

58-30,113. Transaction broker; obligations of; disclosure of information. (a) A broker engaged as a transaction broker shall not act as an agent for either party.

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

(1) To perform the terms of any written or oral agreement made with any party to the transaction;

(2) to exercise reasonable skill and care as a transaction broker, including, but not limited to:

(A) Presenting all offers and counteroffers in a timely manner, even when the property is subject to a contract of sale;

(B) advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the licensee;

(C) accounting in a timely manner for all money and property received;

(D) keeping the parties fully informed regarding the transaction;

(E) assisting the parties in complying with the terms and conditions of any contract including closing the transaction;

(F) disclosing to all prospective buyers or tenants all adverse material facts actually known by the transaction broker, including, but not limited to:

(i) Any environmental hazards affecting the property which are required by law to be disclosed;

(ii) the physical condition of the property;

(iii) any material defects in the property;

(iv) any material defects in the title to the property; or

(v) any material limitation on the seller's or landlord's ability to perform under the terms of the contract; and

(G) disclosing to any prospective seller or landlord all adverse material facts actually known by the transaction broker, including, but not limited to, material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction;

(3) comply with all requirements of this act and rules and regulations adopted hereunder; and

(4) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights and rules and regulations.

(c) Except as provided in subsection (d), the transaction broker is not required to disclose to any party to the transaction information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the party.

(d) A transaction broker shall disclose to the party any facts actually known by the transaction broker that were omitted from or contradict any information included in a written report described in subsection (c).

(e) If pursuant to subsection (b)(2)(B), the transaction broker advised the parties to obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the transaction broker, no cause of action for any person shall arise against the transaction broker pertaining to such material matters.

(f) In any transaction regarding the sale or lease of real estate other than commercial property or residential property of more than four units, the following information shall not be disclosed by a transaction broker without the consent of all parties:

(1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(2) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(3) what the motivating factors are for any party buying, selling, or leasing the property;

(4) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered; or

(5) any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

(g) (1) Except as provided in subsection (g)(2), in any transaction regarding the sale or lease of commercial property or residential property of more than four units, the following information may be disclosed by a transaction broker unless prohibited by the parties:

(A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(B) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(C) what the motivating factors are for any party buying, selling or leasing the property; or

(D) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered.

(2) Any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party shall not be disclosed unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

(h) A transaction broker has no duty to conduct an independent inspection of the property for the benefit of any party to the transaction and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, buyer, tenant or qualified third party inspectors.

(i) A transaction broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.

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

(1) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;

(2) list competing properties for sale or lease;

(3) show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and

(4) serve as a single agent or subagent for the same or for different parties in other real estate transactions.

(k) Information known to a transaction broker shall not be imputed to any party to the transaction or to any licensee within the brokerage firm engaged as a transaction broker.

(l) A transaction broker may cooperate with other brokers or cooperate and pay compensation to other brokers but shall not engage any subagents.

History: L. 1997, ch. 65, § 1; L. 2006, ch. 159, § 4; July 1.