

14 Hour Florida Real Estate Continuing Education Course





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The Florida Real Estate Commission approved the subject matter covered in this course. Gray Systems, Incorporated, is an approved provider (Provider Number 0006247 • DBPR # **0015359**) Correspondence is approved for fourteen hours of continuing education credit. This course is designed to provide accurate and authoritative information in regard to the subject matter covered. This material and course is provided with the understanding that the provider is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Gray Systems, Incorporated is an educational organization licensed through the Department of Business and Professional Regulation, serving licensees in the Florida Government Educational System since 1984. Though we were actively involved in the Real Estate Industry in the 70's and 80's, we proudly return to serve you with the introduction of this course. We sincerely hope you enjoy your experience and thank you for giving us this opportunity.

Fred R. Gray

President

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FLORIDA REAL ESTATE COMMISSION (FREC) GUIDELINES REGARDING CONTINUING EDUCATION REQUIREMENTS

All active and inactive sales associates, broker associates and brokers, in compliance with FAC61J2-3.009, (1)(a), must complete a minimum of fourteen hours of course instruction during each renewal period. NOTE: This does not include the first renewal period of their license. However, if this IS the first renewal period of your license, you must complete “post license education.”

This 14-hour course is approved by the FREC for sales associates, broker associates and brokers and, as such, complies with FREC guidelines in terms of content and format. The course FREC approval number is 0015359 and expires on March 31, 2016.

ABOUT THIS COURSE BOOK AND EXAM

This is a 14 hour continuing education correspondence course which contains all the required material to satisfy your continuing education requirements. This is an Adobe Acrobat PDF file. If you were not prompted to save it after your download, you need to save it in a location so that you can come back to it as needed.

You should read the material, complete the knowledge checks throughout the book, and after you have completed and reviewed the material, complete the 30 question examination. (Knowledge Checks are questions that follow material throughout the book to... Check your Knowledge of the topic! They generally are not the exam questions.)

NO PAYMENT IS REQUIRED UNTIL YOU TAKE THE EXAM.

Consider taking your exam online. At the end of the book are instructions for completing the exam online, which will allow you to get instant results, have access to a certificate of complete and we will report automatically your completion to the DBPR.

You will be directed to click on a link to purchase the ability to take the exam online. When you make the purchase, you will receive a confirmation email with a link to the exam, and information about your username and password.

If you prefer to take the exam using the answer sheet provided at the back of the book, please complete the answer sheet and scan and email or FAX back to us according to instructions on the answer sheet.

You can make your payment by filling out the appropriate information following the answer sheet, or you may call Gray systems and deal directly with our customer support staff.

Best wishes for great success in your career as a real estate professional. Let us know if you have any questions or issues.



KEYSTROKES TO HELP YOU MOVE THROUGHOUT THIS BOOK.

HELPFUL HINT: The course exam is an open book exam.

You may use page numbers in the INDEX (p 216) or the search feature (SEE BELOW) to seek content review from key words if necessary.

WINDOWS:

Return from Hyperlink **Alt + ←**

Find (search for keywords) – **Ctrl+F**

Go to Page (from index) – **Shift+Ctrl+N**

Go to beginning of book – **Ctrl+Home**

Go to end of book – **Ctrl+End**

MAC:

Return from Hyperlink

In Acrobat: **CMD + ←**

In default MAC PDF: **CMD + [**

Find (search for keywords) – **CMD+F**

Go to Page (from index) – **Shift+CMD+N**

Go to beginning of book – **CMD +Home (or Home)**

Go to end of book – **CMD +End (or End)**

Fit your window proportionately **CMD+0** (zero not letter o)

Don't have Adobe Reader? It's Free. [Click here](#)



Knowledge Checks are simply questions set up you confidence that you understand the topic.

throughout this book to help give

Questions on your ONLINE Final Exam are found at the back of this book.

We recommend that you print out the exam and use it as a basis for answering questions on your ONLINE exam.



PART I: 3-HOUR CORE LAW COURSE

INTRODUCTION

Your decision to pursue a career in real estate was probably driven by a desire to sell real estate and work with people, but there's much more to it than that; complying with regulations, for instance. Understanding your profession and abiding by a myriad number of complex laws, rules and regulations will provide you with a more fulfilling experience and keep you from running afoul of the law.

Guiding you in that experience is the purpose of this course, which will provide you with the 14 hours of continuing education required by statute, including three hours of core law. The Florida legislature created the laws found in the Florida Statutes to protect you, the professional, as well as the public.

Most of the information you need to be successful in this profession may be found in two main sources: The Federal Statutes and the Florida Real Estate Commission Rules, which derive their authority from the Florida Statutes.

WHAT YOU'LL LEARN

Part I of this course encompasses the 3 hours of core law required in the FREC Rules, and is divided into three sections that include a review of relevant law along with a legislative update, discussion on the law of agency, and a discussion on Federal, other State and Tax laws that may affect you and your business.

Part II of this course provides 11 hours of continuing education, and is divided into four separate sections. Section I focuses on qualifications and licensing requirements, how to avoid violations of the law and a discussion of the real estate business. Section 4 covers your responsibilities as a real estate sales person, required disclosures and how to operate lawfully. Section 5 focuses on real property; legal relationships, legal descriptions and the real estate appraisal process. Section 6 focuses on the legal documents necessary to complete a real estate transaction, including contracts, financing and mortgages.

Part II concludes with Section 7, which delves into residential real estate sales, and taxes. The various acts that govern funds, such as the mortgage Foreclosure Reserve Act and The Real Estate Recovery Fund Act.

Again, in order to be successful in this profession, it's critical that you understand your role as broker, sales associate, real estate school provider or appraiser, as well as the laws that you're required to abide by in that role. So, let's get started.



COURSE DEFINITIONS

Several key definitions specific to the real estate industry affect all of your endeavors. Definitions are generally found within every statute and for the purposes of this course, we consider those found in F.S. Chapters 455 and 475.

“BOARD” means any board or Commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the DBPR, including the Florida Real Estate Commission, except for sections 455.201 through 455.245, where “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

“BROKER” is defined as a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists.

“BROKER ASSOCIATE” means a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another.

“COMMISSION” within this course refers to the Florida Real Estate Commission.

“CONSUMER MEMBER” means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.



“CUSTOMER” means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship.

“DBPR” within this course refers to the DBPR of Business and Professional Regulation, also known as DBPR.

“FIDUCIARY” means a broker who is in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. A fiduciary’s duties as the broker include loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

“LICENSE” means any permit, registration, certificate, or license issued by the department and “licensee” means any person issued a permit, registration, certificate, or license by the DBPR.

“PRINCIPAL” is the party with whom a real estate licensee has entered into a single agent relationship.

“PROFESSION” means any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

“REAL PROPERTY” or **“REAL ESTATE”** means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, sub-leasehold, or mineral right. The definition does not include any cemetery lot or right of burial in any cemetery. The definition also does not include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

“SALES ASSOCIATE” is a person who performs any act specified in the definition of “broker,” but who performs such act under the direction, control, or management of another person.

“SINGLE AGENT” is a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.

“TRANSACTION BROKER” is a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent.



SECTION 1 – KNOW THE LAW

A. Review of Florida Real Estate License Law And Legislative Update - F.S. chapter 475, Part I – Real Estate Brokers, Sales Associates, School And Appraisers

F.S. chapter 475 contains the majority of the law that affects your real estate business and is divided into four parts. Legislative changes to chapter 475 in 2012 occurred throughout the chapter, so we will take a closer look at each change specifically, alongside reviewing the chapter. Whenever appropriate, sections of 61J2 are incorporated in the chapter 475 discussion.

F.S. SECTION 475.02 - FLORIDA REAL ESTATE COMMISSION

F.S. section 475.02 creates within the DBPR of Business and Professional Regulation (DBPR), the Florida Real Estate Commission (FREC), which consists of seven members appointed by the Governor and subject to confirmation by the Senate.

- Four members of FREC must be licensed brokers, and each must have held an active license for the 5 years preceding appointment to the Commission.
- One member of FREC must be a licensed broker or a licensed sales associate who has held an active license for the 2 years preceding appointment to the Commission.
- The final two members of FREC must not be brokers or ever have been brokers or sales associates.
- One of the seven members of FREC must be at least 60 years of age or older.
- All of the members appointed to the Commission serve 4-year terms, unless removed for cause.

Any member of the Commission who is a licensed real estate broker or sales associate and who holds an active real estate school permit, school instructor permit, or any combination of such permits issued by the DBPR, may offer, conduct, or teach any course prescribed or approved by the Commission or the DBPR.



The corresponding F.A.C. rule is found at 61J2-20.040 which states that the Florida Real Estate Commission is a regulatory agency and performs its functions pursuant to Chapter 475, Part I, F.S. Along with providing for the number of members, 61J2-20.040 requires that membership become void if a member has three consecutive unexcused absences or absences constituting 50% or more of the Commission's meetings within any 12-month period.

Under F.A.C. 61J2-20.048, the principal office of the Commission must be located at: 400 West Robinson Street, Orlando, Florida 32801-1757



The Commission may also be contacted through the DBPR at: 1940 North Monroe Street, Tallahassee, Florida 32399-0750

Members of the Commission are paid \$50.00 for each day in attendance at a meeting under F.A.C. 61J2-20.049, including Probable Cause Panel Meetings, and for each day the member participates in any other business involving the Commission.

Other business involving the Commission includes attendance at instructors' seminars sponsored by the Commission, appearances before a legislative committee, upon direction of the chairperson of the Commission or the chairperson of the Committee, attendance at a meeting with the staff or contractors of the DBPR at the request of the Secretary of the DBPR or the Division Director, attendance at a conference or trade association meeting in the capacity of a member of the Commission or attendance at the Florida Association of Realtor's Legislative Days in Tallahassee in the capacity of a member of the Commission regarding legislation being promoted by the Commission.

F.S. section 475.02(3) was modified in 2012 to add "chief administrator permit" to the list of authorized persons permitted to conduct or teach any course prescribed or approved by the Commission or DBPR (DBPR).

Introducing you to KNOWLEDGE CHECKS

FYI: Knowledge Checks are simply questions like the one below, set up throughout this book to help give you confidence that you understand the topic. They generally follow the paragraph with the appropriate content to answer them. The answers to Part I KCs are begin on page 71 and are linked back to the content page.

Knowledge Check 1: Under F.A.C. 61J2-20.049, members of the Commission are paid \$50.00 for –

- A. Each day in attendance at a meeting
 - B. Each week that included attendance at a meetings
 - C. Each month regardless of whether meetings were held
 - D. Once annually for conducting all business involving the Commission
-



F.S. section 475.04 - Duty of Commission to Educate Members of Profession

F.S. section 475.04 prescribes that the Commission has duties and obligations to the real estate industry. The Commission is required to foster the education of brokers, broker associates, sales associates, and instructors concerning the ethical, legal, and business principles that govern their conduct.

The courses that you may take as a real estate broker or sales associate must all be approved by the Commission, who may also conduct, offer, sponsor, and prescribe real estate educational courses for all persons licensed or permitted by the DBPR as brokers, broker associates, sales associates, or instructors.

F.S. section 475.04 implements a rule found at F.A.C. 61J2-3.015, which was amended in 2012. The rule requires the satisfactory completion of courses and states that applicants for initial licensure as a broker or sales associate must provide a course completion report at the individual's scheduled examination as proof that they have satisfactorily completed the applicable Commission prescribed course.

An application for renewal or reactivation of an existing status as a broker, broker-sales associate, sales associate or instructor must contain an affirmation by the individual of having satisfactorily completed the applicable Commission prescribed, conducted or approved course or courses.

Each licensee and instructor permitholder must retain the course completion report as proof of successful completion of continuing education or post-license education requirements for at least 2 years following the end of the renewal period for which the education is claimed.

Failing to provide evidence of compliance with continuing education or post-license education requirements or the furnishing of false or misleading information regarding compliance with the requirements is grounds for disciplinary action against the licensee or instructor.



Commission-approved equivalent courses offered by accredited Florida universities, colleges, community colleges and area technical centers must provide students with the applicable course completion report or notice. The course completion report for equivalent courses must contain the college equivalent course identifying number.

Requests for equivalency for credit courses taken at universities, colleges and community colleges outside of Florida must be accompanied by an official transcript containing the seal of the institution and the signature of the registrar.



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Course completion reports must be typed or printed in ink and must be completely filled out by the institution, school or sponsor certifying successful course completion.

Course completion reports must contain the following information for the type of course being completed:

PRE-LICENSING COURSE FOR SALES ASSOCIATE - name of school, address, course title, start date, finish date, exam date, last 5 digits of Social Security Number, student name, student address and an authorized signature for the school.

PRE-LICENSING COURSE FOR BROKER – name of school, address, course title, start date, finish date, exam date, Sales Associate License Number, last 5 digits of Social Security Number, student name, student address and authorized signature for the school.

BROKER AND SALES ASSOCIATE CONTINUING EDUCATION AND REACTIVATION EDUCATION - name of school, address, course title, course hours, start date, finish date, License number, student name, student address and authorized signature for the school.

POST-LICENSING EDUCATION FOR BROKER AND SALES ASSOCIATE - name of school, address, course title, course hours, start date, finish date, License Number, student name, student address and authorized signature for the school.

INSTRUCTOR CONTINUING EDUCATION - name of school, address, course title, course hours, start date, finish date, Permit Number, student name, student address and authorized signature for the school.

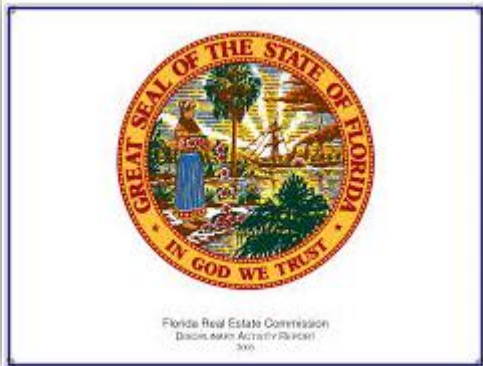
Each course completion report must also contain the following information:



“The student named in this report has completed the referenced course in accordance with the requirements of the Florida Real Estate Commission. The original course completion report is to be given to the student and a copy retained by the school.”



F.S. section 457.045 Florida Real Estate Commission Education and Research Foundation



The Florida Real Estate Commission Education and Research Foundation is encompassed within F.S. section 475.045 and the law establishes a Florida Real Estate Commission Education and Research Foundation, which is administered by the Commission. The Florida Real Estate Commission Education and Research Foundation is referred to as the “Foundation.”

The purposes, objectives, and duties of the Foundation are numerous. One is to create and promote educational projects to expand the knowledge of the public and real estate licensees in matters pertaining to Florida real estate.

Another is to augment the existing real estate programs by increasing the number of teaching personnel and real estate courses in Florida in degree-granting programs in universities and colleges in this state.

The Foundation also conducts studies in all areas that relate directly or indirectly to real estate or urban or rural economics and to publish and disseminate the findings and results of the studies and it assists the teaching program in real estate offered by the universities, colleges, and real estate schools.

The Foundation must develop, and from time to time, revise and update materials for use in the courses in real estate offered by the universities, colleges, and real estate schools and to make studies of, and recommend changes in, Florida statutes and municipal ordinances, as long as the studies are requested by the Governor or the presiding officers of the Legislature.

The Foundation also prepares information of consumer interest concerning Florida real estate and makes information available to the public and appropriate state agencies.

By January 1 of each year, the Commission must file with the Governor, the presiding officer of each house of the Legislature, and the secretary of the DBPR a complete and detailed written report accounting for all funds received and disbursed by the Foundation during the preceding year.



The Commission must seek advice and information from real estate licensees, universities, colleges, real estate schools and the general public for the purpose of submitting proposals for carrying out the purposes, objectives, and duties of the Foundation.

F.S. section 475.045 also sets forth the duties of the Director of the Division of Real Estate of the DBPR.

A brief but critically important section of chapter 475 is 475.05, which allows the Commission to enact bylaws for its own government and adopt rules pursuant to F.S. sections 120.536(1) and 120.54 to implement the provisions of law conferring powers or duties upon the Commission. The Commission may decide questions of practice arising in the proceedings before it.

F.S. SECTION 475.12 - FEES



Fees are governed in F.S. section 475.125 and the Commission establishes fees to be paid for application, examination, reexamination, licensing and renewal, certification and recertification, reinstatement, and record making and recordkeeping.

Currently, the fee for initial application and examination may not exceed \$100 and the initial license fee and the license renewal fee may not exceed \$50 for each year of the duration of the license. The Commission also establishes a late renewal penalty.



A full listing of fees is found at F.A.C. 61J2-1.011.

61J2-1.011 License Fees and Examination Fees

- (1) Every person, partnership, limited liability partnership, corporation or limited liability company deemed and held to be a licensee under Chapter 475, F.S., must register with the Florida Real Estate Commission (Commission) and must secure a license for each license period.
- (2) The application fee for licensure shall be as follows:
 - Initial application
 - Broker \$ 20.00
 - Sales Associate \$ 20.00
- (3) Effective July 1, 2014, the biennial license fee for an active licensee shall be
 - Broker \$ 72.00
 - Sales Associate \$ 64.00
 - Branch office for Broker \$ 64.00
- (4) The fee and the time of payment for inactive license shall be the same as for an active license, as set forth in paragraph (3) of this rule; however, there is no inactive branch office
- (5) The following fees shall be charged for the following purposes
 - (a) change of Individual License to professional association or Professional Association to Individual License. \$ 30.00
 - (b) Checks returned due to insufficient funds or account closed:
 - Face value does not exceed \$50.00 \$ 25.00
 - Face value exceeds \$50.00 but does not exceed \$300.00 \$ 30.00
 - Face value exceeds \$300.00 (Section 68.065, F.S.) \$ 40.00
 - Or an amount up to 5% of the face amount of the check, whichever is greater
 - (c) Late fee \$ 45.00
 - (d) Duplicate License \$ 25.00
- (6) The license fee for school related categories shall be as follows
 - (a) Application for School Instructor \$ 20.00
 - (b) Effective July 1, 2014, the biennial Permit Fees shall be:
 - School Permitholder \$104.00
 - Additional Location for Permitholder \$ 45.00
 - School Instructor \$ 64.00
- (7) Entity, sponsor, organization and individual equivalent education course offering:
 - For each application for approval of education offering \$ 80.00
 - For each biennial education course offering renewal \$ 80.00
- (8) Effective July 1, 2014, the initial application for registration of a corporation, partnership, limited liability company or limited liability partnership is:
 - Corporation, partnership, limited liability company or limited liability partnership \$ 72.00
 - Branch office for a corporation, partnership, limited liability company or limited liability partnership \$ 64.00
- (9) Effective July 1, 2014, the biennial renewal of a corporation, partnership, limited liability company or limited liability partnership registration fee shall be:
 - Corporation, partnership, limited liability company or limited liability partnership \$ 72.00
 - Branch office for a corporation, partnership, limited liability company or limited liability partnership \$ 64.00
- (10) The fee for request for a change of examination date, which must be in writing, shall be:
 - (a) Requests received by the examination vendor 3 or more days prior to the scheduled date **no fee**
 - (b) Requests received by the examination vendor less than 3 days prior to the scheduled dates \$ 45.00



Knowledge Check 2: Ricky Realtor is a licensed real estate broker. After having some health problems, he decided to allow his real estate broker's license to become inactive for five years, but is ready to get back to work. He may expect to be charged fees for all but the following:

- A. Examination or re-examination.
- B. Licensing or license renewal.
- C. Certification or recertification.
- D. Annual fee after license revocation.

F.S. SECTION 475.15 - REGISTRATION AND LICENSING OF GENERAL PARTNERS, MEMBERS, OFFICERS, AND DIRECTORS OF A FIRM

F.S. section 475.15 establishes the rules regarding registration and licensing of general partners, members, officers, and directors of a firm. Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker must register with the Commission and renew the licenses or registrations of its members, officers, and directors for each license period.

However, if the partnership is a limited partnership, only the general partners must be licensed brokers or brokerage corporations registered pursuant to 475.15. If the license or registration of at least one active broker member is not in force, the registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during that period of time.

F.A.C. 61J2-1.013 defines the registration categories and states that registration must show the name, the business address, effective and expiration date for:

- | | |
|---|--|
| (a) Active broker partnership; | (e) Active Professional Limited Liability Company; |
| (b) Active broker corporation; | (f) Active Professional Association; and |
| (c) Active Limited Liability Company; | (g) Branch office. |
| (d) Active Limited Liability Partnership; | |

F.A.C. 61J2-1.013 also states that an active real estate broker may serve in a non-brokerage capacity as an officer or director with a real estate corporation or as a partner in a real estate partnership while maintaining an active license with another real estate brokerage firm.

F.S. SECTION 475.161 - LICENSING OF BROKER ASSOCIATES AND SALES ASSOCIATES





The licensing of broker associates and sales associates is governed by F.S. section 475.161, which requires the Commission to license a broker associate or sales associate as an individual or, upon the licensee providing the Commission with authorization from the DBPR of State, as a professional corporation, limited liability company, or professional limited liability company.

A license must be issued in the licensee's legal name only and, when appropriate, shall include the entity designation.

F.A.C. 61J2-5.016 governs the licensure status of active officers and directors of corporations. Officers and directors who expect to be active must qualify and become licensed in the same manner and procedure as any other applicant for active license.

No registration will be issued to the corporation or partnership unless every broker licensed with the corporation or partnership is registered as an officer, director, or partner of the corporation or partnership.

No sales associate or broker associate may be registered as an officer, director of a brokerage corporation, or general partner of a brokerage partnership.

F.S. SECTION 475.17 - QUALIFICATIONS FOR PRACTICE

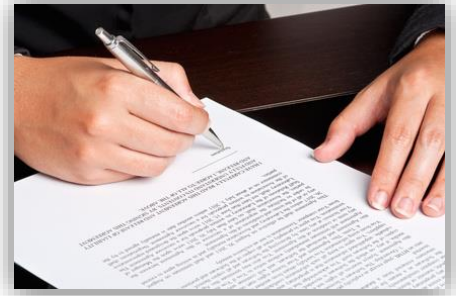
The qualifications for practice are found in F.S. section 475.17 and implemented by rule in F.A.C. 61J2-2.027. An applicant for licensure must be a natural person, be at least 18 years of age, hold a high school diploma or its equivalent, be honest, truthful, trustworthy, of good character, and have a good reputation for fair dealing.

F.A.C. 61J2-2.027(2)(a) through (d) was amended in January 2013. Under 61J2-2.027(2) an applicant must make it possible to immediately begin the inquiry as to whether the applicant is honest, truthful, trustworthy, of good character, and bears a good reputation for fair dealings. The purpose for the rule is to determine that the applicant will likely make transactions and conduct negotiations with safety to investors and to those with whom the applicant may undertake a relation of trust and confidence.



The 2013 changes to 61J2-2.027 pertain to the disclosure an applicant is required to make and include:

- (a) Whether the applicant has ever been convicted or found guilty of, or entered a guilty plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction or if applicant is currently under criminal investigation;
- (b) Whether the applicant has ever done business under any other name, or alias, than the name signed on the application, with sufficient information to enable the Commission to investigate the circumstances;
- (c) Whether the applicant has had any license, registration or permit to practice any requested profession, occupation, vocation or business revoked, annulled, suspended, relinquished, surrendered, or otherwise disciplined in Florida, or in any other jurisdiction, or if any such proceeding or investigation is now pending; and,
- (d) Whether the applicant has had an application for a real estate license denied in Florida or in any other jurisdiction, or if there is a pending proceeding to deny such application.



An applicant for an active broker's license or a sales associate's license must be competent and qualified to make real estate transactions and conduct negotiations with safety to investors, as well as to those with whom the applicant may undertake a relationship of trust and confidence.

If the applicant has been denied registration or a license or has been disbarred, or the applicant's registration or license to practice or conduct any regulated profession, business, or vocation has been revoked or suspended, by Florida or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this chapter, or if the applicant has been guilty of conduct or practices in Florida or elsewhere which would have been grounds for revoking or suspending her or his license under F.S. section 475.17 had the applicant then been registered, the applicant shall be deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the Commission that the interest of the public and investors will not likely be endangered by the granting of registration.



The Commission may adopt rules requiring an applicant for licensure to provide written information to the Commission regarding the applicant's good character.



Reject

An application may be disapproved if the applicant has acted or attempted to act, or has held herself or himself out as entitled to act, during the period of one year next prior to the filing of the application, as a real estate broker or sales associate in Florida in violation of section 475.17.

F.S. section 475.17 operates to bar any person from licensure who has performed any of the acts or services described in section 475.01(3), unless exempt pursuant to section 475.011, during a period of one year next preceding the filing of the application, or during the pendency of the application, and until a valid current license has been duly issued to the person, regardless of whether the performance of the act or service was done for compensation or valuable consideration.

The Commission may require the satisfactory completion of one or more of the educational courses or equivalent courses conducted, offered, sponsored, prescribed, or approved pursuant to section 475.04, taken at an accredited college, university, or community college, at a career center, or at a registered real estate school, as a condition precedent for any person to become licensed or to renew her or his license as a broker, broker associate, or sales associate.

The course or courses required for initial license must not exceed a total of 63 classroom hours of 50 minutes each, including examinations, for a sales associate and 72 classroom hours of 50 minutes each, including examinations, for a broker. The satisfactory completion of an examination administered by the accredited college, university, or community college, by a career center, or by the registered real estate school shall be the basis for determining satisfactory completion of the course, but a student who exceeds 8 classroom-hour absences has not satisfactorily completed a course.

Knowledge Check 3. Agnes wants to become a licensed real estate agent. How many classroom hours will she be required to complete?

- A. 63 classroom hours of 50 minutes each, including examinations.
 - B. 63 classroom hours of 50 minutes each, excluding examinations.
 - C. 72 classroom hours of 50 minutes each, including examinations.
 - D. 72 classroom hours of 50 minutes each, excluding examinations.
-



F.A.C. 61J2-3.008 CONTAINS THE RULES FOR EDUCATIONAL COURSES PRESCRIBED IN F.S. 475.04.

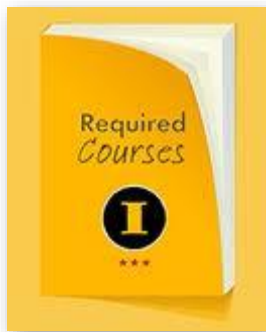
The rule also states that a grade of 70% or higher on the Commission-prescribed, end-of-course examination constitutes satisfactory course completion.

The Commission must approve distance learning courses as an alternative to classroom hours as satisfactory completion of the course, or courses, as required by section 475.17 and implemented in F.A.C. 61J2-3.008(b). The schools authorized have the option of providing classroom courses, distance learning courses as an option to classroom, or both.

The satisfactory completion of a distance learning course requires the satisfactory completion of a timed distance learning course examination, but the examination shall not be required to be monitored or given at a centralized location.

Such required course or courses must be made available by correspondence or other suitable means to any person who, by reason of hardship, cannot attend the place or places where the course or courses are regularly conducted or does not have access to the distance learning course or courses.

A person may not be licensed as a real estate broker unless, in addition to the other requirements of law, the person has held an active real estate sales associate's license for at least 24 months during the preceding five years in the office of one or more real estate brokers licensed in Florida or any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction, a current and valid real estate sales associate's license for at least 24 months during the preceding five years in the employ of a governmental agency for a salary and performing the duties authorized in this part for real estate licensees, or a current and valid real estate broker's license for at least 24 months during the preceding five years in any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction.



F.A.C. 61J2-2.027 was amended in January 2013 and all 12-month periods in the previous rule were extended to 24 months.

A person who has been licensed as a real estate sales associate in Florida during the preceding five years may not be licensed as a real estate broker unless, in addition to the other requirements of law, he or she has completed the sales associate post-licensure educational requirements.



The Commission may prescribe a post-licensure education requirement in order for a person to maintain a valid sales associate's license, which shall not exceed 45 classroom hours of 50 minutes each, including examinations, prior to the first renewal following initial licensure.

The courses may include property management, appraisal, real estate finance, the economics of real estate management, marketing, technology, sales and listing of properties, business office management, courses teaching practical real estate application skills, development of business plans, marketing of property, and time management.

Required post-licensure education courses must be provided by an accredited college, university, or community college, career center, registered real estate school, or Commission-approved sponsor.

Satisfactory completion of the post-licensure education requirement is demonstrated by successfully meeting all standards established for the Commission-prescribed or Commission-approved institution or school, provided the student has not had absences in excess of 10 percent of the required classroom hours or has not satisfactorily completed a timed, distance learning course, examination.

The license of any sales associate who does not complete the post-licensure education requirement prior to the first renewal following initial licensure shall be considered null and void. Anyone desiring to operate as a real estate sales associate must re-qualify by satisfactorily completing the sales associate's pre-licensure course and passing the state examination for licensure as a sales associate.



A sales associate who is required to complete any post-licensure education requirement must complete the requirement and hold a current and valid license in order to be eligible for licensure as a broker.

The Commission may prescribe a post-licensure education requirement in order for a person to maintain a valid broker's license. The requirement shall not exceed 60 classroom hours of 50 minutes each, including examinations, prior to the first renewal following initial licensure.

The courses may include advanced appraisal, advanced property management, real estate marketing, business law, advanced real estate investment analyses, advanced legal aspects, general accounting, real estate economics, syndications, commercial brokerage, feasibility analyses, advanced real estate finance, residential brokerage, advanced marketing, technology, advanced business planning, time management, or real estate brokerage office operations.

Required post-licensure education courses must be provided by an accredited college, university, or community college, career center, registered real estate school, or Commission-approved sponsor.



14 Hour Florida Real Estate Continuing Education Course

Satisfactory completion of the post-licensure education requirement is demonstrated by successfully meeting all standards established for the Commission-prescribed or Commission-approved institution or school. The licensee must not have had absences in excess of 10 percent of the required classroom hours and must have satisfactorily completed a timed distance learning course examination.

The license of any broker who does not complete the post-licensure education requirement prior to the first renewal following initial licensure shall be considered null and void. If the licensee wishes to operate as a sales associate, she or he may be issued a sales associate's license after providing proof that she or he has satisfactorily completed the 14-hour continuing education course within the six months following expiration of her or his broker's license.

To operate as a broker, the licensee must re-qualify by satisfactorily completing the broker's pre-licensure course and passing the state examination for licensure as a broker.

The Commission may allow an additional 6-month period after the first renewal following initial licensure for completing the post-licensure education courses for sales associates and brokers who cannot, due to individual physical hardship, complete the courses within the required time.

Sales associates and brokers are not required to meet the 14-hour continuing education requirement prior to the first renewal following initial licensure.

A distance learning course, or courses, must be approved by the Commission as an alternative to classroom hours as satisfactory completion of the post-licensure education course or courses. The schools or sponsors authorized by law have the option of providing classroom courses, distance learning courses, or both, but satisfactory completion requires the satisfactory completion of a timed, distance learning course, examination. The examination must not be required to be monitored or given at a centralized location.

The Commission must provide for post licensure education courses to be made available by correspondence or other suitable means to any person who, by reason of hardship, as defined by rule, cannot attend the place or places where courses are regularly conducted, or does not have access to the distance learning courses.

The post-licensure education requirements and the education course requirements initial license do not apply to any applicant or licensee who has received a 4-year degree in real estate from an accredited institution of higher education.

The Commission may not approve pre-licensure or post-licensure distance learning courses for brokers, broker associates, and sales associates by correspondence methods, except in instances of hardship.



The F.A.C. rule regarding distance education courses for hardship cases is found at 61J2-3.013.

It was amended in 2012. The rules state that the distance education courses containing the same subject matter and requiring substantially the same assignment work must be prescribed by the Commission for any person who, by reason of hardship, cannot attend the place for classroom instruction prescribed in F.A.C. rules 61J2-3.008, 61J2-3.010 and 61J2-3.020, or who does not have access to the distance learning course or courses.

The scholastic standards and other related requirements must be substantially the same as the courses offered by classroom instruction, and a copy of the course and all course materials must be submitted to the Commission for evaluation at least 60 days prior to use.

The approval or denial of the course is based on the extent to which the course complies with the requirements of F.A.C. rules 61J2-3.008, 61J2-3.009, or 61J2-3.020. If required, examinations must test the course material. If course approval is denied, the institution or school may resubmit the course with the mandated changes.

Any person desiring to complete the education course by means of distance education must make a request to the Commission in writing, detailing the basis of the alleged hardship. The Commission must require that all requests be supported by statements of doctors and other persons having knowledge of the facts.

F.A.C. 61J2-3.013 states that hardship cases include:

- (1) a licensee's long term illness or an illness involving a close relative or person for whom the licensee has care-giving responsibilities,
- (2) the availability of the required courses, and
- (3) the licensee has an economic, technological, or legal hardship that substantially relates to the licensee's ability to complete education requirements.



F.S. SECTION 475.175 - EXAMINATIONS

F.S. section 475.175 governs examinations and states that persons are entitled to take the license examination to practice in Florida if the person submits to the DBPR:

- the appropriate signed or electronically authenticated application,
- digital fingerprint data,
- the fee,
- proof of satisfactory completion of accredited course work,
- the examination admissions authorization letter, and
- proof of identification.



The digital fingerprints shall be forwarded to the FBI and the DBPR to ensure:

- No criminal record, and
- Satisfactory completion of requirements for taking the exam.



F.A.C. 61J2-26.001 states that FREC has determined that it is in the best interest of the public's welfare to ensure a nonresident seeking licensure in Florida is knowledgeable in Florida law, statutes and administrative rules. To ensure the applicant's knowledge, he or she must take a written examination consisting of 40 questions worth one point each. An applicant who receives a grade of 30 points or higher is deemed to have successfully completed the examination requirement for nonresident licensure.

