

SECOND REGULAR SESSION

HOUSE BILL NO. 1505

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TREADWAY.

Read 1st time January 17, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3752L.011

AN ACT

To repeal sections 339.710, 339.720, and 339.770, RSMo, and to enact in lieu thereof three new sections relating to real estate licenses.

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

Section A. Sections 339.710, 339.720, and 339.770, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 339.710, 339.720, and 339.770, to read
3 as follows:

339.710. For purposes of sections 339.710 to 339.860, the following terms mean:

- 2 (1) "Adverse material fact", a fact related to the physical condition of the property not
3 reasonably ascertainable or known to a party which negatively affects the value of the property.
4 Adverse material facts may include matters pertaining to:
 - 5 (a) Environmental hazards affecting the property;
 - 6 (b) Physical condition of the property which adversely affects the value of the property;
 - 7 (c) Material defects in the property;
 - 8 (d) Material defects in the title to the property;
 - 9 (e) Material limitation of the party's ability to perform under the terms of the contract;
- 10 (2) "Affiliated licensee", any broker or salesperson who works under the supervision of
11 a designated broker;
- 12 (3) "Agent", a person or entity acting pursuant to the provisions of this chapter;
- 13 (4) "Broker disclosure form", the current form prescribed by the commission for
14 presentation to a seller, landlord, buyer or tenant who has not entered into a written agreement
15 for brokerage services;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

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

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

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

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

36 [(8)] (9) "Confidential information", information obtained by the licensee from the client
37 and designated as confidential by the client, information made confidential by sections 339.710
38 to 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 [(9)] (10) "Customer", an actual or potential seller, landlord, buyer, or tenant in a real
42 estate transaction in which a licensee is involved but who has not entered into a brokerage
43 relationship with a licensee;

44 [(10)] (11) "Designated agent", a licensee named by a designated broker as the limited
45 agent of a client as provided for in section 339.820;

46 [(11)] (12) "Designated broker", any individual licensed as a broker who is operating
47 pursuant to the definition of "real estate broker" as defined in section 339.010, or any individual
48 licensed as a broker who is appointed by a partnership, association, limited liability corporation,
49 or a corporation engaged in the real estate brokerage business to be responsible for the acts of
50 the 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 [(12)] **(13)** "Designated transaction broker", a licensee named by a designated broker or
54 deemed appointed by a designated broker as the transaction broker for a client pursuant to section
55 339.820;

56 [(13)] **(14)** "Dual agency", a form of agency which may result when an agent licensee
57 or someone affiliated with the agent licensee represents another party to the same transaction;

58 [(14)] **(15)** "Dual agent", a limited agent who, with the written consent of all parties to
59 a 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 [(15)] **(16)** "Licensee", a real estate broker or salesperson as defined in section 339.010;

63 [(16)] **(17)** "Limited agent", a licensee whose duties and obligations to a client are those
64 set forth in sections 339.730 to 339.750;

65 [(17)] **(18)** "Ministerial acts", those acts that a licensee may perform for a person or
66 entity that are informative in nature and do not rise to the level which requires the creation of a
67 brokerage relationship. Examples of these acts include, but are not limited to:

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

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

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

74 (d) Setting an appointment to view property;

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

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

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

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

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

83 **(19) "Residential real estate", all real property improved by a structure that is used**
84 **or intended to be used primarily for residential living by human occupants and that**
85 **contains not more than four dwelling units or that contains single dwelling units owned as**
86 **a condominium or in a cooperative housing association, and vacant land classified as**
87 **residential property. The term "cooperative housing association", means an association,**

88 **whether incorporated or unincorporated, organized for the purpose of owning and**
89 **operating residential real property in Missouri, the shareholders or members of which, by**
90 **reason of their ownership of a stock or membership certificate, a proprietary lease, or**
91 **other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms**
92 **of a proprietary lease or occupancy agreement;**

