
6 read:

7 475.01 Definitions.--

8 (1) As used in this part:

9 (i) "Fiduciary" means a broker in a relationship of  
10 trust and confidence between that broker as agent and the  
11 seller or buyer as principal. The duties of the broker as a  
12 fiduciary are loyalty, confidentiality, obedience, full  
13 disclosure, and accounting, and the duty to use reasonable  
14 skill, care, and diligence.

15 (j) "Disclosed dual agent" means a broker who works as  
16 an agent for both the buyer and seller. The broker must  
17 obtain the informed consent in writing of all parties to the  
18 transaction to be a disclosed dual agent. The role of a  
19 disclosed dual agent must be fully described and disclosed in  
20 writing to the buyer and seller. The disclosed dual agent has  
21 all the duties of a fiduciary except full disclosure between  
22 the buyer and seller.

23 (k) "Transaction broker" means a broker who  
24 facilitates a brokerage transaction between a buyer and a  
25 seller. The transaction broker does not affirmatively  
26 represent either the buyer or seller as an agent, and no  
27 fiduciary duties exist except for the duty of accounting and  
28 the duty to use reasonable skill, care, and diligence.  
29 However, the transaction broker shall treat the buyer and  
30 seller with honesty and fairness ~~and shall disclose all known~~  
31 ~~facts materially affecting the value of the property in~~

1 ~~residential transactions to both the buyer and seller.~~ A  
2 transaction broker may keep the identity of a buyer or seller  
3 confidential if requested to do so by the buyer or seller. The  
4 ~~broker's role of~~ as a transaction broker must be fully  
5 described and disclosed in writing to the buyer and seller.

6 (1) "Single agent" means a broker who represents, as a  
7 fiduciary, either the buyer or seller but not both in the same  
8 transaction. The role of a single agent must be fully  
9 described and disclosed in writing to the buyer or seller.

10 (o) "First substantive contact" means either the first  
11 face-to-face contact between a licensee and a buyer, a seller,  
12 the agent of a buyer or seller, or a transaction broker  
13 working with a buyer or seller or written communications prior  
14 to the execution of any other property-specific legally  
15 required written disclosures. Nothing in this chapter is  
16 intended to require a licensee to provide any written notice  
17 to property owners whose properties are being shown for the  
18 first time by the licensee.

19 Section 2. Section 475.012, Florida Statutes, is  
20 created to read:

21 475.012 Presumption of transaction broker  
22 relationship; legislative findings and intent.--The  
23 Legislature finds that the public will best be served by a  
24 clear statement of the public's legal and working  
25 relationships with real estate brokers and salespersons and  
26 that, through an understanding of such agency relationships,  
27 the public will engage real estate brokers and salespersons on  
28 terms and conditions that are mutually acceptable. The  
29 Legislature also finds that, in order to eliminate confusion  
30 and provide for a better understanding on the part of the  
31 public in real estate transactions, a presumption as to the

1 agency relationship of a real estate broker or salesperson  
2 should be declared. Therefore, for purposes of this part, it  
3 shall be presumed that a real estate broker or salesperson is  
4 acting in the capacity of a transaction broker as defined in  
5 and subject to such duties as specified in this part unless  
6 another relationship with the buyer, seller, or other customer  
7 is established pursuant to a written agreement with the broker  
8 or salesperson. If another relationship is established  
9 between the buyer, seller, or other customer and the broker or  
10 salesperson, then the duties and obligations of that  
11 relationship shall be as specified in the contract and as  
12 required under the terms of this part regarding agency  
13 relationships. When engaged in any of the activities  
14 regulated under this part, a broker or salesperson may act in  
15 any transaction as a single agent, disclosed dual agent, or  
16 transaction broker; however, the duties and obligations of the  
17 broker or salesperson arising from each such relationship must  
18 be disclosed as required by this part. Nothing in this part  
19 shall prohibit a buyer, seller, or other customer from  
20 entering into a written contract with any broker or  
21 salesperson which contains duties, obligations, or  
22 responsibilities that are in addition to those specified in  
23 this part for the particular relationship desired.

24 Section 3. Section 475.015, Florida Statutes, is  
25 created to read:

26 475.015 Disclosed dual agent requirements.--

27 (1) A real estate broker may act as a disclosed dual  
28 agent only with the written consent of all parties. Consent  
29 of a party is presumed if the party signs an agreement that  
30 contains the following:

1 (a) A description of the situation or circumstances,  
2 during representation of a client, in which the real estate  
3 broker will serve as a disclosed dual agent.

4 (b) A statement that, in serving as a disclosed dual  
5 agent, the real estate broker represents two or more clients  
6 whose interests are adverse and that the agency duties are  
7 limited.

8 (c) A statement that the disclosed dual agent may  
9 disclose any information to one party that the agent gains  
10 from the other party if that information is relevant to the  
11 transaction, except:

12 1. To the buyer that the seller will accept a price  
13 less than the asking or listed price, unless otherwise  
14 instructed by the seller;

15 2. To the seller that the buyer will pay a price  
16 greater than the price submitted in a written offer to the  
17 seller, unless otherwise instructed by the buyer;

18 3. The motivation of any party, if adverse to the  
19 party's interest, for selling, buying, or leasing a property,  
20 unless otherwise instructed by the respective party; or

21 4. That a seller or buyer will agree to financing  
22 terms other than those offered.

23 (d) A statement that the client may choose to consent  
24 or not consent to the disclosed dual agency.

25 (e) A statement that the consent of the client has  
26 been given voluntarily and that the agreement has been read  
27 and understood.

28 (2) A disclosed dual agent has the duty to disclose in  
29 a timely manner to a buyer all personally known facts which  
30 materially affect the value of a residential property. Facts  
31



1 which are readily observable or are known to the buyer do not  
2 need to be disclosed.

3 (3) A cause of action may not be brought on behalf of  
4 any person against a disclosed dual agent for making  
5 disclosures permitted or required by this part, and the  
6 disclosed dual agent does not terminate any real estate broker  
7 agency relationship by making disclosures permitted or  
8 required by this part.

9 (4) In a disclosed dual agent relationship, each  
10 client and the real estate broker and its associated licensees  
11 are considered to possess only actual knowledge and  
12 information. There is no imputation of knowledge or  
13 information by operation of law among or between the clients  
14 and the real estate broker and its associated licensees.