Under F.A.C. 61J2-26.001, the subject area of the examination must consist of general real estate license law, with a particular emphasis placed on F.S. chapters 455 and 475 and F.A.C. rules found in chapter 61J2. The examination is required of all applicants for nonresident licensure, regardless of jurisdiction.



F.S. SECTION 475.180 - NON-RESIDENT LICENSES

Real estate brokers and sales associates of other states, territories or U.S. jurisdictions or from foreign countries must turn to F.S. section 475.180, which governs non-resident licenses. The Commission has the discretion to enter into written agreements with similar licensing authorities to ensure for Florida licensees nonresident licensure opportunities. If the Commission determines that another jurisdiction does not offer nonresident licensure to Florida licensees substantially comparable to those afforded to licensees of that jurisdiction, under Florida law, the Commission must require licensees of that jurisdiction, who apply for nonresident licensure to meet education, experience, and examination requirements substantially comparable to those required by that jurisdiction with respect to Florida licensees who seek nonresident licensure.

Any Florida resident licensee who becomes a nonresident must notify the Commission within 60 days of the residency change and comply with nonresident requirements. Failing to comply with the notice of change of residency requirement is subject to penalties found in section 475.25, and discussed later in this course.



60 DAYS

F.S. SECTION 475.181 - LICENSURE

Under F.S. section 475.181, the DBPR must license any applicant who the Commission certifies to be qualified to practice as a broker or sales associate. The Commission must certify for licensure any applicant who satisfies the requirements found in sections 475.17, 475.175, and 475.180. The Commission may refuse to certify any applicant who has violated any of the provisions of section 475.42 or who is subject to discipline under section 475.25. Discipline is covered further within this course.

An application expires two years after the date received when the applicant does not pass the appropriate examination. If an applicant has not passed the licensing examination within two years after the successful completion of courses, then the applicant's successful course completion is invalid for licensure.

The DBPR may not issue a license to any applicant who is under investigation in any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction for any act that would constitute a violation of chapters 475 or 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.



Knowledge Check 4. Risky Realtor not only stole money from several of his clients, he also stole property from houses that were on the market for sale. Which is not a punishment that the DBPR may impose?

- A. Refusing to certify, or to certify with restrictions, Risky's application for a license.
- B. Suspension or permanent revocation of Risky's license.
- C. Imposition of a jail sentence not to exceed one year.
- D. Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

F.S. SECTION 475.182 - RENEWAL OF LICENSE AND CONTINUING EDUCATION



When renewing a license, you are required to complete continuing education under F.S. section 475.182. The DBPR must renew a license upon receipt of the renewal application and fee.

The renewal application for an active license as broker, broker associate, or sales associate must include satisfactory proof to the Commission that the licensee has, since the issuance or renewal of a current, satisfactorily completed at least 14 classroom hours of 50 minutes each of a continuing education course during each biennium of a license period.

Approval or denial of a specialty course must be based on the extent to which the course content focuses on real estate issues relevant to the modern practice of real estate by a real estate licensee, including technology used in the real estate industry.

The Commission may accept as a substitute for such continuing education course, on a classroom-hour-for-classroom-hour basis, any satisfactorily completed education course that the Commission finds is adequate to educate licensees, as intended by law, and that may include an approved distance learning course.

The Commission may accept as a substitute for three classroom hours, one time per renewal cycle, attendance at one legal agenda session of the Commission. The licensee must notify the Division at least seven days in advance of intent to attend the session in order to obtain credit. A licensee may not earn any continuing education credit for attending a legal agenda session of the Commission as a party to a disciplinary action.



The DBPR must adopt rules establishing a procedure for the renewal of licenses at least every four years. Any license that is not renewed at the end of the license period automatically reverts to involuntarily inactive status. A licensee may seek renewal by meeting the other qualifications found in section 475.183 regarding inactive status.

The DBPR must mail a notice of renewal and possible reversion to the last known address of the licensee 60 days before the end of the license period and automatic reversion of the license to inactive status.

F.S. SECTION 475.183 - INACTIVE STATUS



The **rules governing inactive status** are found in F.S. section [475.183](#).

If a license has become **voluntarily inactive**, it may be renewed as described in section [475.182](#). The inactive license holder must apply to the DBPR.

The Commission must set out continuing education requirements, which may not exceed 12 classroom hours for each year the license was inactive, as a condition for the renewal of a voluntarily inactive license. Voluntary inactive status may remain in force at a licensee's own choosing.

A licensee may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing at least 14 hours of a Commission-prescribed continuing education course. If the license has been inactive for more than 12 months, but fewer than 24 months, the licensee may reactivate a license by satisfactorily completing 28 hours of a Commission-prescribed education course.



Knowledge Check 5. A licensee may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing:

- A. At least 12 hours of a Commission-prescribed continuing education course.
- B. At least 50 hours of a Commission-prescribed continuing education course.
- C. At least 14 hours of a Commission-prescribed continuing education course.
- D. At least 28 hours of a Commission-prescribed continuing education course.

All licenses that are inactive for more than two years automatically expire. Once a license expires, it becomes null and void without any further action by the Commission or DBPR. *The DBPR must give notice to the licensee 90 days prior to expiration of the license.* The Commission must prescribe by rule a fee not to exceed \$100 for the late renewal of an involuntarily inactive license and the DBPR must also collect the current renewal fee for each renewal period in which the license was involuntarily inactive in addition to any applicable late renewal fee.



Whenever **additional licenses** are necessary to conduct a real estate brokerage business, a licensed broker may be issued additional licenses as a broker, but not as a sales associate or as a broker associate under section [475.215](#). The licensed broker must not use the additional licenses in a manner that is likely to prejudice any person, including a licensee, under this chapter 475.

Also within the multiple licenses rule found in 475.215 is a requirement that a sales associate or broker associate must not have more than one registered employer at any one time. F.A.C. 61J2-6.006 requires that a salesperson or broker-salesperson only be employed by one broker or by one owner-developer.

The rules governing **inactive renewal** are found in [F.A.C. 61J2-1.014](#). The rules states that a voluntarily inactive licensee may elect to renew as inactive every two years by submitting a request to the DBPR, satisfying the required continuing education, and submitting the fee established in F.A.C. 61J2-1.011. If a licensee does not elect to renew, the status automatically reverts to involuntarily inactive.

An **involuntarily inactive licensee** may renew by submitting a request to the DBPR, complying with F.A.C. [61J2-3.010](#), and submitting the current renewal fee in addition to any applicable late fee. When the total period of involuntary inactivity exceeds 2 years, the license automatically expires per F.S. section 475.183(2). Ninety days prior to the expiration, the DBPR must give notice to the involuntarily inactive licensee.

F.S. SECTION 475.22 - BROKER TO MAINTAIN OFFICE AND SIGN AT ENTRANCE OF OFFICE



F.S. section [475.22](#) governs real estate brokers and requires that all active brokers maintain an office. The office must consist of at least one enclosed room in a building of stationary construction.

In 2012, F.A.C. [61J2-10.022](#) was amended. The rules now includes that an office required under F.S. section 475.22(1) may be in a residential location, if not contrary to local zoning ordinances, provided the minimum office requirements are met and the required broker's sign is properly displayed under F.S. section 475.22(1).



F.S. section 475.22 requires each active broker to maintain a sign on or about the entrance of her or his principal office and each branch office, which is easily observed and read by any person about to enter the office.

Each sign must contain the name of the broker and the trade name, if any.

For a partnership or corporation, the sign must contain the name of the firm or corporation, or its trade name, and must include the name of at least one of the brokers.

The required sign must state, at a minimum, “licensed real estate broker” or “lic. real estate broker”.

Under 61J2-10.034 an individual broker, partnership or corporation may use a trade name, which must be disclosed upon the request for license, and be placed upon the registration or license.

Any trade name may not be the same as the real or trade name of another registrant or licensee registered or licensed with the Commission and no individual, partnership, or corporation may be registered under more than one trade name.

The actual name of the individual or an entity is not a trade name.

Rule 61J2-10.027 requires that no licensee may use an identification or designation of any association or organization having to do with real estate unless entitled to use such identification or designation.

If a broker's registered office is located outside of the State of Florida, prior to registering such office or branch office, the broker must agree in writing to cooperate with any investigation initiated in accordance with F.S. chapter 475, or Commission rules.

Cooperation may include the broker promptly supplying any documents requested by any authorized representative of the DBPR and by personally appearing at any designated office of the DBPR or other location in Florida or elsewhere as reasonably requested by the DBPR.



If the broker receives a notice or request to produce any documents or to appear for an interview with the authorized representative of the DBPR, and then fails to substantially comply with the request, the broker may be subject to disciplinary action.

The notice must be sent by the DBPR by certified mail to the broker at the broker's last known business address as registered with the department. The failure to comply with the notice is a violation of the license law and subject to the penalties found in section 475.25, which governs discipline.

F.S. SECTION 475.23 - LICENSE TO EXPIRE ON CHANGE OF ADDRESS



Under F.S. section 475.23, licenses cease to be in force whenever a broker changes her or his business address, a real estate school operating under a permit issued pursuant to section 475.451 changes its business address, or a sales associate working for a broker or an instructor working for a real estate school changes employer.

The licensee shall notify the Commission of the change no later than 10 days after the change, on a form provided by the Commission. When a broker or a real estate school changes business address, the brokerage firm or school permit holder must file a notice of the change of address with the Commission, as well as the names of any sales associates or instructors who are no longer employed by the brokerage or school.

The notification shall also fulfill the change of address notification requirements for sales associates who remain employed by the brokerage, as well as the instructors who remain employed by the school.



F.S. SECTION 475.24 - BRANCH OFFICE AND FEES



Under F.S. section 475.24, any licensee conducting business at some other location, either in the same or a different municipality or county than that in which she or he is licensed, must register the other location as a branch office and pay an annual registration fee not to exceed \$50.00.

Any office is deemed a **branch office** if the name or advertising of a broker having a principal office located elsewhere is displayed in such a manner as to reasonably lead the public to believe that such office is owned or operated by such broker.

The rules enforcing F.S. section [475.24](#) are found in F.A.C. [61J2-10.023](#) and [61J2-1.011\(3\)](#) and also state that a mere temporary shelter on a subdivision being sold by the broker for the protection of salespersons and customers, and at which transactions are not closed and salespersons are not permanently assigned, is not deemed to be a branch office.

The permanence, use, and character of activities customarily conducted at the office or shelter shall determine whether it must be registered.

Further, if a broker closes a branch office and, at about the same time, establishes another at a different location, the registration of the office which was closed may not be transferred. The new location is a new branch office which must be registered and the fee paid as though the other had not been closed and the broker may reopen the first office at any time during the license period without payment of an additional fee upon appropriate application.

F.S. SECTION 475.25, 455.225 - 232 AND F.A.C. 61J2-24.001 - DISCIPLINE





F.S. section 475.25, 455.225 through 455.232 and F.A.C. 61J2-24.001 cover discipline and are more fully discussed in Part II, Section 1 of this course. The only 2012 amendment to section 475.25 occurred at 475.25(1)(t) and states that the Commission may take action if the applicant has violated any standard of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in section 475.611.

The guidelines found in F.A.C. 61J2-24.001 and 61J2-24.002 were also amended in 2012 and discussed in Part II of this course.



F.S. SECTION 475.451 – SCHOOLS TEACHING REAL ESTATE PRACTICE

Many revisions to F.S. section 475.451 occurred in 2012. In section 475.451(2), text was deleted, changing the paragraph from “An applicant for a permit to operate a proprietary real estate school, to be a chief administrator of a proprietary real estate school or state institution...” to “An applicant for a permit to operate a proprietary real estate school, or to be an instructor for a proprietary real estate school or a state institution must meet the qualifications for practice set forth in s. 475.17(1)...”



The first paragraph of 475.451(2)(b) was removed altogether, which defined “chief administrator person.”

475.451(2)(b)(3) was modified to include “distance learning” hours for renewal of an instructor permit. The remainder of the paragraph had minor wording changes.

475.451(9) is a new paragraph added in 2012 that states that a real estate school may offer any course through distance learning if the course complies with section 475.17.

One rule implemented by section 475.451 is found at F.A.C. 61J2-3.011 and entitled Continuing Education for School Instructors. The rule was amended in 2012 and states that any person holding “school instructor” permits must recertify competency during each permit period by satisfactorily completing 7 classroom or distance learning hours of instruction and/or instructional techniques as prescribed and conducted by the Commission.

A school instructor is not required to complete the 7 hours of recertification education as a condition for initial permit renewal if the time between the effective date on the initial permit as an instructor and the beginning of the initial renewal permit is less than 12 months.

Of the required 7 classroom or distance learning hours, up to 3 hours may be applied toward the continuing education core law requirement for licensure required by F.A.C. 61J2-3.009.

Satisfactory completion of the required courses does not entitle any person to renew a permit as a school instructor until all other requirements are met. Attorneys qualified under F.S. section 475.451 are not bound by the continuing education requirements for school instructors.



F.S. SECTION 475.4511 - ADVERTISING BY REAL ESTATE SCHOOLS

Under F.S. section 475.5411, *no one may make a misleading, exaggerated, or false statement about a real estate school.*

The statute states that no person representing a real estate school offering and teaching real estate courses may make, cause to be made, or approve, any statement, representation, or act, oral, written, or visual, in connection with the operation of the school, its affiliations with individuals or entities of courses offered, or any endorsement of such, if he or she knows or believes, or reasonably should know or believe, the statement, representation, or act to be false, inaccurate, misleading, or exaggerated.



Schools are prohibited from using false, inaccurate, misleading, or exaggerated advertising. Publicity and advertising of a real estate school, or of its representative, must be based upon relevant facts and supported by evidence establishing their truth.

No representative of any school or institution may promise or guarantee employment or placement of any student or prospective student using information, training, or skill purported to be provided, or otherwise enhanced, by a course or school as an inducement to enroll in the school, unless such person offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student.

F.A.C. 61J2-10.025 requires that all advertising must be in a manner in which reasonable persons would know they are dealing with a real estate licensee. All real estate advertisements must include the licensed name of the brokerage firm. No real estate advertisement placed, or caused to be placed by a licensee, may be fraudulent, false, deceptive, or misleading.

When the licensee's personal name appears in the advertisement, at the very least the licensee's last name must be used in the manner in which it is registered with the Commission.

Internet advertising requires the broker's name to be placed adjacent to or immediately above or below the point of contact information. "Point of contact information" refers to any means by which to contact the brokerage firm or individual licensee including mailing address(es), physical street address(es), e-mail address(es), telephone number(s) or facsimile telephone number(s).

Knowledge Check 6. F.A.C. 61J2-10.025 requires that all advertising include all but the following –

- A. Be in a manner in which reasonable persons would know they are dealing with a real estate licensee.



- B. Include the licensed name of the brokerage firm.
- C. Not be fraudulent, false, deceptive or misleading.
- D. Include at least the first name of the licensee.

F.S. SECTION 475.5015 – BROKERAGE BUSINESS RECORDS



Under F.S. section 475.5015, brokers must keep and make available to the DBPR such books, accounts, and records as will enable the DBPR to determine whether the broker is in compliance with the provisions of chapter 475.

Brokers must preserve at least one legible copy of all books, accounts, and records pertaining to her or his real estate brokerage business for at least 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker.

In the event no funds are entrusted to the broker, then records must be preserved for at least 5 years from the date of execution by any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker.

If any brokerage record has been the subject of, or has served as evidence for litigation, relevant books, accounts, and records must be retained for at least 2 years after the conclusion of the civil action or the conclusion of any appellate proceeding, whichever is later, but in no case less than a total of 5 years.

Disclosure documents required under sections 475.2755 and 475.278 must be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.



F.S. SECTION 475.5016 – AUTHORITY TO INSPECT AND AUDIT



F.S. section 475.5016 authorizes agents and employees of the DBPR to have the power to inspect and audit any broker or brokerage office licensed under chapter 475, for the purpose of determining if any of the provisions of chapter 475, chapter 455, or any rule promulgated under authority of either chapter is being violated.

F.S. SECTION 475.5017 - INJUNCTIVE RELIEF AND POWERS

Under F.S. section 475.5017, appropriate civil action may be brought by the DBPR in circuit court to enjoin a broker from engaging in, or continuing, a violation. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper.

In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought has the power and jurisdiction to impound and appoint one or more receivers for the property and business of the broker, including books, papers, documents and records. The purpose of the rule is to prevent violations of the law or injury to the public through, or by means of, the use of such property and business.

The appointed receiver has the powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as is, from time to time, conferred upon her or him by the court.

In any such action, the court may issue an order staying all pending civil actions and the court, in its discretion, may require that all civil actions be assigned to the circuit court judge who appointed the receiver.

The expenses of the receiver are paid out of the assets of the brokerage firm upon application to and approval by the court. If the assets are not sufficient to pay all the expenses of the receiver, the court may order disbursement from the Real Estate Recovery Fund, which may not exceed \$100,000 per receivership.

F.S. SECTION 475.5018 – FACSIMILE SIGNATURE OR WRITING ACCEPTED

F.S. section 475.5018 states that when any act performed under F.S. Chapter 475, Part I must be performed in writing or acknowledged with a signature, the provision of an instrument or writing by electronic means or facsimile, including a signature transmitted by electronic means or facsimile, is binding and sufficient.



B. Review of F.S. Chapter 455, Business And Professional Regulation – 2010, 2011 and 2012 Amendments

F.S. chapter 455 contains the law that regulates certain professions by the DBPR, including those within the real estate industry. Legislative changes to chapter 455 in 2012 were seen throughout the chapter, but only those pertaining to the real estate profession are noted here, and include all changes occurring in 2010, 2011 and 2012.

F.S. SECTION 455.2122 - EDUCATION

F.S. section 455.2122 is a new provision in the 2010 rules. Unmodified in 2011 or 2012, it states that a board, or the department where there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy pre-licensure or post-licensure education requirements provided for in Part VIII of chapter 468 or Part I of chapter 475. A board, or the department when there is no board, may not require centralized examinations for completion of pre-licensure or post-licensure education requirements for those professions licensed under Part VIII of chapter 468 or Part I of chapter 475.

F.S. SECTION 455.2123 - CONTINUING EDUCATION



Provisions for continuing education found in F.S. section 455.2123 were essentially re-written in 2010, and unmodified in 2011 or 2012. The section had stated that a board, or the DBPR when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements. In 2010, the section was modified and now goes on to state that a board, or the DBPR when there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements provided for in part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475. Further, the board or DBPR may not require centralized examinations for completion of continuing education requirements for the professions licensed under those provisions.

F.S. SECTION 455.213 - GENERAL LICENSING PROVISIONS

In 2012, F.S. section 455.213 saw the addition of a new paragraph in 2012, 455.213(12) which states that the DBPR must waive the



initial licensing fee, initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the DBPR for a license. The application must be in the prescribed format and made within 24 months after an honorable discharge from any branch of the United States Armed Forces.

Knowledge Check 7. Marty Marine wants was just honorably discharged from the U.S.M.C. and wants to become a licensed Florida real estate agent. What fees may Marty expect to pay?

- A. None.
- B. The initial licensing fee.
- C. The initial licensing and initial application fee.
- D. All fees because the DBPR may not waive any fees for discharged vets.

F.S. SECTION 455.217 – EXAMINATIONS

A few changes in wording in 2010 occurred to F.S. section 455.217 beginning at 455.217(1) with the words “Service Operations” being deleted and adding “Professions” to the paragraph. The provision now states that the Division of Professions of the DBPR must provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations. 455.217(1)(a) did not delete “Service Operations”, but did add “the Division of Professions” so that the paragraph requires the DBPR, acting in conjunction with the Division of Service Operations, the Division of Professions, and the Division of Real Estate, as appropriate, must ensure that examinations adequately and reliably measure an applicant’s ability to practice the profession regulated by the DBPR.



F.S. section 455.217(3) was modified to require the DBPR of a contracted vendor to review their “most recently administered” examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed.

F.S. SECTION 455.2175 - PENALTY FOR THEFT OR REPRODUCTION OF AN EXAMINATION



F.S. section 455.2175 states that in addition to, or in lieu of, any other discipline imposed pursuant to section 455.227, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the DBPR, whether such examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree. Punishment for that crime is regulated in sections 775.082, s. 775.083, or s. 775.084. In 2010, an additional provision was added to 455.2175 which states that an examinee whose examination materials are confiscated is not permitted



to take another examination until the criminal investigation reveals that the examinee did not violate section 455.2175.

F.S. SECTION 455.2179 - CONTINUING EDUCATION PROVIDER AND COURSE APPROVAL; CEASE AND DESIST ORDERS

A 2012 modification to F.S. section 455.2179 occurred at 455.2179(1) and states that the Board must approve the providers and courses for continuing education and the DBPR may approve continuing education providers or courses even if there is a Board. Further, if the DBPR finds that an application for a continuing education provider or course requires expert review or should be denied, the DBPR must forward the application to the appropriate board for review and approval or denial. The modification concludes with new language that states that only the DBPR may determine the contents of any documents submitted for approval of a continuing education provider or course.

F.S. SECTION 455.227- GROUNDS FOR DISCIPLINE; PENALTIES; ENFORCEMENT

A 2010 expansion to F.S. section 455.227 was seen at 455.227(1)(c) which lists acts that constitute grounds for disciplinary actions and includes a conviction or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.



F.S. SECTION 455.228 - UNLICENSED PRACTICE OF A PROFESSION; CEASE AND DESIST NOTICE; CIVIL PENALTY; ENFORCEMENT; CITATIONS; ALLOCATION OF MONEYS COLLECTED

F.S. section 455.288 grants the DBPR the right to issue and deliver a cease and desist order to any person not licensed by the DBPR who violates any provision of Chapter 455 or any statute that relates to the practice of a regulated profession. In 2010 the word “order” was changed to “notice” 455.228(3) modified one word from “order” to “notice” in the 2010 change and that provision now states that if the DBPR is required to see enforcement of the notice for a penalty pursuant to section 120.669, it shall be entitled to collect its attorney’s fees and costs, together with any cost of collection.

F.S. SECTION 455.271- INACTIVE AND DELINQUENT STATUS

- A 2012 modification to F.S. section 455.271(2) eliminates the requirement that a licensee who changed from inactive to active status was not eligible to return to inactive status until the licensee completed a licensure cycle on active status.
- Changes to 455.271(6)(b) state that the DBPR may, at its discretion, reinstate a license of an individual whose license has become void if the DBPR determines that the individual failed to comply because of illness or hardship. Prior to the modification, the Board could also make that determination.
- Also, 455.271(6)(b) states that the individual must apply to the DBPR for reinstatement and pay a fee. The DBPR must require that such individual meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under Chapter 455.
- In 455.271(1) language was added and deleted, and now states that the Board, or the DBPR if there is no Board, may not require an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renew cycle of continuing education to reactivate a license.



F.S. SECTION 455.273 - RENEWAL AND CANCELLATION NOTICES



The 2012 amendment to F.S. section 455.273 provides that at least 90 days before the end of a licensure cycle, the DBPR must forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record or email address, and forward a notice pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record or email address.

F.S. SECTION 455.275 - ADDRESS OF RECORD

gsi@graysystems.co

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F.S. section 455.275 was modified in 2012 to **include email address** as one of the legitimate addresses a licensee may possess.

455.275(3)(b) was gutted regarding service of an administrative complaint. Service may be provided by the DBPR by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible by email. If the service does not provide the DBPR with proof of service, then the DBPR must call the last known telephone number of record, and post a short, plain notice to the licensee on the front page of the DBPR's website, and send notice via email to all newspapers of general circulation and all news DBPRs of broadcast network affiliates in the county of the licensee's last known address of record.

F.A.C. 61J2-10.038 requires each licensee and permit holder to notify the DBPR in writing of the current mailing address and any change in the current mailing address within 10 days after the change.



SECTION 2 – RELATIONSHIPS

A. The Agency



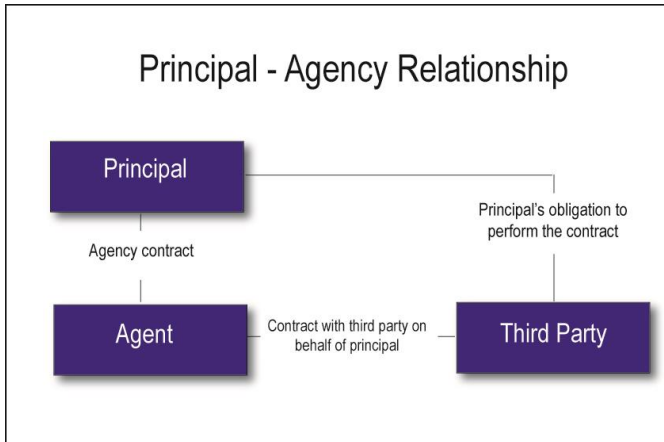
The Law of Agency is concerned with the relationship between a “principal” and an “agent, where one has the legal authority to act on behalf of the other. In principal/agent relationships, the principal allows, consents, or authorizes the agent to act on his behalf when dealing with a third person or third parties.

The principal or agent may terminate the agency relationship. In contractual relationships, the terms for termination of the agency relationship may be included within the contract.

The agency relationship may be created in one of four specific ways, and once created, comes with obligations and duties and even liabilities.

- (1) The agency relationship may be created through contract, where the principal and the agency agree upon the terms in which the agent will act on behalf of the principal. When the parties consent to the contract, they enter into the principal/agent relationship.
- (2) The agency relationship may also be created even in situations where the agent acts without the consent of the principal, by ratification. Ratification occurs when the principal accepts the acts of the agent.
- (3) Agency may occur out of necessity. Necessity occurs where the principal and agent have not agreed or consented to the principal/agent relationship, but the agent must act to prevent an injury. The injury may be to persons or to property.
- (4) The fourth manner of creating the agency relationship is agency by estoppel, that is, if a third party has a reasonable belief that an agency relationship exists between a principal and an agent, and denying the agency relationship would be unjust to the third party. Estoppel is generally also evidenced when the principal and agent knew, or should have known, that the third party believed in the existence of the relationship but failed to inform the third party of the mistake. If estoppel is a valid theory, the agent and the principal are “estopped” from denying the agency relationship.





Agency may be defined as “he who acts through another is deemed in law to do it himself,” or in Latin, “Qui facit per alium, facit per se.” The person who acts on behalf of the other is known as the agent, while the person on whom an act was performed is known as the principal.

In Florida real estate, an agency relationship exists between brokers and sales associates and the doctrine of Respondeat Superior applies. Under the doctrine, both the principal and agent are liable for damages or injuries caused when the agent acts negligently toward a third party.

The damages or injury may be to a person, as in personal injuries, or to property. The loss of money is covered by Respondeat Superior and the law of agency.

When the principal/agency relationship is created, the agent must act on behalf of the principal as if the agent was the principal. The agent must follow the instructions of the principal, use reasonable care, notify the principal of the agent’s acts or actions, remain loyal to the principal during the agency relationship, act in the best interests of the principal, act in good faith toward the principal and to those third parties related to the agency relationship, follow the rules of confidentiality, and be accountable to the principal for any of the principal’s money spent by or on behalf of the agent or received by the agent on behalf of the principal. Acting just like the principal would or should act is a duty or duties of the agent toward the principal.

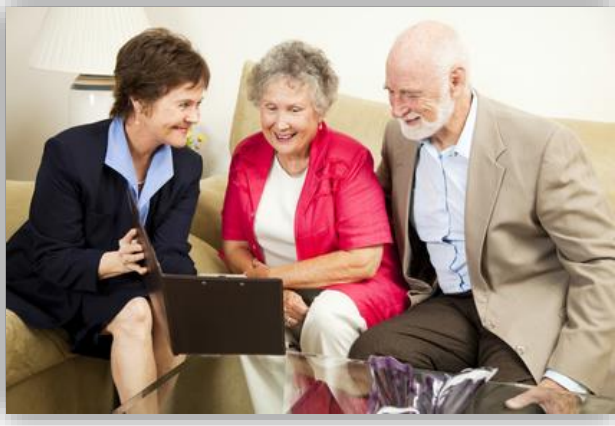
In most cases, when an agent fails to perform a duty toward the agent, some harm occurs. Harm may rise to the level of breach of duty, which may in turn lead to a law suit. Third parties who may have been injured by the agent’s failure to perform required duties may sue the principal rather than the agent. The law of agency is designed to protect third parties from potential harm caused by agents on behalf of principals.

Knowledge Check 8. Florida real estate, an agency relationship exists between brokers and sales associates under the doctrine of –

- A. Res Adjudicata.**
 - B. Respondeat Superior.**
 - C. Res Ipsa.**
 - D. Collateral Estoppel.**
-



B. Brokers and Agents



For real estate brokers and sales associates in Florida, the law of agency in a real estate transaction is governed by section 475.2701 to 475.2801, also known as the “Brokerage Relationship Disclosure Act.”

Section 475.272 describes the purpose of the Brokerage Relationship Disclosure Act. The Act purposefully revokes disclosed dual agency as an authorized form of representation by a real estate licensee in Florida. The Act sets out the requirements for disclosure for real estate licensees and the authorized forms of brokerage representation.

The Act allows single agents to represent either a buyer or a seller, *but not both*, in a real estate transaction. The Act also states that transaction brokers provide a limited form of non-fiduciary representation to a buyer, a seller, or both in a real estate transaction.

Pursuant to section 475.2755, any real estate transaction other than a residential sale as defined in section 475.278(5)(a), and where the buyer and seller have assets of \$1 million or more, the broker, at the customers’ request, may designate sales associates to act as single agents for different customers in the same transaction.

The designated sales associates have the duties of a single agent found in section 475.278(3), including disclosure requirements in section 475.278(3)(b) and (c).

The buyer and seller, as customers, must both sign disclosures stating that their assets meet the \$1 million threshold and requesting that the broker use the designated sales associate form of representation.

The required disclosure notice must include the following:

FLORIDA LAW PROHIBITS A DESIGNATED SALES ASSOCIATE FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALES ASSOCIATE IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.

Section 475.278 defines the **brokerage relationships**.



- A real estate licensee in Florida may enter into a brokerage relationship as either a transaction broker or as a single agent with potential buyers and sellers.
- A real estate licensee may not operate as a disclosed or non-disclosed dual agent. Within section 475.278, a “dual agent” means a broker who represents both the prospective buyer and the prospective seller as a fiduciary in a real estate transaction.
- A licensee is not prevented from changing from one brokerage relationship to the other as long as the buyer or the seller, or both, gives consent before the change and the appropriate disclosure of duties is made to the buyer or seller.

Nothing within 475.278 requires a customer to enter into a brokerage relationship with any real estate licensee.

A presumption exists that all licensees operate as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer.

A transaction broker provides a limited form of representation to a buyer, a seller, or both in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent.

The duties of the real estate licensee in the limited form of representation of transaction broker include:

- dealing honestly and fairly,
- accounting for all funds,
- using skill, care, and diligence in the transaction, and
- disclosing all known facts which materially affect the value of residential real property, but are not readily observable to the buyer.

Additional duties include presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing. The duties include limited confidentiality, unless waived in writing by a party.

The limited confidentiality prevents disclosure:

- that the seller will accept a price less than the asking or listed price,
- that the buyer will pay a price greater than the price submitted in a written offer of the motivation of any party for selling or buying property,
- that a seller or buyer will agree to financing terms other than those offered, or, of any other information requested by a party to remain confidential.

The Single Agent

The duties of the single agent are owed to a buyer or seller who engages the real estate licensee as a single agent.





As demonstrated on the following page, the duties of the 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. Another document might be a listing agreement.

The disclosure must be made before, or at the time of, entering into a listing agreement or other 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.

The first sentence of the information must be printed in uppercase and bold type.

A single agent relationship may be changed to a transaction broker relationship at any time during the relationship between an agent and principal, provided the agent first obtains the principal's written consent to the change in relationship.

The disclosure must be in writing to the principal, either as a separate and distinct document, or included as part of other documents such as a listing agreement or other agreements for representation.

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 limited representation.

The first sentence of the information must be printed in uppercase and bold type.

The document must be initialed or signed.



SINGLE AGENT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, _____, owe to you the following duties:

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.

The document must be dated and signed.

In order to change a relationship the following disclosure must be given and written consent must be obtained:

CONSENT _____ TO _____ TRANSITION
_____ TO TRANSACTION BROKER.

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

As a transaction broker, _____, provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

I agree that my agent may assume the role and duties of a transaction broker.

The real estate licensee owes a potential buyer or seller, with whom the licensee has no brokerage relationship, the duties of dealing honestly and fairly, disclosing all known facts that materially affect the value of the



residential real property which are not readily observable to the buyer, and accounting for all funds entrusted to the licensee.

The required disclosures that a licensee must provide to a buyer or seller, with whom no brokerage relationship exists, must be in writing and must be made before the showing of property.

If 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 licensee that has no brokerage relationship with a buyer or seller.

The first sentence of the information must be printed in uppercase bold type.

The no brokerage relationship disclosure must state:

NO BROKERAGE RELATIONSHIP NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

As a real estate licensee who has no brokerage relationship with you, _____ owe to you the following duties:

1. Dealing honestly and fairly;
2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer.
3. Accounting for all funds entrusted to the licensee.

(The disclosure must be dated and signed.)



C. Disclosure Requirements – Relationships



The disclosures required in section 475.278 apply to all residential sales, and the term “residential sale” means the sale of improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or fewer, or the sale of agricultural property of 10 acres or fewer.

The disclosure requirements do not apply when:

- a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker, or,
- when an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential buyer that the owner’s employee or single agent is acting on behalf of the owner, whether because of the location of the sales office or because of office signage or placards or identification badges worn by the owner’s employee or single agent.

