

## **WHOLESALEING— A PRIMER FOR INVESTORS**

Wholesaling refers to the practice of selling or assigning one's rights as a buyer under a contract to purchase real property, for a fee. This fee is sometimes referred to as, a spread.

The wholesaler is generally the assignor, and the end buyer is the assignee.

In Florida, this practice is legal and does not require having a real estate realtor or brokerage license.

Wholesalers can sell their contractual rights, or they can partake in a double closing, the alternative way to wholesale.

A double closing requires the wholesaler to close on the transaction directly with the seller. If the wholesaler does not have the funds to close the transaction, the wholesaler uses a short-term lender to provide the funds on 24-hour to 1-week terms. This loan is paid off in full in the second closing, where the end buyer tenders the contractual sum agreed to between the wholesaler and the end buyer. This practice is sometimes referred to as an A to B to C deal. These closings may be done back to back, and **may require separate funds** from B to A to fund that closing, than the funds from the B to C closing.

How can Wholesalers practice this business lawfully? By adhering to the following points:

1. **Do not market the property.** While you have an equitable interest in the property you have under contract, you actually own the contract rights to purchase. You must focus your interests on marketing the *contract rights*, not the property. This does not mean that you cannot discuss the nature of the property subject to the contract. But it does mean that you should not be *marketing* the property. A wholesaler should not be putting up for sale signs, promoting or negotiating the sales price of the property on behalf of the seller, or promoting or negotiating the sales price of the property on behalf of the buyer.
2. **Promote your contract rights.** You are selling your rights to purchase a property, under a set price, for a specific time period, and under specific terms to the investor audience. As such, you should focus on the *value* of your contract rights. You can discuss potential gains to the prospective purchasers of your contractual rights, but should focus your efforts on the inherent value of the *contract*.
3. **If doing an ABC closing, disclosure is key.** The major title insurance underwriters require disclosure to A of the source of B's closing funds. After receipt of all documents and funds, the funds will be disbursed to the parties in accordance with the closing statements. Any closing in which the funds from B to A come from C will require pre-approval from the title insurance underwriters.
4. **Even if you are a licensed realtor you cannot market the property unless you've entered into a brokerage agreement with the Seller.** I cannot stress this enough. Selling the property of another is not only about a *license*, it is about a *contractual relationship that permits that third-party marketing of someone else's property*. Therefore, if the seller

has not contractually entered into agreement to sell their property with a licensed realtor-wholesaler that wholesaler *is still only limited to promoting the sale/assignment of the contract.*

What should a Wholesaler have in place to ensure lawful Florida wholesaling?

1. A valid and fully executed real estate contract between the seller and themselves for the purchase of the property. A valid contract requires consideration. Therefore, an earnest money deposit **must be tendered** and the sum must be **of value and not *de minimus***. Usually 1% of the purchase price is sufficient consideration. The contract should clearly state the buyer's willingness to accept the **condition of the property, time periods for inspection, and distribution of closing costs.**
2. **Assignment** of the contract **must be permitted** under the Contract.
3. A clearly stated Assignment period. Generally, the deposit is non-refundable and the wholesaler has 14-21 days to assign the contract, after which the wholesaler must close the transaction or forfeit the deposit. **Wholesalers should have prospective end-buyers in place before they enter into a purchase agreement.**
4. A separate Assignment Contract between the end buyer and the wholesaler. This should express the obligations the end buyer is assuming, the purchase price of the assignment, and the date by which the purchase of the assignment must be completed and paid. The parties, including the Seller under the original contract, should be clearly identified. The real property should be clearly identified. **Because the Assignment Contract sells contractual rights, the wholesaler should not make any warranties regarding the real property, the focus should be on contractual obligations.**

Relevant Statutes:

1. 475.278(3) SINGLE AGENT RELATIONSHIP.—
  - (a) Single agent; duties.—The duties of a real estate licensee owed to a buyer or seller who engages the real estate licensee as a single agent include the following:
    1. Dealing honestly and fairly;
    2. Loyalty;
    3. Confidentiality;
    4. Obedience;
    5. Full disclosure;
    6. Accounting for all funds;
    7. Skill, care, and diligence in the transaction;
    8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
    9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.
  - (b) Disclosure requirements.—

1. Single agent disclosure.—Duties of a single agent must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a single agent, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type.
2. 475.41 Contracts of unlicensed person for commissions invalid.—No contract for a commission or compensation for any act or service enumerated in s. 475.01(3) is valid unless the broker or sales associate has complied with this chapter in regard to issuance and renewal of the license at the time the act or service was performed.
3. 475.42 Violations and penalties.—
  - (1) VIOLATIONS.—
    - (a) A person may not operate as a broker or sales associate without being the holder of a valid and current active license therefor. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, as provided in s. 775.083.