

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 842

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WOOD.

2042L.01P

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 339.710, RSMo, and to enact in lieu thereof one new section relating to real estate brokers and agents.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 339.710, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 339.710, to read as follows:

339.710. For purposes of sections 339.010 to 339.180, RSMo, and sections 339.710 to 339.860, the following terms mean:

(1) "Adverse material fact", a fact related to the property not reasonably ascertainable or known to a party which negatively affects the value of the property. Adverse material facts may include matters pertaining to:

(a) Environmental hazards affecting the property;

(b) Physical condition of the property which adversely affects the value of the property;

(c) Material defects in the property;

(d) Material defects in the title to the property;

(e) Material limitation of the party's ability to perform under the terms of the contract;

(2) "Affiliated licensee", any broker or salesperson who works under the supervision of a designated broker;

(3) "Agent", a person or entity acting pursuant to the provisions of this chapter;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (4) "Broker disclosure form", the current form prescribed by the commission for  
15 presentation to a seller, landlord, buyer or tenant who has not entered into a written agreement  
16 for brokerage services;

17 (5) "Brokerage relationship", the relationship created between a designated broker, the  
18 broker's affiliated licensees, and a client relating to the performance of services of a broker as  
19 defined in section 339.010, and sections 339.710 to 339.860. If a designated broker makes an  
20 appointment of an affiliated licensee or affiliated licensees pursuant to section 339.820, such  
21 brokerage relationships are created between the appointed licensee or licensees and the client.  
22 Nothing in this subdivision shall:

23 (a) Alleviate the designated broker from duties of supervision of the appointed licensee  
24 or licensees; or

25 (b) Alter the designated broker's underlying contractual agreement with the client;

26 (6) "Client", a seller, landlord, buyer, or tenant who has entered into a brokerage  
27 relationship with a licensee pursuant to sections 339.710 to 339.860;

28 (7) "Commercial real estate", any real estate other than real estate containing one to four  
29 residential units[, real estate on which no buildings or structures are located,] or real estate  
30 classified as agricultural and horticultural property for assessment purposes pursuant to section  
31 137.016, RSMo. Commercial real estate does not include single family residential units  
32 including condominiums, townhouses, or homes in a subdivision when that real estate is sold,  
33 leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a  
34 larger building or parcel of real estate containing more than four units;

35 (8) "Commission", the Missouri real estate commission;

36 (9) "Confidential information", information obtained by the licensee from the client and  
37 designated as confidential by the client, information made confidential by sections 339.710 to  
38 339.860 or any other statute or regulation, or written instructions from the client unless the  
39 information is made public or becomes public by the words or conduct of the client to whom the  
40 information pertains or by a source other than the licensee;

41 (10) "Customer", an actual or potential seller, landlord, buyer, or tenant in a real estate  
42 transaction in which a licensee is involved but who has not entered into a brokerage relationship  
43 with the licensee;

44 (11) "Designated agent", a licensee named by a designated broker as the limited agent  
45 of a client as provided for in section 339.820;

46 (12) "Designated broker", any individual licensed as a broker who is operating pursuant  
47 to the definition of "real estate broker" as defined in section 339.010, or any individual licensed  
48 as a broker who is appointed by a partnership, association, limited liability corporation, or a  
49 corporation engaged in the real estate brokerage business to be responsible for the acts of the

50 partnership, association, limited liability corporation, or corporation. Every real estate  
51 partnership, association, or limited liability corporation, or corporation shall appoint a designated  
52 broker;

53 (13) "Designated transaction broker", a licensee named by a designated broker or deemed  
54 appointed by a designated broker as the transaction broker for a client pursuant to section  
55 339.820;

56 (14) "Dual agency", a form of agency which may result when an agent licensee or  
57 someone affiliated with the agent licensee represents another party to the same transaction;

58 (15) "Dual agent", a limited agent who, with the written consent of all parties to a  
59 contemplated real estate transaction, has entered into an agency brokerage relationship, and not  
60 a transaction brokerage relationship, with and therefore represents both the seller and buyer or  
61 both the landlord and tenant;

