

# HB230 INTRODUCED



1 HB230  
2 GMSP226-1  
3 By Representative Shedd  
4 RFD: Commerce and Small Business  
5 First Read: 06-Feb-25



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SYNOPSIS:

Under existing law, a licensee of a real estate transaction must provide a written disclosure form to a consumer describing the types of brokerage services, as required by the Real Estate Consumers Agency and Disclosure Act (RECAD), prior to a consumer disclosing any confidential information. This form is adopted by the Alabama Real Estate Commission. In addition, a licensee must inform the consumer of the brokerage services specifically provided by the licensee's company. A written agreement is required to establish an agency relationship but is not required to establish a transaction brokerage relationship.

Pursuant to the National Association of Realtors (NAR) settlement agreement approved by the U.S. District Court for the Western District of Missouri, NAR created a new rule requiring brokers working with prospective buyers to enter into a written agreement with the prospective buyer prior to the prospective buyer touring a home. This requirement conflicts with existing law.

In response to recent changes in industry practices, this bill would provide that a consumer must receive a disclosure form from the licensee prior to a



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29 real estate licensee showing him or her a property; and  
30 the disclosure of the specific brokerage services the  
31 licensee's company provides must be in writing and  
32 include general information related to compensation of  
33 the licensee.

34 This bill would provide that after the  
35 disclosure, a consumer retains the option to enter into  
36 a brokerage agreement with the brokerage company;  
37 however, the consumer is not required to enter into a  
38 written brokerage agreement as a prerequisite to the  
39 licensee showing him or her a property.

40 This bill would further provide that a licensee  
41 and consumer are only required to execute a written  
42 brokerage agreement if the licensee will either list  
43 the property for sale or submit an offer to a seller on  
44 behalf of the consumer; and any brokerage agreement  
45 entered into must provide terms of compensation to the  
46 licensee and company.

47 This bill would further provide that a referral  
48 agreement between real estate licensees must be in  
49 writing.

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A BILL

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TO BE ENTITLED

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AN ACT

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56 Relating to real estate transactions; to clarify when a



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57 real estate consumer agency disclosure form is required; to  
58 further clarify when a written brokerage agreement is required  
59 to establish a brokerage relationship; and to provide when a  
60 licensee referral agreement must be in writing.

61 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

62 Section 1. Sections 34-27-81, 34-27-82, and 34-27-100  
63 Code of Alabama 1975, are amended to read as follows:

64 "§34-27-81

65 As used in this article, the following words ~~shall~~ have  
66 the following meanings:

67 (1) AGENCY AGREEMENT. A written agreement between a  
68 broker and a client which creates a fiduciary relationship  
69 between the broker and ~~a principal, who is commonly referred~~  
70 ~~to as a client~~the client.

71 (2) BROKER. Any person licensed as a real estate broker  
72 pursuant to Articles 1 and 2 of this chapter.

73 (3) BROKERAGE AGREEMENT. A specific written agreement  
74 between a ~~brokerage firm~~company as defined in Section 34-27-2  
75 and a consumer which establishes a brokerage relationship. The  
76 brokerage agreement shall contain a statement of the terms and  
77 conditions of the brokerage services to be provided, including  
78 any compensation to be paid to or through the company. The  
79 term includes agency agreements and transaction brokerage  
80 agreements.

81 (4) BROKERAGE SERVICE. Any service, except for rental  
82 or property management services, provided by a broker or  
83 licensee to another person and includes all activities for  
84 which a real estate license is required under Articles 1 and 2



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85 of this chapter.

86 (5) ~~CONSUMER. A person who obtains information, advice,~~  
87 ~~or services concerning real estate from a real estate~~  
88 ~~licensee.~~ CLIENT. A person who has an agency agreement with a  
89 broker for brokerage services whether he or she is the buyer  
90 or seller.

91 (6) ~~CLIENT. A person who has an agency agreement with a~~  
92 ~~broker for brokerage service, whether he or she be buyer or~~  
93 ~~seller.~~ CONSUMER. A person who obtains information, advice, or  
94 services concerning real estate from a real estate licensee.

95 (7) CUSTOMER. A person who is provided brokerage  
96 services by a ~~broker or~~ licensee but who is not a client of  
97 the broker.

98 (8) DUAL AGENCY. An agency relationship in which the  
99 same brokerage firm represents both the seller and the buyer  
100 in the same real estate transaction. once all parties have  
101 signed the consent agreement. Circumstances ~~which~~ that  
102 establish a dual agency include, but are not limited to, one  
103 of the following:

104 a. When two or more licensees licensed under the same  
105 broker each represent a different party to the transaction.

106 b. When one licensee represents both the buyer and  
107 seller in a real estate transaction.

108 (9) INFORMED CONSENT. A consumer's agreement to allow  
109 something to happen which is based upon full disclosure of  
110 facts needed to choose appropriate brokerage services.