15 (5) A disclosed dual agent has no duty to conduct an  
16 independent inspection of or discover latent defects in the  
17 property. Nothing in this section limits the obligation of a  
18 buyer to inspect the physical condition of the property.

19 (6) A disclosed dual agent has no duty to disclose any  
20 fact or suspicion concerning the property, including, but not  
21 limited to, any fact or suspicion that the property was, or  
22 was suspected to have been, the site of a homicide or other  
23 felony or a suicide, which if known by a party might cause  
24 that party to suffer adverse psychological effects. Such fact  
25 or suspicion is not a material fact that must be disclosed in  
26 a real estate transaction. No cause of action shall arise  
27 against an owner of real estate or a real estate licensee for  
28 the failure to disclose such fact or suspicion to the  
29 transferee.

30 (7) Nothing in this section alters or eliminates the  
31 responsibility of a broker, as set forth in this part, for the

1 conduct and actions of a salesperson operating under the  
2 broker's license.

3 Section 4. Section 475.016, Florida Statutes, is  
4 created to read:

5 475.016 Transaction broker requirements.--

6 (1) A transaction broker shall have the following  
7 obligations and responsibilities

8 (a) To perform the terms of any written or oral  
9 agreement made with any party to the transaction.

10 (b) To exercise reasonable skill, care, and diligence  
11 as a transaction broker, including, but not limited to:

12 1. Presenting all offers and counteroffers in a timely  
13 manner regardless of whether the property is subject to a  
14 contract for sale or lease or a letter of intent, unless  
15 otherwise provided in the agreement entered with the party.

16 2. Advising the parties regarding the transaction and  
17 suggesting that such parties obtain expert advice as to  
18 material matters about which the transaction broker knows but  
19 the specifics of which are beyond the expertise of such  
20 broker.

21 3. Accounting in a timely manner for all money and  
22 property received.

23 4. Keeping the parties informed regarding the  
24 transaction.

25 5. Assisting the parties in complying with the terms  
26 and conditions of any contract.

27 6. Informing the parties that as seller and buyer they  
28 shall not be vicariously liable for any acts of the  
29 transaction broker.

30 (c) To disclose in a timely manner to both the buyer  
31 and seller all personally known facts which materially affect

1 the value of a residential property. Facts which are readily  
2 observable or are known to the buyer do not need to be  
3 disclosed.

4 (2) The following information shall not be disclosed  
5 by a transaction broker without the informed consent of the  
6 party or parties disclosing such information to the broker.

7 (a) That a buyer is willing to pay more than the  
8 purchase price or lease rate offered for the property.

9 (b) That a seller is willing to accept less than the  
10 asking price or lease rate for the property.

11 (c) What the motivating factors are for any party  
12 buying, selling, or leasing the property.

13 (d) That a seller or buyer will agree to financing  
14 terms other than those offered.

15 (e) Any material information about the other party,  
16 unless disclosure of such information is required by law or  
17 failure to disclose such information would constitute fraud or  
18 dishonest dealing.

19 (3) A transaction broker has no duty to conduct an  
20 independent inspection of or discover latent defects in the  
21 property. Nothing in this section limits the obligation of  
22 the buyer to inspect the physical condition of the property.

23 (4) A transaction broker has no duty to conduct an  
24 independent investigation of the buyer's financial condition.

25 (5) A transaction broker may do the following without  
26 breaching any obligation or responsibility:

27 (a) Show alternative properties not owned by the  
28 seller or landlord to a prospective buyer or tenant.

29 (b) List competing properties for sale or lease.

30 (c) Show properties in which the buyer or tenant is  
31 interested to other prospective buyers or tenants.

1 (d) Serve as a single agent, subagent, or disclosed  
2 dual agent for the same or for different parties in other real  
3 estate transactions.

4 (6) In a transaction broker relationship, each party  
5 and the transaction broker, including all persons within an  
6 entity engaged as the transaction broker if the transaction  
7 broker is an entity, are considered to possess only actual  
8 knowledge and information. There is no imputation of  
9 knowledge or information by operation of law between any party  
10 and the transaction broker or between any party and any person  
11 within an entity engaged as the transaction broker if the  
12 transaction broker is an entity.

13 (7) A transaction broker has no duty to disclose any  
14 fact or suspicion concerning the property, including, but not  
15 limited to, any fact or suspicion that the property was, or  
16 was suspected to have been, the site of a homicide or other  
17 felony or a suicide, which if known by a party might cause  
18 that party to suffer adverse psychological effects. Such fact  
19 or suspicion is not a material fact that must be disclosed in  
20 a real estate transaction. No cause of action shall arise  
21 against an owner of real estate or a real estate licensee for  
22 the failure to disclose such fact or suspicion to the  
23 transferee.

24 (8) A transaction broker may cooperate with other  
25 brokers, and such cooperation does not establish an agency or  
26 subagency relationship.

27 (9) Nothing in this section prohibits a transaction  
28 broker from acting as a single agent, whether on behalf of a  
29 buyer or seller, or acting as a disclosed dual agent in  
30 separate transactions as long as the requirements of this part  
31 governing disclosure are met.

1           (10) Nothing in this section alters or eliminates the  
2 responsibility of a broker, as set forth in this part, for the  
3 conduct and actions of a salesperson operating under the  
4 broker's license.

5           Section 5. Section 475.017, Florida Statutes, is  
6 created to read:

7           475.017 Single agent requirements.--

8           (1) A single agent who represents a seller:

9           (a) Shall perform the terms of the brokerage agreement  
10 entered into with the seller.

11           (b) Shall promote the interests of the seller by  
12 exercising agency duties, including:

13           1. Seeking a sale at the price and terms stated in the  
14 brokerage agreement or at a price and terms acceptable to the  
15 seller, except that the licensee is not obligated to seek  
16 additional offers to purchase the property while the property  
17 is subject to a contract of sale unless the brokerage  
18 agreement so provides.

19           2. Presenting, in a timely manner, all offers to and  
20 from the seller, even when the property is subject to a  
21 contract of sale, unless the brokerage agreement provides  
22 otherwise.

23           3. Advising the seller to obtain expert advice on  
24 material matters that are beyond the expertise of the  
25 licensee.