The disclosure requirements also do not apply to:

- nonresidential transactions,
- the rental or leasing of real property, (unless an option to purchase all or a portion of the property improved with four or fewer residential units is given),
- a bona fide “open house” or model home showing that does not involve eliciting confidential information,
- the execution of a contractual offer or an agreement for representation, or
- negotiations concerning price, terms, or conditions of a potential sale.
- to unanticipated casual conversations between a licensee and a seller or buyer which do not involve eliciting confidential information,
- responding to general factual questions from a potential buyer or seller concerning properties that have been advertised for sale,
- situations in which a licensee’s communications with a potential buyer or seller are limited to providing general factual information, oral or written, about the qualifications, background, and services of the licensee or the licensee’s brokerage firm.
- auctions, appraisals and dispositions of any interest in business enterprises or business opportunities, except for property with four or fewer residential units.

Section 475.255 states that the mere payment or promise to pay compensation to a licensee does not determine whether an agency or transactional brokerage relationship exists between the licensee and a seller, landlord, buyer, or tenant.





The Florida Statutes only go so far regarding the law and the law of agency. Much of what a realtor should be aware of is found in case law. Case law is “judge made” law in that it is created when a judge, or panel of justices, interpret what the statutes or Constitution means and write an opinion.

The statutes provide a framework for the agency relationship between the real estate broker (principal) and real estate associate (agent), as well as the important disclosures that brokers and sales associates must provide to buyers and sellers (third parties).

The agency relationship is important because it defines liability. If a buyer or sell is harmed by the conduct of the real estate sales associate, then the sales associate’s relationship to a real estate broker determines who may have to pay for the harm.

Knowledge Check 9. The agency relationship is important because it –

- A. Defines liability.
 - B. Defines which party must pay wages to the other.
 - C. Defines culpability.
 - D. Defines, in advance, what the consequences are if the real estate sales associate is harmed by actions of the real estate broker.
-



That determination begins with a closer look at the relationship between the broker and agent.

Courts must consider the nature of that relationship if a buyer or seller files a lawsuit. In *Freedom Labor Contractors of Fla., Inc. v. State of Fla., Div. of Unemployment Comp.*, 779 So.2d 663, 665 (Fla. 3d DCA 2001), the court ruled that evidence of an agency relationship exists between a real estate broker or agency and the real estate association/agent may include:

- A written agreement defining the relationship between the real estate broker/agency and the agent;
- Any authority granted by the real estate broker/agency upon the sales associate/agent to incur debt on behalf of the real estate broker/agency;
- Policies and procedures in place by the real estate broker/agency that the sales associate/agent had to, and did abide by;
- If the sales associate/agent used the real estate broker/agency's name and business logo on information provided by the sales associate/agent to potential or existing clients;
- If an independent contract agreement was entered into between the real estate broker/agency and the sales associate/agent;
- If the sales associate/agent was able to come and go from an office of the real estate broker/agency at his or her own free will without regard to set business hours or business quotas; or,
- The types of expenses the real estate broker/agency may have paid or not paid on behalf of the sales associate/agent, such as advertising expenses, Commissions, salaries, hourly wages, travel, or other expenses.
- If a sales associate is truly the agent of the real estate broker or agency, then a closer look at the agent's conduct is important if liability for harm may fall upon the real estate broker or agency. The real estate broker or agency may ratify the conduct of the agent, thereby accepting vicarious liability of harm caused by the agent.



SECTION 3 – REAL ESTATE SALES AND THE LAW COMPLIANCE

A. Complying with Federal Law

Federal laws have an impact upon each state and state law. Many disclosures required under federal law relate to real estate sales in Florida. In this section we consider federal laws that affect real estate sales. The required disclosures are mentioned within this section, but covered in detail in Part II of this course.

APPRAISALS AND APPRAISERS

12 USC 3331, Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)

FIRREA provides standards for real estate appraisal and licensing requirements for appraisers and regulates appraisers and appraisal standards.

12 CFR part 34, Real Estate Lending and Appraisals

2 CFR part 34 is issued by the Office of the Comptroller of the Currency (OCC), under 12 USC 93a and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and requires a document appraisal or evaluation for all real estate and real estate-related financial transactions except for those specifically exempted by federal agencies' appraisal regulations. The appraisal must be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

12 CFR part 323 – Uniform Standards of Professional Appraisal Practice (USPAP)

FIRREA also authorizes the Appraisal Subcommittee (ASC) to oversee the U.S. Mortgage and Banking System. The ASC provides oversight to The Appraisal Foundation (TAF) which was formed to administer Uniform Standards of Professional Appraisal Practice (USPAP). TAF consists of two divisions – the Appraisal Standards Board (ASB) and the Appraisal Qualifications Board (AQB). The AQB sets forth the minimum qualifications for appraisal licensure and has been adopted in Florida.

USPAP is updated every two years and the current version is available at www.appraisalfoundation.org.

CREDIT



12 CFR 202 and 15 USC 1691, Equal Credit Opportunity Act of 1974, REG B (ECOA)



Prohibits lenders from discriminating against credit applicants, establishes guidelines for gathering and evaluating credit information, and requires written notification when credit is denied. The Act prohibits discrimination by a creditor against any applicant for a loan with respect to race, color, religion, national origin, sex, marital status, or age.

Lenders may not discriminate against an applicant whose income is mainly derived from public assistance, or an applicant who has exercised any right under the Consumer Protection Act.

Creditors regulated by the Act include banks, retailers, bankcard companies, finance companies, and credit unions.

Financial institutions regulated by the Act who fail to comply with its provisions may be subject to civil liability for both actual and punitive damages, whether the complainant is an individual or group of individuals in a class action. If punitive damages are awarded they may be as much as \$10,000 for an individual or the lesser of \$500,000 or one percent of the creditor's net worth in a class action.

15 USC 1681, Fair Credit Report Act, REG. V (FCRA)

The Act regulates the collection, dissemination and use of consumer information. The Act also protects consumer privacy and regulates consumer credit information. These Acts, along with the Fair Debt Collection Practices Act, (FDCPA), provide consumers with protections against unfair debt collection methods and unfair credit reporting practices.



DISCLOSURES

12 CFR 528, 12 USC 2801, Home Mortgage Disclosure Act of 1975, REG C (HMDA)

The Home Mortgage Disclosure Act requires certain mortgage lenders to disclose data regarding their lending patterns. HMDA is discussed more fully in Part II of this course.

Residential Lead-Based Paint Hazard Reduction Act of 1992

The Residential Lead-Based Paint Hazard Reduction Act of 1992 is also known as Title X and requires disclosure by a seller or landlord to a buyer or tenant before a contract for sale or lease is entered into. The requirement includes providing the buyer or tenant with an EPA approved information pamphlet on identifying and controlling lead-based paint hazards.

The disclosure required under the act is discussed in detail in Part II of this course.

24 CFR Chapter X, part 1024, Real Estate Settlement Procedures Act of 1974 (RESPA)

RESPA regulates disclosure of affiliated businesses and estimated costs and is administered and enforced by the Consumer Financial Protection Bureau, (CFPB). The Act ensures that consumers are provided with information about the cost of the mortgage settlement and protects consumers from unnecessarily high settlement charges caused by certain abusive practices.

Under the new rule, a standardized Good Faith Estimate, GFE, is required to facilitate shopping among settlement service providers. The standardized GFE provides improved disclosure of settlement costs and interest rates.



The HUD-1 Settlement Statement has been improved and provides for better understanding of the actual closing costs to the buyer. The HUD-1 Settlement Statement is a form that lists all charges and credits to the borrower and seller in a transaction. Buyers are encouraged to compare the HUD-1 Settlement Statement to the GFE and ask his or her lender about any differences. The following can be downloaded free of charge for your form library.

<http://www.hud.gov/offices/adm/hudclips/forms/files/1.pdf>



RESPA is interested in closing costs and settlement procedures and, under RESPA, consumers are entitled to receive disclosures at various times in the transaction. Under RESPA, kickbacks are illegal.

RESPA and its required disclosures and the HUD-1 Settlement Statement are discussed in greater detail in Part II of this course.

12 CFR 226, Truth in Lending Act of 1968, REG Z (TILA)

The Truth in Lending Act prescribes uniform methods for computing the cost of credit, for disclosing credit terms, and for resolving errors on certain types of credit accounts, regulates disclosure of anticipated credit costs and promotes the informed use of consumer credit.

A more thorough discussion of Truth in Lending is covered in Part II of this course.

Knowledge Check 10. Leonard Lender wants to be sure to comply with RESPA, so what should he provide to consumers?

- A. The disclosures required under the Act.
 - B. Lead-based paint and associated hazards.
 - C. The cost of the mortgage settlement.
 - D. Specific settlement charges caused by certain abusive practices.
-



DISCRIMINATION

42 USC 3601, Title VIII of the Civil Rights Act of 1968, Fair Housing Act



The Fair Housing Act prohibits discrimination in housing transactions, including the sale, rental and financing of dwellings based on race, color, religion, sex or national origin. The Fair Housing Amendments of 1988 expanded the coverage of the Fair Housing Act to prohibit discrimination based on disability or on familial status. Familial status could include having a child under the age of 18, or being pregnant, divorced, and the like. The Amendment also established new administrative enforcement mechanisms with HUD attorneys bringing actions before administrative law judges on behalf of victims of housing discrimination.

Further, certain new multifamily dwellings developed for first occupancy on or after March 13, 1991 must not discriminate against individuals with disabilities.

Knowledge Check 11. Boyce and Brenda Buyer are looking for a home and think they've found the perfect one, but when they tried to make an offer they were turned down because Boyce is Caucasian and Brenda is Asian. Under the Fair Housing Act, has the couple been discriminated against?

- A. No, because the FHA covers race, color, religion, sex or national origin, and they were discriminated because of their marital status.
 - B. No, because the FHA covers race, color, religion, and sex but not national origin and the sellers assumed Brenda was from North Korea.
 - C. Yes, if the sellers put the denial of the sale in writing informing the couple that they couldn't purchase the home because of their race, color, religion, sex or national origin.
 - D. Yes, if the denial of the sale was due to race, color, religion, sex or national origin.
-



EQUITY

12 CFR 226.32, Home Ownership and Equity Protection Act of 1994, REG Z (HOEPA)

This Act addresses unfair practices and establishes requirements for certain loans with high rates and fees and also prohibits equity stripping (giving away or otherwise reducing your ownership interest in real property in order to hide its real value (or your actual interest) from creditors). The law requires certain disclosures and institutes restrictions on lenders for high cost loans and only applies to non-purchase money transactions, or home equity loans.

FLOOD ZONES

Public Law No. 90-448 - National Flood Insurance Act of 1968 (NFIP)



Property owners in participating communities are able to purchase flood insurance protection from the government under this Act. The coverage protects against losses from flooding. The Act was created to provide an alternative to disaster assistance from the government and make funds available for the high costs associated with flood damage.

A community participates in the program by agreement with the federal government and adopting and enforcing a floodplain management ordinance to reduce future flood risks to new construction in Special Flood Hazard Areas (SFHA). By doing so, the federal government makes flood insurance available within the community. The SFHAs are shown on Flood Insurance Maps, or (FIRMs).

The Federal Emergency Management Agency (FEMA), manages the NFIP and oversees floodplain management and mapping through its Mitigation Division.



LENDING

12 USC 2901, 12 CFR 288, Community Reinvestment Act of 1977, REG BB(CRA)

The Community Reinvestment Act requires banks to loan in all areas in which they collect deposits - serving the community—both low and moderate income neighborhoods—consistent with safe and sound Banking practices. The Association’s loan officers, under the Act, must actively seek opportunities to make the bank’s credit products equally available to all segments of the association’s communities. Essentially, the Act reduces discriminatory credit practices against low income neighborhoods, a practice called “redlining.”

MONEY LAUNDERING

U.S.A. Patriot Act of 2001 – Public Law No. 107-56

Under the U.S.A Patriot Act, real estate professionals are required to report any single or series of related transactions in which they receive cash in excess of \$10,000. They must also check a list provided by the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury for individuals and companies that are owned or controlled by, or acting for or on behalf of, targeted countries, which are collectively called “Specially Designated Nationals (SDNs).”

The SDN list may be found at:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>



If an individual or company is on the list, the realtors must report the entity to OFAC. Separately, home mortgage lenders and other financial institutions are required to create programs to help protect against money laundering and to block the financial dealings of terrorists.

Real estate professionals engaged in brokerage or property management activities and their real estate firms are not required to implement anti-money laundering or anti-terrorist financing programs, but the Treasury Department may expand coverage of these requirements to include real estate professionals.

Home mortgage lenders and other financial institutions that fail to terminate any targeted accounts within 10 days of being so ordered by the U.S. Attorney General or the Secretary of Treasury may be subject to fines of \$10,000 for each day the account remains open after the 10 day limit has expired.

The U.S. Patriot Act serves to regulate reporting of earnest money deposits.



MORTGAGES

16 CFR part 321, Mortgage Acts and Practices

The Mortgage Acts and Practices became effective in August 2011 and are derived pursuant to the Omnibus Appropriations Act of 2009 as clarified by the Credit Card Accountability, Responsibility and Disclosure Act of 2009. The Act prohibits any misrepresentation in any commercial communication regarding any term of any mortgage credit product and imposes certain recordkeeping requirements. The rule regulates information about lenders' loan products.



Mortgage Assistance Relief Services (MARS)

The Mortgage Assistance Relief Services (MARS), is a Federal Trade Commission rule that bans providers of mortgage foreclosure rescue and loan modification services from collecting fees until homeowners have a written offer from their lender or servicer that they decide is acceptable. The rule regulates promotion of businesses involved in short sales or loan modifications.

Under the Rule, mortgage relief companies are required to disclose key information to consumers to protect them from being misled and to aid in informed purchasing decisions. Advertising communications directed at individual consumers must disclose that:

- the company is not associated with the government,
- their services have not been approved by the government or the consumer's lender
- the lender may not agree to change the consumer's loan and if companies tell consumers to stop paying their mortgage, they must also tell them that they could lose their home and damage their credit rating.

Companies are also required to explain in their communications to consumers that the consumer may stop doing business with the company at any time, may accept or reject any offer the company obtains from the lender or servicer, and, if they reject the offer, they do not have to pay the company's fee. Companies also must disclose the amount of the fee.



Dodd-Frank: Title XIV Mortgage Reform and Anti-Predatory Lending Act (MRAPL)

The Mortgage Reform and Anti-Predatory Lending Act amended the Truth in Lending Act and establishes a duty of care for all mortgage originators. Under the Act, all mortgage originators must be properly qualified, registered and licensed and they must comply with the regulations designated by the Federal Reserve Board. Also under the Act, mortgage originators are prohibited from receiving compensation that is correlated to the face amount of the loan. The prohibition is designed to diminish incentives for originators to steer borrowers toward residential loans that the borrower cannot repay. The Act also prohibits deceptive, unfair or predatory loan terms.

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE)

The SAFE for Mortgage Licensing Act regulates and requires mortgage licensing of loan originators and is administered by the Consumer Financial Protection Bureau, CFPB, for administration and enforcement. The Act is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors, CSBS, and the American Association of Residential Mortgage Regulators, AARMR, to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry.

The SAFE Act sets a minimum standard for licensing and registering mortgage loan originators. Specific state licensing requirements can be found at the Nationwide Mortgage Licensing System Registry, NMLSR.

Knowledge Check 12. Which of the following statements is inaccurate about the SAFE for Mortgage Licensing Act?

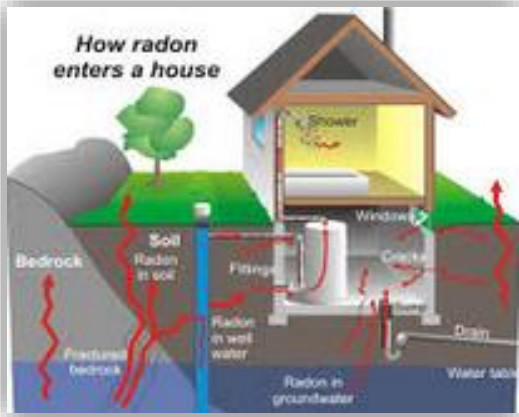
- A. It regulates and requires mortgage licensing of loan originators.
 - B. It is administered by the Consumer Financial Protection Bureau, CFPB, for administration and enforcement.
 - C. It is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators.
 - D. It is considered ineffective and is slated for remand once an adequate replacement Act is written and adopted.
-



B. Complying with Florida State Laws

Beyond F.S. chapters 455 and 475 and federal laws, there are other Florida state laws affect real estate transactions in Florida.

F.S. SECTION 404.056(5) - RADON GAS NOTIFICATION



Under F.S. section 404.056(5) all real estate transactions in Florida require the inclusion of a notification regarding radon gas in at least one document in the transaction. The notice is required prior to or at the time of execution of the contract for sale and purchase of any building. Notices are also required upon the execution of a rental agreement for any building.

The notification must state:

“RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

Residential transient occupancies of 45 days or less are not subject to the notification requirement.



F.S. SECTION 553.996 - ENERGY EFFICIENCY RATING

Purchasers of real property in Florida are entitled to an option for an energy-efficiency rating on the building purchased. An Energy-Efficiency Information Brochure must be provided to all prospective purchasers of buildings for occupancy prior to, or at the time of, the execution of the contract for sale and purchase. The brochure must:

- contain information relevant to the class of building and state how to analyze the building's energy-efficiency rating,
- include comparisons to statewide averages for new and existing construction of that class of building,
- provide information concerning methods to improve the building's energy-efficiency rating and
- include a notice to residential purchasers that the energy-efficiency rating may qualify the purchaser for an energy-efficient mortgage from lending institutions.

F.S. SECTION 689.25 – FAILURE TO DISCLOSE HOMICIDE, SUICIDE, DEATHS, HIV OR AIDS



Real estate brokers and sales associates have **no legal duty** to notify a potential occupant of real property in Florida that a prior occupant of real property is infected or has been infected with human immunodeficiency virus (HIV) or diagnosed with acquired immune deficiency syndrome (AIDS). F.S. section 689.25(1)(a) states that neither is a material fact that must be disclosed in a real estate transaction.

Further, 689.25(1)(b) states that the fact a property was, or was at any time suspected to have been the site of a homicide, suicide or death is also not a material fact that must be disclosed in a real estate transaction.

F.S. section 689.25 protects owners of real property against any cause of action for failure to disclose that the property was either the site of a homicide, suicide or death or suspected of having been the site, or that a prior occupant had been infected with HIV or diagnosed with AIDS. The protection extends to the owner's agents.



F.S. CHAPTER 515 - THE RESIDENTIAL SWIMMING POOL SAFETY ACT

Because drowning is the leading cause of death of young children in Florida, the legislature created the Residential Swimming Pool Safety Act. Drowning deaths also occur frequently among the medically-frail elderly. The statute states that when lapses in supervision occur, a pool safety feature can reduce drowning and near-drowning incidents.



The statute requires that all new residential swimming pools, spas, and hot tubs be equipped with at least one pool safety feature.

In order to pass final inspection and receive a certificate of completion, a residential swimming pool must meet at least one of the requirements relating to pool safety features found in chapter 515. The list of safety features includes:

- (1) The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirements of section 515.29.
- (2) The pool must be equipped with an approved safety pool cover.
- (3) All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure rating of 85 dB A at 10 feet.
- (4) All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.





A residential pool barrier must be at least 4 feet high on the outside with no gaps, openings, indentations, protrusions, or structural components that could allow a young child to crawl under, squeeze through, or climb over the barrier. The barrier must be placed around the perimeter of the pool and must be separate from any fence, wall, or other enclosure surrounding the yard unless the fence, wall, or other enclosure or portion thereof is situated on the perimeter of the pool, is being used as part of the barrier, and meets the barrier requirements.

The residential pool barrier must be placed sufficiently away from the water's edge to prevent a young child or medically frail elderly person who may have managed to penetrate the barrier from immediately falling into the water.

The structure of an aboveground swimming pool may be used as its barrier or the barrier for may be mounted on top of its structure. All ladders or steps that are the means of access to an aboveground pool must be capable of being secured, locked, or removed to prevent access or must be surrounded by a barrier.

Access gates to the swimming pool must open outward away from the pool and be self-closing and equipped with a self-latching locking device, the release mechanism of which must be located on the pool side of the gate and placed so that it may not be reached by a young child over the top or through any opening or gap.

A wall of a dwelling may serve as part of the barrier if it does not contain any door or window that opens to provide access to the swimming pool and no barrier may be located in a way that allows any permanent structure, equipment, or similar object to be used for climbing the barrier.



A violation of the pool safety statutes is a second degree misdemeanor and punishable by law. Penalty may be avoided if the person, within 45 days after arrest or issuance of a summons or a notice to appear, has equipped the pool with at least one safety required feature and has attended a drowning prevention education program.



Material Facts

In *Johnson v. Davis*, 480 So. 2d 625 (Florida 1985), the Florida Supreme Court ruled that a seller of a home has a duty to disclose to the buyer known facts materially affecting the value of the property which are not readily observable and are not known to the buyer. Florida does not have a statute requiring the seller to disclose material facts affecting the value of real property for sale.

F.S. 689.27 – MILITARY PERSONNEL AND CONTRACT TERMINATION

Under F.S. 689.27, servicemembers may terminate agreements to purchase real property prior to closing by providing the seller or mortgagor of the property with a written notice of termination to be effective immediately, if certain criteria are met.

The criteria include:

- The servicemember is required to move 35 miles or more from the location of the property due to permanent change of station orders received after entering into a contract for the property and prior to closing.
- The servicemember is released from active duty or state active duty after having agreed to purchase the property and prior to closing while serving on active duty or state active duty status, and the property is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty.
- Prior to closing, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters.
- Prior to closing, the servicemember receives temporary duty orders, temporary change of station orders, or active duty or state active duty orders to an area 35 miles or more from the location of the property, provided such orders are for a period exceeding 90 days.



The servicemember is required to provide a copy of the official military orders or a written verification signed by his or her commanding officer along with the notice to the seller or mortgagor canceling the contract. The seller or mortgagor is required to refund any funds provided by the servicemember under the contract within 7 days from termination of a contract. The servicemember is not liable for any other fees due to the termination of the contract.



F.S. SECTION 712.02 - MARKETABLE RECORD TITLE TO REAL ESTATE



F.S. section 712.02 requires that any person having the legal capacity to own land in Florida, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, has a marketable record title to such estate in said land, which is be free and clear of all claims except the matters set forth as exceptions to marketability found in section 712.03.

A person has a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in the person claiming such estate or some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

Knowledge Check 13. Larry Landowner has the legal capacity to own land in Florida, and he has been vested in an estate in land for 29 ½ years, in two separate periods. One was for 10 years and one was for 19 ½ years and the two periods were three years apart. Does he have a marketable record title to the estate in the land?

- A. No, he would need to be vested for 30 years or more.
- B. Yes, because he may be vested for 30 years or less.
- C. No, because he must have hand an uninterrupted period of 30 years or more.
- D. Yes, because the aggregate of years is 30 years or less.



C. Complying with The IRS – Federal And Florida State Tax Law

FLORIDA TAX LAW – REAL PROPERTY

F.S. 689.261 TAX DISCLOSURE ACT

A prospective purchaser of residential property must be presented a disclosure summary at or before execution of the contract for sale. Unless a substantially similar disclosure summary is included in the contract for sale, a separate disclosure summary must be attached to the contract for sale.

Contents of disclosure:

PROPERTY TAX DISCLOSURE SUMMARY

BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

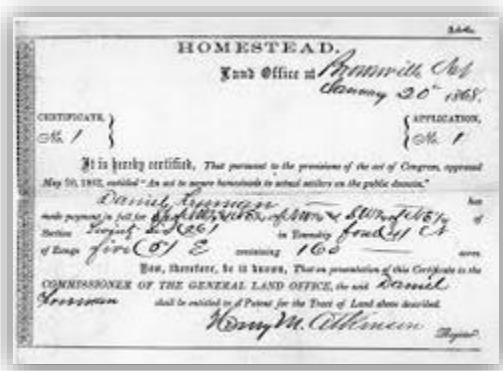
The property tax disclosure summary must be provided by the seller, unless included in the contract. If the property tax disclosure summary is not included in the contract for sale, the contract for sale must refer to, and incorporate by reference, the disclosure summary and include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.



Knowledge Check 14. Agnes Agent has given Betsy Buyer a property tax disclosure summary in a separate document than the contract for sale. Has she committed an error?

- A. No, because the contract for sale referred to the disclosure summary and included a statement that the potential purchaser should not execute the contract until Betsy has read the disclosure summary.
- B. No, if the contract for sale referred to the disclosure summary and included, in prominent language, a statement that the Betsey should not execute the contract until she has read the disclosure summary.
- C. Yes, because the disclosure summary must be contained within contract for.
- D. Yes, unless the contract for sale referred to and incorporated by reference the disclosure summary and included, in prominent language, a statement that Betsy should not execute the contract until she has read the disclosure summary.

F.S. SECTION 222.01 – DESIGNATION OF HOMESTEAD BY OWNER (BEFORE LEVY)



Florida residents may make a written statement declaring homestead. The statement must contain a description of the real property, mobile home, or modular home claimed to be exempt and declare that the real property, mobile home, or modular home is the homestead of the party in whose behalf such claim is made. The statement must be signed by the person making it and recorded in the circuit court.

Homestead laws exempt property from forced sale under any process of law.

An example of the Notice to Homestead is on the following page.



NOTICE OF HOMESTEAD

To: (Name and address of judgment creditor as shown on recorded judgment and name and address of any other person shown in the recorded judgment to receive a copy of the Notice of Homestead).

You are notified that the undersigned claims as homestead exempt from levy and execution under Section 4, Article X of the State Constitution, the following described property:

(Legal description)

The undersigned certifies, under oath, that he or she has applied for and received the homestead tax exemption as to the above-described property, that is the tax identification parcel number of this property, and that the undersigned has resided on this property continuously and uninterruptedly from (date) to the date of this Notice of Homestead. Further, the undersigned will either convey or mortgage the above-described property pursuant to the following:

(Describe the contract of sale or loan commitment by date, names of parties, date of anticipated closing, and amount. The name, address, and telephone number of the person conducting the anticipated closing must be set forth.)

The undersigned also certifies, under oath, that the judgment lien filed by you on (date) and recorded in Official Records Book , Page , of the Public Records of County, Florida, does not constitute a valid lien on the described property.

YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION 222.01 ET SEQ., FLORIDA STATUTES, THAT WITHIN 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU MUST FILE AN ACTION IN THE CIRCUIT COURT OF COUNTY, FLORIDA, FOR A DECLARATORY JUDGMENT TO DETERMINE THE CONSTITUTIONAL HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO FORECLOSE YOUR JUDGMENT LIEN ON THE PROPERTY AND RECORD A LIS PENDENS IN THE PUBLIC RECORDS OF THE COUNTY WHERE THE HOMESTEAD IS LOCATED. YOUR FAILURE TO SO ACT WILL RESULT IN ANY BUYER OR LENDER, OR HIS OR HER SUCCESSORS AND ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF SALE OR LOAN COMMITMENT TO TAKE FREE AND CLEAR OF ANY JUDGMENT LIEN YOU MAY HAVE ON THE PROPERTY.

The notice must be sworn and subscribed to before a notary public.

F.S. 192.0105 – TAXPAYER’S BILL OF RIGHTS





Florida created a Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of taxpayers in Florida are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of Florida.

The Taxpayer's Bill of Rights summarizes the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of Florida are found in F.S. section 213.015.

The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue.

<http://www.irs.gov/uac/Newsroom/IRS-Adopts-Taxpayer-Bill-of-Rights;-10-Provisions-to-be-Highlighted-on-IRSpGov,-in-Publication-1>



FLORIDA TAX LAW – INCOME

F.S. SECTION 205.067 – EXEMPTIONS FOR BROKER ASSOCIATES AND SALES ASSOCIATES

Florida Statute section 205.067 was adopted in 2012 and states that individuals licensed and operating as broker associates or sales associates under F.S. chapter 475 are not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt.

An individual exempt under F.S. section 205.067 may not be held liable by any local governing authority for the failure of a principal or employer to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt.

An individual exempt under F.S. section 205.067 may not be required by any local governing authority to apply for an exemption from a local business tax, otherwise prove his or her exempt status, or pay any tax or fee related to a local business tax.

A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for individuals exempt under this section in order to obtain a local business tax receipt.

http://dor.myflorida.com/dor/taxes/tax_interest_rates.html

Knowledge Check 15. Bobby Broker is a licensed broker in Florida and he has applied for a local business tax exemption so that he won't have to pay a local business tax. Is he in any trouble under F.S. section 205.067?

- A. No, Bobby was required to apply for an exemption from a local business tax and he'll be required to pay a local business tax, and obtain a local business tax receipt.
- B. No, Bobby was not required to apply for an exemption from a local business tax, but must pay a local business tax, and obtain a local business tax receipt, so applying for the exemption was a good idea.
- C. No, Bobby is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt.
- D. Yes, Bobby is required pay a local business tax and no exemptions apply.



FEDERAL TAX LAWS

Real estate brokers, sales associate, buyers and sellers of real property may qualify for credits against tax obligations, or owe taxes when real property is sold. The following list is not as a substitute for tax or legal advice, but for informational purposes only, and does not include all available tax schedules and forms from the Internal Revenue Service.

IRS SCHEDULE A - ITEMIZED DEDUCTIONS

Taxpayers may elect to itemize deductions including interest on debts secured by a principal residence or a second home (also known as a mortgage interest deductions), on Schedule A, lines 10 and 11.

Taxpayers may elect to itemize mortgage insurance premiums paid on Schedule A, line 13.

Taxpayers may elect to itemize real estate taxes paid on Schedule A, line 6.

Real estate brokers and sales associates may itemize certain unreimbursed job related expenses on Schedule A, line 21.

IRS SCHEDULE C – PROFIT AND LOSS FROM A BUSINESS

Independent contractors or sole proprietors use Schedule C to record the profit and loss from business.

IRS SCHEDULE D – CAPITAL GAINS AND LOSSES

Qualified tax payers pay no capital gains tax on the sale of a main home. The taxpayer may exclude up to \$250,000 for single person or \$500,000 for married couple from income when filing the federal income tax return and appropriate schedules.

IRS SCHEDULE E – SUPPLEMENTAL INCOME AND LOSS

Schedule E is used to report income or loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, and residual interests in Real Estate Mortgage Investment Conduits (REMICs).

IRS SCHEDULE K-1 – PARTNER’S SHARE OF INCOME, CREDITS, ETC.

Schedule K-1 is used to report income from partnerships, S corporations and some trusts. Accurate filing of the forms is important because the IRS continues to match income from Schedules K-1 to other tax returns.



Knowledge Check 16. Stanley Seller and his wife sold their home for \$600,000; do they have to pay a capital gains tax on the sale?

- A. Yes, but they may exclude \$500,000.
 - B. No, they may exclude all of the proceeds up to \$750,000.
 - C. Yes, but they may only exclude \$300,000.
 - D. Yes, so long as he and his wife each claim \$250,000 of the proceeds on their own return and then pay the capital gains on the remaining \$100,000.
-

Knowledge Check 17. Leonard Landlord and Peter Partner have several rental properties in and around Miami. Some renters pay rent with no problems, but sometimes the partners must evict renters, creating a loss in rental income. What should they do?

- A. File a Schedule E to report income or loss from rental real estate.
 - B. File a Schedule K-1 to report income from partnerships.
 - C. File a Schedule C for independent contractors or sole proprietors to record the profit and loss from business.
 - D. Nothing, the partners have no recourse in Federal tax law.
-



HELPFUL HINT: After you've visited the page where the Knowledge Check information is, return to this page:

Windows: Return TO THIS PAGE **Alt + ←** (back arrow)

MAC: Return TO THIS PAGE Acrobat: **CMD + ←** Default MAC PDF: **CMD + [** (bracket next to "P")

KNOWLEDGE CHECK ANSWERS FOR PART 1

- Knowledge Check 1:** Under F.A.C. 61J2-20.049, members of the Commission are paid \$50.00 for –
A. Each day in attendance at a meeting
- Knowledge Check 2:** Ricky Realtor is a licensed real estate broker. After having some health problems, he decided to allow his real estate broker's license to become inactive for five years, but is ready to get back to work. He may expect to be charged fees for all but the following:
D. Annual fee after license revocation.
- Knowledge Check 3.** Agnes wants to become a licensed real estate agent. How many classroom hours will she be required to complete?
A. 63 classroom hours of 50 minutes each, including examinations
- Knowledge Check 4.** Risky Realtor not only stole money from several of his clients, he also stole property from houses that were on the market for sale. Which is not a punishment that the DBPR may impose?
C. Imposition of a jail sentence not to exceed one year
- Knowledge Check 5.** A licensee may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing – **C. At least 14 hours of a Commission-prescribed continuing education course**
- Knowledge Check 6.** F.A.C. 61J2-10.025 requires that all advertising include all but the following – **D. Include at least the first name of the licensee \$100,000 per receivership**
- Knowledge Check 7.** Marty Marine was just honorably discharged from the U.S.M.C. and wants to become a licensed Florida real estate agent. What fees may Marty expect to pay? **A. None.**
- Knowledge Check 8.** Florida real estate, an agency relationship exists between brokers and sales associates under the doctrine of ?
B. Respondeat Superior.
- Knowledge Check 9.** The agency relationship is important because it:
A. Defines liability



- Knowledge Check 10.** Leonard Lender wants to be sure to comply with RESPA, so what should he provide to consumers?
C. The cost of the mortgage settlement
- Knowledge Check 11.** Under the Fair Housing Act, has the couple been discriminated against?
D. Yes, if the denial of the sale was due to race, color, religion, sex or national origin
- Knowledge Check 12.** Which of the following statements is inaccurate about the SAFE for Mortgage Licensing Act?
D. It is considered ineffective and is slated for remand once an adequate replacement Act is written and adopted.
- Knowledge Check 13.** Larry Landowner has the legal capacity to own land in Florida, and he has been vested in an estate in land for 29 ½ years, in two separate periods. One was for 10 years and one was for 19 ½ years and the two periods were three years apart. Does he have a marketable record title to the estate in the land?
A. No, he would need to be vested for 30 years or more.
- Knowledge Check 14.** Agnes Agent has given Betsy Buyer a property tax disclosure summary in a separate document than the contract for sale. Has she committed an error?
D. Yes, unless the contract for sale referred to and incorporated by reference the disclosure summary and included, in prominent language, a statement that Betsy should not execute the contract until she has read the disclosure summary.
- Knowledge Check 15.** Bobby Broker is a licensed broker in Florida and he has applied for a local business tax exemption so that he won't have to pay a local business tax. Is he in any trouble under F.S. section 205.067?
C. No, Bobby is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt.
- Knowledge Check 16.** Stanley Seller and his wife sold their home for \$600,000, do they have to pay a capital gains tax on the sale?
A. Yes, but they may exclude \$500,000
- Knowledge Check 17.** Leonard Landlord and Peter Partner have several rental properties in and around Miami. Some renters pay rent with no problems, but sometimes the partners must evict renters, creating a loss in rental income. What should they do?
A. File a Schedule E to report income or loss from rental real estate.