111 (10) LICENSEE. Any broker, salesperson, or company as  
112 defined in Section 34-27-2.



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113 (11) LIMITED CONSENSUAL DUAL AGENT. A licensee who,  
114 with the written informed consent of all parties to a  
115 contemplated real estate transaction, is engaged as an agent  
116 for both the buyer and seller. Circumstances which establish  
117 dual agency include, but are not limited to, one of the  
118 following:

119 a. When two or more licensees licensed under the same  
120 broker each represent a different party to the transaction.

121 b. When one licensee represents both the buyer and  
122 seller in a real estate transaction.

123 (12) MATERIAL FACT. A fact that is of significance to a  
124 reasonable party which affects the party's decision to enter  
125 into a real estate contract.

126 (13) QUALIFYING BROKER. A broker under whom a  
127 corporation, partnership, branch office, or lawfully  
128 constituted business organization, as the Legislature may from  
129 time to time provide, is licensed, or a broker licensed to do  
130 business as a sole proprietorship who is responsible for  
131 supervising the acts of the company, or proprietorship and all  
132 real estate licensees licensed therewith.

133 (14) REAL ESTATE TRANSACTION. The purchase, sale, lease  
134 and rental, option, or exchange of an interest in real estate.

135 (15) SINGLE AGENT. A licensee who is engaged by and  
136 represents only one party in a real estate transaction. A  
137 single agent ~~includes, but is not limited to, one~~ may be only  
138 one of the following:

139 a. Buyer's agent, which means a broker or licensee who  
140 is engaged by and represents only the buyer in a real estate



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141 transaction.

142 b. Seller's agent, which means a broker or licensee who  
143 is engaged by and represents only the seller in a real estate  
144 transaction.

145 (16) SUB-AGENT. A licensee who is empowered to act for  
146 another broker in performing real estate brokerage tasks for a  
147 principal, and who owes the same duties to the principal as  
148 the agent of the principal.

149 (17) TRANSACTION BROKER. A licensee who assists one or  
150 more parties in a contemplated real estate transaction without  
151 being an agent or fiduciary or advocate for the interest of  
152 that party to a transaction."

153 "§34-27-82

154 (a) When engaged in any real estate transaction, the  
155 licensee may act as a single agent, sub-agent, a limited  
156 consensual dual agent, or as a transaction broker.

157 (b) At the initial contact between a licensee and the  
158 consumer and until such time a broker enters into a specific  
159 written agreement to establish an agency relationship with one  
160 or more of the parties to a transaction, the licensee shall  
161 not be considered an agent of that consumer. An agency  
162 relationship shall not be assumed, implied, or created without  
163 a written bilateral agency agreement establishing the terms of  
164 the agency relationship. In the absence of a signed brokerage  
165 agreement between the parties, the transaction brokerage  
166 relationship shall remain in effect.

167 (c) ~~As soon as reasonably possible and before any~~  
168 ~~confidential information is disclosed to any other person by a~~



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169 ~~licensee, the~~The licensee shall provide a written disclosure  
170 form to a consumer for signature describing the ~~alternative~~  
171 types of brokerage services, as identified in subsection (a),  
172 that are available to clients and customers of real estate  
173 brokerage companies, as soon as reasonably possible and before  
174 any confidential information is disclosed to any other person  
175 by a licensee. Such disclosure must occur at least prior to a  
176 licensee providing any brokerage service, which includes a  
177 licensee showing a property as to a prospective buyer but does  
178 not include a seller's agent conducting an open house as to  
179 prospective buyers. As part of the disclosure, ~~The~~the licensee

180 shall also provide~~inform~~ a consumer ~~as to~~in writing the  
181 specific types of brokerage services that are provided by his  
182 or her company, as required by Section 34-27-83, which shall  
183 also include general information on how the company and  
184 licensee are compensated for the brokerage services. A broker  
185 shall not be required to offer or engage in any one or in all  
186 of the ~~alternative~~ brokerage ~~arrangements~~services specified in  
187 subsection (a). ~~The licensee will provide a written form to~~  
188 ~~the consumer for their signature describing the alternative~~  
189 ~~types of brokerage arrangements available.~~ All rental or  
190 property management services are excluded from the  
191 requirements of this subsection.

192 (d) A licensee shall not be required to comply with the  
193 provisions of subsection (c) when engaged in transactions with  
194 any corporation, ~~non-profit~~nonprofit corporation, professional  
195 corporation, professional association, limited liability  
196 company, partnership, any partnership created under the





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197 Uniform Partnership Act, ~~commencing at Section 10-8A-101~~,  
198 real estate investment trust, business trust, charitable  
199 trust, family trust, or any governmental entity in  
200 transactions involving real estate.