26           4. Accounting, in a timely manner, for all money and  
27 property received

28           (c) Has an obligation to preserve confidential  
29 information provided by the seller during the course of the  
30 relationship that would have a negative impact on the seller's  
31 real estate transaction, unless:

1           1    The seller to whom the information pertains grants  
2 consent to disclose the information;

3           2.   Disclosure of the information by the licensee is  
4 required by law;

5           3.   The information is made public or becomes public  
6 from a source other than the licensee, or

7           4.   Disclosure is necessary to defend the licensee  
8 against an accusation of wrongful conduct in a proceeding  
9 before the commission, a professional committee, or any court  
10 of this state or in any administrative proceeding.

11           (d) Shall be permitted to promote alternative  
12 properties not owned by the seller to prospective buyers as  
13 well as list competing properties for sale without breaching  
14 any duty to the client.

15           (e) Shall treat buyers honestly and may not knowingly  
16 give false information. A single agent shall also disclose in  
17 a timely manner to a buyer all personally known facts which  
18 materially affect the value of a residential property. Facts  
19 which are readily observable or are known to the buyer do not  
20 need to be disclosed. A single agent is not liable to a buyer  
21 for providing false information to the buyer if the false  
22 information was provided to the agent by the seller-client and  
23 the agent did not know that the information was false. A  
24 cause of action may not arise on behalf of any person against  
25 a single agent for revealing information in compliance with  
26 this part.

27           (f) Has no duty to conduct an independent inspection  
28 of or discover latent defects in the property. Nothing in  
29 this section limits the obligation of a buyer to inspect the  
30 physical condition of the property.

31           (2) A single agent who represents a buyer:

1 (a) Shall perform the terms of the brokerage agreement  
2 entered into with the buyer.

3 (b) Shall promote the interests of the buyer by  
4 exercising agency duties, including:

5 1. Seeking a property at a price and terms specified  
6 by the buyer, except that the licensee is not obligated to  
7 seek other properties for the buyer while the buyer is a party  
8 to a contract to purchase that property unless the brokerage  
9 agreement so provides.

10 2. Presenting, in a timely manner, all offers to and  
11 from the buyer.

12 3. Disclosing to the buyer all personally known facts  
13 which materially affect the value of a residential property.  
14 Facts which are readily observable or are known to the buyer  
15 do not need to be disclosed.

16 4. Advising the buyer to obtain expert advice on  
17 material matters that are beyond the expertise of the  
18 licensee.

19 5. Accounting, in a timely manner, for all money and  
20 property received.

21 (c) Has an obligation to preserve confidential  
22 information provided by the buyer during the course of the  
23 relationship that would have a negative impact on the buyer's  
24 real estate transaction, unless:

25 1. The buyer to whom the information pertains grants  
26 consent to disclose the information;

27 2. Disclosure of the information by the licensee is  
28 required by law;

29 3. The information is made public or becomes public  
30 from a source other than the licensee; or  
31

1           4. Disclosure is necessary to defend the licensee  
2 against an accusation of wrongful conduct in a proceeding  
3 before the commission, a professional committee, or any court  
4 of this state or in any administrative proceeding.

5           (d) Shall be permitted to promote other properties in  
6 which the buyer is interested to other buyers who might also  
7 be clients of the agent without breaching any duty or  
8 obligation.

9           (e) Is not liable to a seller for providing false  
10 information to the seller if the false information was  
11 provided to the agent by the agent's buyer-client and the  
12 agent did not know that the information was false. A cause of  
13 action may not arise on behalf of any person against a single  
14 agent for revealing information in compliance with this part.

15           (f) Has no duty to conduct an independent inspection  
16 of or discover latent defects in the property. Nothing in  
17 this section limits the obligation of a buyer to inspect the  
18 physical condition of the property.

19           (3) A single agent who represents either a buyer or a  
20 seller has no duty to disclose any fact or suspicion  
21 concerning the property, including, but not limited to, any  
22 fact or suspicion that the property was, or was suspected to  
23 have been, the site of a homicide or other felony or a  
24 suicide, which if known by a party might cause that party to  
25 suffer adverse psychological effects. Such fact or suspicion  
26 is not a material fact that must be disclosed in a real estate  
27 transaction. No cause of action shall arise against an owner  
28 of real estate or a real estate licensee for the failure to  
29 disclose such fact or suspicion to the transferee.

30           (4) In a single agent relationship, the client or  
31 clients and the real estate broker and its associated



1 licensees are considered to possess only actual knowledge and  
2 information. There is no imputation of knowledge or  
3 information by operation of law among or between the client or  
4 clients and the real estate broker and its associated  
5 licensees.

6 (5) Nothing in this section alters or eliminates the  
7 responsibility of a broker, as set forth in this part, for the  
8 conduct and actions of a salesperson operating under the  
9 broker's license.

10 Section 6. Section 475.15, Florida Statutes, is  
11 amended to read:

12 475.15 Registration and licensing of general partners,  
13 members, officers, and directors of a firm.--Each partnership  
14 or corporation which acts as a broker shall register with the  
15 commission and shall renew the licenses or registrations of  
16 its members, officers, and directors for each license period.  
17 ~~The registration of a partnership is canceled automatically~~  
18 ~~during any period of time that the license or registration of~~  
19 ~~any one or more of its partners is not in force.~~ However, if  
20 the partnership is a limited partnership, only the general  
21 partners must be licensed brokers or brokerage corporations  
22 registered pursuant to this part. If the license or  
23 registration of at least one active broker member is not in  
24 force, the registration of a corporation or partnership is  
25 canceled automatically during that period of time.

26 Section 7. Paragraphs (a) and (g) of subsection (1) of  
27 section 475.25, Florida Statutes, are amended, paragraph (t)  
28 is added to that subsection, and subsection (4) is added to  
29 that section, to read:

30 475 25 Discipline.--  
31

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

10           (a) Has violated any provision of s. 455.227(1) or of  
11 s. 475.42. However, licensees under this part are exempt from  
12 the provisions of s. 455.227(1)(1).

13           (q)1. Has failed in a single agency to give written  
14 disclosure in a sale, exchange, purchase, or lease of real  
15 property or any interest in real property to the party for  
16 whom the licensee is not an agent revealing that the broker is  
17 an agent of another party. The disclosure shall be given at  
18 first substantive contact.