93 [(18)] (20) "Single agent", a licensee who has entered into a brokerage relationship with
94 and therefore represents only one party in a real estate transaction. A single agent may be one
95 of the following:

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

98 (b) "Seller's agent", which shall mean a licensee who represents the seller in a real estate
99 transaction; and

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

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

104 [(19)] (21) "Subagent", a designated broker, together with the broker's affiliated
105 licensees, engaged by another designated broker, together with the broker's affiliated or
106 appointed affiliated licensees, to act as a limited agent for a client, or a designated broker's
107 unappointed affiliated licensees engaged by the designated broker, together with the broker's
108 appointed affiliated licensees, to act as a limited agent for a client. A subagent owes the same
109 obligations and responsibilities to the client pursuant to sections 339.730 to 339.740 as does the
110 client's designated broker;

111 [(20)] (22) "Transaction broker", any licensee acting pursuant to sections 339.710 to
112 339.860, who:

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

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

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

339.720. 1. A licensee's general duties and obligations arising from the limited agency

2 relationship shall be disclosed in writing to the seller and the buyer or to the landlord and the
3 tenant pursuant to sections 339.760 to 339.780. Alternatively, when engaged in any of the
4 activities enumerated in section 339.010, a licensee may act as an agent in any transaction in
5 accordance with a written agreement as described in section 339.780.

6 2. A licensee shall be considered a transaction broker unless:

7 (1) The designated broker enters into a written seller's agent or landlord's agent
8 agreement with the party or parties to be represented pursuant to subsection 2 of section 339.780;

9 (2) The designated broker enters into a subagency agreement with another designated
10 broker pursuant to subsection 5 of section 339.780;

11 (3) The designated broker [enters into a written buyer's agent or tenant's agent agreement
12 with the party or parties to be represented pursuant to subsection 3 of section 339.780]
13 **establishes a buyer's or tenant's agency relationship pursuant to subsection 3 of section**
14 **339.780;**

15 (4) The designated broker enters into a written agency agreement pursuant to subsection
16 7 of section 339.780;

17 (5) The designated broker and the affiliated licensees are performing ministerial acts;

18 (6) The designated broker enters into a written dual agency agreement with the parties
19 pursuant to subsection 4 of section 339.780;

20 (7) The designated broker is acting in a manner described in paragraph (c) of subdivision
21 [(20)] **(22)** of section 339.710 without proper notice of assumption of transaction broker status;
22 or

23 (8) The licensee is making a listing presentation, which may include pricing and
24 marketing advice about a potential future transaction, to a customer in anticipation of entering
25 into a signed agency brokerage service agreement as a direct result of the presentation.

26 3. Sections 339.710 to 339.860 do not obligate any buyer or tenant to pay compensation
27 to a designated broker unless the buyer or tenant has entered into a written agreement with the
28 designated broker specifying the compensation terms in accordance with subsection 3 of section
29 339.780.

30 4. A licensee may work with a single party in separate transactions pursuant to different
31 relationships, including, but not limited to, selling one property as a transaction broker or a
32 seller's agent working with that seller in buying another property as a buyer's agent, as a subagent
33 or as a transaction broker if the licensee complies with sections 339.710 to 339.860 in
34 establishing the relationships for each transaction.

339.770. 1. **In a residential real estate transaction**, at the earliest practicable
2 opportunity during or following the first substantial contact by the designated broker or the
3 affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a written

4 agreement for services as described in subdivision (5) of section 339.710, the licensee shall
5 provide that person with a written copy of the current broker disclosure form which has been
6 prescribed by the commission.

7 2. When a seller, landlord, buyer, or tenant has already entered into a written agreement
8 for services with a designated broker, no other licensee shall be required to make the disclosures
9 required by this section.

10 3. Disclosures made in accordance with sections 339.710 to 339.860 shall be sufficient
11 as a matter of law to disclose brokerage relationships to the public.