PART II

11-HOUR CONTINUING EDUCATION COURSE

SECTION 4 – HANDLING OF FUNDS

A. Ethics



Real estate brokers and sales associates are entrusted with money. F.S. sections 475.25(1)(k) and (1)(d) are concerned with what happens if a broker fails to properly handle money entrusted to him or her. The section also authorizes the rules found in F.A.C. 61J2-14 that address money entrusted to brokers.

Under F.S. section 475.25(1) the Commission may deny an application for licensure, registration, or permit, or renewal of a license, or may place a licensee, registrant, or permittee on probation or may suspend a license, registration, or permit for a period of up to 10 years or may revoke a license, registration, or permit or may impose an administrative fine of up to \$5,000 for each count or separate offense or may issue a reprimand or a combination of any, if it finds that the licensee, registrant, permittee, or applicant has violated the provisions of F.S. section 475.25(1)(k).

The answers to Part II Knowledge Checks begin on page 207 and are linked back to the content page.

Knowledge Check 18. Bobby Broker violated a provision of licening law. He’s worried about the punishment he may receive by the Commission. He knows he could have to serve probation and pay a fine. How long and how much?

- A. 10 years, \$5,000.
 - B. 5 years, \$2,500.
 - C. 3 years, \$2,000.
 - D. 2 years, \$1,500.
-





F.S. section 475.25(1)(k) states that the Commission may **take action against** a licensee, registrant, or permittee, if a broker, if he or she **has failed to place**, *immediately upon receipt, any money, fund, deposit, check, or draft entrusted to him or her, in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in Florida, in a trust or escrow account maintained by him or her with some bank, credit union, or savings and loan association located and doing business in Florida.

The funds must be kept until disbursement is properly authorized.

Section 475.25(1)(k) also states that the Commission may take action against a licensee, registrant, or permittee, if a sales associate, if he or she has failed, to *immediately place with his or her registered employer any money, fund, deposit, check, or draft entrusted to him or her by any person dealing with him or her as agent of the registered employer.

(* "Immediately" means no later than the end of the 3rd business day following receipt of the item to be deposited.. Saturday, Sunday and legal holidays are not business days.)

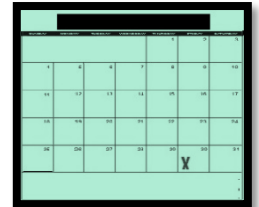
The Commission must establish rules to provide for records to be maintained by the broker and the manner in which deposits must be made. A broker may place and maintain:

- up to **\$5,000 of personal or brokerage funds** in the broker's property management escrow account, and
- up to **\$1,000 of personal or brokerage funds** in the broker's sales escrow account.

A broker must be provided *a reasonable amount of time to correct escrow errors if:

- there is no shortage of funds, and
- the errors don't pose a significant threat to economically harm the public.

(* "A reasonable amount of time" means 30 days from the date the last reconciliabtion statement was performed or should have been performed.)



Knowledge Check 19. Bobby Broker must be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and –

- A. He did not deliberately withhold funds from his trust.
 - B. He did deliberately withhold funds from his trust but the his actions didn't pose a significant threat to economically harm the public.
 - C. The errors don't pose a significant threat to economically harm the public.
 - D. His conduct was not malicious or capricious.
-



F.A.C. 61J2-14.008 provides the definitions regarding entrusted funds.

A “deposit” is a sum of money, or its equivalent, delivered to a real estate licensee as earnest money, a payment, or a part payment, in connection with any real estate transaction named or described in F.S. section 475.01(1)(a), or for the purpose of obtaining satisfaction, release, or assignment of mortgages, or quit claim or other deeds deemed necessary or desirable in acquiring or perfecting the title to real estate, or assembling interest therein, or such sum delivered in escrow, trust or on condition, in connection with any transaction conducted, or being conducted, by such licensee within the scope of F.S. chapter 475.



A deposit also extends to and includes not only cash, or currency, but any medium of exchange, or any securities to be converted into money, delivered for any of the purposes described in the statute, to be held or converted into cash or bank credits.

Brokers are not responsible for the payment of any check or draft unless through culpable negligence, i.e., failure to deposit the check or draft in the regular course of business, and the check or draft is not paid due to such culpable negligence, and damage results to some party entitled to complain of said culpable negligence.



“Trust” or “escrow” account means an account in a bank or trust company, title company having trust powers, credit union, or a savings and loan association within the State of Florida. Only funds described in F.A.C. 61J2-14 must be deposited in trust or escrow accounts. No personal funds of any licensee may be deposited or intermingled with any funds being held in escrow, trust or on condition except as provided in F.A.C. 61J2-14.010(2).

When a deposit is placed or to be placed with a title company or an attorney, the licensee who prepared or presented the sales contract must indicate on that contract the name, address, and telephone number of the title company or attorney.

Within 10 business days after each deposit is due under the sales contract, the licensee’s broker must make written request to the title company or attorney to provide written verification of receipt of the deposit, unless the deposit is held by a title company or by an attorney nominated in writing by a seller or seller’s agent.



Within 10 business days of the date the licensee's broker made the written request for verification of the deposit, the licensee's broker must provide seller's broker with either a copy of the written verification, or, if no verification is received by licensee's broker, written notice that the licensee's broker did not receive verification of the deposit.



If a seller is not represented by a broker, then the licensee's broker must notify the seller directly in the same manner.

F.A.C. 61J2-14.009 requires every sales associate who receives any deposit, as defined in F.A.C. rule 61J2-14.008, to deliver the same to the broker or employer no later than the end of the next business day following receipt of the item to be deposited.



Receipt by a sales associate, or any other representative of the brokerage firm, constitutes receipt by the broker.

If the licensee, registrant, permittee, or applicant has failed to account or deliver to any person, including a licensee under chapter 475, at the time that was agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery, any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document or thing of value, including a share of a real estate commission if a civil judgment relating to the practice of the licensee's profession has been obtained against the licensee and the judgment has not been satisfied in accordance with the terms of the judgment within a reasonable time, or any secret or illegal profit, or any divisible share or portion of a divisible share, which has come into the licensee's hands and which is not the licensee's property or which the licensee is not in law or equity entitled to retain under the circumstances.



If the licensee, in good faith, entertains doubt as to what person is entitled to the accounting and delivery of the escrowed property, or if conflicting demands have been made upon the licensee for property he or she still maintains in his or her escrow or trust account, the licensee must promptly notify the Commission of his or her doubts or conflicting demands and employ one of the following escape procedures:

- (1) Request that the Commission issue an escrow disbursement order determining who is entitled to the escrowed property.
- (2) With the consent of all parties, submit the matter to arbitration.
- (3) By interpleader or otherwise, seek adjudication of the matter by a court.
- (4) With the written consent of all parties, submit the matter to mediation.

If the matter is submitted for mediation, the mediation process must be successfully completed within 90 days following the last demand or the licensee must promptly employ one of the other escape procedures contained in section 475.25(1)(d).

If the licensee promptly employs one of the escape procedures and abides by the resulting order or judgment, then no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property.



Under certain circumstances, which the Commission sets forth by rule, a licensee may disburse property from the licensee's escrow account without notifying the Commission or employing one of the escape procedures. If the buyer of a residential condominium unit delivers to a licensee written notice of the buyer's intent to cancel the contract for sale and purchase, as authorized by F.S. section 718.503, or if the buyer of real property in good faith fails to satisfy the terms in the financing clause of a contract for sale and purchase, the licensee may return the escrowed property to the purchaser without notifying the Commission or initiating any of the escape procedures.



The Commission may also take action if the licensee, registrant, permittee, or applicant has failed to deposit money in an escrow account when the licensee is the purchaser of real estate under a contract where the contract requires the purchaser to place deposit money in an escrow account to be applied to the purchase price if the sale is consummated.

F.A.C. 61J2-14.010 requires every broker who receives from sales associates, principals, prospects, or other persons interested in any real estate transaction, any deposit, fund, money, check, draft, personal property, or item of value to immediately place the same in a bank, savings and loan association, trust company, credit union or title company having trust powers, in an insured escrow or trust account.

The broker must be a signatory on all escrow accounts. If the brokerage entity has more than one broker licensee, then one broker licensee may be designated as the signatory.

If the deposit is in securities, intended by the depositor to be converted into cash, the conversion must be made at the earliest practical time and the proceeds immediately deposited in the account.



Knowledge Check 20. Under F.A.C. 61J2-14.001 a broker who receives a deposit does not have any right to or lien upon the deposit except –

- A. If the broker has performed all duties under the contract.
- B. Upon the written agreement or order of the depositor so long as the depositor or depositor's legal representative has sole control of the deposit.
- C. If the depositor has breached the contract and has failed to pay for the services of the broker, as long as the transaction involved has been closed.
- D. If the broker has ascertained that no other part may claim any of the deposit.



The rule of 61J2-14 allows a broker to place and maintain up to \$1,000 of personal or brokerage funds per each sales escrow account. A broker may place and maintain up to \$5,000 of personal or brokerage funds per each property management escrow account. Personal or brokerage funds in any escrow account may not exceed \$5,000 per account.



F.A.C. rule 61J2-14.001 provides that a broker who receives a deposit does not have any right to, or lien upon, the deposit, except upon the written agreement or order of the depositor as long as the depositor or depositor's legal representative has sole control of the deposit, until the transaction involved has been closed, and no person has any claim except the party ultimately to receive the same.

The broker may deduct the agreed commission unless the amount or time of payment is disputed.

In case of a dispute as to the amount of the Commission, or the time of payment, the broker may retain only the amount of the claim in the account and in trust, until the dispute is settled by agreement, arbitration, mediation or court proceedings, as provided in F.S. section 475.25(1)(d)1.

A depositor has the right to demand return of a deposit until such time as another party has acquired some interest or equity, subject to the right to make an express agreement to compensate the broker for time and expense incurred prior to the demand.

The right to demand return of the deposit accrues upon:

- (1) a breach by the other party to the contract or agreement under which it is held, or
- (2) the expiration of the time fixed, or a reasonable time, for performance of the things necessary to establish the exclusive right of the other party to said deposit.

A broker may not deliver the deposit to the other party to the transaction until the transaction is closed, except as otherwise directed or agreed to specifically by the depositor.

The interested parties involved, other than the broker, may by express agreement, alter the disposal of the deposit, but the burden is on the broker to establish good faith in the matter if the agreement is to the broker's advantage.



The broker must recognize and comply with the joint directions of the parties in such cases, except where the parties act in bad faith with intent to deprive the broker of a commission. In that case the broker must proceed as provided in F.S. section 475.25(1)(d)1.

Brokers are required to maintain business records under F.S. section 475.5015 and keep and make available to the DBPR such books, accounts, and records as will enable the DBPR to determine whether such broker is in compliance with the provisions of F.S. chapter 475.

5 YEARS

Brokers must preserve at least one legible copy of all books, accounts, and records pertaining to his or her real estate brokerage business for at least 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker or, in the event no funds are entrusted to the broker, for at least 5 years from the date of execution by any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker.

Knowledge Check 21. Bobby Broker just threw out a lot of his old files, including copies of all books, accounts, and records pertaining to his real estate brokerage business. Has he violated any laws?

- A. No, as long as it has been 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to him.
 - B. No, as long as it has been 5 years from the date of execution of the sales and purchase contract.
 - C. No, as long as it has been 7 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to him.
 - D. No, as long as it has been 7 years from the date of execution of the sales and purchase contract.
-



If any brokerage record has been the subject of, or has served as evidence for, litigation, any relevant books, accounts, and records must be retained for at least 2 years after the conclusion of the civil action or the conclusion of any appellate proceeding, whichever is later, but in no case less than a total of 5 years.

Disclosure documents required under sections 475.2755 and 475.278 must be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.



Brokers who receive deposits must preserve and make available to the DBPR all deposit slips and statements of accounts rendered by the depository pursuant to F.A.C. 61J2-14.012. The deposit slips must be made available together with all agreements between the parties to the transaction.

Brokers must also keep an accurate account of each deposit transaction and each separate bank account where funds have been deposited, and all books and accounts are subject to inspection by the DBPR or its authorized representatives at all reasonable times during regular business hours.

Once monthly, brokers are required to generate a written statement comparing the broker's total liability with the reconciled bank balance of each trust account. The broker's trust liability is defined as the sum total of all deposits received, pending and being held by the broker at any point in time.

The minimum information to be included in the monthly statement-reconciliation includes the date the reconciliation was undertaken, the date used to reconcile the balances, the name of the bank(s), the name(s) of the account(s), the account number(s), the account balance(s) and date(s), deposits in transit, outstanding checks identified by date and check number, an itemized list of the broker's trust liability, and any other items necessary to reconcile the bank account balance(s) with the balance per the broker's checkbook(s) and other trust account books and records disclosing the date of receipt and the source of the funds. The broker must then review, sign and date the monthly statement-reconciliation.

If the trust liability and the bank balances do not agree, the reconciliation must contain a description or explanation for any difference and all corrective action taken in reference to shortages or overages of funds in the account(s).

Whenever a trust bank account record reflects a service charge or insufficient funds fee, or whenever an account has a negative balance, the reconciliation must disclose the cause or causes of the returned check or negative balance and the corrective action taken.

Under F.S. section 475.5016, duly-authorized agents and employees of the DBPR have the power to inspect and audit in a lawful manner, at all reasonable hours, any broker or brokerage office licensed under F.S. chapter 475, for the purpose of determining if any of the provisions of chapter 475 or 455, or any rule promulgated under authority of either chapter is being violated.



Brokers may place escrow funds into an interest-bearing account under F.A.C. 61J2-14.014. Written permission of all parties to a transaction is required before the placement of escrow monies in an interest-bearing account. The agreement must designate the party who is to receive the interest, and the time the earned interest must be disbursed. All escrow accounts must be in an insured account in a depository located and doing business in Florida.



In order to disburse principal and interest to the designated party at the time agreed, the broker must first transfer the principal and interest to a non-interest-bearing escrow account before disbursement. In the event the broker is designated by all parties to receive the interest, only the principal is to be transferred to the non-interest-bearing escrow account for further disbursement.

Interest must be transferred directly to the broker's operating account.

Alternatively, the broker may establish an individual interest-bearing escrow account for a specific transaction or sum of money. On the date agreed upon for disbursement of the principal and interest, the broker must close the account with checks issued to the appropriate person or business entity for the principal and interest.



Under F.A.C. 61J2-10.032, if a real estate broker receives conflicting demand for any trust funds maintained in the broker's escrow account, he or she must provide written notification to the Commission within 15 business days of the last party's demand and the broker must institute one of the settlement procedures required in F.S. section 475.25(1)(d)1 within 30 business days after the last demand.

A broker, who has a good faith doubt as to whom is entitled to any trust funds held in the broker's escrow account, must provide written notification to the Commission within 15 business days after having such doubt and must institute one of the settlement procedures found in F.S. section 475.25(1)(d)1 within 30 business days after having such doubt. The determination of good faith doubt is based upon the facts of each case brought before the Commission.



In the event a party to a failed real estate sales transaction does not respond to the broker's inquiry as to whether that party is placing a demand on the trust funds or is willing to release the funds to the other party, the broker may send a certified notice letter, return receipt requested, to the non-responding party. The notice letter should include the information that a demand has been placed by the other party, that a response must be received by a certain date, and that failure to respond will be construed as authorization for the broker to release the funds to the other party.

If the broker has instituted a settlement procedure other than a request for an Escrow Disbursement Order, the broker must provide written notification to the Commission within 30 business days of the receipt of the last demand or good faith doubt of the procedure instituted to resolve the matter.

If the broker has requested an Escrow Disbursement Order and the broker is notified in writing that no Escrow Disbursement Order will be issued, then the broker must institute another settlement procedure and notify the Commission within 30 business days after the broker's receipt of such notification.

If the broker has requested an Escrow Disbursement Order and the dispute is subsequently settled or goes to court before the Order is issued, the broker must notify the Commission within 10 business days of such event.

The effective date for notifications is deemed to be the date of the postmark or other dispatch of notification. A request for an Escrow Disbursement Order as a settlement procedure is deemed instituted when the completed request form is mailed or otherwise dispatched to the Commission.

Knowledge Check 22. The effective date for notifications to the Commission concerning an escrow disbursement order is deemed to be –

- A. The date it is received by the intended recipient.
- B. The date it is placed in a mail receptacle, regardless of time of day.
- C. The date of the postmark or other dispatch of notification.
- D. The date stamped as "returned" if the notification is returned without successful delivery.



Brokers who are entrusted with an earnest money deposit (EMD), pursuant to a residential sales contract utilized by the DBPR of Housing and Urban Development (HUD) in the sale of property owned by HUD, are not required to follow the notice or settlement procedures of F.S. section 475.25(1)(d)1 but must follow HUD's Agreement to Abide, Broker Participation Requirements, and 24 C.F.R. section 291.135 for proper disposition of an EMDs.



B. Disclosures

Providing disclosures serves a key goal in the business of real estate, educating both the borrower and the public at large. Disclosures are required in all aspects of a real estate transaction, from creating the broker or sales associate/purchaser relationship, to creating the lender/borrower relationship and even the buyer/seller relationship. When parties enter into the various relationships they have certain protections under the law, and disclosures are an important part of that protection.



BROKERS AND AGENTS

All disclosures required by the Brokerage Relationship Disclosure Act, F.S. section 475.272 are discussed fully in Part I of this course.

REAL ESTATE SALES TRANSACTIONS



All Real Estate Settlement Procedures Act (RESPA) forms mentioned in this course can be found at this link. If you haven't already done so, it's a good idea to make this link one of your "favorites" in your browser:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/respa_hm

RESPA, the Good Faith Estimate and HUD-1

The Real Estate Settlement Procedures Act of 1974, known as RESPA and REG X, regulates disclosure of affiliated businesses and estimated costs and is administered and enforced by the Consumer Financial Protection Bureau (CFPB). The Act ensures that consumers are provided with information about the cost of the mortgage settlement and protects consumers from unnecessarily high settlement charges caused by certain abusive practices.

RESPA was enacted in the hope of making consumers better shoppers for settlement services and the key method for achieving that goal is through the use of mandatory disclosures. Settlement is also known as "closing" and is the final step in a real estate transaction. Required disclosures under RESPA provide the buyer with information about the actual costs of settlement, a description of lender services, and an explanation of escrow account practices.



Knowledge Check 23. Leonard Lender wants to be sure to comply with RESPA, so what should he provide to consumers?

- A. The disclosures required under the Act.
- B. Lead-based paint and associated hazards.
- C. The cost of the mortgage settlement.
- D. Specific settlement charges caused by certain abusive practices.



Under RESPA, a standardized Good Faith Estimate (GFE), is required to facilitate shopping among settlement service providers. The standardized GFE provides improved disclosure of settlement costs and interest rates.

When a buyer applies for a loan, he or she is given a GFE by the lender that lists estimated settlement service charges the borrower will likely pay. Most lenders give buyers the GFE when an application for the loan is filed, but if the GFE is not provided at that time, it must be mailed to the borrower within the next three business days.

The key thing to remember about GFE's is that the costs associated with settlement are estimates and that actual costs may be different depending upon various factors in the market. The GFE is not a statement or guarantee from the lender to the borrower, but is an excellent tool for the borrower to use when making decisions about borrowing the funds necessary to purchase the real estate.

The HUD-1 Settlement Statement has been improved and provides for better understanding of the actual closing costs to the buyer. The HUD-1 Settlement Statement is a form that lists all charges and credits to the borrower and seller in a transaction. Buyers are encouraged to compare the HUD-1 Settlement Statement to the GFE and ask his or her lender about any differences.

The HUD-1 must be made available for inspection by the borrower business day before the settlement. The HUD-1 itemizes the services provided to the borrower, along with the charges for the services.

HUD-1 Settlement Statements are prepared by the settlement agent that conducts the settlement. If no settlement meeting is scheduled, the settlement agent must mail the HUD-1 after settlement, which leaves the borrower with no right to inspect the HUD-1 beforehand.

Another disclosure requirement of RESPA is a Servicing Disclosure Statement, which is a written statement from the lender to the borrower at the time of application for the loan or within the next three business days afterward, if someone else other than the lender will service the loan. Servicing the loan means to collect the loan payments.



http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/ramh/res/sc2sectg

An **Escrow Account Operation and Disclosures** are also required by RESPA. Lenders may require borrowers to establish an escrow account in order for taxes and insurance premiums to get paid. Generally, taxes and insurance premiums are collected during settlement for the first year of the loan and borrowers pay an additional amount to the lender each month along with the regular mortgage payment to keep enough money available for taxes and insurance.

Extra money placed into escrow accounts act as a “cushion” against payment due in the future, but RESPA limits the amount of the cushion to a maximum of two months of escrow payments..

At the time of settlement, or within the next 45 days, the loan servicer must provide the borrower an initial escrow account statement showing all payment expected to be deposited into the account and all anticipated disbursements from the account for the next 12-month period. Annual escrow account statements must be provided to borrowers showing the prior year’s activity and any necessary adjustments for the upcoming year.



Often, many settlement services are owned by related businesses. Businesses that have a common corporate parent may be known as “affiliated.” If a borrower is referred to a service provider, RESPA requires the referring party to provide the borrower with an Affiliated Business Arrangement Disclosure, which must clearly state that an affiliated business does not have to be utilized in order to obtain the funding for the loan.

Under RESPA, borrowers are protected from illegal referral fees or kickbacks. Lenders, for instance, may not pay fees to real estate brokers for referring buyers to the lender for the loan. Fees are illegal, unless the person receiving the fee has actually performed settlement services for the fee. Lenders may not “mark-up” the costs for appraisals, inspections, or other services that may occur during the purchase transaction.

Anyone who pays or receives a referral fee in violations of RESPA may receive a fine or jail time, or both. In a private civil lawsuit, the complainant could receive up to three times the amount of the charge for any settlement service prohibited under RESPA, along with court costs and attorney’s fees.

TRUTH IN LENDING ACT

website: <http://mortgage-home-loan-bank-fraud.com>

Preliminary Audit Form: http://mortgage-home-loan-bank-fraud.com/tila_services_app.html





The Truth in Lending Act of 1968 is also known as TILA and as REG Z, and it prescribes uniform methods for computing the cost of credit, for disclosing credit terms, for resolving errors on certain types of credit accounts, and regulates disclosure of anticipated credit costs. The Act promotes the informed use of consumer credit.

The Act was designed to promote the informed use of consumer credit. Like RESPA, TILA uses required disclosures as a means of educating consumers about the costs associated with borrowing.

Under TILA, consumers may cancel certain credit transactions that involve a lien on the consumer's principal dwelling. TILA also regulates certain high-cost mortgage loans. TILA requires uniform or standardized disclosure of costs and charges so that consumers may shop around for the best deal.

Knowledge Check 24. Betsy Buyer is buying a house. Under the Truth in Lending Act, TILA, Betsy may:

- A. Demand a low-cost mortgage loan.
 - B. Waive her right to receive uniform disclosures to avoid settlement delays.
 - C. Not shop around for the best mortgage after receiving the TILA disclosure.
 - D. Cancel certain credit transactions that involve a lien on Betsy's principal dwelling.
-

RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992



The Residential Lead-Based Paint Hazard Reduction Act of 1992 is also known as Title X and requires disclosure by a seller or landlord to a buyer or tenant before a contract for sale or lease is entered into. The requirement includes providing the buyer or tenant with an EPA approved information pamphlet on identifying and controlling lead-based paint hazards, "Protect Your Family From Lead in Your Home."



Sellers or their sales agents must tell prospective buyers what the seller actually knows about the home's lead-based paint or lead-based paint hazards.

Disclosures include any known information concerning lead-based paint or lead-based paint hazards and their location and the condition of painted surfaces. Sellers and landlords must provide any available records and reports on lead-based paint and/or lead-based paint hazards.

Owners or landlords of multi-unit buildings must include records and reports concerning common areas and other units, when such information was obtained as a result of a building-wide evaluation.

The contract for sale or lease agreement must include an attachment or contain required language of a Lead Warning Statement, which confirms that the seller or landlord has complied with all notification requirements. The attachment must be provided in the same language used in the rest of the contract. Sellers or landlords, and agents, as well as homebuyers or tenants, must sign and date the attachment.

Sellers must provide homebuyers a 10-day period to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity.

Most private housing is covered under the Residential Lead-Based Paint Hazard Reduction Act of 1992, including public housing, Federally owned housing, and housing receiving Federal assistance. TILA affects homes built before 1978.



MORTGAGES

HOME MORTGAGE DISCLOSURE ACT



The Home Mortgage Disclosure Act of 1975 is also known as HMDA or REG C and requires certain mortgage lenders to disclose data regarding their lending patterns. Under HMDA, financial institutions must maintain and annually disclose data about home purchases, home purchase pre-approvals, home improvement, and refinance applications involving 1 to 4 unit and multifamily dwellings. Financial institutions and their branches must display a HMDA poster.

HMDA was designed by the Federal Reserve Board in order to help public officials to distribute public-sector investments, discover if financial institutions are serving housing needs of communities and to identify discriminatory lending practices.



COMMUNITY ASSOCIATIONS AND TIMESHARES

HOMEOWNERS' ASSOCIATION DISCLOSURE LAW



The Florida Homeowners' Association Disclosure Act of 2004 is found in F.S. section 720.401 and requires that a prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale.

The HOA disclosure summary must be in a form substantially similar to the following form:

The disclosure must be supplied by the developer or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale must refer to and incorporate the disclosure summary and in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary.

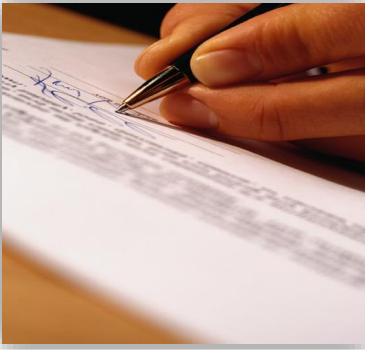
IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

If the disclosure summary is not provided to a prospective purchaser before the purchaser executes a contract for the sale of property, the purchaser may void the contract by delivering to the seller or the seller's agent or representative written notice canceling the contract. The written notice must be provided within 3 days of receipt of the disclosure summary or prior to closing, whichever occurs first.

The right to cancel the contract may not be waived by the purchaser but terminates at closing.



CONDOMINIUMS DISCLOSURE LAW



F.S. section 718.503 requires developers and non-developers to provide written disclosures to buyers of condominiums.

F.S. 718.503(1)(a) states that any contract for the sale of a residential unit or a lease for an unexpired term of more than 5 years must contain a notice typed conspicuously.

THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

The contract must also contain the following caveat in conspicuous type on the first page of the contract.

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.





If the unit has been occupied by someone other than the buyer, the disclosure must contain a statement that the unit has been occupied.

If the contract is for the sale or transfer of a unit subject to a lease, a copy of the executed lease must be included and the contract must contain within the text in conspicuous type:

THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

Knowledge Check 25. Suzie Seller and Betsy Buyer have a contract for the sale of Suzie's unit in a condominium community. Suzie has been leasing the property to Leslie Lessee . What must the parties do?

- A. The parties may not lawfully enter into a sale and a lease at the same time.
 - B. Attach a copy of the executed lease to the contract and include the words, "The unit is subject to a lease (or sublease) in conspicuous type.
 - C. Attach a copy of the executed lease to the contract and include the words, "The sale of the unit is contingent upon Suzie leasing the unit for a specified term" in conspicuous type.
 - D. Ensure that each party has obtained their own attorney to handle the transactions.
-



If the contract is for the lease of a unit for a term of 5 years or more, then a copy of the proposed lease must be included as an exhibit.

If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, then the following statement must be contained within the text in conspicuous type:



THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

The contract must state the name and address of the escrow agent required by F.S. section 718.202 and that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, then it must contain within the text in conspicuous type:

UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.

The contract for the sale of a fee interest in a timeshare estate must also contain, in conspicuous type, the following:

FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.



NON-DEVELOPER DISCLOSURE



Condominium unit owners who are not developers must comply with the provisions of F.S. section 718.503(2) prior to the sale of his or her unit. Prospective purchasers who have entered into a contract for the purchase of a condominium unit are entitled to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association, financial information required by F.S. section 718.111, and the document entitled "Frequently Asked Questions and Answers" required by section 718.504.

Knowledge Check 26. Oprah Owner, who owns a unit in a condominium, is not a developer. She is selling the unit to Betsy Buyer and has entered into a contract with Betsy. Betsy is entitled to all but which of the following?

- A. A current copy of the declaration of condominium.
 - B. The articles of incorporation of the association.
 - C. The bylaws and rules of the association.
 - D. A list of all owners in the condominium.
-



Prospective purchasers are also entitled to receive a copy of a governance form from the seller and any other information helpful to prospective purchasers in understanding association governance. The governance form must address:

1. The role of the board in conducting the day-to-day affairs of the association on behalf of, and in the best interests of, the owners.
2. The board's responsibility to provide advance notice of board and membership meetings.
3. The rights of owners to attend and speak at board and membership meetings.
4. The responsibility of the board and of owners with respect to maintenance of the condominium property.
5. The responsibility of the board and owners to abide by the condominium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.
6. Owners' rights to inspect and copy association records and the limitations on such rights.
7. Remedies available to owners with respect to actions by the board which may be abusive or beyond the board's power and authority.
8. The right of the board to hire a property management firm, subject to its own primary responsibility for such management.
9. The responsibility of owners with regard to payment of regular or special assessments necessary for the operation of the property and the potential consequences of failure to pay such assessments.
10. The voting rights of owners.
11. Rights and obligations of the board in enforcement of rules in the condominium documents and rules adopted by the board.

The governance form must also include the following statement in conspicuous type:

"This publication is intended as an informal educational overview of condominium governance. In the event of a conflict, the provisions of chapter 718, Florida Statutes, rules adopted by the Department of Business and Professional Regulation, and the provisions of the condominium documents, and reasonable rules adopted by the board of administration prevail over the contents of this publication."



All contracts for the resale of a residential unit must contain in conspicuous type either:



A clause which states:

THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT

or

A clause which states:

THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of section 718.503(2), F.S. is voidable at the option of the purchaser prior to closing.



If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer must make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

Knowledge Check 27. Penny Purchase is buying a unit in a residential condominium, but construction is not yet complete. What must Danny Developer make available to Penny?

- A. A list of all owners who have also bought a unit.
- B. A copy of the complete plans and specifications for the construction.
- C. All anticipated costs for the completion of the construction.
- D. A copy of all contracts with subcontractors.

Sales brochures, if any, must be provided to each purchaser, and the following caveat in conspicuous type must be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed:



ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION [718.503](#), FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure must contain the following statement in conspicuous type:

UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.



C. Discipline and Penalties



Anyone holding a Florida license regulated by chapters 455 and 475 may be subject to the disciplinary guidelines found in chapters 455, 475 and 61J2-24.001 of the Commission Rules. Penalties may be imposed upon a licensee found guilty of a Chapter 455 or 475 violation.

F.S. section 475.25(1) details the many types of discipline that may be imposed upon a licensee. The Commission may deny an application for licensure, registration, or permit, or renewal, or may place a licensee, registrant, or permittee on probation. A license, registration or permit may be suspended for a period not exceeding 10 years. A license, registration or permit may also be revoked. Administrative fines may be imposed but may not exceed \$5,000 for each count or separate offense. A reprimand may be issued.

This section begins with a discussion of reasons why an application for licensure may be denied, then moves on to a discussion of the different types of violations and penalties that may be assessed during the disciplinary process. Because not all violations are created equal, penalties vary greatly.

Violations and penalties are covered in section 475.42.

DENIAL OF APPLICATION, LICENSE REVOCATION AND SUSPENSION, FINES AND PROBATION

Denial of an application for licensure, registration, or permit, or renewal may occur for several reasons found in 475.25(1).

Disciplinary action as stated above may occur if a licensee:

1. is guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in Florida or any other state, nation, or territory.
2. has violated a duty imposed by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction.
3. has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance of misconduct, or has formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme.