19           2. Has failed in a single agency to perform any duty  
20 specified in s. 475.017 notice-to-all-parties-to-a-sale,  
21 exchange,-purchase,-or-lease-of-real-property-or-any-interest  
22 in-real-property,-revealing-the-party-or-parties-for-whom-the  
23 licensee-is-an-agent,-disclosure-to-the-party-for-whom-the  
24 licensee-is-an-agent-must-be-made-at-or-before-the-time-an  
25 agreement-for-representation-is-entered-into,-disclosure-to  
26 the-party-for-whom-the-licensee-is-not-an-agent-must-be-made  
27 at-the-time-of-the-first-substantive-contact.

28           3.2. Has failed in a dual agency to obtain the  
29 informed written consent of all parties to a sale, exchange,  
30 purchase, or lease of real property or any interest in real  
31 property that the licensee intends to operate as a disclosed

1 dual agent. Unless all parties to the transaction grant their  
2 written informed consent prior to or at the time of  
3 formalization of the dual agency by the licensee, the licensee  
4 shall be deemed to be an undisclosed dual agent. The licensee  
5 must inform all parties that the licensee is acting as agent  
6 for all parties and of the effect of dual agency, including,  
7 but not limited to, the fact that, by consenting to the dual  
8 agency relationship, the parties are giving up their rights to  
9 the undivided loyalty of the licensee~~7-as-required-by-the~~  
10 ~~rules-of-the-commission~~. When single agency exists, the  
11 licensee may change to a disclosed dual agent by making full  
12 written disclosure to and obtaining the informed written  
13 consent of all the parties. Written consent of the parties  
14 may be obtained at the time of entry of the listing agreement  
15 or agreement for representation whether the agent is acting as  
16 a buyer agent, disclosed dual agent, or transaction broker. A  
17 disclosed dual agent may not disclose among other items:  
18 a. To the buyer that the seller will accept a price  
19 less than the asking or listed price, unless otherwise  
20 instructed ~~in-writing~~ by the seller;  
21 b. To the seller that the buyer will pay a price  
22 greater than the price submitted in a written offer to the  
23 seller, unless otherwise instructed ~~in-writing~~ by the buyer;  
24 c. The motivation of any party, if adverse to the  
25 party's interest, for selling, buying, or leasing a property,  
26 unless otherwise instructed ~~in-writing~~ by the respective  
27 party, or  
28 d. That a seller or buyer will agree to financing  
29 terms other than those offered.  
30 4. Has failed in a dual agency to perform any duty  
31 specified in s. 475.015.

1           5.3. Has failed in a transaction brokerage capacity to  
2 give written notice to all parties to a sale, exchange,  
3 purchase, or lease of real property or an interest in real  
4 property prior to or at the time of the licensee's licensee  
5 becoming a transaction broker or first substantive contact,  
6 whichever occurs first, of the licensee's role as a  
7 transaction broker. ~~Unless the buyer and seller are given~~  
8 ~~written notice prior to the licensee's acting in a transaction~~  
9 ~~brokerage capacity, the licensee is deemed to be an agent of~~  
10 ~~either the buyer or seller, or both. The licensee shall treat~~  
11 ~~the buyer and seller honestly and fairly and shall disclose~~  
12 ~~all known facts materially affecting the value of the property~~  
13 ~~in residential transactions to both the buyer and seller.~~

14           6. Has failed while acting as a transaction broker to  
15 perform any duty specified in s. 475.016.

16  
17 For the purposes of this paragraph, the payment or promise of  
18 payment of compensation to a licensee does not determine  
19 whether an agency or transactional brokerage relationship has  
20 been created between any licensee and a seller, landlord,  
21 buyer, or tenant. The commission shall implement this  
22 paragraph by rule. ~~For purposes of this paragraph, the~~  
23 ~~commission shall also define by rule forms for agency~~  
24 ~~disclosure. The forms provided for in this rule shall be~~  
25 ~~written in plain language and shall provide to the buyer or~~  
26 ~~seller or both, as appropriate, an explanation of the agency~~  
27 ~~relationships and shall offer the buyer or seller or both the~~  
28 ~~explicit right to choose or refuse among these agency~~  
29 ~~relationships.~~

30           (t) Has violated any standard for the development or  
31 communication of a real estate appraisal or other provision of

1 the Uniform Standards of Professional Appraisal Practice, as  
2 defined in s. 475.611, as approved and adopted by the  
3 Appraisal Standards Board of the Appraisal Foundation, as  
4 defined in s. 475 611. This paragraph does not apply to a  
5 real estate broker or salesperson who, in the ordinary course  
6 of business, performs a comparative market analysis or makes  
7 an evaluation of real estate. However, in no event may this  
8 evaluation be referred to or construed as an appraisal.

9 (4) For any finding under this section of a failure to  
10 disclose by a person who has not previously been found to have  
11 violated this section, the commission may only impose an  
12 administrative fine in an amount not to exceed \$100 for each  
13 count or separate offense or may issue a reprimand for failure  
14 to disclose if each of the following conditions is met:

15 (a) There is no showing of intentional failure to  
16 disclose.

17 (b) The failure to disclose has not been a  
18 contributing factor that caused harm to any consumer.

19 Section 8. Section 475.256, Florida Statutes, is  
20 created to read:

21 475.256 Abrogation of common law agency.--It is the  
22 intent of the Legislature that the duties and responsibilities  
23 of brokers as agents or transaction brokers as set forth in  
24 this part shall abrogate and supersede the duties and  
25 responsibilities of agents and transaction brokers under the  
26 common law. This abrogation of agency law shall apply only to  
27 persons licensed pursuant to this part while performing the  
28 duties of a real estate broker or transaction broker on behalf  
29 of any buyer, seller, or other party to a real estate  
30 transaction. This abrogation shall not be construed to limit  
31 or extinguish any civil cause of action based on a breach of

1 the duties and responsibilities of agents and transaction  
2 brokers set forth in this part, nor shall this abrogation  
3 limit or extinguish any civil remedy in law or equity that is  
4 based on a breach of the duties and responsibilities of agents  
5 and transaction brokers set forth in this part.

