

FLORIDA STATUTE 475  
SECTION 278

AUTHORIZED BROKERAGE RELATIONSHIPS,  
PRESUMPTION OF TRANSACTION BROKERAGE,  
AND REQUIRED DISCLOSURES

A BALISTRERI REALTY CLIENT-EDUCATION REPORT

**BALISTRERI**  
**REALTY**

Est. 1964

LEADING REAL ESTATE  
COMPANIES *of* THE WORLD™

LUXURY  
PORTFOLIO™

BALISTRERI.COM 866-902-1010

**FLORIDA STATUTE 475, SECTION 278**  
**AUTHORIZED BROKERAGE RELATIONSHIPS,**  
**PRESUMPTION OF TRANSACTION BROKERAGE,**  
**AND REQUIRED DISCLOSURES**

**(1) BROKERAGE RELATIONSHIPS**

**(a) Authorized brokerage relationships:** A real estate licensee in this state may enter into a brokerage relationship as either a transaction broker or as a single agent with potential buyers and sellers. A real estate licensee may not operate as a disclosed or nondisclosed dual agent. As used in this section, the term “dual agent” means a broker who represents as a fiduciary both the prospective buyer and the prospective seller in a real estate transaction. This part does not prevent a licensee from changing from one brokerage relationship to the other as long as the buyer or the seller, or both, gives consent as required by subparagraph (3)(c)2. before the change and the appropriate disclosure of duties as provided in this part is made to the buyer or seller. This part does not require a customer to enter into a brokerage relationship with any real estate licensee.

**(b) Presumption of transaction brokerage:** It shall be presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer.

**(2) TRANSACTION BROKER RELATIONSHIP**

**(a) Transaction broker-duties of limited representation:** 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 of representation include the following:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are mutually agreed to with a party.

**(b) Disclosure requirements:** Duties of a transaction broker must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type. This paragraph expires July 1, 2008.

**(c) Contents of disclosure:** The required notice given under paragraph (b) must include the following information in the following form:

### **TRANSACTION BROKER NOTICE**

As a transaction broker, (insert name of Real Estate Firm and its Associates), provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

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

\_\_\_\_\_ Date

\_\_\_\_\_ Signature

\_\_\_\_\_ Signature

This paragraph expires July 1, 2008.

### **(3) SINGLE AGENT RELATIONSHIP**

**(a) Single agent-duties:** The duties of a real estate licensee owed to a buyer or seller who engages the real estate licensee as a single agent include the following:

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. Obedience;
5. Full disclosure;
6. Accounting for all funds;
7. Skill, care, and diligence in the transaction;
8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

#### **(b) Disclosure requirements:**

**1. Single agent disclosure:** Duties of a single agent must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a single agent, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type.

**2. Transition to transaction broker disclosure:** A single agent relationship may be changed to a transaction broker relationship at any time during the relationship between an agent and principal, provided the agent first obtains the principal's written consent to the change in relationship. This disclosure must be in writing to the principal either as a separate and distinct document or included as part of other documents such as a listing agreement or other agreements for representation. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in subparagraph (c)2. must be printed in uppercase and bold type.

#### **(c) Contents of disclosure:**

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

## SINGLE AGENT NOTICE

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

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

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. Obedience;
5. Full disclosure;
6. Accounting for all funds;
7. Skill, care, and diligence in the transaction;
8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

**2. Transition disclosure:** To gain the principal's written consent to a change in relationship, a licensee must use the following disclosure:

### CONSENT TO TRANSITION TO TRANSACTION BROKER

**FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.**

As a transaction broker, (insert name of Real Estate Firm and its Associates), provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

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

\_\_\_\_\_I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

#### **(4) NO BROKERAGE RELATIONSHIP**

**(a) No brokerage relationship—duties:** A real estate licensee owes to a potential seller or buyer with whom the licensee has no brokerage relationship the following duties:

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

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

**(c) Contents of disclosure:** The notice required under paragraph (b) must include the following information in the following form:

## NO BROKERAGE RELATIONSHIP NOTICE

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

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

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

---

Date

---

Signature

#### **(5) APPLICABILITY**

**(a) Residential sales:** The real estate licensee disclosure requirements of this section apply to all residential sales. As used in this subsection, the term "residential sale" means 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 10 acres or fewer.

#### **(b) Disclosure limitations:**

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

2. The real estate licensee disclosure requirements of this section do not apply to: nonresidential transactions; the rental or leasing of real property, unless an option to purchase all or a portion of the property improved with four or fewer residential units is given; a bona fide "open house" or model home showing that does not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; unanticipated casual conversations between a licensee and a seller or buyer which do not involve eliciting confidential information, the execution of a contractual offer or agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; responding to general factual questions from a potential buyer or seller concerning properties that have been advertised for sale; situations in which a licensee's communications with a potential buyer or seller are limited to providing general factual information, oral or written, about the qualifications, background, and services of the licensee or the licensee's brokerage firm; auctions; appraisals; and dispositions of any interest in business enterprises or business opportunities, except for property with four or fewer residential units.