It is immaterial to the guilt of the licensee:



- (a) that the victim or intended victim has sustained damages or loss,
- (b) that the licensee has settled with the victim and paid damages or for the loss, or
- (c) that the victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.
- (d) that the licensee has advertised property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.
- (e) that the licensee has failed to account for or deliver to any person, including another licensee, a demand of an accounting and delivery of any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document or thing of value, including:
 - i. a share of a real estate Commission obtained by a civil judgment relating to the practice of the licensee's profession has been obtained against the licensee and said judgment has not been satisfied in accordance with the terms of the judgment within a reasonable time.
 - ii. any secret or illegal profit, or
 - iii. any divisible share or portion, which has come into the licensee's hands and which is not the licensee's property or which the licensee is not in law or equity entitled to retain under the circumstances.



However, if the licensee, in good faith, is doubtful about what person is entitled to the accounting and delivery of the escrowed property, or if conflicting demands have been made upon the licensee for the escrowed property that remains in the licensee's escrow or trust account, the licensee must promptly notify the Commission of such doubts or conflicting demands and promptly employ one of the following escape procedures:

- (a) request that the Commission issue an escrow disbursement order determining who is entitled to the escrowed property,
- (b) with the consent of all parties, submit the matter to arbitration,
- (c) by interpleader or otherwise, seek adjudication of the matter by a court or
- (d) with the written consent of all parties, submit the matter to mediation.

If the licensee promptly employs one of the escape procedures allowed by law and abides by the order or judgment, then no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property.

4. has failed to deposit money into an escrow account when the licensee is the purchaser of real estate under a contract where the contract requires the purchaser to place deposit money in an escrow account to be applied to the purchase price if the sale is consummated.
5. has violated any of the provisions of chapter 475 or any lawful order or rule made or issued under the provisions of chapter 475 or chapter 455.

Knowledge Check 28. Ricky Realtor has violated provisions of Florida licensing law and is waiting to find out what discipline the Commission will impose. All but one of the following is a type of discipline that the Commission may impose –

- A. Deny Ricky's application for license renewal.
 - B. Place Ricky on probation.
 - C. Suspend Ricky's license for up to 20 years and impose a fine of up to \$10,000.
 - D. Revoke Ricky's license.
-



6. has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a licensed broker or sales associate, or involves moral turpitude or fraudulent or dishonest dealing. A certified record of a conviction is admissible as prima facie evidence of such guilt.
7. has had a broker's or sales associate's license revoked, suspended, or otherwise acted against, or has had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country.
8. has shared a Commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under Florida law, for the referral of real estate business, clients, prospects, or customers, or other service described in section 475.01(1)(a). A licensed broker from Florida may pay a referral fee or share a real estate brokerage Commission with a broker licensed or registered under the laws of a foreign state as long as the foreign broker does not violate any Florida law.
9. has become temporarily incapacitated from acting as a broker or sales associate with safety to investors or those in a fiduciary relation with the licensee because of drunkenness, use of drugs, or temporary mental derangement. The suspension of a license may only be for the period of such incapacity.
10. has rendered an opinion that the title to any property sold is good or merchantable, except when correctly based upon a current opinion of a licensed attorney at law, or has failed to advise a prospective purchaser to consult her or his attorney on the merchantability of the title or to obtain title insurance.
11. failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to the licensee by any person dealing with the licensee as a broker in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in Florida.
12. has failed to deposit funds in a trust or escrow account maintained by the licensee with some bank, credit union, or savings and loan association located and doing business in Florida, wherein the funds must be kept until disbursement is properly authorized.



13. has failed, if a sales associate, to immediately place with the licensee's registered employer any money, fund, deposit, check, or draft entrusted to the licensee by any person dealing with the licensee as agent of the registered employer.
 - (a) The Commission establishes rules to provide for records to be maintained by the broker and the manner in which deposits must be made.
 - (b) A broker may place and maintain up to \$5,000 of personal or brokerage funds in the broker's property management escrow account and up to \$1,000 of personal or brokerage funds in the broker's sales escrow account.
 - (c) A broker must be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and the errors pose no significant threat to economically harm the public.

Denial may occur if the licensee:

14. has made or filed a report or record known to be false, willfully failed to file a report or record required by state or federal law, willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing.
15. has obtained a license by means of fraud, misrepresentation, or concealment.
16. is confined in any county jail, post-adjudication, confined in any state or federal prison or mental institution, is under home confinement ordered in lieu of institutional confinement or, through mental disease or deterioration, can no longer safely be entrusted to competently deal with the public.
17. has been found guilty, for a second time, of any misconduct that warrants suspension or has been found guilty of a course of conduct or practices which show such incompetent, negligent, dishonesty, or untruthfulness that the money, property, transactions, and rights of investors, or those with whom the licensee may sustain a confidential relation, may not safely be entrusted to the licensee.
18. has failed to inform the Commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.
19. has violated any provision of F.S. section 475.2755 or section 475.278, including the duties owed under those sections.
20. has failed in any written listing agreement to include a definite expiration date, description of the property, price and terms, fee or Commission, and a proper signature of the principal or principals and has failed to give the principal or principals a legible, signed, true and correct copy of the listing agreement within 24 hours of obtaining the written listing agreement. The written listing



agreement must not contain a provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.

21. has had a registration suspended, revoked, or otherwise acted against in any jurisdiction. The certified or authenticated record of the disciplinary action is admissible as prima facie evidence of such disciplinary action.
22. has violated any standard of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, defined in F.S. section. 475.611. The requirement does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. The licensee may not refer to a comparative market analysis, broker price opinion, or opinion of value of real estate as an appraisal, as defined in F.S. section 475.611.
23. has failed, if a broker, to direct, control, or manage a broker associate or sales associate employed by such broker. A rebuttable presumption exists that a broker associate or sales associate is employed by a broker if the records of the DBPR establish that the broker associate or sales associate is registered with that broker. A certified or authenticated record of licensure is admissible as prima facie evidence of such registration.
24. as failed, if a broker, to review the brokerage's trust accounting procedures in order to ensure compliance with F.S. chapter 475.



A license may be revoked or canceled if it was issued through the mistake or inadvertence of the Commission. The revocation or cancellation cannot prejudice any subsequent application for licensure filed by the licensee.

The DBPR must reissue the license of a licensee against whom disciplinary action was taken upon certification by the Commission that the licensee has complied with all of the terms and conditions of the final order imposing discipline.

The Commission may adopt rules allowing the director of the Division of Real Estate to grant to a licensee placed on probation additional time to complete the terms of probation. The rules must allow the licensee to appeal any denial to the Commission.

An administrative complaint against a broker, broker associate, or sales associate must be filed within 5 years after the time of the act giving rise to the complaint or within 5 years after the time the act is discovered or should have been discovered with the exercise of due diligence.



The DBPR or Commission must promptly notify a licensee's broker or employer, in writing, when a formal complaint is filed against the licensee alleging violations of chapters 475 or 455. The DBPR must not issue a notification to the broker or employer until 10 days after a finding of probable cause has been found to exist by the probable cause panel or by the DBPR, or until the licensee waives his or her privilege of confidentiality under section 455.225, whichever occurs first.

The Commission must promptly report to the proper prosecuting authority any criminal violation of any statute relating to the practice of a real estate profession regulated by the Commission.



Knowledge Check 29. The Commission may deny an application for license renewal if the licensee has failed to inform the Commission in writing _____ after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.:

- A. within 30 days
 - B. within 60 days
 - C. within 90 days
 - D. immediately
-



DISCIPLINARY GUIDELINES



F.S. section 455.2273 and F.A.C. 61J2-24.001 discuss disciplinary guidelines adopted by the Board, which must specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses that may be imposed upon licensees guilty of violating Chapters 455 or 475. The legislature has specifically stated that minor violations be distinguished from those which endanger the public health, safety, or welfare. The disciplinary guidelines must provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct. The Board must also consistently apply any penalties.

If the Board makes a specific finding of mitigating or aggravating circumstances then it must allow the imposition of a penalty other than those found in the guidelines.

The administrative law judge hearing a case of a violation must follow the penalty guidelines established by the Board or DBPR, and if deviating from the guidelines, must state in writing the mitigating or aggravating circumstances warranting a recommended penalty that does not comply with the guidelines.

F.A.C. 61J2-24.001 states that the purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which will normally be imposed for each count during a formal or an informal hearing.

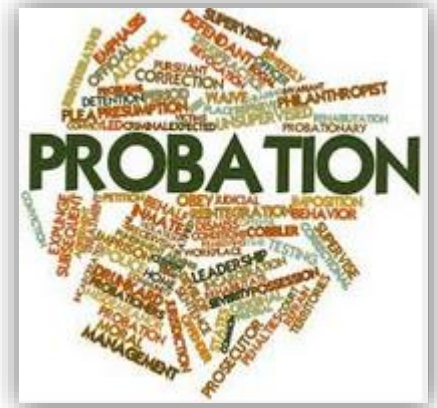
The order of penalties, from lowest to highest, is reprimand, fine, probation, suspension, and revocation or denial.

F.S. section 475.25(1) states that combinations of the penalties are permissible by law.

Nothing in rule 61J2-24.001 may preclude any discipline imposed upon a licensee pursuant to a stipulation or settlement agreement and the range of penalties set forth in the rule may not preclude the Probable Cause Panel from issuing a letter of guidance.



F.S. section 475.25(1) allows the Commission to place a licensee on probation for such period of time, and conditions, as the Commission specifies. Standard probationary conditions may include requiring the licensee:



- to attend pre-licensure courses,
- to satisfactorily complete a pre-licensure course,
- to attend post-licensure courses,
- to satisfactorily complete a post-licensure course,
- to attend continuing education courses,
- to submit to and successfully complete the state-administered examination,
- to be subject to periodic inspections and interviews by a DBPR investigator and
- if a broker, to place the license on a broker associate status and to file escrow account status reports with the Commission or with a DBPR investigator as required.

The 2012 changes made to 61J2-24.001 did not affect the list of violations and range of penalties other than to renumber them after the deletion of former 61J2-24.001(aa). No changes occurred to 61J2-24.001(a) through (z).

THE VIOLATIONS



The list of violations, per statutory section and the range of penalties found at 61J2-24.001.

<https://www.flrules.org/gateway/ruleNo.asp?id=61J2-24.001>



THE MINOR VIOLATIONS

Violations of Chapters 455 and 475 may be major or may be minor. The Commission has listed the violations considered minor in 61J2-24.003. A minor violation leads to a notice of non-compliance from the DBPR. Violations are considered minor when they do not result in economic or physical harm to a person, or they do not adversely affect the public health, safety or welfare or they do not create a significant threat of such harm.

The notice of non-compliance is only issued for an initial offense of a listed minor violation.

Minor violations include:

F.A.C. 61J2-3.009(5)(e) - failure to have a distance education instructor available.

F.A.C. 61J2-3.009(6) – failure to inform students of course standards and requirements.

F.A.C. 61J2-3.015(2) – failure to provide a course completion report to a student.

F.A.C.61J2-5.016 – sales associate or broker associate serving as officer or director of a registered brokerage corporation.

F.S. section 475.22(1) – failure to maintain the office entrance sign as required.

F.A.C. 61J2-10.032(1) and (2) – failure to perform the required act within the stated time frame but does so no later than 30 days after the stated time frame.

F.A.C. 61J2-10.034 – failure to register a trade name with the Division of Real Estate.

F.A.C. 61J2-14.008(2)(b) – initial offense of failure to indicate the name, address and telephone number of the title company or attorney on the contract will receive a notice of non-compliance without citation for a period of twelve months after the effective date of this rule.

F.A.C. 61J2-14.008(2)(b) – initial offense of failure to provide Seller’s broker, or Seller if not presented by a broker, within ten (10) business days of the date the Licensee’s broker made the written request for verification of the deposit with either a copy of the written verification, or if no verification is received by Licensee’s broker, written notice that Licensee’s broker did not receive verification of the deposit, will receive a notice of non-compliance without citation for a period of twelve months after the effective date of this rule.

F.A.C. 61J2-14.012 – failure to sign the escrow account reconciliation if the account balances.

F.A.C. 61J2-14.014(2) – failure to stop interest from accruing prior to disbursement.

F.S. section 475.451(8) – failure to keep registration records, course, rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years subsequent to the beginning of each course and make them available to the department for inspection and copying upon request.

F.A.C. 61J2-17.014 – improper use of a guest lecturer.

F.A.C. 61J2-17.015 – improper recruiting; failure to post the required statement.



NOTICE OF NON-COMPLIANCE

The DBPR must issue a notice of noncompliance to the licensee, registrant or permitholder subject to the statute and rule that the statute and rule have been violated. The notice of noncompliance must identify the statute and rule being violated and provide information on how to comply with the statute and rule.

Knowledge Check 30. Agnes Agent has committed a minor violation found in F.A.C. 61J2-24.003. What punishment may she expect?

- A. A citation and possible suspension.
- B. A citation and a period of suspension.
- C. A notice of non-compliance from the DBPR.
- D. No action because minor violations are those considered not resulting in economic or physical harm to a person or those that do not adversely affect the public health, safety or welfare or those that do not create a significant threat of such harm.



The DBPR must allow 15 days for compliance with the statute and rule and notify the licensee, registrant or permitholder of the time allowed for compliance. The time for compliance must begin to run from the time the licensee, registrant or permitholder receives the notice of noncompliance. The failure of a licensee, registrant or permitholder to comply with the notice of noncompliance within the time allowed results in the issuance of a citation pursuant to F.A.C 61J2-24.002 and, if there is no citation for the violation, then the institution of regular disciplinary proceeding pursuant to F.S. section 455.225.

The notice of noncompliance may be delivered to the licensee, registrant or permit holder's current mailing address by certified mail, by restricted delivery or by personal service. The notice of noncompliance may be issued by the Division of Real Estate.



DISCIPLINARY PROCEEDINGS

F.S. section 455.225 governs disciplinary proceedings. Any written, legally-sufficient complaint, signed by the complainant, must be investigated. A complaint is legally sufficient if it contains ultimate facts that show that a violation of F.S. chapter 455 has occurred, of any of the practice acts relating to the real estate sales profession, or of any rule adopted by the DBPR.



The DBPR may require supporting information or documentation to determine legal sufficiency. Even if the complainant withdraws a complaint and does not wish to see it investigated or prosecuted, the DBPR may investigate, and take appropriate final action.

Anonymous written complaints that are legally sufficient may also be investigated by the DBPR, if the alleged violation of law or rules is substantial, and if the DBPR has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true.

Written complaints made by a confidential informant that are legally sufficient may also be investigated by the DBPR, if the alleged violation of law or rule is substantial, and if the DBPR has reason to believe, after preliminary inquiry, that the allegations of the complainant are true.

The DBPR may also initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the DBPR, or a rule of a Board.

A sample complaint form with a light orange background. At the top, the word "COMPLAINT" is written in large, bold, orange letters. Below this, there are several sections with labels in orange: "TO:" followed by a grid of boxes for "NAME", "PHONE", "ADDRESS", "CITY", "STATE", and "ZIP"; "WHOSE FAULT:" followed by boxes for "MILE", "YARDS", "FEET", "INCHES", "LITIGATION", "RESTITUTION", and "CHANGE"; "DESIRED OUTCOME:" followed by boxes for "APPROX", "EXPLANATION", "LITIGATION", "PROMOTION", and "CHANGE". At the bottom, there is a "COMPLAINANT:" label and a small "ANONYMOUS" checkbox.

The DBPR must promptly furnish a copy of the complaint or document that resulted in the initiation of an investigation to the subject or the subject's attorney when an investigation of any subject is undertaken. The subject may submit a written response to the information contained in the complaint or document within 20 days after service to the subject of the complaint or document.

The subject's written response must be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order, if necessary, to protect the public.

The DBPR may withhold notification if that notification would be detrimental to the investigation. In that case, the secretary, or the secretary's designee, and the chair of the Board or the chair of its probable cause panel, must agree in writing that such notification would be detrimental to the investigation.

If the act under investigation is a criminal offense, then the DBPR may conduct an investigation without notification to any subject.



When the DBPR's investigation is complete and legally sufficient, an investigation report containing investigative findings and recommendations of the DBPR concerning the existence of probable cause is prepared and submitted to the probable cause panel of the Board.

The DBPR may dismiss any case, or any part of a case, at any time after legal sufficiency is found, if it is determined that there is insufficient evidence to support the prosecution of allegations. The DBPR must provide a detailed report to the appropriate probable cause panel prior to dismissal of any case, or part of a case, and to the subject of the complaint after dismissal of any case, or part of a case.

Any case dismissed prior to a finding of probable cause must remain confidential and exempt from F.S. section 119.07(1). Section 119.07(1) requires the inspection and copying of records or photographing public records. Every person who has custody of a public record must permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Upon request, the probable cause panel must have access to the investigative files pertaining to a case prior to dismissal of the case. If the DBPR dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

F.S. 455.225(3) states that as an alternative to the provisions of sections 455.225(1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation.



PROBABLE CAUSE

The determination as to whether probable cause exists must be made by majority vote of a probable cause panel of the Board, or by the DBPR, as appropriate. The board may provide for multiple probable cause panels composed of at least two members.

The makeup of the probable cause panel is also regulated in F.S. section 455.225. The panel may consist of former Board members. The length of term or repetition of service of any former board member on a probable cause panel may vary according to the direction of the Board. Any probable cause panel must include one of the Board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the Board chair.



The probable cause panel must include a present Board member and a former or present professional Board member. Any former professional board member serving on the probable cause panel must hold an active valid license.

All proceedings of the panel are exempt from F.S. section 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. Section 286.0111 provides for certain exemptions from the requirement of public meetings and recordkeeping.



Upon a reasonable request from the probable cause panel, the DBPR must provide such additional investigative information as is necessary to the determination of probable cause.

A request for additional investigative information must be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the DBPR. The probable cause panel or the DBPR must make its determination of probable cause within 30 days after receipt by it of the final investigative report of the DBPR. Extensions of the 15-day and the 30-day time limits may be granted.



ALTERNATIVE LETTER OF GUIDANCE



In lieu of a finding of probable cause, the probable cause panel, or the DBPR, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department, for disciplinary cases under its jurisdiction, must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit.

If there is a finding of probable cause, then the probable cause panel must direct the DBPR to file a formal complaint against the licensee and the DBPR must follow the directions of the probable cause panel regarding the filing of a formal complaint and prosecute the complaint according to chapter 120. Chapter 120 is also known as the Administrative Procedures Act.

The DBPR could choose not to prosecute a complaint if it finds that probable cause had been improvidently found by the panel. In such a case, the DBPR must refer the case to the Board and the Board may then file a formal complaint and prosecute the complaint pursuant to chapter 120.

The DBPR must refer any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the DBPR to the Board within 1 year after the filing of a complaint.

The DBPR must establish a uniform quarterly reporting system to refer to the Board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the DBPR within 1 year after the filing of the complaint.

A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary and all costs are paid from the Professional Regulation Trust Fund.





Formal hearings before an administrative law judge from the Division of Administrative Hearings are held pursuant to F.S. chapter 120 if there are any disputed issues of material fact. The administrative law judge must issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing must be terminated and a formal hearing pursuant to chapter 120 held.

The Board must determine and issue the final order in each disciplinary case. Orders must constitute final agency action. Any consent order or agreed settlement is subject to the approval of the DBPR and the department has standing to seek judicial review of any final order of the Board.

The Secretary of Business and Professional Regulation must conduct any proceeding for the purpose of summary suspension of a license, or the restriction of a license, pursuant to F.S. section 120.60(6), and issue the final summary order.

F.S. section 120.60(6) states that if a finding of immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, action may be taken by any procedure that is fair under the circumstances:

- if the procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution,
- only the action necessary to protect the public interest under the emergency procedure is taken and
- the agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.





The DBPR is required to periodically notify the complainant of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from F.S. section 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the DBPR, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first.

F.S. section 119.07 governs the inspection and copying of records, photographing public records, fees and exemptions. Without the exemption, every person who has custody of a public record must permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Knowledge Check 31. F. S. section 119.07 governs the inspection and copying of records, photographing public records, fees and exemptions. Without an exemption, every person who has custody of a public record must –

- A. Provide copies to any person desiring copies, even if the copying request creates an undue burden upon the person in control of the records.
 - B. Permit the record to be inspected and copied by any person desiring to do so, regardless of any undue burden created and provided the person making copies is given privacy during the copying.
 - C. Provide copies to any person desiring copies so long as the copying may be one a reasonable time and under reasonable conditions.
 - D. Permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.
-



The exemption does not apply to actions against unlicensed persons pursuant to section 455.228 or the applicable practice act.

Upon completion of the investigation and pursuant to a written request by the subject, the DBPR must provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file.



The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. The DBPR is not prohibited from providing information obtained to any law enforcement agency or other regulatory agency.

The classification of disciplinary actions is found in F.S. section 455.2255. Licensees may petition the DBPR for the review of a disciplinary incident to determine whether the specific violation meets the standard of a minor violation found in section 455.225(3).

The DBPR must reclassify a violation as inactive:

- (1) if the circumstances of the violation meet the standard found in F.S. section 455.225(3),
- (2) 2 years have passed since the issuance of a final order imposing discipline , and
- (3) if the licensee has not been disciplined for any subsequent minor violation of the same nature.

A violation reclassified as inactive is no longer considered to be part of the licensee's disciplinary record, and the licensee may lawfully deny or fail to acknowledge the incident as a disciplinary action.

The DBPR may establish a schedule classifying violations according to the severity of the violation. Upon expiration of set periods of time, the DBPR may allow disciplinary records to become inactive, according to their classification. Once a disciplinary record is inactive, the DBPR may clear the violation from the disciplinary record and the subject person or business may lawfully deny or fail to acknowledge such disciplinary actions.



FOUNDATIONS FOR DISCIPLINE – F.S. SECTION 455.227

Grounds for discipline and potential penalties are found in F.S. section 455.227 as well as enforcement of the laws for licensure.

Acts that constitute grounds for discipline are detailed in section 455.227(1)(a) through (u) and the disciplinary actions are found in section 455.227(2)(a) through (g).



Acts that warrant discipline include:

- making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession,
- intentionally violating any rule adopted by the Board or the DBPR,
- any conviction, whether by a guilty finding, a plea of guilty or nolo contendere to a crime in any jurisdiction related to the practice of, or the ability to practice, a licensee's profession.
- failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome,
- revocation of a license or the authority to practice the regulated profession, or suspension or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law,
- the licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, must be construed as action against the license,
- a guilty finding in a civil proceeding for knowingly filing a false report or complaint with the DBPR against another licensee,
- obtaining, attempting to obtain or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the DBPR or the Board,
- failure to report to the DBPR any person known to be in violation of F.S. chapter 455, or other regulating chapter, or DBPR or Board rules to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board,
- aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to F.S. chapter 455, or other regulating chapter or other DBPR or Board rules is a violation,
- making or filing a known false report, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Only reports or records signed in the capacity of a licensee are covered by the section,
- making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession,
- exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party,



- practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform,
- delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them,
- violating any provision of chapter 455, the applicable professional practice act, a rule of the DBPR or the Board, or a lawful order of the DBPR or the Board, or failing to comply with a lawfully issued subpoena of the DBPR,
- improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding,
- failing to comply with the educational course requirements for domestic violence,
- failing to report to the Board or DBPR, in writing within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction,
- termination from a treatment program for impaired practitioners as described in section 456.076 for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program.

PENALTIES

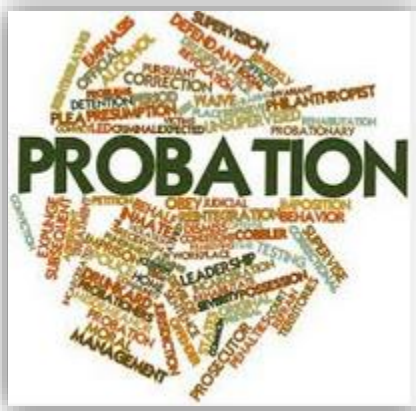
When found guilty of a violation, the DBPR may impose one or more penalties, including

- refusing to certify, or to certify with restrictions, an application for a license,
- suspension or permanent revocation of a license,
- restriction of practice,
- imposition of an administrative fine not to exceed \$5,000 for each count or separate offense,
- issuance of a reprimand or the placement of the licensee on probation for a period of time and subject to such conditions as the Board, or the DBPR may specify.



Knowledge Check 32. Risky Realtor not only stole money from several of his clients, he also stole property from houses that were on the market for sale. Which is not a punishment that the Department may impose?

- A. Refusing to certify, or to certify with restrictions, Risky's application for a license.
- B. Suspension or permanent revocation of Risky's license.
- C. Imposition of a jail sentence not to exceed one year.
- D. Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.



Conditions of probation may include requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, satisfy any terms which are reasonably tailored to the violations found, or other measure deemed appropriate by the Board or DBPR.

The Board or DBPR may also assess costs related to the investigation and prosecution, excluding costs associated with an attorney's time.

The DBPR or the DBPR of Legal Affairs may contract for the collection of any unpaid fine or assessment by a licensee, including bring civil action to recover the fine or assessment.

No licensee may have a license renewed until the person or business has paid in full any fine, interest, or costs associated with investigation and prosecution or until the person or business complies with or satisfies all terms and conditions of the final order.

The DBPR may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of F.S. chapter 455, or any provision of law with respect to professions regulated by the DBPR, or any Board or rules.

If revocation of a license is the appropriate penalty, the revocation must be permanent. However, the board may establish, by rule, requirements for reapplication by applicants whose licenses have been permanently revoked.



F.A.C. 61J2-24.005 provides the circumstances under which a licensee may reapply after a license revocation. Revocation of a license is **permanent** except when the individual had not complied with the provisions of F.A.C. 61J2-3.009 or 61J2-3.020, or obtained a license by means of fraud, misrepresentation or concealment when the licensee had filed an application for licensure which contained false or fraudulent information or answers.

No one whose license has been revoked for either of these two violations may apply for a sales associate's license for a period of 5 years after the date of filing of the final order revoking the license unless the Commission specifies a lesser period of time in the final order.

Criminal proceedings against licensees are governed by F.S. section 455.2274. A representative of the DBPR may voluntarily appear in a criminal proceeding brought against a person licensed by the DBPR to practice a profession regulated by the state.



The DBPR's representative is authorized to furnish pertinent information, make recommendations regarding specific conditions of probation, and provide other assistance to the court necessary to promote justice or protect the public.

The court may order a representative of the department to appear in a criminal proceeding if the crime charged is substantially related to the qualifications, functions, or duties of a license regulated by the department.

Under F.S. section 455.2275 the act of knowingly giving false information in the course of applying for or obtaining a license from the DBPR with intent to mislead a public servant in the performance of his or her official duties, or the act of attempting to obtain or obtaining a license from either the DBPR to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in F.S. sections 775.082, 775.083, or 775.084.

F.S. section 455.2277 requires the DBPR or the appropriate board to report any criminal violation of any statute relating to the practice of a profession regulated by the DBPR or appropriate board to the proper prosecuting authority for prompt prosecution.

The unlicensed practice of a profession in Florida is governed by F.S. section 455.228. When the DBPR has probable cause to believe that any person not licensed by the DBPR, or the appropriate regulatory board within the DBPR, has violated any provision of F.S. chapter 475 or any statute that relates to the practice of a profession regulated by the DBPR, or any adopted rule, the DBPR may issue and deliver to such person a notice to cease and desist from such violation.

**CEASE
AND
DESIST**



The DBPR may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and



desist does not constitute agency action for which a hearing under F.S. sections 120.569 and 120.57 may be sought.

For the purpose of enforcing a cease and desist notice, the DBPR may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such notice.

The DBPR may also impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of F.S. chapter 120 or may issue a citation.

The DBPR may seek the imposition of a civil penalty through the circuit court for any violation for which the DBPR may issue a notice to cease and desist. The civil penalty must be no less than \$500 and no more than \$5,000 for each offense.

The court may also award to the prevailing party court costs and reasonable attorney fees. If the DBPR prevails, the reasonable costs of investigation may also be awarded.

The DBPR has also adopted rules to permit the issuance of citations for unlicensed practice of a profession. The citation must be issued to the subject and contain the subject's name and any other information the DBPR determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed.

The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under F.S. section 455.225.

If the subject disputes the matter in the citation then the procedures found in F.S. section 455.225 must be followed.

If the subject does not dispute the matter in the citation with the DBPR within 30 days after the citation is served, the citation becomes a final order of the DBPR with a penalty being a fine of not less than \$500 or more than \$5,000 or other conditions as established by rule.

Each day that the unlicensed practice continues after issuance of a citation constitutes a separate violation.



FORM OF DISCIPLINE - CITATION

Section 455.224 allows for a licensee to receive a citation rather than go through the disciplinary process for certain violations. Those violations must present no substantial threat to the public health, safety and welfare. If a threat to the public health, safety or welfare does exist, that threat must be removed removed prior to the issuance of the citation. When a citation is issued, a fine or other condition is imposed.

Citations must be issued to the subject and contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed.

Citations must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under section 455.225. If the matter is disputed, the procedures set forth in section 455.225 are to be followed.

If the matter is not disputed with the DBPR within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. All fines are to be made payable to the "DBPR of Business and Professional Regulation – R. E. Citations" and sent to the Division of Real Estate in Orlando. A copy of the citation must accompany the payment of the fine.

The department is entitled to recover the costs of investigation, in addition to any penalty provided according to Board or DBPR rule, as part of the penalty levied pursuant to the citation.

All citations must be issued within 6 months after the filing of the complaint that is the basis for the citation.

Service of a citation may be made to the subject at the subject's last known address by personal service or certified mail, restricted delivery.

The Division of Real estate may issue citations to real estate licensees, permit holders, and registrants.

61J2-24.002 lists the violations and accompanying fine or other conditions that are handled by a citation.



<https://www.flrules.org/gateway/RuleNo.asp?ID=61J2-24.002>



FORM OF DISCIPLINE – MEDIATION

Section 455.2235 allows the Board or the DBPR to adopt rules to designate which violations are appropriate for mediation, and may designate complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee as mediation offenses.

After the DBPR determines a complaint is legally sufficient and the alleged violation is a mediation offense, the DBPR may conduct informal mediation to resolve the complaint.



F.A.C. 61J2-24.004 defines mediation as a process, pursuant to F.S. section 455.2235, whereby a mediator appointed by the DBPR acts to encourage and facilitate resolution of a legally-sufficient complaint. The process is informal, with the objective of assisting the complainant, and subject of the complaint, to reach a mutually acceptable resolution.

If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator must notify the DBPR of the terms of the resolution. The DBPR or Board must take no further action unless the complainant and the subject each fail to record an Acknowledgment of Satisfaction of the terms of mediation with the Board within 60 days of the mediator's notification to the DBPR.

If the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the DBPR must process the complaint according to the provisions of F.S. section 455.225.

Statements made, or conduct occurring during mediation is inadmissible in a proceeding pursuant to F.S. section 455.225, and any information relating to the mediation must be subject to the confidentiality provisions of section 455.225.

Licensees may not go through the mediation process more than three times without approval of the DBPR and the department may consider the subject and dates of the earlier complaints in rendering its decision, but the decision may not be considered a final agency action for purposes of F.S. chapter 120.

Mediation may be conducted for the failure to maintain an office or sign at the entrance of an office as required in F.S. section 475.22, or the failure to register a branch office as required by section 475.24 or for the failure to deliver to a licensee a share of a real estate Commission if the licensee has obtained a civil judgment and the judgment has not been satisfied as required by section 475.25(1)(d).



FORM OF DISCIPLINE - PROBATION



Pursuant to F.A.C. 61J2-24.006, unless otherwise stated in the final order, a term of probation must be 90 days commencing 30 days after the filing of the final order.

If a respondent is unable to complete the requirements of probation within the 90 days or such other time specified in the final order, the Division Director is authorized to grant a one-time 180 days extension due to illness, unavailability of a required course, or economic hardship, which means that the respondent has completed all requirements of probation except for the payment of fines or costs and is presently unable to pay.

In the event that the Division Director denies a request for extension or the request for extension involves a non-listed reason, then the request must be heard by the Commission.

The respondent bears the responsibility to submit to the Division Director or the Commission written documentation to substantiate the request for extension and the request must be made prior to the expiration of the initial term of probation.

Failure to request an extension either of the Division Director or the Commission within the initial term of probation will result in the automatic denial of the request for extension and any penalty or penalties associated with the failure to timely complete probation will become effective.

The respondent will be released early from probation upon the successful completion of the terms of probation and the required information being submitted to the Division of Real Estate Legal Section.

When as a term of probation, the Commission orders a respondent to attend one or more meetings of the Commission, the respondent must comply with the following in order to obtain credit for attending the meeting:

- (a) The respondent shall arrive not less than 5 minutes prior to the published starting time and date on the meeting agenda, absent good cause. Inability to find a parking space shall not constitute good cause. The respondent is responsible for arriving early enough to obtain suitable parking;
- (b) Appropriate dress is required. Appropriate dress includes casual business attire. Respondents may choose to wear coat, tie or other business attire at their option. Items of prohibited clothing include denim, shorts, flip-flops, sneakers, sandals, t-shirts, hats, caps or other leisure attire;
- (c) The respondent shall pay attention. Engaging in disruptive behavior is prohibited. Disruptive behavior includes, but is not limited to, sleeping, excessive conversation, or the reading of newspapers, magazines, or other outside materials;
- (d) The demeanor and behavior of all respondents shall be consistent with an orderly public meeting and consistent with judicial or quasi-judicial proceedings;



14 Hour Florida Real Estate Continuing Education Course

- (e) The respondent is permitted short absences from the meeting for not more than 5 minutes each hour. Failure to remain in the meeting at least 55 minutes per hour without prior permission of Division staff or the Chair of the Commission will result in a Commission decision to not award credit for attendance at a Commission meeting;
- (f) Except as otherwise allowed by this section, the respondent is required to attend the meeting in its entirety;
- (g) All electronic devices must be turned off; and
- (h) Failure to comply with this subsection or any other direction of the Commission consistent with an orderly public meeting will result in loss of credit for attendance at the entire meeting of the Commission.
- (i) Any respondent requiring special accommodations to attend the meeting, because of a disability, must contact the Division of Real Estate staff at:

400 West Robinson Street
Suite N801
Orlando, Florida 32801-1757
Call.Center@dbpr.state.fl.us
850.487.1395

At least two weeks prior to the meeting date. The Commission will make a reasonable accommodation for those respondents who demonstrate they require special accommodations because they are a person who has a mental or physical impairment that substantially limits one or more of the major life activities of such individual.