6 Section 9. Section 475.257, Florida Statutes, is  
7 created to read:

8 475.257 Facsimile signatures or writing  
9 accepted.--When any act performed pursuant to the terms of  
10 this part must be performed in writing or acknowledged with a  
11 signature, the provision of an instrument or writing by  
12 electronic means or facsimile, including a signature  
13 transmitted by electronic means or facsimile, shall be deemed  
14 binding and sufficient.

15 Section 10. Section 475.258, Florida Statutes, is  
16 created to read:

17 475.258 Disclosure to agent, broker, or transaction  
18 broker authorized.--In any disclosure of agency or transaction  
19 brokerage performed pursuant to the terms of this part,  
20 disclosure by an agent, broker, or transaction broker to the  
21 agent, broker, or transaction broker representing or working  
22 with another party shall be sufficient and shall satisfy the  
23 disclosure requirements.

24 Section 11. Section 475.259, Florida Statutes, is  
25 created to read:

26 475.259 Ministerial acts not a violation.--A real  
27 estate broker engaged by any buyer or seller in a real estate  
28 transaction or engaged by any buyer or seller as a transaction  
29 broker may provide assistance to any party to the transaction  
30 by performing ministerial acts such as preparing and conveying  
31 offers; preparing, completing, and conveying contracts for the

1 sale, lease, exchange, or other conveyance of real property or  
2 any interest in real property; and providing information and  
3 assistance concerning professional services not related to  
4 real estate broker services. Performing ministerial acts may  
5 not be construed as violating the real estate broker agreement  
6 or transaction broker agreement with a buyer or seller, and  
7 performing ministerial acts may not be construed as forming a  
8 transaction brokerage or agency agreement.

9 Section 12. Section 475.261, Florida Statutes, is  
10 created to read:

11 475.261 Duty of broker to act with reasonable skill,  
12 care, and diligence.--Nothing in this part shall be construed  
13 to relieve any licensee from the duty to act with reasonable  
14 skill, care, and diligence while performing the duties of a  
15 real estate broker, salesperson, or transaction broker on  
16 behalf of any buyer, seller, or other party to a real estate  
17 transaction.

18 Section 13. Subsections (2), (6), and (7) of section  
19 475.451, Florida Statutes, are amended to read:

20 475.451 Schools teaching real estate practice.--

21 (2) An applicant for a permit to operate a proprietary  
22 real estate school, to be a chief administrator of a  
23 proprietary real estate school or a state institution, or to  
24 be an instructor for a proprietary real estate school or a  
25 state institution must meet the qualifications for practice  
26 set forth in s. 475.17(1) and the following minimal  
27 requirements:

28 (a) "School permitholder" means the is-defined-as-that  
29 individual who is responsible for directing the overall  
30 operation of a proprietary real estate school. A school  
31 permitholder He must be the holder of a license as a broker,

1 either active or voluntarily inactive, or must have passed an  
2 instructor's examination administered by the department. A  
3 school permitholder must also meet the requirements of a  
4 school instructor if ~~he-is~~ actively engaged in teaching.

5 (b) "Chief administrative person" means the is-defined  
6 ~~as-that~~ individual who is responsible for the administration  
7 of the overall policies and practices of the institution or  
8 proprietary real estate school. A chief administrative person  
9 ~~He~~ must also meet the requirements of a school instructor if  
10 ~~he-is~~ actively engaged in teaching.

11 (c) "School instructor" means an is-defined-as-that  
12 individual who ~~actively~~ instructs persons in the classroom in  
13 noncredit college courses in a college, university, or  
14 community college or courses in an area vocational-technical  
15 center or proprietary real estate school.

16 1. Before commencing to provide such instruction, the  
17 applicant instruct-noncredit-college-courses-in-a-college,  
18 university, or community college, or courses in an area  
19 technical-center-or-proprietary-real-estate-school, he must  
20 certify his or her competency and obtain an instructor permit  
21 by meeting one of the following requirements:

22 a. Hold a bachelor's degree in a business-related  
23 subject, such as real estate, finance, accounting, business  
24 administration, or its equivalent and hold a valid broker's  
25 license in this state.

26 b. Hold a bachelor's degree, have extensive real  
27 estate experience, as defined by rule, and hold a valid  
28 broker's license in this state.

29 c. Pass an instructor's examination administered by  
30 the Division of Real Estate.

31



1           2. Any requirement by the commission for a teaching  
2 demonstration or practical examination must apply to all  
3 school instructor applicants.

4           3. The department shall renew an instructor permit  
5 upon receipt of a renewal application and fee. The renewal  
6 application shall include proof that the permitholder has,  
7 since the issuance or renewal of the current permit, Every  
8 ~~second-year-each-instructor-must-recertify-his-competency-by~~  
9 ~~presenting-to-the-commission-evidence-of-his-having~~  
10 successfully completed a minimum of 15 classroom hours of  
11 instruction in real estate subjects or instructional  
12 techniques, as prescribed by the commission. The commission  
13 shall adopt rules providing for the renewal of instructor  
14 permits at least every 2 years. Any permit which is not  
15 renewed at the end of the permit period established by the  
16 department shall automatically revert to involuntarily  
17 inactive status.

18  
19 The department may require an applicant to submit names of  
20 persons having knowledge concerning the applicant and the  
21 enterprise; may propound interrogatories to such persons and  
22 to the applicant concerning the character of the applicant,  
23 including the taking of fingerprints for processing through  
24 the Federal Bureau of Investigation; and shall make such  
25 investigation of the applicant ~~him~~ or the school or  
26 institution as it may deem necessary to the granting of the  
27 permit. If an objection is filed, it shall be considered in  
28 the same manner as objections or administrative complaints  
29 against other applicants for licensure by the department.

30           (6) Any course prescribed by the commission as a  
31 condition precedent to any person's becoming initially

1 licensed as a salesperson may be taught in any real estate  
2 school through the use of a video tape of instruction by a  
3 currently permitted ~~icensed~~ instructor from any such school.  
4 The commission may require that any such video tape course  
5 have a single session of live instruction by a currently  
6 permitted ~~icensed~~ instructor from any such school; however,  
7 this requirement shall not exceed 3 classroom hours. All  
8 other prescribed courses, except the continuing education  
9 course required by s. 475.182, shall be taught by a currently  
10 permitted ~~icensed~~ school instructor personally in attendance  
11 at such course. The continuing education course required by  
12 s. 475.182 may be taught by an equivalent correspondence  
13 course; however, any such course of correspondence shall be  
14 required to have a final examination, prepared and  
15 administered by the school issuing the correspondence course.  
16 The continuing education requirements provided in this section  
17 or provided in any other section in this chapter do not apply  
18 with respect to any attorney who is otherwise qualified under  
19 the provisions of this chapter.