201 (e) After disclosure, the consumer may make an  
202 affirmative election of a specific type of brokerage  
203 ~~arrangement~~service that is available from the real estate  
204 ~~brokerage~~ company by signing a brokerage agreement. The  
205 brokerage agreement shall contain a statement of the terms and  
206 conditions of the brokerage services that the company will  
207 provide, as provided in Section 34-27-81. The consumer or  
208 customer may not be required to enter into a written brokerage  
209 agreement in order for a licensee to show a property to the  
210 consumer or customer. Notwithstanding the application of  
211 subsection (d), a written brokerage agreement is required  
212 prior to a licensee either listing for sale or submitting an  
213 offer on a property on behalf of a consumer, customer, or  
214 client for compensation. ~~In the absence of a signed brokerage~~  
215 ~~agreement between the parties, the transaction brokerage~~  
216 ~~relationship shall remain in effect.~~

217 (f) When serving as a transaction broker, the duties of  
218 the licensee to all the parties to a real estate transaction  
219 are limited to those which are enumerated in Section 34-27-84.  
220 A signed brokerage agreement between the parties or, in the  
221 absence of a signed brokerage agreement, the continuation of  
222 the transaction brokerage relationship, shall constitute  
223 informed consent by the consumer as to the services the  
224 consumer shall receive from the broker.



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225 (g) Disclosure forms shall be provided to buyers and  
226 sellers. All real estate ~~brokerage firms~~companies operating  
227 within the State of Alabama shall use the same agency  
228 disclosure forms. Disclosure forms describing the alternative  
229 types of brokerage services identified above shall be written  
230 by the Alabama Real Estate Commission.

231 (h) Nothing in this section shall prohibit the consumer  
232 from entering into a written contract with a broker which  
233 contains provisions for services not specifically identified  
234 in the written disclosure form."

235 "§34-27-100

236 For the purposes of this article, the following terms  
237 shall have the following meanings:

238 (1) ACTUAL INTRODUCTION. ~~a. When~~Either: (i) when the  
239 buyer, seller, landlord, or tenant has been referred to the  
240 real estate licensee by the person or entity seeking the  
241 referral fee prior to the time the customer has executed a  
242 real estate brokerage services disclosure form or waived  
243 execution in writing or the customer has executed a buyer's  
244 agency agreement, property listing agreement, or a transaction  
245 brokerage agreement; or

246 ~~b. For~~(ii) for real estate transactions in which the  
247 law of this state does not require the presentation of a real  
248 estate brokerage services disclosure form, when the buyer,  
249 seller, landlord, or tenant has been referred to the real  
250 estate licensee by the person or entity seeking the referral  
251 fee prior to any contact between the buyer, seller, landlord,  
252 or tenant and the real estate licensee during which their real



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253 estate business has been discussed. Any such referral  
254 agreement between real estate licensees must be in writing.  
255 Any attempt to present an unlawful referral agreement is  
256 prohibited.

257 (2) INTERFERENCE WITH A REAL ESTATE BROKERAGE  
258 RELATIONSHIP. Demanding a referral fee from a real estate  
259 licensee when reasonable cause for payment does not exist. The  
260 term "interference with a real estate brokerage relationship"  
261 may also include a threat by a third party to reduce,  
262 withhold, or eliminate any relocation or other benefits, or  
263 the actual reduction, withholding, or elimination of any  
264 relocation or other benefit, in order to generate a referral  
265 fee from a real estate broker when reasonable cause for  
266 payment does not exist. Notwithstanding the foregoing, ~~either~~  
267 neither of the following shall ~~not~~ constitute interference  
268 with a real estate brokerage relationship:

269 a. Communications between an employer or its  
270 representative and an employee concerning relocation policies  
271 and benefits.

272 b. Advising a party of the right to allow a brokerage  
273 relationship to expire pursuant to its own terms or not to  
274 renew the brokerage relationship upon expiration.

275 (3) REAL ESTATE BROKERAGE RELATIONSHIP. A relationship  
276 entered into between a real estate broker or salesperson and a  
277 buyer, seller, landlord, or tenant under which the real estate  
278 broker or salesperson engages in any of the acts set forth in  
279 Alabama real estate license law, but the relationship does not  
280 exist prior to actual introduction of the relationship as



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281 provided in subdivision (1).

282 (4) REASONABLE CAUSE FOR PAYMENT. When an actual  
283 introduction of business has been made, a subagency  
284 relationship between brokers exists, a contractual referral  
285 fee relationship or other agreement exists, or a contractual  
286 cooperative brokerage relationship exists.

287 (5) REFERRAL FEE. Any fee or commission paid by a real  
288 estate licensee to any person or entity, other than a  
289 cooperative commission offered by a listing real estate broker  
290 to a selling real estate broker or by a selling real estate  
291 broker to a listing real estate broker."

292 Section 2. This act shall become effective 30 days  
293 after the enactment of this bill.