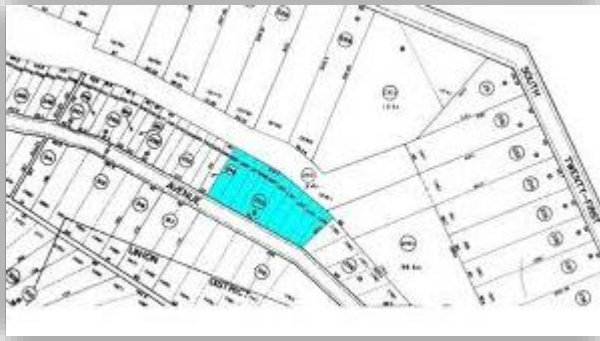
Knowledge Check 33. Agnes Agent was involved in a terrible car wreck and was unable to work for six months. During that same period Agnes was on probation, which she completed 30 days ago, but she can't afford to pay the fines that were imposed. What will happen to Agnes?

- A. She'll be granted a one-time extension of 90 days if the only requirement left of her probation is to pay the fine.
 - B. She'll be granted a one-time extension of 180 days if the only requirement left of her probation is to pay the fine.
 - C. Her real estate license must be revoked because she failed to complete all of the terms of her probation.
 - D. Her real estate license must be suspended until she completes all of the terms of her probation and pays the fines.
-



SECTION 5 – PROPERTY

A. Legal Descriptions



Legal descriptions are a vital and necessary manner to accurately determine where property is located and where its boundaries exist. Legal descriptions set out all of the boundaries of a given parcel of land and they must be in writing. The “legal description” is defined as the words used to describe a particular piece of real property, whether or not the property has been improved or is vacant land.

The locale of the property is more than an estimate, but is a near-exact measurement of a property’s boundaries. Legal descriptions may or may not also include a property’s street address.

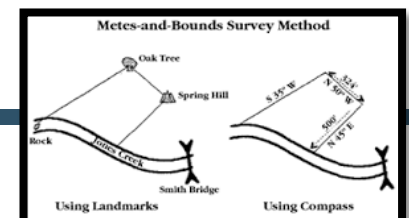
Knowledge Check 34. The locale of property –

- A. Is more than an estimate.
- B. Must be exactly accurate.
- C. Depends upon many factors including the subdivision it is situated in.
- D. Isn’t nearly as important as the size of the property.

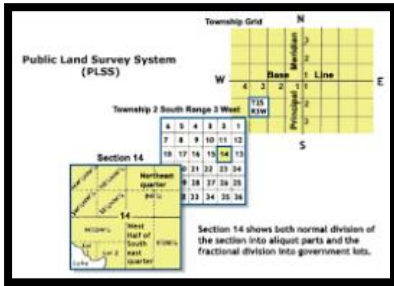
Later in this course we discuss how property is transferred. For purposes of this section, it is important to understand that when property is transferred or conveyed, it must be legally described within the conveyance instrument, usually a deed. The deed must be filed with the proper taxing authority in the county where the land is situated and thus becomes a matter of public record. Real estate sales contracts require a legal description sufficient enough for a surveyor to accurately locate the property and its boundaries.

In the United States, land is classified in three ways:

- (1) Metes and bounds legal descriptions use the public surveying system, with land being divided into sections. Each section is 640 acres. The metes and



bounds legal description pinpoints the property's location within a township, range and section. The legal description may use degrees and distance.



- (2) The legal description for a tract of land under the U.S. Public Land Survey System, PLSS, must include the state, county, township number, range number, section number and section portion.

- (3) The lot and block survey system is generally used in densely populated areas such as cities or their suburbs. The system may be known as the Recorded Plat Survey System or the Recorded Map Survey System. When areas of rural land become developed, the legal descriptions change from metes and bounds or PLSS to lot and block.



Lots and blocks are portions of a larger piece of land. A survey is conducted and the original piece of land, or tract, is divided into smaller lots and a plat map is created. The “subdivision survey” generally uses the metes and bounds system to delineate individual lots within the main tract. The new lots created are assigned a special identifier on the plat map, often a number or a letter, and then the plat map is recorded with the property governmental authority.



The plat maps that are recorded become the legal description for each lot in the subdivided tract, called a subdivision. The lot and block number, along with the volume and page number where the plat map was recorded is a sufficient legal description for the property.

Regardless of which method is used to determine a parcel of land's legal description, it is important that some consistency exist. A legal description for instance, should not contain any commas but should be one continuous sentence with primary words capitalized.

The Northeast Quarter of Section 15 Township-375-South Range-45-East of the Third Principal Meridian.

In shorthand, the description reads –

NE1/4 of sec 15 t375 r45 e of the 3rd pm

F.S. section 177.021 states that the recording of any plats made in compliance F.S. chapter 177 serve to establish the identity of all lands shown on and being a part of such plats. The section also allows for the conveyance of lands by referencing the plat.

F.S. section 177.051 requires that all subdivisions be given a name, which then becomes its legal name, or “primary name.”

F.S. section 177.061 requires that all plats offered for recording must be prepared by a professional surveyor and mapper and contain the printed name and registration number of the professional surveyor and mapper.

Knowledge Check 35. John Q. Public is offering a plat for recording, may he do so?

- A. Yes, if he is a surveyor and mapper.
 - B. Yes, if he is a professional surveyor and mapper and the survey contains his printed name and registration number.
 - C. Yes, if he is a person with experience with surveying and mapping and the survey contain his printed name.
 - D. Yes, if he filed it with the Florida Secretary of State's Office within 90 days of the completion of surveying and mapping.
-



Under F.S. section 177.091, all plats of subdivisions offered for recording must conform to a standard, and must be:

- (a) An original drawing made with black permanent drawing ink; or
- (b) A non-adhered scaled print on a stable base film made by photographic processes from a film scribing tested for residual hypo testing solution to assure permanency.



In today's world of the Internet, mobile phones, pc's and tablets, finding a particular legal description is only a few clicks or taps away. Counties across the U.S. and in Florida have websites that allow a search for a parcel of land.

The deed or map records are kept by a recording officer and because the recordings are public record, anyone may view the actual records or receive a copy. Some counties allow a personal search, while others have clerks who perform searches.

Many counties have a computer terminal to aid in the search and pinpoint the volume and page number of the parcel sought. But not every county has an interactive website. When no records are available online, a search of the county's records is necessary. The key to determining a parcel of land's legal description is knowing in which county the parcel is located..

Knowledge Check 36. Which of the following statements does not accurately reflect legal descriptions in Florida?

- A. The recording of any plats made in compliance F.S. chapter 177 serve to establish the identity of all lands shown on and being a part of such plats.
- B. In Florida all subdivisions must be given a name, which then becomes its legal name, or "primary name."
- C. Land in Florida may not be conveyed by a mere reference to a plat made in compliance with F.S. chapter 177.
- D. Plats offered for recording must be prepared by a professional surveyor and mapper and contain the printed name and registration number of the professional surveyor and mapper.

B. The Real Estate Appraisal





In order to determine a fair estimate of a parcel of land’s worth, including all improvements such as a house, real estate appraisals are performed. The purpose of the appraisal is to determine value, often called “market value.” Appraisals are a necessary step in the transfer of title to property process achieved through real estate sales. The step is an important one as well, because a property’s value is directly related to loan underwriting. If an appraisal comes in at less than what a lender would loan for a particular piece of property, the sale may fail.

Appraisals help sellers determine the best asking price for property, while allowing buyers to gauge the high and low ends of an offer to purchase property.



The Appraisal Standards Board of the Appraisal Foundation sets forth standards for the appraisal profession in the Uniform Standards of Professional Appraisal Practice or USPAP, which sets out standardized procedures for developing and communicating an appraisal. USPAP also sets forth ethical rules for the appraisal practice.

When the necessary appraisal is for the sale of property, the process must begin with the lender. Federal law requires lenders to request the appraisal, not the seller or owner. Lenders must have the first contact with the appraiser and engage the appraiser’s services. The lender is the client and the appraiser must be engaged by the lender.





12 USC 1818, 1819 ["Seventh" and "Tenth"] and title XI of the **Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)**, contains the federal laws regulating the appraisal process.

The Florida Real Estate Appraisal Board (FREAB), administers and enforces the real estate appraiser license law found in F.S. chapter 475, Part II. The Board passes rules that enable it to implement its statutorily authorized duties and responsibilities. The rules governing real estate appraiser license law are found in F.A.C. chapter 61J1 and Florida recognizes the Uniform Standards of Professional Appraisal Practice, (USPAP).



In order to determine an accurate value for property specially trained and qualified appraisers are required to value the property. Appraisers prepare carefully detailed written valuations and provide the information to the client, the lender. The property appraisal is used during underwriting to set up mortgage loans.

Many times the buyer and seller agree in advance that the appraised value of a particular parcel of property *is* the correct value, which then becomes the sales price.

Florida requires all appraisers to obtain and maintain an appraiser's license and the laws regulating the business of appraising and valuating property are found in F.S. sections 475.610 to 475.631, F.S. chapter 455 and F.A.C. rules 61J1.

Under F.S. section 475.628, the FREAB must adopt rules establishing standards of professional practice which meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation.

Appraisers registered, licensed, or certified to perform appraisals in Florida must comply with the rules created by the FREAB.

F.A.C. rule 61J1-9.001 requires all licensed, or certified appraisers to comply with the 2012-2013 Uniform Standards of Professional Appraisal Practice, USPAP, effective January 1, 2012.

Most states within the United States utilize a standardized form or appraisals such as the Uniform Residential Appraisal Report.

https://www.fanniemae.com/content/guide_form/1004.pdf



MARKET VALUE

Since appraisers determine property value, they must have a way to determine “what is value?” The most common definition of value for real estate sales is market value. Market value is the price that the property would bring in a competitive auction setting between a willing buyer and a willing sell in an arm’s length transaction.



In real estate sales, three ways to consider value are prominent and include:

1. The current cost of reproducing or replacing a building, less an estimate for depreciation, plus the value of the land;
2. The value estimated by recent sales of comparable properties in the market and,
3. The value that the property’s net earning power may support.

Sales Comparison Approach		
	Sale # 1	Sale #
	Markon	
	Brown	
	Duran	

Using the **Sales Comparison Approach, (SCA)** the subject property’s particular characteristics are compared to other properties that have recently sold. Comparative characteristics may include square footage, property age, property condition, number of levels, number of bedrooms, and the size of the lot. Another key comparison characteristic is location.



Appraisers are likely to use the sales comparison approach when several similar properties have recently sold, or are currently on the market for sale. The sales prices of the comparable properties determine a value range for the subject property.

There are three suggested formats for written appraisals:

- (1) Self-contained reports, which provides comprehensive coverage of appropriate information within the actual report with very little reference to information outside of the report.
- (2) Summary reports, which summarizes the data and analyses used in the real property appraisal assignment, and
- (3) Restricted-use report, which generally provides only the appraiser's conclusions and is only used when the client is the only user for the report.



All appraisals conclude with a certification verifying that the appraiser actually personally conducted the appraisal in an unbiased and object manner and in accordance with USPAP. Appraisers must sign the certification.

Knowledge Check 37. Appraisals conclude with a certification –

- A. Always and the certification verifies that the appraiser actually personally conducted the appraisal in an unbiased and object manner and in accordance with USPAP.
 - B. If the appraiser actually personally conducted the appraisal in an unbiased and object manner and in accordance with USPAP, otherwise the appraisal does not require a certification.
 - C. Always and the certification verifies that the appraiser is qualified and licensed to appraise property in the state of Florida.
 - D. If the appraiser is a Florida licensed appraiser, otherwise the appraisal does not require a certification.
-



Appraisal reports, in whatever form used, must contain:

- Identity of the client and any other intended users
- Intended use of the report
- Purpose of the assignment (type of value)
- Effective date of the opinion
- Real estate being appraised
- Real property interest being valued
- Any assignment conditions
- Scope of work
- Any usual valuation approaches excluded
- Highest and best use of the real estate if necessary and appropriate
- The information considered, appraisal procedures followed and reasoning applied
- A signed certification in accordance with USPAP Standards Rule 2-3

USPAP Standards Rule 1-6 states that when developing a real property appraisal, an appraiser must:

- Reconcile the quality and quantity of data available and analyzed within the approaches used and,
- Reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

Knowledge Check 38. Appraisal reports must contain all but the following:

- A. Intended use of the report.
 - B. The selling price of the property when it sold last.
 - C. Scope of work.
 - D. A signed certification.
-



C. Property Rights — Estates And Tenancies

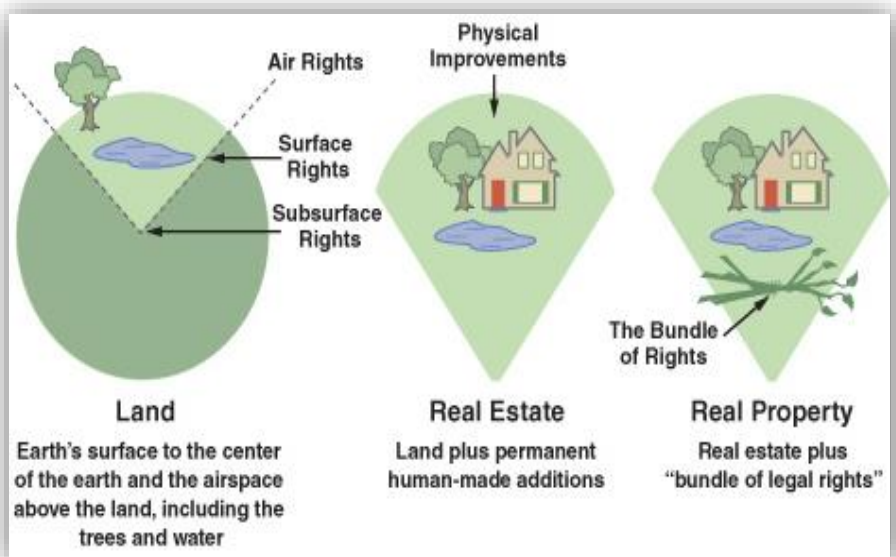
Real property or real estate is defined in F.S. section 475.01(a)(1)(i) as any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, sub-leasehold, or mineral right.



The definition does not include any *cemetery lot* or right of burial in any cemetery or the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

Real property consists of physical components, including surface rights, subsurface rights and air rights and also includes water components including riparian rights, littoral rights and accretion and erosion.

The greatest distinction between real property and personal property is that real property is land. The definition is extended to improvements made to land and fixtures that were once personal property but whose characterization is changed because of some action.





Personal property, also known as “chattel” or “personalty,” may be thought of as items having a limited lifespan, and which are moveable from one place to another. Personal property could also be defined as any property that is not real property.

Personal property that is defined as fixtures, that legally become real property, includes items such as:

- fences,
- air conditioners,
- stoves,
- refrigerators, or
- built-in furniture.



Personal property re-characterized as real property legally becomes a part of its host real property.

Knowledge Check 39. Personal property, also known as chattel or personalty, may be thought of as items having a limited lifespan, and which are moveable from one place to another. Which of the following item of personal property has likely become real property?

- A. An extra refrigerator stored in the garage.
- B. A non-working car that has been sitting in the driveway for more than 5 years.
- C. A temporary fence used to separate animals from each other.
- D. A cooking range that is built into the kitchen cabinetry.

Real Estate Listing and Sales contracts should clearly specify the items of the subject sale property that are considered real property and a listing of the personal property that will be included in the transaction. A listing might read:



The real property for sale includes only the following described land, improvements and fixtures. Items not listed herein are not considered a part of the real property the subject of this sale:

1. The land legally described as _____
2. The House and detached 2-car garage located within the boundaries of the land described herein, and more commonly known as 123 ABC Street, Anytown, Florida 33333
3. The portable air conditioning units that rest within the window frames of the house described herein
4. All appliances currently in the house, including the range, oven, microwave, refrigerator/freezer, washer and dryer, dishwasher, trash compactor and the freezer that is located inside the garage
5. Two (2) portable storage buildings located in the backyard of the subject house described herein

When someone owns real property they are afforded basic property rights, often called the "**Bundle of Rights**," including the right of possession, the right of enjoyment, the right of disposition, the right of control over the real property, and the right to exclude others from the real property.



Interrupting the Bundle of Rights occurs regularly. For instance, if a contractor attaches a Mechanic's Lien to the property, the owner no longer has the right to sell, transfer or otherwise encumber the property without acquiring a release of the Mechanic's Lien first. During the period of time that the Mechanic's Lien is in force, the owner's Bundle of Rights to his land are restricted.



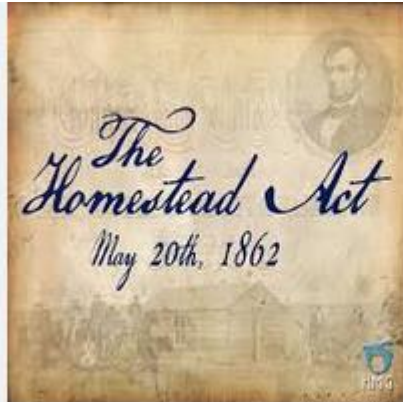
Tax liens also restrict the Bundle of Rights of a real property owner. If the owner acquires the purchase money for the real property from a lender, then his bundle of rights are restricted as well, because he may not sell or transfer the real property without first satisfying the lien held by the lender.

Marriage also has a restricting effect upon the Bundle of Rights because spouses are not free to alienate (sell, gift or transfer) their interest in the property without the other spouse's consent if the property is their homestead.

Knowledge Check 40. John owned a house when he married Jane, and Jane moved from an apartment she rented to live with John when they married. The couple decides to buy a larger house in Jacksonville. Which statement is true about the sale of John's house?

- A. John owned the house before marriage so he'll have to sign all of the documents required to sell the house.
 - B. John may sign all of the documents required to sell the house so long as Jane signs a valid Waiver of Interest in the house.
 - C. John and Jane must both sign documents to sell the home if the home is their homestead.
 - D. Jane may sign all of the required documents to sell the house if John gives her a Power of Attorney.
-





The right to declare a residence a **homestead** is a powerful way to avoid losing the home to debt and creditors.

F.S. section 222.01 allows residential homeowners to designate their primary residence as a homestead. A homestead is exempt from forced sale under any process of law. The designation must be in writing and contain a description of the real property, mobile home, or modular home claimed to be exempt.

When a person owns a parcel of real property, he may do with it as he pleases, as long as the use of his property doesn't violate the laws that affect his property.

The use of real property may be restricted by federal or state laws, county or city ordinances or even by deed restrictions.

- A city ordinance may prohibit real property owners in a residential neighborhood from parking non-working motor vehicles on the property.
- In a deed restricted residential neighborhood a real property owner may be prohibited from allowing cable or telephone wires from running across the front of the property that faces the main street.
- State and federal laws may prohibit constructing a building or residential property on burial grounds.
- A city ordinance may limit the number of pets a real property owner may own within city

The list is nearly endless, so it is important to research the permissible uses of real property when buying or selling and to protect your real estate client's interests.

ESTATES IN LAND CAN BE DIVIDED INTO FOUR BASIC CATEGORIES:



Having the right to decide how property is used is also determined by the property interest a person possesses. Interest is ownership rights, and interest may be in varying degrees.

A freehold estate refers to the degree, quantity, nature and extent of interest (ownership rights) a person can have in real and personal property. Other terms used to describe a person's property interest are estate in land, tenement, and hereditaments.



Estates are categorized in two groups. The freehold estate, which may be for an indefinite length of time, and a leasehold estate, also called non-freehold, which is always for a fixed term.

FREEHOLD ESTATES

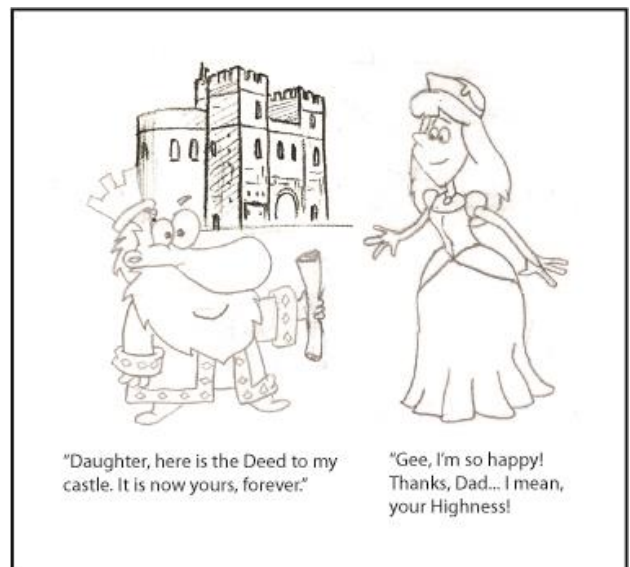
Freehold estates may be either fee simple or a life estate.

A freehold estate is a right of title to land and characterized by two essential elements. The first is immobility, which means that the subject property is either land or an interest attached to the land. The second is indeterminate duration, which means that no fixed duration of ownership exists.

Freehold estates may be one of four different types:

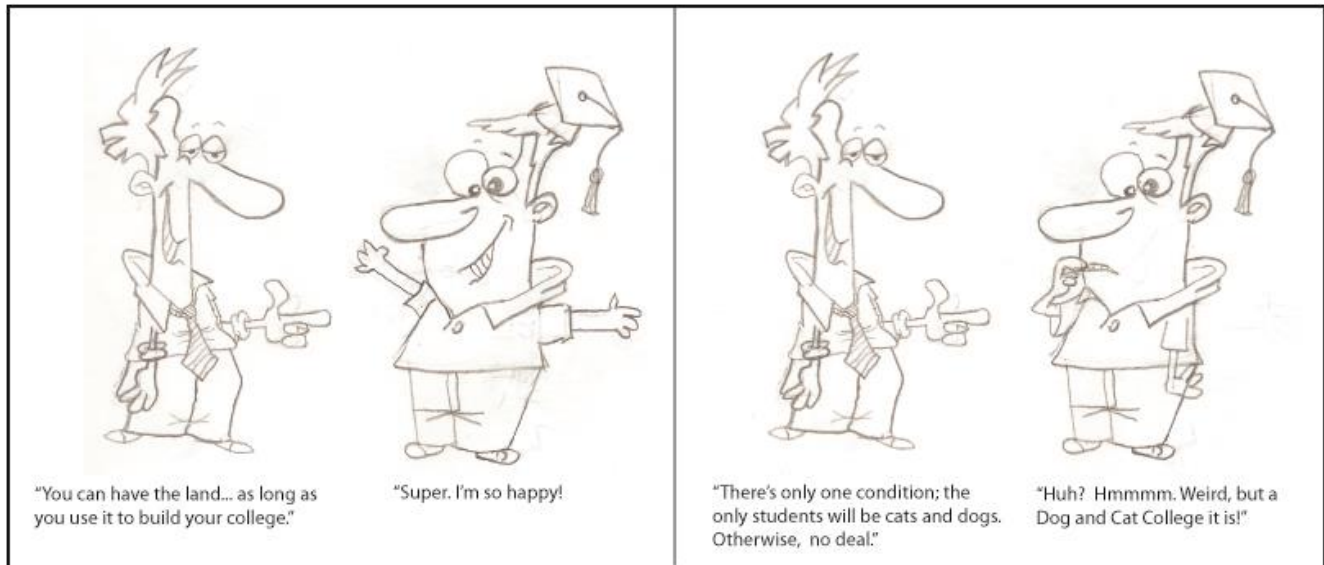
1. **The Fee Simple Absolute** is the most common, and it provides the most interest in the subject property. A fee simple absolute is limited to the individual property owner and his or her heirs and assigns – forever. Freehold estates are not subject to limitations or conditions.

A Fee Simple Absolute freehold estate is created by language such as “Grantor transfers said property to grantee and his or her heirs in fee simple”, thereby giving grantee the right to immediately and exclusive possession of the land to do with as he or she pleases.



2. **The Fee Simple Determinable**, also called a Base Fee or Qualified Fee, continues until the occurrence of a predetermined event. When the event occurs, the Fee Simple Determinable freehold estate terminates automatically by operation of law.

When a Fee Simple Determinable freehold estate terminates, property ownership reverts back to the grantor or his or her heirs.



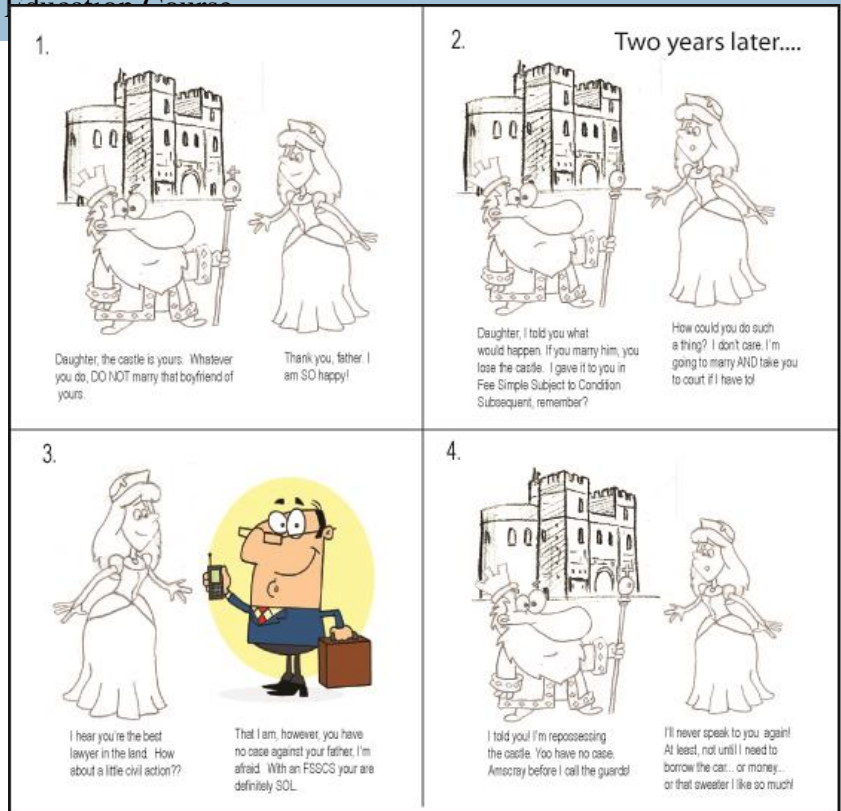
A Fee Simple Determinable freehold estate is created by language such as "To grantee and his or her heirs for as long as it is used for as dog and cat college," thereby determining in advance what conditions control the freehold estate and what event will automatically terminate the freehold estate

3. **Fee Simple Subject to a Condition Subsequent**, like the Fee Simple Determinable, may terminate in the future upon the exercise of the power of termination, the right of re-entry or the violation of a particular condition.

What distinguishes a Fee Simple Determinable and a Fee Simple Subject to a Condition Subsequent is **when** the fee hold expires. Unlike the Fee Simple Determinable which expires when the specified event occurs, the Fee Simple Subject to a Condition Subsequent continues **until** the person or entity that dispossess the estate, or terminates it through the exercise of his or her powers to terminate. In other words, it does not expire by operation of law, but requires some action on the part of the grantor.



Under the example, until the Grantor exercises his or her right to re-enter the land, the Grantee retains the right of possession.



4. **Fee Simple Subject to Excutory Limitation** is created to include clear language by the grantor that determines when the freehold will end. The language limits the freehold until a specific condition occurs and essentially provides, “I give you an interest in the property as long as,” or “I give you an interest in the property while...” Once the expressed condition occurs the property reverts to a third party, which has been clearly identified by the grantor as well.

Example of Excutory Limitation: Gives Mike an estate in land "as long as no alcohol is brought onto the property, in which case the property will go to Harry"; this creates a fee simple subject to executory limitation- if alcohol is brought onto the property, Harry may choose to take ownership.

Knowledge Check 41. Which of the following statements is accurate?

- A. A fee simple absolute is not limited to the individual property owner and his or her heirs and assigns.
- B. A fee simple determinable continues until the occurrence of a predetermined event.
- C. A fee simple subject to a condition subsequent terminates in the future automatically regardless of whether or not the grantor exercises the power of termination or right of re-entry.
- D. Nothing distinguishes a fee simple determinable and a fee simple subject to a condition.

LIFE ESTATES





A freehold estate that is a life estate is created by the action of the grantor toward the grantee, called a life tenant, to use the land during his or her lifetime. Life estates end when the life tenant dies or otherwise relinquishes the life estate while alive.

The key players in a life estate are the grantor, the life tenant, and whoever receives the land after the life estate terminates.

One type of life estate is the **remainder estate**. In a remainder life estate, the property transfers to someone other than the grantor, called the remainderman, after the life tenant's life estate terminates. The life estate is often used by a husband for his wife with his children as remaindermen.



A remaindermen life estate is created by language such as "I, grantor, being the husband, grant to my wife the right to possession of my separate property house until her death, and upon my wife's death I grant to my children the property in fee simple."

Another type of life estate is the reversion estate. In a reversion life estate, the property transfers back to the grantor after the life tenant's life estate terminates.

A reversion life estate is created by language such as "I, grantor, being the husband, grant to my best friend Johnnie Freeloader, the right to possession of my mansion in Orlando until his death, and upon his death the property shall revert back to my exclusive possession and ownership."

Without specific language about what happens to the property upon the life tenant's death, a **reversion life estate** is created. If the grantor has passed away at the time the life estate terminates, the land becomes a part of the grantor's estate. If the grantor left a Last Will and Testament bequeathing the property to a beneficiary, the beneficiary must wait to take possession until after the life tenant has died. If the grantor dies without leaving a Will, then the property is distributed according to the laws of intestate succession. Intestate means "without a Will."

Certain types of legal life estates are created automatically by law.

Death of the spouse: If the couple resided together in a homestead (their principal place of residence) and one of them dies, the surviving spouse has a life estate in the residence. The homestead is an extremely important legal right because homesteads are protected from certain types of creditors. Homesteads are not protected from real estate property taxes or from a mortgage for the purchase money



used to buy the homestead. Homestead are also not protected from any other legal liens against the property, such as a second lien, home equity loan or loan for home improvements.

When married couples encumber their homestead, the signature of each of the spouses is required before either of them may enter into a contract that results in a lien upon the homestead. The spouses must release their homestead rights to each other, thereby allowing the creditor to attach a lien against the homestead.

A life estate is created automatically by law in a couple's homestead when one of the spouses dies.

Husband and wife are married and they reside in a home that was owned by the wife prior to her marriage to husband, and thus her separate property. Wife has two grown children from a prior marriage. Husband had no children when he married wife, and the couple never had any children together. The wife dies and her adult children immediately request a court order to kick the husband out of their mother's separate property residence. The lawsuit is dismissed because an automatic life estate in the home was created at the time of the wife's death because the home was the homestead of the spouses. The husband may not be kicked out of the residence except for other legal causes, such as failing to pay property taxes or mortgage payments. The husband doesn't get a "free ride" because he must keep up the maintenance and expenses of the property, but he may not be forced to leave his homestead residence at his stepchildren's whim either.



MANNER OF OWNING REAL PROPERTY

Ownership in real property may be held in more than one manner. When only one owner has the right and title to the property the ownership is a severalty. Only one party is required to sign a deed for a severalty, unless the subject property is a homestead. No matter which spouse owns a homestead's legal title, both parties must always sign to encumber or sell the property.





When more than one party has the right and title to the property, ownership is co-owned between the parties and is called a concurrent ownership. The different forms of concurrent ownership provide different rights to the co-owners.

The three types of concurrent ownership are a tenancy in common, tenancy by the entirety and joint tenancy. Although the words “tenant” or “tenancy” make up the definition for the three types of concurrent ownership; the words do not imply a rental relationship. When used in the context of concurrent ownership, tenant and tenancy imply an ownership interest in real property.

- (1) A **Tenancy in Common** means that each owner holds an undivided ownership interest in the subject property and each party has the right to alienate or transfer his or her ownership interest without the consent of the other owners.

Tenants in common may each own a different portion of the property. Each is not required to own an equal interest.

Example: Suzy, Matt, Fred and Tom own a home together as a tenancy in common. Tom decides he’s tired of living with his roommates and wants to sell his undivided interest in the home. Tom may sell his interest, thereby transferring it to another owner, without the consent of Suzy, Matt, and/or Fred.



Transferring an interest in a tenancy in common may occur through deed or by Last Will and Testament or some other form of conveyance. Co-owners of a tenancy in common are not required to acquire their ownership interest simultaneously.

Example: Suzy, Matt, Fred and Tom own a home together as a tenancy in common. Suzy dies, leaving a Last Will and Testament that bequeaths her undivided interest in the home to Mary and Joseph, a married couple. Mat, Fred and Tom become co-owners with Mary and Joseph, even if they didn't agree to the transfer. A key point to make is that when the property transferred to Mary and Joseph and the number of co-owners changed from four to five, the interest owned by each didn't change from 25% to 20%, because Tom was only able to transfer his own undivided interest to Mary and Joseph and he could not have bequeathed a portion of the other co-owner's interest to anyone. Mary and Joseph own the same share of the property that Tom had owned prior to his death.

Knowledge Check 42. John bought a house, and two years later asked his brother-in-law to buy half an interest in the house. What type of ownership have the two created?