62 (16) "Exclusive brokerage agreement", means a written brokerage agreement which  
63 provides that the broker has the sole right, through the broker or through one or more affiliated  
64 licensees, to act as the exclusive limited agent, representative, or transaction broker of the client  
65 or customer that meets the requirements of section 339.780;

66 (17) "Licensee", a real estate broker or salesperson as defined in section 339.010;

67 (18) "Limited agent", a licensee whose duties and obligations to a client are those set  
68 forth in sections 339.730 to 339.750;

69 (19) "Ministerial acts", those acts that a licensee may perform for a person or entity that  
70 are informative in nature and do not rise to the level which requires the creation of a brokerage  
71 relationship. Examples of these acts include, but are not limited to:

72 (a) Responding to telephone inquiries by consumers as to the availability and pricing of  
73 brokerage services;

74 (b) Responding to telephone inquiries from a person concerning the price or location of  
75 property;

76 (c) Attending an open house and responding to questions about the property from a  
77 consumer;

78 (d) Setting an appointment to view property;

79 (e) Responding to questions of consumers walking into a licensee's office concerning  
80 brokerage services offered on particular properties;

81 (f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to  
82 a property;

83 (g) Describing a property or the property's condition in response to a person's inquiry;

84 (h) Showing a customer through a property being sold by an owner on his or her own  
85 behalf; or

86 (i) Referral to another broker or service provider;

87 (20) "Residential real estate", all real property improved by a structure that is used or  
88 intended to be used primarily for residential living by human occupants and that contains not  
89 more than four dwelling units or that contains single dwelling units owned as a condominium  
90 or in a cooperative housing association, and vacant land classified as residential property. The  
91 term "cooperative housing association" means an association, whether incorporated or  
92 unincorporated, organized for the purpose of owning and operating residential real property in  
93 Missouri, the shareholders or members of which, by reason of their ownership of a stock or  
94 membership certificate, a proprietary lease, or other evidence of membership, are entitled to  
95 occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement;

96 (21) "Single agent", a licensee who has entered into a brokerage relationship with and  
97 therefore represents only one party in a real estate transaction. A single agent may be one of the  
98 following:

99 (a) "Buyer's agent", which shall mean a licensee who represents the buyer in a real estate  
100 transaction;

101 (b) "Landlord's agent", which shall mean a licensee who represents a landlord in a  
102 leasing transaction;

103 (c) "Seller's agent", which shall mean a licensee who represents the seller in a real estate  
104 transaction; and

105 (d) "Tenant's agent", which shall mean a licensee who represents the tenant in a leasing  
106 transaction;

107 (22) "Subagent", a designated broker, together with the broker's affiliated licensees,  
108 engaged by another designated broker, together with the broker's affiliated or appointed affiliated  
109 licensees, to act as a limited agent for a client, or a designated broker's unappointed affiliated  
110 licensees engaged by the designated broker, together with the broker's appointed affiliated  
111 licensees, to act as a limited agent for a client. A subagent owes the same obligations and  
112 responsibilities to the client pursuant to sections 339.730 to 339.740 as does the client's  
113 designated broker;

114 (23) "Transaction broker", any licensee acting pursuant to sections 339.710 to 339.860,  
115 who:

116 (a) Assists the parties to a transaction without an agency or fiduciary relationship to  
117 either party and is, therefore, neutral, serving neither as an advocate or advisor for either party  
118 to the transaction;

119 (b) Assists one or more parties to a transaction and who has not entered into a specific  
120 written agency agreement to represent one or more of the parties; or

121 (c) Assists another party to the same transaction either solely or through licensee  
122 affiliates. Such licensee shall be deemed to be a transaction broker and not a dual agent,  
123 provided that, notice of assumption of transaction broker status is provided to the buyer and  
124 seller immediately upon such default to transaction broker status, to be confirmed in writing prior  
125 to execution of the contract.

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