

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 842

95TH GENERAL ASSEMBLY

2042S.02T

2009

AN ACT

To repeal sections 339.503 and 339.710, RSMo, and to enact in lieu thereof two new sections relating to real estate.

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

Section A. Sections 339.503 and 339.710, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 339.503 and 339.710, to read as follows:

339.503. As used in sections 339.500 to 339.549, the following words and phrases mean,
2 unless the context clearly indicates otherwise:

3 (1) "Appraisal" or "real estate appraisal", an objective analysis, evaluation, opinion, or
4 conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of,
5 identified real estate. An appraisal may be classified by subject matter into either a valuation or
6 an analysis;

7 (2) "Appraisal assignment", an engagement for which a person is employed or retained
8 to act as a disinterested third party in rendering an objective appraisal;

9 (3) "Appraisal foundation", the organization of the same name that was incorporated as
10 an Illinois not-for-profit corporation on November 20, 1987, whose operative boards are the
11 appraisal standards board and the appraiser qualifications board;

12 (4) "Appraisal report", any communication, written or oral, of an appraisal. The purpose
13 of an appraisal is immaterial, therefore valuation reports, real estate counseling reports, real
14 estate tax counseling reports, real estate offering memoranda, mortgage banking offers, highest
15 and best use studies, market demand and economic feasibility studies and all other reports
16 communicating an appraisal analysis, opinion or conclusion are "appraisal reports", regardless
17 of title;

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.

18 (5) "Appraisal standards board (ASB)", the independent board of the appraisal
19 foundation which promulgates the generally accepted standards of the appraisal profession and
20 the uniform standards of professional appraisal practices;

21 (6) "Appraiser qualifications board (AQB)", the independent board of the appraisal
22 foundation which establishes minimum experience, education and examination criteria for state
23 licensing of appraisers;

24 (7) **"Boat dock", a structure for loading and unloading boats and connecting real**
25 **property to water, public or private. A boat dock is real property and has riparian rights,**
26 **provided:**

27 (a) **The lender includes the boat dock as a fixture both in the lender's deed of trust**
28 **and a uniform commercial code fixture filing under section 400.9-502, RSMo;**

29 (b) **The boat dock is attached to the real property by steel cable, bar, or chain that**
30 **is permanently imbedded in concrete or rock, and otherwise securely attached to the dock;**
31 **and**

32 (c) **The owner of the dock has riparian rights by means of real estate rights**
33 **bordering the body of water, including such rights by license, grant, or other means**
34 **allowing access to the body of water, which access may be seasonal because the water may**
35 **be reduced for electric power production or flood control;**

36 (8) "Broker price opinion", an opinion of value, prepared by a real estate licensee for a
37 fee, that includes, but is not limited to, analysis of competing properties, comparable sold
38 properties, recommended repairs and costs or suggested marketing techniques. A broker price
39 opinion is not an appraisal and shall specifically state it is not an appraisal;

40 [(8)] (9) "Certificate", the document issued by the Missouri real estate appraisers
41 commission evidencing that the person named therein has satisfied the requirements for
42 certification as a state-certified real estate appraiser and bearing a certificate number assigned
43 by the commission;

44 [(9)] (10) "Certificate holder", a person certified by the commission pursuant to the
45 provisions of sections 339.500 to 339.549;

46 [(10)] (11) "Certified appraisal report", an appraisal prepared or signed by a
47 state-certified real estate appraiser. A certified appraisal report represents to the public that it
48 meets the appraisal standards defined in sections 339.500 to 339.549;

49 [(11)] (12) "Commission", the Missouri real estate appraisers commission, created in
50 section 339.507;

51 [(12)] (13) "Comparative market analysis", the analysis of sales of similar recently sold
52 properties in order to derive an indication of the probable sales price of a particular property
53 undertaken by a licensed real estate broker or agent, for his or her principal. A comparative
54 market analysis is not an appraisal and shall specifically state it is not an appraisal;

55 [(13)] **(14)** "Disinterested third party" shall not exclude any state-certified real estate
56 appraiser or state-licensed real estate appraiser employed or retained by any bank, savings
57 association, credit union, mortgage banker or other lender to perform appraisal assignments,
58 provided that the appraisal assignments are rendered with respect to loans to be extended by the
59 bank, savings association, credit union, mortgage banker or other lender, and provided further
60 that the state-certified real estate appraiser or state-licensed real estate appraiser is not requested
61 or required to report a predetermined analysis or opinion of value;

62 [(14)] **(15)** "License" or "licensure", a license or licensure issued pursuant to the
63 provisions of sections 339.500 to 339.549 evidencing that the person named therein has satisfied
64 the requirements for licensure as a state-licensed real estate appraiser and bearing a license
65 number assigned by the commission;

66 [(15)] **(16)** "Real estate", an identified parcel or tract of land, including improvements,
67 if any;

68 [(16)] **(17)** "Real estate appraiser" or "appraiser", a person who for a fee or valuable
69 consideration develops and communicates real estate appraisals or otherwise gives an opinion
70 of the value of real estate or any interest therein;

71 [(17)] **(18)** "Real estate appraising", the practice of developing and communicating real
72 estate appraisals;

73 [(18)] **(19)** "Real property", the interests, benefits and rights inherent in the ownership
74 of real estate;

75 [(19)] **(20)** "Residential real estate", any parcel of real estate, improved or unimproved,
76 that is primarily residential in nature and that includes or is intended to include a residential
77 structure containing not more than four dwelling units and no other improvements except those
78 which are typical residential improvements that support the residential use for the location and
79 property type. A residential unit is a condominium, town house or cooperative complex, or a
80 planned unit development is considered to be residential real estate. Subdivisions are not
81 considered residential real estate. Individual parcels of property located within a residential
82 subdivision shall be considered residential property;

83 [(20)] **(21)** "Specialized appraisal services", appraisal services which do not fall within
84 the definition of appraisal assignment. The term "specialized services" may include valuation
85 work and analysis work. Regardless of the intention of the client or employer, if the appraiser
86 is acting as a disinterested third party in rendering an unbiased analysis, opinion or conclusion,
87 the work is classified as an appraisal assignment and not specialized services;

88 [(21)] **(22)** "State-certified general real estate appraiser", a person who holds a current,
89 valid certificate as a state-certified general real estate appraiser issued pursuant to the provisions
90 of sections 339.500 to 339.549;

91 [(22)] **(23)** "State-certified residential real estate appraiser", a person who holds a
92 current, valid certificate as a state-certified residential real estate appraiser issued pursuant to the
93 provisions of sections 339.500 to 339.549;

94 [(23)] **(24)** "State-licensed real estate appraiser", a person who holds a current, valid
95 license as a state-licensed real estate appraiser pursuant to the provisions of sections 339.500 to
96 339.549;

97 [(24)] **(25)** "Subdivision", a tract of land that has been divided into blocks or plots with
98 streets, roadways, open areas and other facilities appropriate to its development as residential,
99 commercial or industrial sites;

100 [(25)] **(26)** "Temporary appraiser licensure or certification", the issuance of a temporary
101 license or certificate by the commission to a person licensed or certified in another state who
102 enters this state for the purpose of completing a particular appraisal assignment.

339.710. For purposes of sections 339.010 to 339.180, RSMo, and sections 339.710 to
2 339.860, the following terms mean:

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

6 (a) Environmental hazards affecting the property;

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

8 (c) Material defects in the property;

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

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

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

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

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.

✓