- A. A tenancy in common.
 - B. A tenancy by the entirety.
 - C. A joint tenancy.
 - D. A life estate with remaindermen.
-



- (2) A **Tenancy by the Entirety** is a concurrent ownership between married persons and just like with a homestead, neither spouse may alienate the property without the other spouse's consent. When one of the spouses dies, the surviving spouse receives the deceased spouse's interest in the property, becoming an owner in severalty, or solely. In a tenancy by the entirety each spouse owns an equal share of the property, and they may not own the property in unequal shares.

A **Tenancy by the Entirety** may be used to circumvent community property law, where the death of a spouse does not result in the surviving spouse taking full ownership of the property. When spouses own property under community property laws they may only automatically keep their own community property share upon the death of their spouse. Their spouse's share is distributed based upon whether or not they left a Last Will and Testament or died intestate. Through a Will, spouses may leave all of their own property to their spouse if they choose. When a spouse dies without a Will, his or her own property is distributed pursuant to the laws of intestacy.

When a surviving spouse receives their deceased spouse's share of a tenancy by the entirety, he or she exercises a right of survivorship.

- (3) In the third type of concurrent ownership, **joint tenancy**, joint tenants also have a right of survivorship. The key difference between a *joint tenancy* and a *tenancy by the entirety* is that the co-owners may alienate their ownership interest in the property without the consent of the other co-owner. The key difference between a joint tenancy and a tenancy in common is that the surviving co-owner of a joint tenancy automatically acquires the interest of the deceased co-owner upon his death.

The right of survivorship in a joint tenancy only lasts as long as the original co-owners own the property. If one of the co-owners sells his share then the new owner and the other original co-owner become tenants in common, and the right of survivorship dies.

Example: Mary and Peter purchased a house as a **joint tenancy** because they wanted to make sure that if either of them died, the surviving spouse would own the house outright without having to worry about a Last Will and Testament of the laws of intestacy. Peter died two years after the couple purchased the home and his brother sued Mary for Peter's joint interest in the property. The lawsuit is dismissed because under a tenancy by the entirety, Joseph's ownership interest automatically passed to Mary as a matter of law upon his death because of her right of survivorship. Mary is not required to go through probate proceedings to keep the property, and if she chooses to sell the property only her signature is required.

For tenants in common the co-owners may all acquire their ownership interests at different times and through different types of instruments. For both tenancy by the entirety and joint tenancy, co-owners must acquire their ownership interests at the same time and formalized within the same document. When



a change in ownership under a tenancy by the entirety or joint tenancy occurs, a tenancy in common results between the new or different owners.

Example: Suzy, Matt, Fred and Tom, Mary and Joseph all own a piece of property as joint tenants, having acquired their ownership interests on the same day and within the same deed. Suzy passes away. Because joint tenants enjoy a right of survivorship, the remaining five owners continue to own the property as joint tenants with a continued right of survivorship. If Suzy had sold her interest in the property, then a tenancy in common would have been created between the new owner and the other original five owners, with no right of survivorship.



LEASEHOLD ESTATES

A leasehold estate, or non-freehold, occurs when a person has an interest in real property for a definite period of time. The person, the lessee in the leasehold agreement, may exclusively possess or occupy the leased property during the leasehold period. Lease agreements may have varying terms of time. Some may last for several years and others for as short as a week or a month.



Mary and Joseph are planning a vacation to Miami, Florida in the summer. Rather than reserve a hotel room, they've decided to rent a house right on the beach since their trip will last for six weeks. The couple enters into a leasehold agreement with Ricky Rental, who owns the house on the beach. While Mary and Joseph are residing on the premises, they'll have exclusive possession of the property, which they may enjoy uninterrupted by Ricky.



Leasehold estates are of four basic types.

- (1) A **tenancy for years** has a fixed term. Frequently, a tenancy for years lasts for years and the lease agreement anticipates the long term. The lease agreement contains a specified start and end date, but may have provisions for early termination of the agreement. A tenancy for years requires a written lease in order to conform to provisions of the Statute of Frauds, which states that all agreements concerning land that cannot be performed in less than one year must be in writing. A tenancy for years that is not in writing is automatically converted into a periodic tenancy.
- (2) A **periodic tenancy** is a very common tenancy and one seen in many residential rental agreements. Under a periodic tenancy the tenant/leasee may acquire the leasehold from year to year, month to month or week to week. Generally, the lease payment runs with the term of the lease. If the lease is month to month, the lease payment is paid monthly and the leasehold is called a “month to month.” The landlord or lessor may end the lease agreement at any time after giving the tenant sufficient prior notice.

A year to year leasehold requires 6 months’ notice to terminate.

A month to month leasehold requires the same period, 30 days, to terminate.

A week to week leasehold requires the same period, 7 days, to terminate.



- (3) A **tenancy at sufferance** is very much open-ended, even though it does have a specified term with a start and end date. The term of the leasehold only ends upon the landlord/lessor requesting the termination. The open-endedness stems from the landlord's right to terminate, as well as the tenant's right to continue to occupy and possess the property after the stated term of the leasehold expires. If the leasehold expires and the tenant holds over, then the tenant continues to pay the lease and may remain as long as he continues to pay the lease and until the landlord terminates the lease.

Carol leased a home from Frank for twelve months, and although the two have known each other for years they did draw up and sign a written lease agreement. Carol agreed to lease the home and Frank agreed that she could have exclusive use of the home and that he wouldn't interfere with her enjoyment of the home.

Thirteen months after leasing the home, Joseph found out that his brother was returning from overseas and wants to lease the home. He let Mary know that she would have to move right away.

Carol said she wouldn't move and that she believed she had the right to remain in exclusive possession of the home until she decided to move, as long as she continued to pay the lease.

Under the circumstances, Frank may terminate the lease because the leasehold is a tenancy at sufferance and he has no obligation to provide notice.

F.S. section 83.04 states that when any tenancy is created in writing with a limited term, and the term has expired but the tenant holds over in the possession of the premises without renewing the lease by some further instrument in writing, then the holding over is construed to be a tenancy at sufferance. The mere payment or acceptance of rent is not a renewal of the term from the original lease. If the holding over is continued with the written consent of the lessor, then the tenancy becomes a tenancy at will.



- (4) Under a **tenancy at will** both the landlord and the tenant have the right to terminate. Termination may occur with proper prior notification, providing a reasonable time for the lessee to vacate, or the landlord to prepare for a new tenant. Tenancies at will are often by oral agreement, with no written contract.

F.S. section 83.01 states that leases of land or tenements are tenancies at will unless they are made in writing and signed by the lessor. They are from year to year, or quarter to quarter, or month to month, or week to week, determined by the periods the rent is payable. If the rent is payable weekly, then the tenancy is week to week, and so on.

F.S. section 83.03 allows that a tenancy at will may be terminated by either party giving notice as follows:

- (1) Where the tenancy is from year to year, by giving not less than 3 months' notice prior to the end of any annual period;
- (2) Where the tenancy is from quarter to quarter, by giving not less than 45 days' notice prior to the end of any quarter;
- (3) Where the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and
- (4) Where the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

Example: Mary leased a home from Joseph. The two didn't bother with a written contract because they've known each other for years and didn't anticipate any problems.

Mary agreed to lease the home for nine months and Joseph agreed that she could have exclusive use of the home and that he wouldn't interfere with her enjoyment of the home.

Three months after leasing the home, Mary found out that her job was transferring her out of state. She let Joseph know that she would have to move and she gave him sixty days' notice, the same amount of time her company gave to her.

Under the circumstances, Mary may terminate the lease because her leasehold is a **tenancy at will** and the amount of time she has given as notice is reasonable.



SECTION 6 – DOCUMENTS

A. Real Estate Listing Agreements and Sales Contracts



The purchase of real property, with or without improvements, is one of the most significant purchases a person may make in their lifetime. Most parcels of real property within the United States may be traced back to their origin within the United States, called “inception of title.”

It’s not surprising that the transfer of real property from one property owner to another is governed by regulations, both state and federal, as well as many rules of law. Many documents are necessary to complete a transfer of title to real property, and this section focuses on some of those documents.

Transferring real property by sale generally begins with an Exclusive Listing Agreement between the seller and a real estate broker, followed by a Real Estate Sales Contract, title exchange documents and in most cases accompanied by financing documents. In this section we take a closer look at listing agreements, real estate sales contracts, real property title transferring instruments and several of the various types of mortgages available, and we conclude with a look at recording instruments.

Real estate listing agreements and sales contracts are, at the core, the same as any other contracts. All contracts have some basic and consistent elements that make them relatively similar and that categorize the contract as a particular type of transaction. Contracts also have specific or unique elements that differentiate a particular contract from all other similar types of contracts.

A **contract** is an agreement between two or more parties that includes a promise to do something in exchange for consideration. Consideration may be thought of as a valuable benefit.





A contract isn't a contract without offer, acceptance and consideration, the three elements that give life to a contract, and it is presumed that the parties to the contract have a "meeting of the minds."

In other words, the parties have a mutual understanding of what the contract is for and the terms and conditions it contains.

A fourth element is performance, but the contract itself is not void without performance. Performance is "doing" what the contract requires.

An offer may be written or oral, but must convey a willingness to commit to something. An example of an offer may be, "I will sell you my house for \$150,000.00." An offer must be serious to be valid. In other words, if you said, "I will sell you my house for \$150.00" you are probably making a joke, not a valid offer.

Offers made in writing tend to contain information or terms that show that the offer is serious, like the names of the parties, a description of the consideration, the description of the real property, the sales price, and/or the place for performance.



Generally, real estate sales in Florida begin with a Contract for Sale and Purchase in a form standardized by the State Bar of Florida and the Florida Association of Realtors.

Knowledge Check 43. Generally, real estate sales in Florida begin with a Contract for Sale and Purchase in a form standardized by –

- A. Uniform Real Estate Association.
- B. State Bar of Florida and the Florida Association of Realtors.
- C. DBPR of Business and Professional Regulation.
- D. Florida Administrative Weekly.

Although offers may be written or oral, pursuant to F. S. section 689.01, when real property is conveyed, the agreement must be writing and signed by all parties in the presence of two witnesses, who must also sign the written instrument.



Acceptance may be as simple as saying, “I accept your offer,” as long as the acceptance occurs while the offer is still available or “open.” If your client offered to sell his house for \$150,000.00 and offer was accepted within about 30 days and hasn’t been revoked or withdrawn, then the offer is still open; however, if the acceptance arrives a year later your client is not likely to still intend to sell the home for \$150,000.00 without determining if that is still a fair price.



the



Offers are no longer **open** when they are:

- withdrawn or revoked
- expired by terms such as, “This offer is good until 5 p.m. on May 1”
- upon receipt of a counter offer, rejected or accepted.

If your potential client says, “I accept the seller’s offer to buy their house if they will sell it for \$140,000.00,” then he has rejected the offer and made a counter-offer, which may be accepted, rejected, or a counter-counter offer made. Offers and counter offers help each party get what they want.

In contract law, “consideration” is a legal term that means “to give something of value in exchange for a promise, or the performance of an act.” Consideration is written right into the contract, “I give \$10.00 and other good and valuable consideration,” where the \$10.00 is a substitute for the actual amount that will be given at a later time, or over the course of time.

Consideration doesn’t have to be money. It may be goods or services, and it may even be agreeing not to do something. Without consideration in some form, a contract is not valid or enforceable. In a real estate sales contract, consideration is generally the promise to sell or purchase real property in exchange for money.

Consideration may NOT be an amount paid into escrow. Money placed into escrow demonstrates a good faith intention of following through with the contract, and it is generally lost to the other party if follow through does not occur.

Consideration is not a gift because it requires that parties trade something of value. In the sale and purchase of real estate, selling the house for



\$150,000.00 provides a benefit to both parties in the contract. The seller receives the money and the buyer receives the house.

Using the same scenario, an example of a gift is if your client wants to buy a house, but he intends *to give it to his child*. The seller and the buyer have provided consideration and have a contract, but the child has not given any consideration and has no contract. The house is a gift to the child by your client.

As a broker or sales agent, you trade your services and expertise in exchange for money. The exact amount of money is generally not known because the trade is generally a percentage of the sales price of the real property.



EXCLUSIVE RIGHT OF SALE LISTING AGREEMENT



The first contract you'll consider when selling real estate is an Exclusive Right of Sale Listing Agreement. The agreement that you and your client sign must comply with statute and FREC rules and may be one of several different types.

Click for copy and save to your favorites:

[Exclusive Right of Sale Agreement Transaction Broker from Florida Realtors](#)

1. An Exclusive Right of Sale Listing Agreement for Commercial Property - is a listing agreement for commercial property granted by the seller grants to the listing broker for the sole right to sell the commercial property.
2. An Exclusive Brokerage Listing Agreement - is a listing agreement granted by the seller to the listing broker, authorizing the listing broker to sell the property and to offer cooperation to other agents and/or transaction brokers but also reserves the right to sell the property himself/herself.
3. An Exclusive Right of Sale Listing Agreement – Non-Representation - is a listing agreement granted by the seller to the listing broker, granting the sole right to sell the property. The agreement requires the right to cooperate with buyer's agents and transaction brokers.
4. An Exclusive Right of Sale Listing Agreement - Single Agent - is a listing agreement granted by the seller to the listing broker, granting the sole right to sell the property. The agreement requires the right to cooperate with subagents, buyer's agents, transactions brokers and non-representatives. The agreement includes the duties required by statute of the single agent.
5. An Exclusive Right of Sale Listing Agreement - Transaction Broker – is a listing agreement granted by the seller to the listing broker, granting the sole right to sell the property. The agreement includes the right to offer compensation to subagents, buyer's agents, transactions brokers and non-representatives. The agreement includes the duties required by statute of the transaction broker.
6. An Exclusive Right of Sale Listing Agreement - Transition from Single Agent to Transaction Broker - a listing agreement granted by the seller to the listing broker, granting the sole right to sell the property. The agreement includes the right to offer compensation to subagents, buyer's agents, transaction brokers and non-representatives. The agreement includes the duties required by statute of the single and transaction broker duties as well as the consent to transition to transaction broker.
7. An Exclusive Right to Lease Agreement -is listing agreement granted by the seller giving the broker the sole right to lease a particular property.
8. A Limited Service Agreement - is a listing agreement granted by the seller giving the listing broker the right to put the property in the Multiple Listing Service (MLS) and to offer compensation to cooperating brokers.



As a real estate broker or sales associate, you are required to provide your client with very particular disclosures about yourself as a broker or sales associate. Disclosures are discussed in detail in another section of this course.

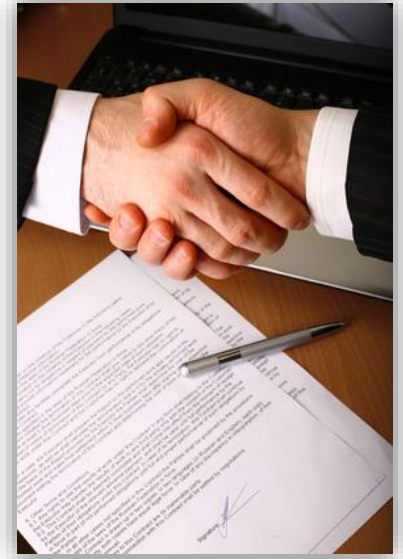
Once you have entered into a binding agreement between you and your client, you begin the property search on behalf of a buyer, or you begin promoting the sale of property on behalf of a seller. When a match is made between real property for sale and a potential buyer, a real estate sales contract is signed by buyer and seller.

The real estate sales contract dictates everything from the time available for acceptance of the offer or counter-offers, to financing, to setting a closing date, called settlement. The Florida Bar and the Florida Association of Realtors combined their efforts to create a uniform Contract for Sale and Purchase that is used in most real estate transactions in Florida.

Provisions not found in the standard form may be added via a rider or addendum.

A sales contract for the purchase of property “as is” is also provided by the Florida Association of Realtors. As a member of the association, you may utilize all of the forms.

<http://www.floridarealtors.org/toolsandsupport/formsimplicity/>



B. Transfer of Title

Properly transferring title to real property requires completing a few important steps.

1. To provide the new owner of the property with the proof necessary to demonstrate ownership.
2. To make certain that the proof complies with Florida law, including the Statute of Frauds, and
3. To record the proof with the appropriate agency.

The steps taken together create “transfer of title.”



Knowledge Check 44. Suzie Seller sold her house to Betsy Buyer and Betsy needs to transfer title to the property into her name. Which of the following steps is not required for Suzie to successfully transfer the title to real property to Betsy?

- A. Provide Betsy with the proof necessary to demonstrate ownership.
 - B. Make certain that the proof of ownership complies with Florida law, including the Statute of Frauds.
 - C. Record the proof with the appropriate agency.
 - D. Notify all living prior owners, or if deceased, the legal heirs at law, that title to the property has transferred.
-



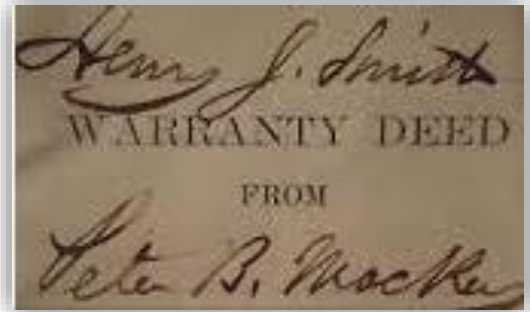
Many title transfer instruments exist, including deeds. Deeds may be of many types, such as an Executor's Deed, Guardian's Deed, Quitclaim Deed, Sheriff's Deed, Special Warranty Deed, Tax Deed and Warranty Deed.



Warranty Deed

A **warranty deed** is a powerful deed because the seller guarantees that he holds clear title to the real property.

“Clear title” means that the seller has the right to sell the real property. The guarantee in a warranty deed extends back to the property’s origin. The warranty deed may be thought of as, “I guarantee that I own the real property free and clear and I grant my interest to you.”



Quitclaim Deed



On the other hand, a **quitclaim deed** only conveys whatever right, title, or interest the grantor “may” have, if any, in the real property and the seller (or grantor) makes no warranty about the property. A quitclaim may be thought of as, “If I own an interest in the real property, then I grant it to you.”

Special Warranty Deed

A **special warranty deed** is granted to convey the seller’s (grantor’s) interest in the real property, which he asserts he does have an interest in, but without dating the warranty back to the property’s origin, thus no “warranty” at all.



Section 689.02, F.S. prescribes the language necessary to transfer title to real property via a warranty deed. A warranty deed transfers the title of real property from one person to another and it asserts that title to the property is free and clear from any claims.



“This indenture, made this _____ day of _____ A.S., between _____, of the County of _____, in the State of _____, party of the first part, and _____, of the County of _____, State of Florida, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of \$_____ dollars, to her or him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, her or his heirs and assigns forever, the following described land, to wit:

(place legal description here)

And the said party of the first part does hereby *fully warrant the title to said land*, and will defend the same against the lawful claims of all persons whomsoever.”

Notice that the required language includes “*fully warrant the title to said land*,” which in effect states that no one else owns the property, including anyone who may have owned it since the property’s origin.

F.S. section 689.02 also requires that warranty deeds for the conveyance of land must include a blank space for the property appraiser’s parcel identification number describing the property conveyed. The number, if available, must be entered on the warranty deed before the deed is presented for recording.



The warranty deed must contain a blank space for the social security numbers of the grantees name in the deed, if available, and the numbers entered on the deed before the deed is presented for recording. Failing to including the required blank spaces, or the parcel identification, or any social security number does not affect the validity of the conveyance or the recordability of the deed.



Including an incorrect parcel identification number or social security number also does not affect the validity of the conveyance or the recordability of the deed. The parcel identification number does not constitute a part of the legal description of the property and must not be used as a substitute for the legal description of the property being conveyed. The social security numbers provided may not serve as a designation of the grantees named in the deed.

Knowledge Check 45. Suzie Seller's warranty deed transfers the title of real property from her to Betsy Buyer and it asserts –

- A. Nothing, because it doesn't provide any guarantees.
 - B. Title to the property is free and clear from any claims.
 - C. Title to the property was owned by the seller's family since inception of title.
 - D. Title to the property is solely owned by the seller, and thus she may do with it as she pleases.
-

When a warranty deed is executed in substantially the same form described above, it is held to be a warranty deed with full common-law covenants, and shall just as effectually bind the grantor, and the grantor's heirs, as if said covenants were specifically set out within the warranty deed, according to section 689.03.

When a warranty deed is executed in substantially the same form described above by a married woman, it conveys whatever interest in the property that she possesses.

Under F.S. section 689.04, warranty deeds must be executed and acknowledged pursuant to any laws regulating conveyances of realty by deed.

An acknowledgement is the legal way to affirm something and generally given before a notary public.



C. Mortgages



As a real estate broker or sales associate, you may wonder why understanding mortgages should be important to you. When you consider what a mortgage actually is, then you start to grasp why you should be fully aware of the mortgage process because most of your real estate sales are dependent upon financing, and the mortgage is the financing tool used.

CHAPTER 697, F.S. INSTRUMENTS DEEMED MORTGAGES AND THE NATURE OF MORTGAGES

A mortgage, also called “mortgage loan,” consists of the financing instruments used to secure a lien against real property in exchange for the money used to purchase the property.

A mortgage is a lien against property. In the simplest of terms, the home buyer makes a pledge to the financier, which is generally a bank, savings and loan, or mortgage company. The buyer pledges the real property to the financier in return for the money needed to make the purchase. The financier receives a claim against the home, which is a very powerful claim and one that comes first before most other claims in the event of a default on repaying the money borrowed to purchase the home.

Knowledge Check 46. A mortgage, also called mortgage loan, consists of the financing instruments used to secure a lien against real property in exchange for:

- A. The money used to purchase the property.
 - B. The proper document used to transfer title to the property.
 - C. The promise by the seller that the property is free and clear from all claims.
 - D. A balloon note payment structure.
-



Mortgages allow the home buyer to purchase a home without having to come up with the entire purchase price. Mortgage documents also set out the terms and conditions that will govern the transaction for its lifetime. Terms include the amount borrowed, the interest rate for borrowing money, when and how payments to repay the money borrowed are made, terms for an early payoff of the entire balance and what happens in the event of a default.



F.S. section 697.01 sets out what may be deemed a mortgage.

A mortgage includes all conveyances, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money. The instrument may be from the debtor to the creditor or from the debtor to some third person in trust for the creditor. Any such instrument is called a mortgage, and is subject to rules of foreclosure.

Knowledge Check 47. Beatrice Borrower has obtained a loan from Big Time Bank and the terms of the mortgage must include all but which of the following?

- A. The amount borrowed.
- B. The interest rate for borrowing money.
- C. The seller's new address.
- D. When and how payments to repay the money borrowed are made.

Knowledge Check 48. Mortgages secure the payment of money for real or personal property and are subject to the rules of –

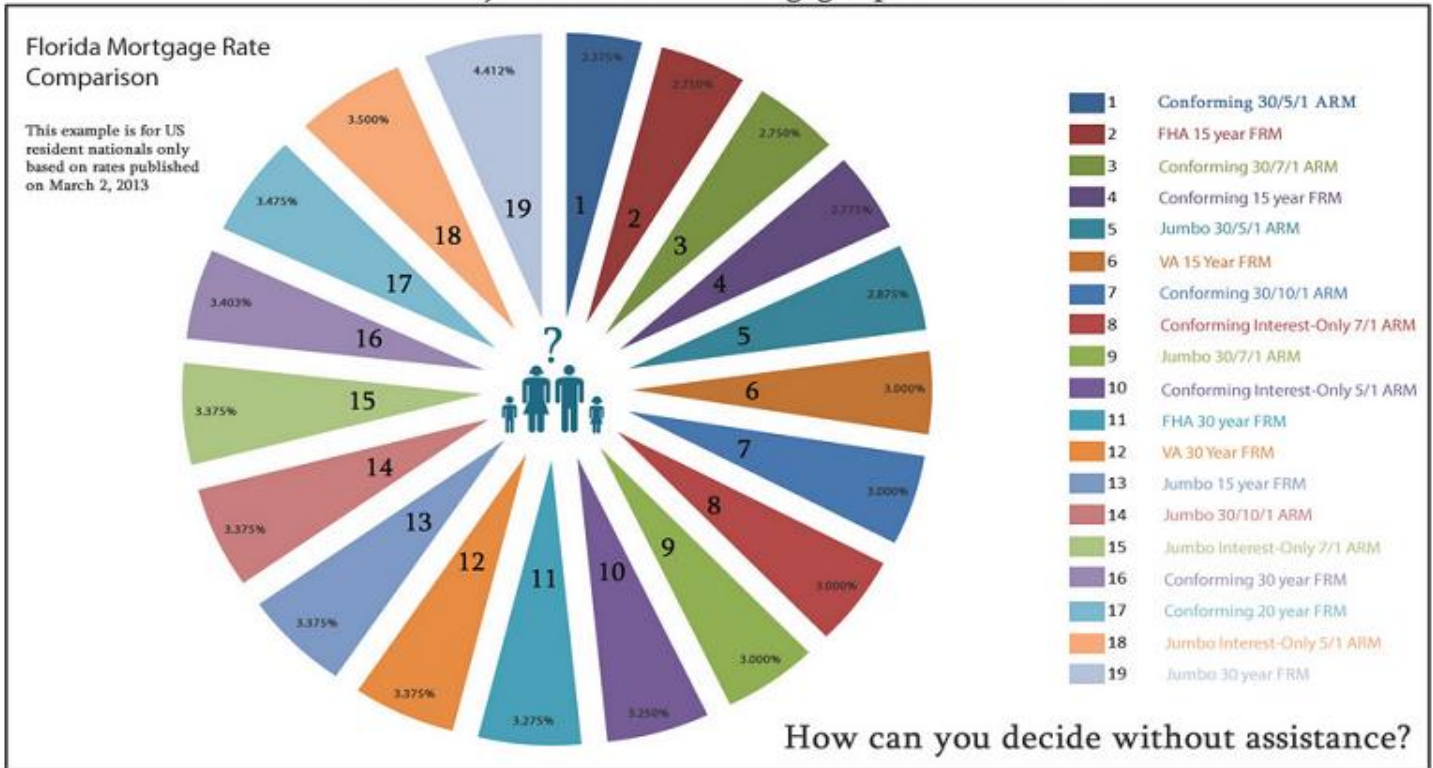
- A. Default.
- B. Timely Payment.
- C. Estoppel for non-payment.
- D. Foreclosure.



Your clients will inevitably ask you about mortgages, including how to obtain one, where to go, how big of a down payment may be required or how long securing a mortgage may take.

Some clients go through a process of mortgage pre-screening before beginning the home buying search, while others search for the dream home first before thinking about its financing.

These are just some of the mortgage options available.



What we know so far is that just about any document that secures the purchase of a home in exchange for money, or a portion it, is deemed a mortgage, but the definition doesn't actually end there.

Mortgages come in a wide variety of types and your clients will naturally be curious about them. Although you won't be consulting with them about the best mortgage for them, having knowledge about the various types will be helpful and make their home search and/or sale a better experience.



Mortgages for the purchase of a home may include:

- fixed rate mortgage,
- adjustable rate mortgage,



- balloon payment mortgage,
- interest-only mortgage,
- FHA mortgage, or
- VA mortgage.

Another mortgage that is a more recent invention is the reverse mortgage, which has been left out of this discussion, as the senior citizen desiring to secure a reverse mortgage does not require the assistance of a real estate agent or sales associate.

Before discussing the various types of mortgages further, let's dissect the mortgage further.

Mortgages are used as **security**.

Security is the assurance of repayment, beyond the mere promise by the borrower, that is embodied in a promissory note. Security may take several forms, and frequently a single loan will be secured with multiple forms of security. The sale of real estate almost always employs a mortgage as security.



Mortgages are formalized with paperwork, generally by a **Promissory Note** and/or a Mortgage Document, and some states utilize a Deed of Trust. Each type serves a similar purpose; to pledge the borrower's title to the real property as security for the loan to purchase the real property. The pledge provides the lender with a claim against the real property until the debt has been paid in full. A lender may exercise their claim in the real property if ever the borrower defaults on repaying the loan.

A **Promissory Note** is a "promise" given by the buyer to the seller to repay the mortgage loan plus interest. The Promissory Note contains repayment information such as the amount of each payment, the length of the loan (also known as the maturity date), and what happens if the buyer breaches the terms of the Promissory Note. The Promissory Note also describes the type of mortgage, whether fixed rate, variable or balloon, or other type as well as the rate of interest.

Click for Sample Promissory Note: <http://www.formsworkflow.com/d101325.aspx?partnercode=Justia>

A **Promissory Note** may also be called a "Mortgage Note," or a "Real Estate Note," and is given along with the Mortgage Document or Deed of Trust to complete the real estate sales transaction.



A Mortgage Document is commonly used in many states, and is the document used in Florida to transfer title to real property.



Mortgages are between two parties; the borrower and the lender

The mortgage document evidences the lien on the real property purchased by the buyer, and it is recorded within the county where the property is situated.

When a mortgage document is used, the borrower has full title to the real property. However, he may not transfer his ownership in the real property without the lender's permission. That may occur by paying off the loan in full, or during the sale of the property to another person. During the sale, the lender is paid in full.

Once the loan has been paid in full, the borrower receives a Release of Lien, which means that the property is no longer encumbered by the loan. In the case of default, where the borrower fails to make the payments required under the terms of the Mortgage Document, the lender may foreclose the property, sell it, and apply the proceeds from the sale to the debt owed by the borrower. If a deficit occurs after the sale, the borrower remains liable to the lender to pay that amount. If a surplus occurs then the lender has a duty to pay the borrower proceeds above the amount owed to the lender, plus costs of foreclosure, maintenance, sale and attorney's fees.



Some states use a **Deed of Trust** rather than a Mortgage Document. Like the Mortgage Document, a Deed of Trust is also recorded in the county where the real property is situated. Recording provides notice that the property is encumbered by a lien.

Rather than two parties, buyer and lender, a Deed of Trust also has a third party to the transaction who acts as a Trustee. Often, Trustees are attorneys or title insurance companies. Unlike a Mortgage Document that grants full title to the borrower at the time of execution, the Deed of Trust grants temporary title to the third party, which remains in effect until the loan is paid in full.



Knowledge Check 49. A deed of trust –

- A. Has a third party to the transaction who acts as a Trustee and which grants full title to the third party for varying reasons such as the borrower's incapacity.
- B. Has a third party to the transaction who acts as a Trustee and which grants temporary title to the third party and who also takes temporary possession of the property until the loan is paid in full.
- C. Has a third party to the transaction who acts as a Trustee and which grants full title to the third party, but who takes temporary possession of the property until the loan is paid in full.
- D. Has a third party to the transaction who acts as a Trustee and which grants temporary title to the third party, which remains in effect until the loan is paid in full.

If a debt secured by a Deed of Trust is not paid, the Trustee may sell the property via foreclosure. The Trustee pays the lender with the proceeds from the sale and if any surplus proceeds exist they must be paid to the borrower.

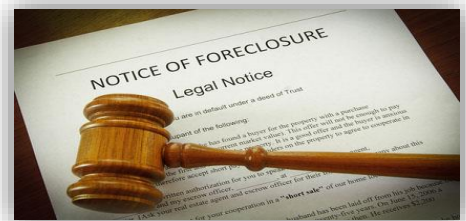
A **Release of Lien** is provided by the Trustee to the borrower once the debt for the real property has been paid in full.

Under F. S. section 697.06, a note that does not detail prepaid terms, or is "silent" as to the right of the borrower (also known as the obligor) to prepay the note in advance of the stated maturity date may be prepaid in full without penalty.

If a default of the terms of the promissory note or mortgage occurs, the lender is entitled to foreclose on the property in accordance with the terms of the mortgage and Florida law.

Your real estate client should be aware of the consequences of a default of the terms of the mortgage. Better understanding the consequences should assist in the decision-making process of not only the type of mortgage sought, but the amount.

Many variables may affect the sale of the real property. To ensure a successful sale, many things must occur, including running a title or lien search, background and/or credit check, verification of land or property use restrictions that may impact financing, presentment of all required disclosures, a review of the mortgage and other loan documents, and closing the real estate transaction, called settlement.



Earlier you learned that mortgages may be of a variety of types. Here, we discuss several in more detail.

(Click [here](#) to download [BankRate Calculator](#) to your favorites.)



Fixed Rate Mortgage

The **fixed rate mortgage** is exactly what it implies. The interest rate remains the same throughout the term of the loan. The borrower has no unanswered questions about how much will be paid in interest charges. If interest rates increase in the future the borrower is guaranteed the rate bargained for, but if interest rates decrease the borrower is stuck with the higher rate.

Variable Rate Mortgage (ARM)

The **variable rate mortgage**, also called an ARM or adjustable rate mortgage is an appealing way for borrowers to take advantage of changes in the interest rate if rates decrease. Initially, the borrower will pay a higher rate than the going fixed rate, but in the long run, the borrower may save money by paying less interest over time. An interest rate margin is set in the terms of the mortgage for the amount a variable interest rate may increase or decrease during the lifetime of the loan. The mortgage also sets the lifetime minimum and maximum rate caps, which is the lowest and highest a variable rate may adjust to.

For instance, if the margin on the rate is a 3, then the initial introductory rate may go up or down by 3 points, but no more, even if a greater change occurred in the rate. The rate caps then determine if an increase or decrease in the rate by 3 margin points is possible. If the initial rate was 5.75 percent with a margin of 3, with a low rate cap of 5.00 percent, then the rate may only adjust to 5.00 percent, and not 2.75 percent. Likewise, if the rates increased to 12 percent, but the high rate cap is set at 10.75 percent, then the rate may change from 5.75 percent to 8.75 percent, the entire 3 point margin because the high rate cap of 10.75 percent allows for that change. So although some uncertainty exists within a variable rate mortgage, the flexibility of the interest rate may be well worth the bargain.