20 (7) Any person holding a school instructor permit on  
21 October 1, 1983, is exempt from the instructor examination  
22 requirements of paragraph (2)(c) as long as the person he  
23 continuously holds such a permit and complies with all other  
24 requirements of this chapter.

25 Section 14. Subsection (6) is added to section  
26 475.452, Florida Statutes, to read:

27 475.452 Advance fees; deposit; accounting; penalty;  
28 damages.--

29 (6) A broker auctioning real property for a seller may  
30 receive anticipated expenses prior to the auction only in  
31 accordance with a written agreement previously concluded

1 between the broker and the seller. A broker may receive funds  
2 in advance of the auction only in accordance with the  
3 requirements of this section applicable to advance fees for  
4 the listing of real property.

5 Section 15. Section 475.6145, Florida Statutes, is  
6 created to read:

7 475.6145 Seal.--The board shall adopt a seal by which  
8 it shall authenticate its proceedings, records, and acts  
9 Copies of the proceedings, records, and acts of the board, and  
10 certificates purporting to relate the facts concerning such  
11 proceedings, records, and acts, which are signed by the board  
12 chair, the custodian of such records, or any other person  
13 authorized to make such certification and which are  
14 authenticated by such seal, shall be prima facie evidence of  
15 such proceedings, records, and acts in all the courts of this  
16 state.

17 Section 16. Section 475.624, Florida Statutes, is  
18 amended to read:

19 475.624 Discipline --The board may deny an application  
20 for registration, licensure, or certification; investigate the  
21 actions of any appraiser registered, licensed, or certified  
22 under this section; and may reprimand, fine, revoke, or  
23 suspend, for a period not to exceed 10 years, the  
24 registration, license, or certification of any such appraiser,  
25 or place any such appraiser on probation if it finds that the  
26 registrant, licensee, or certificateholder:

27 (1) Has violated any provisions of this part or of s.  
28 455.227(1) However, licensees under this part are exempt from  
29 the provisions of s. 455.227(1)(1) ↑

30 (2) Has been guilty of fraud, misrepresentation,  
31 concealment, false promises, false pretenses, dishonest

1 | conduct, culpable negligence, or breach of trust in any  
2 | business transaction in this state or any other state, nation,  
3 | or territory; has violated a duty imposed upon him by law or  
4 | by the terms of a contract, whether written, oral, express, or  
5 | implied, in an appraisal assignment; has aided, assisted, or  
6 | conspired with any other person engaged in any such misconduct  
7 | and in furtherance thereof; or has formed an intent, design,  
8 | or scheme to engage in such misconduct and committed an overt  
9 | act in furtherance of such intent, design, or scheme. It is  
10 | immaterial to the guilt of the registrant, licensee, or  
11 | certificateholder that the victim or intended victim of the  
12 | misconduct has sustained no damage or loss; that the damage or  
13 | loss has been settled and paid after discovery of the  
14 | misconduct; or that such victim or intended victim was a  
15 | customer or a person in confidential relation with the  
16 | registrant, licensee, or certificateholder, or was an  
17 | identified member of the general public.

18 |       (3) Has advertised services in a manner which is  
19 | fraudulent, false, deceptive, or misleading in form or  
20 | content.

21 |       (4) Has violated any of the provisions of this section  
22 | or any lawful order or rule issued under the provisions of  
23 | this section or chapter 455.

24 |       (5) Has been convicted or found guilty of, or entered  
25 | a plea of nolo contendere to, regardless of adjudication, a  
26 | crime in any jurisdiction which directly relates to the  
27 | activities of a registered, licensed, or certified appraiser,  
28 | or which involves fraudulent or dishonest conduct. The record  
29 | of a conviction certified or authenticated in such form as  
30 | admissible in evidence under the laws of the state shall be  
31 | admissible as prima facie evidence of such guilt.

1           (6) Has had a registration, license, or certification  
2 as an appraiser revoked, suspended, or otherwise acted  
3 against, or has been disbarred, or has had his registration,  
4 license, or certificate to practice or conduct any regulated  
5 profession, business, or vocation revoked or suspended by this  
6 or any other state, any nation, or any possession or district  
7 of the United States, or has had an application for such  
8 registration, licensure, or certification to practice or  
9 conduct any regulated profession, business, or vocation denied  
10 by this or any other state, any nation, or any possession or  
11 district of the United States.

12           (7) Has become temporarily incapacitated from acting  
13 as an appraiser with safety to those in a fiduciary  
14 relationship with him because of drunkenness, use of drugs, or  
15 temporary mental derangement; however, suspension of a license  
16 or certification in such cases shall only be for the period of  
17 such incapacity.

18           (8) Is confined in any county jail, postadjudication,  
19 is confined in any state or federal prison or mental  
20 institution; or, through mental disease or deterioration, can  
21 no longer safely be entrusted to deal with the public or in a  
22 confidential capacity.

23           (9) Has failed to inform the board in writing within  
24 30 days after pleading guilty or nolo contendere to, or being  
25 convicted or found guilty of, any felony.

26           (10) Has been found guilty, for a second time, of any  
27 misconduct that warrants disciplinary action, or has been  
28 found guilty of a course of conduct or practice which shows  
29 that he is incompetent, negligent, dishonest, or untruthful to  
30 an extent that those with whom he may sustain a confidential  
31 relationship may not safely do so.

1           (11) Has made or filed a report or record, either  
2 written or oral, which the licensee or certificateholder knows  
3 to be false; has willfully failed to file a report or record  
4 required by state or federal law; has willfully impeded or  
5 obstructed such filing, or has induced another person to  
6 impede or obstruct such filing. However, such reports or  
7 records shall include only those which are signed or presented  
8 in the capacity of a licensed or certified appraiser.

9           (12) Has obtained or attempted to obtain a  
10 registration, license, or certification by means of knowingly  
11 making a false statement, submitting false information,  
12 refusing to provide complete information in response to an  
13 application question, or engaging in fraud, misrepresentation,  
14 or concealment.

