

Duties of a Real Estate Broker Under Florida Law

Article

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The Florida Supreme Court has recognized that real estate in Florida is a highly specialized field, and those who practice it enjoy certain privileges. As a result, real estate brokers owe their clients a high degree of trust and confidence.

Chapter 475 of the Florida Statutes imposes specific requirements on real estate brokers to protect the public.

Types of Brokerage Relationships

Chapter 475, Florida Statutes, recognizes three basic types of relationships that a real estate licensee may have with a principal:

- A transactional brokerage relationship
- A single agent relationship
- A no-brokerage relationship

Transaction Broker (Default Role)

Unless a single agent or no brokerage relationship is established in writing, all licensees are presumed to be operating as transaction brokers. A single agent relationship can change into a transaction broker relationship with prior consent and appropriate written disclosure.

A transaction broker plays a limited, non-fiduciary role and does not represent the buyer or seller as a single agent.

A transaction broker owes the following duties:

- Dealing honestly and fairly
- Accounting for all funds
- Using skill, care, and diligence in the transaction
- Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer

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- Presenting all offers and counteroffers in a timely manner (unless otherwise directed in writing)
- Limited confidentiality

Notably, the duty to disclose latent defects applies in residential real estate transactions.

In commercial real estate transactions, this requirement does not apply, and the buyer is responsible for discovering latent defects.

The limited confidentiality owed by the transaction broker includes not disclosing:

- That a seller will accept a lower price than the asking or listed price
- That a buyer will pay a price more than the price submitted in a written offer
- The motivations of either party
- Willingness to agree to alternative financing terms
- Any other confidential information requested by a party

Single Agent (Fiduciary Role)

A single agent's duties must be disclosed in writing to a buyer or seller before or at the time of entering into a listing or representation agreement, or before showing the property.

A single agent owes the following duties:

- Dealing honestly and fairly
- Loyalty
- Confidentiality
- Obedience
- Full disclosure
- Accounting for all funds
- Skill, care, and diligence in the transaction
- Timely presentation of all offers and counteroffers
- Disclosure of all known facts not readily observable that materially affect the value of residential property

No Brokerage Relationship (Limited Duties)

Even if a broker is not a transaction broker or a single agent, they will still be held to a higher standard.

In *United Homes, Inc. v. Moss*, Florida courts emphasized that real estate brokers hold a legal status with certain privileges and responsibilities. Those working with brokers may reasonably assume the broker is honest and ethical. As a result, even when working for a seller, a broker will still owe a duty to the buyer.

A licensee who has no brokerage relationship must disclose in writing the following duties before a property showing:

- Dealing honestly and fairly
- Disclosing all known material facts affecting the value of residential real property that are not readily observable
- Accounting for all funds entrusted to the licensee

Case Examples

Example: Breach of Duty of Loyalty

In *Wallace v. Odham*, a landowner retained a broker to assist with rezoning, utility acquisition, and finding a purchaser for the property in exchange for a 10% commission.

The broker performed these services, and the Orange County School Board met to discuss purchasing the land. Shortly before the meeting, a dispute arose regarding the commission. The broker then appeared before the school board and made several statements undermining the landowner, including suggesting the landowner was a liar and that the school's contract might not be legitimate.

The court acknowledged that the broker had the right to protect his commission but emphasized that he needed to continue to exercise his fiduciary duty. Because the broker's comments were an egregious breach of duty of loyalty, the court held that he should forfeit his commission.

Example: Breach of Duty of Honesty and Fair Dealing

In *Taylor v. Nicholson-Williams, Inc.*, a seller told her brokers that she would never deal with a particular developer or its affiliates following a negative experience.

The brokers later presented Taylor with an offer from a different entity, representing that it was not affiliated with the developer. They also convinced the seller to add in an assignment clause in favor of the new buyer. Before closing, the new buyer assigned the contract to the same developer the seller had expressly rejected.

The court found that brokers' actions failed to live up to the meaning of "honestly and fairly." As a result, the court held that the seller was not be precluded from recovering the brokers' ill-gotten commission.

Minimizing Risk in Brokerage Relationships

Understanding and properly documenting brokerage relationships is key to minimizing risk in Florida real estate transactions. For guidance on navigating these obligations, or to assess potential exposure, please contact our Real Estate team.