15           (13) Has paid money or other valuable consideration,  
16 except as required by this section, to any member or employee  
17 of the board to obtain a registration, license, or  
18 certification under this section.

19           (14) Has violated any standard for the development or  
20 communication of a real estate appraisal or other provision of  
21 the Uniform Standards of Professional Appraisal Practice.

22           (15) Has failed or refused to exercise reasonable  
23 diligence in developing an appraisal or preparing an appraisal  
24 report.

25           (16) Has failed to communicate an appraisal without  
26 good cause.

27           (17) Has accepted an appraisal assignment if the  
28 employment itself is contingent upon the appraiser reporting a  
29 predetermined result, analysis, or opinion, or if the fee to  
30 be paid for the performance of the appraisal assignment is  
31

1 contingent upon the opinion, conclusion, or valuation reached  
2 upon the consequences resulting from the appraisal assignment.

3 (18) Has failed to timely notify the department of any  
4 change in business location, or has failed to fully disclose  
5 all business locations from which he operates as a registered,  
6 licensed, or certified real estate appraiser.

7 Section 17. This act shall take effect October 1,  
8 1996.

9  
10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
11 COMMITTEE SUBSTITUTE FOR  
12 Senate Bill 502

13 The committee substitute makes various technical and  
14 conforming changes relating to the bill's specification of  
15 duties and obligations of real estate professionals in lieu of  
16 common law agency duties imposed on real estate professionals.  
17 The committee substitute exempts real estate appraisers from  
18 the requirement to report any knowledge of disciplinary  
19 violations by other licensees to the Department of Business  
20 and Professional Regulation.  
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below )

Date: April 11, 1996 Revised: \_\_\_\_\_ 10 2139

Subject: Regulation of Real Estate Transactions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Munroe <i>Bgm</i>	Wilson <i>RW</i>	GO	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides for the abrogation of the common law of agency with respect to agents and transaction brokers under chapter 475, F.S , to the extent the bill specifies the obligations and duties of transaction brokers, single agents, and dual agents under state law governing real estate brokers and salespersons. The bill provides a presumption that a real estate broker or salesperson is acting in the capacity of a transaction broker. The bill revises the grounds for which real estate professionals may be disciplined to conform to changes made in the bill. The bill provides that any act under the real estate practice act which must be performed in writing or acknowledged with a signature may be accomplished by electronic means or facsimile.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 475 01, 475.0125, 475 015, 475.016, 475 017, 475.15, 475.25, 475 256, 475.257, 475.258, 475 259, 475.261, 475.451, 475.452, 475.6145, and 475.624.

II. Present Situation:

Part I of chapter 475, F.S , provides for the regulation of the practice of real estate by the Real Estate Commission within the Department of Business and Professional Regulation (DBPR) The chapter provides definitions. The chapter defines "transactional broker" to mean a broker who facilitates a brokerage transaction between a buyer and a seller The transactional broker does not affirmatively represent either the buyer or the seller as an agent, and no fiduciary duties exist except for the duty of accounting and the duty to use skill, care, and diligence. The chapter requires the broker's role as a transactional broker to be fully disclosed in writing to the buyer and seller. The chapter defines "disclosed dual agent" to mean a broker who works as an agent



for both the buyer and seller. The broker must first obtain the informed consent in writing of all parties to the transaction to be a disclosed dual agent. The disclosed dual agent has all the duties of a fiduciary except full disclosure between buyer and seller. The chapter defines "fiduciary" to mean a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

Black's Law Dictionary defines the term "agency" to mean a relation in which one person acts for or represents another by latter's authority, either in the relationship of principal and agent, master and servant, or employer and independent contractor. An agent is a person authorized by another to act on his behalf. The duties and obligations of real estate professionals are in part determined by the common law of agency, as provided for by case law decisions. In a recent class action suit against a real estate company, a federal district court in Minnesota found that although Edina Realty, Inc., the defendant-real estate company had complied with all of its statutory obligations, the common law of agency imposed other duties on the company which it had failed to follow (Bokusky v. Edina Realty, Inc., 1993 WL 515827 (D. Minn.)). In Edina, plaintiffs filed a class action suit asserting claims against the real estate company involving the breach of statutory duties, fiduciary duty, fraud, breach of contract, and violations of the Racketeer Influenced and Corrupt Organizations (RICO) statute. The gravamen of plaintiffs' complaint was that Edina Realty agents systematically failed to disclose the inherent conflict of interests in dual agency transactions. The plaintiffs alleged that the real estate company relied solely on a form disclosure of the agency relationship within the purchase agreement. The court found that the real estate company had violated its duties under the common law of agency and was liable for damages to plaintiffs in a class action suit. The case was eventually settled out of court. In Florida, similar common law agency duties are imposed on a real estate professional, the violation for which may subject the real estate professional to disciplinary action and liability to consumers for the real estate professional's services and for any subsequent damages resulting from a breach of the common law agency duties in a civil action.

The Florida Real Estate Commission has worked to develop and implement administrative rules regarding agency disclosure for a real estate professional working in the capacity of single agency, disclosed dual agency, and transactional broker which are codified in 61J2-10.036 & 61J2-10.037, Florida Administrative Code. In Florida, the applicable case law on required disclosures imposes a duty on the seller of real property to disclose all facts materially affecting the value of the property which are not readily observable and are not known to the buyer Johnson v. Davis 480 So.2d 625 (Fla. 1985).

Part II of chapter 475, F.S., provides for the regulation of real estate appraisers by the Florida Real Estate Appraisal Board within DBPR.

### III. Effect of Proposed Changes:

The bill abrogates duties placed on real estate professionals under the common law of agency to the extent, the bill specifies in statute, the duties and responsibilities of real estate professionals.

The bill revises the definition of "transaction broker" to allow the broker to keep the identity of a buyer or seller confidential, if requested to do so by the buyer or seller, even if such knowledge could affect the value of the property. The bill specifies the duties of a disclosed dual agent and provides a presumption that consent has been obtained if the party signs an agreement that contains a statement which includes a description of the situation for which representation of a client in which the real estate agent will serve as a disclosed dual agent; an acknowledgment that a disclosed agent is serving clients with adverse interests and that the agency duties are limited; a disclosure that the dual agent may disclose any relevant information to parties with some exceptions; and provides that the client has read the agreement and voluntarily consented. The bill limits the liability of the dual agent for making any disclosures permitted or required by chapter 475, F.S. In a disclosed dual agent situation, the agent and each client are imputed to possess only actual knowledge and there is no knowledge acquired by operation of legal principles between the clients, broker and or his associated real estate licensees

The bill provides requirements, duties and obligations of a transaction broker. The duties include: the exercise of reasonable skill, care and diligence, presentation of all offers in a timely manner; accounting for funds, keeping parties informed and advising the parties to seek expert help regarding material matters that the broker is aware of but are beyond the broker's expertise; informing the parties that as, seller and buyer, they are not vicariously liable for any acts of the transaction broker. The transaction broker is prohibited from disclosing specified information without the consent of all parties, including what the buyer is willing to pay for the property or what the seller is willing to accept for the property, factors motivating any party buying, selling, or leasing the property, and any material information about the other party to the transaction unless disclosure is required by law or failure to disclose constitutes fraudulent or dishonest dealing.

The bill provides a presumption that a real estate broker or salesperson is acting in the capacity of a transaction broker unless another relationship with the buyer, seller, or other customer is established by a written agreement with the broker or salesperson. If another relationship is established between the buyer, seller, or other customer and the broker or salesperson, then the duties and obligations of that relationship must be specified in the contract and as required by law.

Under the bill, transaction brokers have no duty to conduct an independent inspection of the property for the benefit of the buyer and have no duty to independently verify the accuracy or completeness of any statements made by the seller, landlord, or independent inspectors. A transaction broker may cooperate with other brokers without creating an agency or subagency relationship. As long as the required disclosures are made, the transaction broker is authorized to act in other capacities in any real estate transaction. The transaction broker may serve as a single agent, subagent, or dual agent for the same or different parties in other real estate transactions.

The bill specifies the duties of a single real estate agent. The agent representing the seller must promote the interests of the seller by exercising agency duties including: seeking a sale at the price and terms stated in the brokerage agreement or at a price acceptable to the seller; presenting

offers in a timely manner; disclosing material facts of which the licensee has actual knowledge; advising the seller to obtain expert advice on material matters beyond the licensee's expertise, and accounting for all money received. The seller's agent must preserve confidential information with some exceptions specified in the bill, including consent to disclose the information, and disclosures required by law.

The bill specifies the duties of a single real estate agent representing the buyer. The duties include presenting offers to the buyer in a timely manner, disclosing material facts of which the agent has actual knowledge; advising the buyer to obtain expert advice on material matters that are beyond the licensee's expertise, and accounting for all money received. Under the bill, the real estate broker is not obligated to discover latent defects in the property. The buyer is obligated to perform physical inspection of the property. The buyer's agent must maintain confidential information with certain exceptions specified in the bill. The bill provides that the broker is not liable for providing false information to the seller if the false information was provided to the broker by the broker's buyer-client and the broker did not know that the information was false. The bill bars any legal cause of action arising on behalf of any person against a real estate broker for revealing information in compliance with the bill.

The bill revises the grounds for which a real estate professional may be disciplined for unprofessional conduct to conform to changes made in the bill regarding the duties and obligations of real estate licensees. The bill requires licensees to give written disclosure in the sale or exchange of any interest in real property to the party for whom the licensee is not an agent at the first substantive contact revealing to the party or parties for whom the licensee is an agent. The bill provides for the discipline of licensees who fail to meet the specified duties of an agent acting as a single real estate agent, disclosed dual agent, or transaction broker. The bill authorizes the Real Estate Commission to impose an administrative fine no greater than \$100 for the failure of a real estate professional who has failed to make the required disclosures for each count or to issue a reprimand if there is no showing of intentional failure to disclose and the failure has not been a contributing factor causing harm to the consumer. The bill authorizes real estate professionals to obtain the written consent of parties at the time of the entry of the listing agreement for representation whether as buyer agent, dual agent, or acting as a transaction broker. The bill deletes the authority of the Real Estate Commission to specify, by administrative rule, the forms for agency disclosure to be used by real estate professionals. The bill makes real estate appraisers subject to disciplinary action for violating any standard for the development or communication of a real estate appraisal or for violation of any other provision of the Uniform Standards of Professional Appraisal Practice but provides that the prohibition does not extend to real estate professional who performs a comparative market analysis or makes an evaluation of real estate. The bill exempts licensed real estate professionals, including real estate appraisers, from the requirement to report any knowledge of disciplinary violations by other licensees to the department.

The bill deletes a requirement that automatically cancels the registration of a partnership when one or more of the licensed partners is no longer licensed. The bill provides that any act under the real estate practice act which must be performed in writing or acknowledged with a signature

may be accomplished by electronic means or facsimile. The bill provides that disclosures done in accordance with the bill's procedures of agency or transaction brokerage by an agent, broker, or transaction broker to the agent, broker, or transaction broker representing or working with another party is sufficient for satisfying the disclosure requirements. The bill clarifies that any ministerial acts such as preparing or conveying offers and providing information performed by a real estate professional engaged by a party to the transaction does not violate the broker agreement and may not be construed as forming a transaction brokerage or agency agreement.

The bill provides restrictions applicable to advance fees for brokers auctioning real property. The bill provides for a seal for the Florida Real Estate Appraisal Board to use in authenticating its proceedings, records, and acts.

The bill revises requirements for schools teaching real estate practice to require real estate school instructors to certify their competency and obtain an instructor's permit. The bill requires the Real Estate Commission to adopt rules providing procedures for real estate instructors to renew their permit every 2 years.

#### **IV. Constitutional Issues:**

##### **A Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Section 24(a) of Article I of the Florida Constitution.

##### **C. Trust Funds Restrictions**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A Tax/Fee Issues:**

Real estate instructors will be subject to an unspecified renewal application fee

##### **B Private Sector Impact.**

The repeal of the common law of agency currently applicable to real estate transactions may relieve licensed real estate professionals of civil liability but may increase costs to any

consumers to the extent the bill limits any legal redress the consumer has under the common law of agency

**C Government Sector Impact:**

DBPR will incur costs to adopt rules for the real estate instructor's permit established under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None

**VIII. Amendments:**

None.