Balloon Mortgage



The **balloon payment mortgage** is covered in F. S. section 697.05 and defines the balloon mortgage as every mortgage in which the final payment or the principal balance due and payable upon maturity is greater than twice the amount of the regular monthly or periodic payment of the mortgage. ,

$$\text{Final Payment } \$ = > 2X \text{ Monthly/Periodic Payment } \$$$

If the mortgage is a balloon payment mortgage, then a clearly stamped notice must appear as a legend and state:



THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$____, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

An additional notice must appear as a legend in **ARMs** because the variable interest rate, which is adjusted or renegotiated periodically, may be difficult to determine since the principal balance due on maturity cannot be calculated with any certainty. For **ARMs**, then, the principal balance due upon maturity must be calculated on the assumption that the initial rate of interest will apply for the entire term of the mortgage, and the borrower must be notified that the stated principal balance due upon maturity is an approximate amount based on such assumption. The legend must state:

THIS IS A BALLOON MORTGAGE SECURING A VARIABLE (adjustable; renegotiable) RATE OBLIGATION. ASSUMING THAT THE INITIAL RATE OF INTEREST WERE TO APPLY FOR THE ENTIRE TERM OF THE MORTGAGE, THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY WOULD BE APPROXIMATELY \$, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE. THE ACTUAL BALANCE DUE UPON MATURITY MAY VARY DEPENDING ON CHANGES IN THE RATE OF INTEREST.



Further, the legend, including the principal balance due upon maturity, must appear at the top of the first page or face sheet of the mortgage and also must appear immediately above the place for signature of the mortgagor.



The legend must be conspicuously printed or stamped.

The failure of a mortgagee or creditor or a third party in trust for a mortgagee or creditor to comply with the legend requirements of section 697.05 automatically extends the maturity date of the mortgage in the following manner:

The mortgagor must continue to make monthly or periodic payments until the principal and interest which has accrued prior to the time of the balloon payment of the mortgage is paid in full, and the maturity date must be automatically extended to the date upon which said payments would cause the mortgage debt to be paid in full. An assumption exists that the payments are made when due as required on the monthly or periodic schedule. The mortgagor is entitled to prepay the mortgage without penalty during the extension period.

Section 697.05 does not apply to the following:

- (1) any mortgage in effect prior to January 1, 1960,
- (2) any first mortgage, excluding a mortgage in favor of a home improvement contractor defined in section 520.61(13) the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of section. 520.60-520.98,
- (3) any mortgage created for a term of five years or more, excluding a mortgage in favor of a home improvement contractor defined in section 520.61(13) the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of sections 520.60-520.98,
- (4) any interest-only mortgage, with the entire original principal sum to be payable upon maturity,
- (5) any mortgage securing an extension of credit in excess of \$500,000,
- (6) any mortgage granted in a transaction covered by the Federal Truth in Lending Act, 15 U.S.C. sections 1601 et seq., in which each mortgagor thereunder is furnished a Truth in Lending Disclosure Statement that satisfies the requirements of the federal Truth in Lending Act, or
- (7) any mortgage granted by a purchaser to a seller pursuant to a written agreement to buy and sell real property which provides that the final payment of said mortgage debt will exceed the periodic payments of the mortgage.



Balloon Mortgage Interest Only Mortgage



The **interest-only mortgage** requires that the borrower pay only the accrued interest on the loan, generally in monthly payments and for a fixed term. After a defined period, the entire balance of the loan becomes due. The borrower either makes higher monthly payments, pays the entire outstanding balance due, or refinances the loan.

The interest-only mortgage acts as a bit of a hybrid between fixed rate, variable rate and balloon mortgages. Like a fixed rate loan, the interest rate remains the same during the loan's term. Like a variable rate, the interest rate of an interest-only loan may change in the future if the borrower refinances the loan at the end of the loan's term, and like a balloon mortgage, the borrower may make a lump sum payment at the end of the loan's term.

FHA Mortgage

FHA, or Federal Housing Administration, mortgages arose out of the Great Depression as a means of providing lenders insurance against foreclosures, which were a frequent occurrence in the 1930's. An FHA loan is an insurance-backed loan and designed to assist low income borrowers to purchase homes. Lenders pay a mortgage insurance premium (MIP) on behalf of borrowers to the FHA. The premium generally is the equivalent of 1 percent of the amount borrowed. The lender loans the MIP to the borrower by making the payment, then is repaid as the loan is repaid, in monthly installments, or in whatever manner the mortgage prescribes.

The FHA was created by the National Housing Act of 1934. When an FHA loan is approved by the lender and FHA, the FHA insures the lender against loss caused by any default by the borrower. The FHA itself does not lend money or make any loans; however, it does investigate each borrower and make a decision about the risk of making the loan. Often FHA loans have stricter parameters, including placing a cap on the amount of money that may be borrowed.

http://www.fha.com/fha_loan_requirements.cfm

Florida limits the amount of an FHA loan based upon the size of the property, whether a single family, duplex, tri-plex or four-plex dwelling and further dependent upon the Florida county the dwelling is situated within.

http://www.fha.com/lending_limits_state.cfm?state=FLORIDA



An FHA loan may be one of several types including a fixed rate loan, adjustable rate, energy efficient mortgage, graduated payment mortgage, FHA loans for condominiums or a growing equity mortgage.

http://www.fha.com/fha_loan_types.cfm

VA Mortgage

The VA, or Veterans Affairs, mortgage is a guaranteed loan for eligible veterans, active duty military personnel and surviving spouses. The amount of money that may be borrowed under the terms of a VA loan may be limited. The most enticing benefit of a VA mortgage is low or no down payment required with a competitive interest rate.

<http://www.benefits.va.gov/homeloans/>

When working with a client interested in securing a VA home loan, the DBPR of Veterans Affairs is a helpful resource. For Florida residents, potential homeowners may contact the DBPR of Veterans Affairs at the VA Regional Loan Center located at 9500 Bay Pines Boulevard, St. Petersburg, Florida 33708 • 888/611-5916.

DBPR of Veterans Affairs
VA Regional Loan Center
9500 Bay Pines Boulevard
St. Petersburg, Florida 33807
888/611-5916



A few more comments about mortgages -

F. S. SECTION 697.08 PROHIBITS EQUITY SKIMMING.

Equity skimming includes the purchase, within a 3-year period, of two or more single-family dwellings, two-family dwellings, three-family dwellings, or four-family dwellings, or a combination thereof, that are subject to a loan that is in default at the time of purchase or within 1 year after the time of purchase, if the loan is secured by a mortgage or deed of trust, or failing to make payments under the mortgage or deed of trust as the payments become due, regardless of whether the purchaser is obligated on the loan, or applying, and authorizing the application of, rents from such dwellings for the person's own use, and is done with the intent to defraud the real property owner.



Example: An investor offers to buy a home in foreclosure from the homeowner. Often, the homeowner has built up equity in the home, even though faced with an inability to maintain the timely periodic payments. The investor convinces the homeowner to sell the home to the investor for the amount due under the terms of the mortgage. The investor also convinces the homeowner to enter into a lease agreement to remain in the home. The investor under this scenario has stripped the equity from the homeowner by purchasing the home for the amount owed, rather than for fair market value. An added bonus to the investor is that the homeowner remains in the home as a tenant, paying a monthly lease amount.

Equity skimming is a third degree felony in Florida. The legal purchase of a home in foreclosure may be accomplished and could be a great benefit to the homeowner, but must be done with fairness to all parties and not skewed to the investor's benefit.

F.S. section 697.10 states that in any action relating to real property, if a court finds that any person has prepared an instrument, which, due to an inaccurate or improper legal description, impairs another person's title to real property, the court may award to the prevailing party all costs incurred by her or him in such action, including reasonable attorney's fees. The prevailing party may also be awarded all actual damages that she or he may have sustained as a result of such impairment of title.

Preparing and executing the necessary documents to complete a real estate transaction must be followed up with the appropriate recording of the instrument. Recording ensures that potential creditors or purchasers have an opportunity to discover any outstanding encumbrances upon the real property.



CHAPTER 695, F.S. – RECORD OF CONVEYANCY OF REAL ESTATE

Section 695.01 states that in order for a conveyance, transfer, or mortgage of real property, or of any interest in real property to be good and effectual in law or equity against creditors or subsequent purchasers for valuable consideration and without notice, unless it has been recorded according to law. The rule extends to any lease for a term of 1 year or longer.

The rule also extended to any instrument that was executed by virtue of a power of attorney, as long as the power of attorney is recorded before the accruing of the right of such creditor or subsequent purchaser.

F.S. section 695.11 states that when an instrument is recorded it is deemed recorded from the time of filing and the consecutive official register numbers are affixed to the instrument. The consecutive official register numbers determine the priority of recordation, with the instrument bearing the lower number in the then-current series of numbers having priority over any instrument bearing a higher number in the same series.

The Clerk of the Court must endorse upon, and sign, any deed filed and upon the record made by her or him the following:

“This deed and patent (or certified copy as the case may be) having been presented to me on the _____ day of _____ for record, and same appearing to me to be genuine and to have been made and issued by the authority of the United States Government, I have duly recorded same in _____ on page _____ of the public records of my office.

Witness my hand and official seal at Florida, this _____ day _____ of _____.”

Pursuant to F.S. section 695.26, the Clerk may not record instruments conveying title to real property or any interest in real property is conveyed, assigned, encumbered or otherwise disposed of unless:

- No instrument by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of shall be recorded by the clerk of the circuit court unless specific requirements in F.S. 695.26 exist.
- The name of each person who executed the instrument is legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of the person and the post-office address of each person is legibly printed, typewritten, or stamped upon the instrument.
- The name and post-office address of the natural person who prepared the instrument or under whose supervision it was prepared are legibly printed, typewritten, or stamped upon the instrument.
- The name of each witness to the instrument is legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of each witness.



- The name of any notary public or other officer authorized to take acknowledgments or proofs whose signature appears upon the instrument is legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of the notary public or other officer authorized to take acknowledgment or proofs.
- A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for use by the clerk of the court.
- In any instrument other than a mortgage conveying or purporting to convey any interest in real property, the name and post-office address of each grantee in the instrument are legibly printed, typewritten, or stamped upon the instrument.

Section 695.26 does not apply to an instrument executed before July 1, 1991, a decree, order, judgment, or writ of any court, an instrument executed, acknowledged, or proved outside of Florida, a will, plat or an instrument prepared or executed by any public officer other than a notary public.



SECTION 7 – PROTECTIONS

A. The Mortgage Fraud Rescue Act

CHAPTER 501 – CONSUMER PROTECTION

F.S. section 501.1377, known as the Mortgage Fraud Rescue Act, provides homeowners with information necessary to make an informed decisions regarding the sale or transfer of his or her home to an equity purchaser.

Under F.S. section 501.1377 homeowners are protected from fraud when they are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment of taxes. The legislature specifically believed the defaulting homeowners may be vulnerable to fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers.

Knowledge Check 50. Under the Mortgage Fraud Rescue Act, homeowners are protected from fraud when they are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment of taxes. Helpless Homeowner is near foreclosure on his home, what is he protected from under the statute?

- A. Increased interest rates due to late payments.
 - B. Fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers.
 - C. Fraud, deception, and unfair dealings with their lender who may take advantage of the situation.
 - D. Increased contact from persons pretending to have knowledge of the foreclosure process .
-



The section also requires that foreclosure-related rescue services agreements be in writing for the purpose of safeguarding homeowners against deceit and financial hardship, to:

- ensure, foster, and encourage fair dealing in the sale and purchase of homes into foreclosure or default
- prohibit representations that tend to mislead, prohibit or restrict unfair contract terms
- provide a cooling-off period for homeowners who enter into contracts for services related to saving their homes from foreclosure or preserving their rights to possession of their homes
- afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers and to preserve and protect home equity for the homeowners of Florida.



Within F.S. section 501.1377, “Equity purchaser” means a person who acquires a legal, equitable, or beneficial ownership interest in any residential real property as a result of a foreclosure-rescue transaction.

An equity purchaser does not include a person who acquires the legal, equitable, or beneficial interest in such property:

1. By a certificate of title from a foreclosure sale conducted under chapter 45;
2. At a sale of property authorized by statute;
3. By order or judgment of any court;
4. From a spouse, parent, grandparent, child, grandchild, or sibling of the person or the person’s spouse; or
5. As a deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing lender and a homeowner.

Knowledge Check 51. Within F.S. section 501.1377, “Equity purchaser” means a person –

- A. Who offers to purchase the foreclosed home at its fair market value.



- B. Who acquires a legal, equitable, or beneficial ownership interest in any commercial real property as a result of a foreclosure-rescue transaction.
- C. Who acquires a legal, equitable, or beneficial ownership interest in any residential real property as a result of a foreclosure-rescue transaction.
- D. Any person who has purchased a recently foreclosed home because the foreclosed owner has the right to protection of fraud and deceit as to any future purchaser.

A “**Foreclosure-rescue consultant**” means a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services.

A foreclosure-rescue consultant does not include:



1. A person excluded under F.S. section 501.212.
2. A person acting under the express authority or written approval of the United States DBPR of Housing and Urban Development or other department or agency of the United States or Florida to provide foreclosure-related rescue services.
3. A charitable, not-for-profit agency or organization, as determined by the United States Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code, which offers counseling or advice to an owner of residential real property in foreclosure or loan default if the agency or organization does not contract for foreclosure-related rescue services with a for-profit lender or person facilitating or engaging in foreclosure-rescue transactions.
4. A person who holds or is owed an obligation secured by a lien on any residential real property in foreclosure if the person performs foreclosure-related rescue services in connection with this obligation or lien and the obligation or lien was not the result of or part of a proposed foreclosure re-conveyance or foreclosure-rescue transaction.
5. A financial institution as defined in F.S. section 655.005 and any parent or subsidiary of the financial institution or of the parent or subsidiary.
6. A licensed mortgage broker or mortgage lender that provides mortgage counseling or advice regarding residential real property in foreclosure, which counseling or advice is within the scope of services set forth in F.S. chapter 494 and is provided without payment of money or other consideration other than a loan origination fee.
7. An attorney licensed to practice law in Florida who provides foreclosure rescue-related services as an ancillary matter to the attorney’s representation of a homeowner as a client.



“**Foreclosure-related rescue services**” means any good or service related to, or promising assistance in connection with:

1. Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or
2. Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

A “**Foreclosure-rescue transaction**” means a transaction:

1. By which residential real property in foreclosure is conveyed to an equity purchaser and the homeowner maintains a legal or equitable interest in the residential real property conveyed, including, without limitation, a lease option interest, an option to acquire the property, an interest as beneficiary or trustee to a land trust, or other interest in the property conveyed; and
2. That is designed or intended by the parties to stop, avoid, or delay foreclosure proceedings against a homeowner’s residential real property.

A “**Homeowner**” means the record title owner of residential real property.

“**Residential real property**” means real property consisting of one-family to four-family dwelling units.

“**Residential real property in foreclosure**” means residential real property against which there is an outstanding notice of the pendency of foreclosure proceedings recorded pursuant to F.S. section 48.23.

F.S. section 501.1377 details prohibited acts of any individual or entity providing foreclosure-related rescue services and states that a foreclosure-rescue consultant may not:

- (a) Engage in or initiate foreclosure-related rescue services without first entering into a written agreement with the homeowner for foreclosure-related rescue services; or
- (b) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before completing or performing all services under the agreement for foreclosure-related rescue services.



The **written agreement for foreclosure-related rescue services** must be printed in at least 12-point uppercase type and signed by both parties. The agreement must include the name and address of the person providing



foreclosure-related rescue services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the homeowner for the services, and the date of the agreement.

- The date of the agreement may not be earlier than the date the homeowner signed the agreement.
- The foreclosure-rescue consultant must give the homeowner a copy of the agreement to review not less than 1 business day before the homeowner is to sign the agreement.
- Homeowners must retain the right to cancel the written agreement without any penalty or obligation if canceled within 3 business days after signing. Homeowners may not waive the right to cancel the agreement.
- Any payments made by the homeowner to the foreclosure-rescue consultant must be returned to the homeowner within 10 business days after receipt of the notice of cancellation.
- All agreements for foreclosure-related rescue services must contain a statement in at least 12-point uppercase type and immediately above the signature line the following:

HOMEOWNER'S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU.

THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO (NAME) _____ AT (ADDRESS) _____ NO LATER THAN MIDNIGHT OF (DATE) _____.

IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

Foreclosure-rescue consultants may provide homeowners with more time to cancel the agreement.

- (1) Foreclosure-rescue consultants must give homeowners a copy of the signed agreement within 3 hours after a homeowner has signed the agreement. Before the homeowner and equity purchase may execute any instrument quitclaiming, assigning, transferring, conveying, or encumbering an interest in the residential real property in foreclosure, they must sign a written agreement prepared in at least 12-point uppercase type that is completed, signed, and dated by the homeowner and the equity purchaser. The equity



purchaser must give the homeowner a copy of the completed agreement within 3 hours after the homeowner has signed the agreement, which must contain the entire understanding of the parties and must include:

- a. The name, business address, and telephone number of the equity purchaser.
- b. The street address and full legal description of the property.
- c. Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser.
- d. The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition of the property by the equity purchaser.
- e. The terms of payment or other consideration, including, but not limited to, any services that the equity purchaser represents will be performed for the homeowner before or after the sale.
- f. The date and time when possession of the property is to be transferred to the equity purchaser.

A foreclosure-rescue transaction agreement must contain a statement above the signature line in at least 12-point uppercase type that substantially complies with the following:

I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME TO THE OTHER UNDERSIGNED PARTY.



A foreclosure-rescue transaction agreement must state the specifications of any option or right to repurchase the residential real property in foreclosure, including the specific amounts of any escrow payments or deposit, down payment, purchase price, closing costs, Commissions, or other fees or costs. This agreement must comply with all applicable provisions of 15 U.S.C. ss. 1601 et seq. and related regulations, which states:

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

- (2) Homeowners may cancel a foreclosure-rescue transaction agreement without penalty by notifying the equity purchaser of cancellation no later than 5 p.m. on the 3rd business day after signing the written agreement. Any moneys paid by the equity purchaser to the homeowner or by the homeowner to the equity purchaser must be returned at cancellation.

Knowledge Check 52. Helpless Homeowner entered into an agreement with Henry Helper for foreclosure-rescue services. May Helpless cancel the agreement without penalty?

- A. Yes, by notifying the equity purchaser of cancellation no later than 5 p.m. on the 3rd business day after signing the written agreement.
 - B. No, there is a penalty even when he notifies the equity purchaser of cancellation no later than 5 p.m. on the 3rd business day after signing the written agreement.
 - C. Yes, by notifying the equity purchaser of cancellation no later than 5 p.m. on the 7th business day after signing the written agreement.
 - D. No, there is a penalty even when he notifies the equity purchaser of cancellation no later than 5 p.m. on the 7th business day after signing the written agreement.
-



At the time that written agreements are signed, equity purchasers must give homeowners a notice of the homeowner's right to cancel the foreclosure-rescue transaction. The notice must be set forth on a separate cover sheet to the written agreement that contains no other written or pictorial material and must be in at least 12-point uppercase type, double-spaced.

The notice must read as follows:

NOTICE TO THE HOMEOWNER/SELLER

PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY YOU OR BY THE PURCHASER.

ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY 5:00 P.M. ON (DATE) _____ AT (ADDRESS) _____. IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

I (we) hereby cancel this transaction.

Seller's Signature

Printed Name of Seller

Seller's Signature

Printed Name of Seller

Date

(3) In any foreclosure-rescue transaction in which the homeowner is provided the right to repurchase the residential real property, the homeowner has a 30-day right to cure any default of the terms of the contract



with the equity purchaser. The right to cure may be exercised on up to three separate occasions. The homeowner's right to cure must be included in any written agreement required by this subsection.

- (4) In any foreclosure-rescue transaction, before or at the time of conveyance, the equity purchaser must fully assume or discharge any lien in foreclosure as well as any prior liens that will not be extinguished by the foreclosure.
- (5) If a homeowner has the right to repurchase the residential real property, the equity purchaser must verify and be able to demonstrate that the homeowner has or will have a reasonable ability to make the required payments to exercise the option to repurchase under the written agreement. A reasonable ability to make payments means that the homeowner's monthly payments for primary housing expenses and regular monthly principal and interest payments on other personal debt do not exceed 60 percent of the homeowner's monthly gross income.

Knowledge Check 53. A reasonable ability to make payments means that Henry Homeowner's monthly payments for primary housing expenses and regular monthly principal and interest payments on other personal debt don't exceed –

- A. 75 percent of the Henry's monthly gross income.
- B. 60 percent of the Henry's monthly gross income.
- C. 50 percent of the Henry's monthly gross income.
- D. 35 percent of the Henry's monthly gross income.

-
- (6) If a homeowner has the right to repurchase the residential real property, the price the homeowner pays may not be unconscionable, unfair, or commercially unreasonable.

An unconscionable transaction occurs if the homeowner's repurchase price is greater than 17 percent per annum more than the total amount paid by the equity purchaser to acquire, improve, maintain, and hold the property.

A violation of F.S. section 501.1377 is considered an unfair and deceptive trade practice and violators are subject to the penalties and remedies, including a monetary penalty of up to \$15,000 per violation.



B. Real Estate Recovery Fund Act (RERF)



F.S section 475.482 authorizes an RERF held as a separate account in the Professional Regulation Trust Fund for the purpose of reimbursing any person, partnership, or corporation adjudged by a court of competent civil jurisdiction in Florida to have suffered monetary damages.

The RERF is disbursed to any broker or sales associate who suffered damages by reason of any act committed, as a part of any real estate brokerage transaction involving real property in Florida who:

- (1) Was, at the time the alleged act was committed, the holder of a current, valid, active real estate license,
- (2) was neither the seller, buyer, landlord, or tenant in the transaction nor
 - an officer or a director of a corporation,
 - a member of a partnership,
 - a member of a limited liability company, or
 - a partner of a limited liability partnership which was the seller, buyer, landlord, or tenant in the transaction and was acting solely in the capacity of a real estate licensee in the transaction.

The broker or sales associate is entitled to reimbursement as long as the act was a violation proscribed in s. 475.25 or section 475.42.

The Real Estate Recovery Fund is also to be disbursed as provided in section 475.484 as reimbursement to any broker or sales associate who is required by a court of competent civil jurisdiction to pay monetary damages due to a distribution of escrow moneys which is made in compliance with an escrow disbursement order issued by the Commission. The fund **MAY NOT BE DISBURSED** when the broker or sales associate fails to notify the Commission and to diligently defend an action wherein the broker or sales associate may be required by a court of competent civil jurisdiction to pay monetary damages due to a distribution of escrow moneys which is made in compliance with an escrow disbursement order issued by the Commission.



A fee of **\$3.50 per year is added to the license fee** for both new licenses and renewals of licenses for brokers, and a fee of \$1.50 per year is added for new licenses and renewals of licenses for sales associates. The fee is in addition to the regular license fee and deposited in or transferred to the Real Estate Recovery Fund.

If the fund at any time exceeds \$1 million, collection of special fees for the fund are discontinued at the end of the licensing renewal cycle and not re-imposed unless the fund is reduced below \$500,000 by disbursement.

All moneys collected from fines imposed by the Commission and collected by the DBPR transferred into the Real Estate Recovery Fund.

F.S. section 475.483 states that any person is eligible to seek recovery from the Real Estate Recovery Fund if:

- Such person has received a final judgment in a court of competent civil jurisdiction in this state against an individual broker or sales associate in any action wherein the cause of action was based on a real estate brokerage transaction. If such person is unable to secure a final judgment against a licensee due to the death of the licensee, the Commission may waive the requirement for a final judgment. The filing of a bankruptcy petition by a broker or sales associate does not relieve a claimant from the obligation to obtain a final judgment against the licensee. In this instance, the claimant must seek to have assets involving the real estate transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent civil jurisdiction in this state. If, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee, the Commission may waive the requirement for a final judgment.
- At the time the action was commenced, such person gave notice thereof to the Commission by certified mail; except that, if no notice has been given to the Commission, the claim can still be honored if, in the opinion of the Commission, the claim is otherwise valid.
- A claim for recovery is made within 2 years from the time of the act giving rise to the claim or within 2 years from the time the act is discovered or should have been discovered with the exercise of due diligence. In no event may a claim for recovery be made more than 4 years after the date of the act giving rise to the claim.
- Such person has caused to be issued a writ of execution upon such judgment, and the person has executed an affidavit showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment; or
- If such person is unable to comply with subparagraph 1. for a valid reason to be determined by the Commission, such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by her or his search the person has discovered no property or assets or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment.
- Any amounts recovered by such person from the judgment debtor, or from any other source, have been applied to the damages awarded by the court.
- Such person is not a person who is precluded by this act from making a claim for recovery.

Such person has executed an affidavit showing that the final judgment is not on appeal or, if it was the subject of an appeal, that the appellate proceedings have concluded and the outcome of the appeal.

A person is not qualified to make a claim for recovery from the Real Estate Recovery Fund, if:



- Such person is the spouse of the judgment debtor or a personal representative of such spouse;
- Such person is a licensed broker or sales associate who acted as a single agent or transaction broker in the transaction that is the subject of the claim;
- Such person's claim is based upon a real estate transaction in which the licensed broker or sales associate was the owner of or controlled the property involved in the transaction; in which the licensee was dealing for the licensee's own account; or in which the licensee was not acting as a broker or sales associate;
- Such person's claim is based upon a real estate transaction in which the broker or sales associate did not hold a valid, current, and active license at the time of the real estate transaction; or
- The judgment is against a real estate brokerage corporation, partnership, limited liability company, or limited liability partnership.

If the claim is of the type described in section 475.482(2), the Commission must pay the defendant's reasonable attorney's fees and court costs and, if the plaintiff prevails in court, the plaintiff's reasonable attorney's fees and court costs.

F.S. section 475.4835 provides that when the Commission receives certified notice of any action, as required by section 475.483(1)(b), the Commission may intervene, enter an appearance, file an answer, defend the action, or take any action deemed appropriate and may take recourse through any appropriate method of review on behalf of the State of Florida.

Under F.S. section 475.484 any person who meets all of the conditions prescribed in section 475.482(1) or (2) may apply to the Commission to cause payment to be made from the Real Estate Recovery Fund:

- Section 475.482(1), in an amount equal to the unsatisfied portion of such person's judgment or \$50,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages. Except as provided in section 475.483, treble damages, court costs, attorney's fees, and interest may not be recovered from the fund.
- Section 475.482(2), in an amount equal to the judgment against the broker or sales associate or \$50,000, whichever is less.





Upon receipt by a claimant under paragraph (1)(a) of payment from the Real Estate Recovery Fund, the claimant must assign her or his additional right, title, and interest in the judgment, to the extent of such payment, to the Commission, and thereupon the Commission shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment by the Commission, to the extent of the right, title, and interest of the Commission therein, shall be for the purpose of reimbursing the Real Estate Recovery Fund.

Payments for claims arising out of the same transaction are limited, in the aggregate, to \$50,000, regardless of the number of claimants or parcels of real estate involved in the transaction.

Payments for claims based upon judgments against any one broker or sales associate may not exceed, in the aggregate, \$150,000.

If at any time the moneys in the Real Estate Recovery Fund are insufficient to satisfy any valid claim or portion thereof, the Commission must satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by the Commission. However, if the total claims approved at any one Commission meeting exceed the aggregate amount established in subsection (4) against any one broker or sales associate, the claims approved on that day shall be prorated.

All payments and disbursements from the Real Estate Recovery Fund must be made by the Chief Financial Officer upon a voucher signed by the secretary of the department. Upon the payment of any amount from the Real Estate Recovery Fund in settlement of a claim in satisfaction of a judgment against a broker or sales associate as described in section 475.482(1), the license of such broker or sales associate is automatically suspended upon the date of payment from the fund.

The license of such broker or sales associate may not be reinstated until the licensee has repaid in full, plus interest, the amount paid from the fund. No further administrative action is necessary.

A discharge of bankruptcy does not relieve a licensee from the penalties and disabilities provided in this section, except to the extent that this subsection conflicts with 11 U.S.C. section 525, in which case the Commission may order the license not to be suspended or otherwise discriminated against.



Knowledge Check 54. A payment of \$50,000 was made from the Real Estate Recovery Fund in settlement of a claim in satisfaction of a judgment against Bobby Broker. Bobby's license was then –

- A. Automatically revoked permanently.
- B. Automatically revoked until Bobby repays in full, plus interest, the amount paid from the fund.
- C. Automatically suspended until Bobby has repaid in full, plus interest, the amount paid from the fund.
- D. Automatically suspended until Bobby has completed 20 hours of additional continuing education and the CEs directly relate to the underlying issue that led to judgment.

F.S. section 475.485 states that the funds in the Real Estate Recovery Fund may be invested by the Chief Financial Officer under the same limitations that apply to the investment of other state funds, and that the interest earned thereon shall be deposited to the credit of the Real Estate Recovery Fund and shall be available for the same purposes as other moneys deposited in the Real Estate Recovery Fund.



Under F.S. section 475.486(2) it is unlawful for any person or the person's agent to file with the Commission any notice, statement, or other document required under the provisions of sections 475.482-475.486 which is false or contains any material misstatement of fact. Any person who violates the provisions is guilty of a second degree misdemeanor punishable as provided in sections 775.082 or 775.083.

Knowledge Check 55. Bobby Broker's agent, Agnes filed a false statement with the Commission in that she knew a material fact was misstated. Because of this, Agnes is guilty of –

- A. A second degree misdemeanor.
- B. A third degree misdemeanor.
- C. A second degree felony.
- D. A third degree felony.

C. Commercial Real Estate Sales Commission Lien Act



F.S. section 475.700 is known as the “Commercial Real Estate Sales Commission Lien Act” and includes its own set of definitions.

“*Brokerage agreement*” means a written contract entered into on or after the effective date of F.S. section 475.700 between an owner of commercial real estate and a broker that obligates the owner to pay a commission to the broker for licensed services provided by the broker relating to the sale or disposition of the commercial real estate as specified in the contract.

“*Closing*” means the delivery, exchange, and release of documents and funds for the completion of a transaction for the disposition of commercial real estate.

“*Closing agent*” means the person who receives documents and funds for recording and disbursement in closing a transaction for the disposition of commercial real estate.

“*Commercial real estate*” means a fee simple interest or other possessory estate in real property, except an interest in real property that is:

- (a) Improved with one single-family residential unit or one multifamily structure containing one to four residential units;
- (b) Unimproved and the maximum permitted development is one to four residential units under any restrictive covenants, zoning regulations, or comprehensive plan applicable to that real property; or
- (c) Improved with single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether these units may be a part of a larger building or parcel containing more than four residential units.

“*Commission*” means any fee or other compensation that an owner agrees to pay a broker for licensed services as specified in a brokerage agreement.

“*Commission notice*” means the written notice claiming a commission made by a broker under F.S. section 475.705.

“*Days*” means calendar days, but if a period would end on a day other than a business day, then the last day of that period shall instead be the next business day.



“*Disposition*” means a voluntary conveyance or transfer of the title to or other ownership interest in any commercial real estate specified in a brokerage agreement. A disposition does not include a transfer pursuant to a foreclosure sale and does not include a lease.

“*Disputed reserved proceeds*” means the portion of the owner’s net proceeds reserved by a closing agent under F.S. section 475.709 that the owner disputes the broker’s right to receive under section 475.709(5).

“*Owner*” means a person that is vested with fee simple title or a possessory estate in commercial real estate.

“*Owner’s net proceeds*” means the gross sales proceeds that the owner is entitled to receive from the disposition of any commercial real estate specified in a brokerage agreement, less all of the following:

- (a) The amount of money secured by any encumbrance, claim, or lien that has priority over the recorded commission notice as provided in F.S. section 475.715; and,
- (b) Any costs incurred by the owner to close the disposition, including, but not limited to, real estate transfer tax, title insurance premiums, ad valorem taxes and assessments, and escrow fees payable by the owner pursuant to an agreement with the buyer.

“*Real property*” means one or more parcels or tracts of land located in Florida, including any appurtenances and improvements.



Under F.S. section 475.703 a broker has a lien upon the owner’s net proceeds from the disposition of commercial real estate for any commission earned by the broker with respect to that disposition pursuant to a brokerage agreement.

The lien upon the owner’s net proceeds for a broker’s commission is a lien upon personal property, attaches to the owner’s net proceeds only, and does not attach to any interest in real property.

Knowledge Check 56. Bobby Broker has a lien upon the _____ from the disposition of commercial real estate for any commission he earned.

- A. Buyer’s agent’s net proceeds.
- B. Seller’s agent’s net proceeds.
- C. Buyer’s net proceeds.
- D. Owner’s net proceeds.



A commission is earned on the earlier of the date that:



- (a) An event occurs under the brokerage agreement that defines when the **commission** is earned; or
- (b) The owner enters into a contract for the disposition of all or part of the commercial real estate specified in the brokerage agreement, provided that a **commission** would be payable to the broker pursuant to the brokerage agreement if the disposition occurs under that contract.

A commission is payable at the time set forth in the brokerage agreement. If payment of the commission is conditioned on the occurrence of an event and that event does not occur, a broker may not enforce a lien for that commission.

A broker's lien for commission:

- (a) Belongs to the broker named in the brokerage agreement and not to an employee or independent contractor of the broker.
- (b) Cannot be assigned voluntarily or by operation of law and may not be enforced by a person other than the broker.
- (c) Cannot be waived before the **commission** is earned.
- (d) Cannot be waived by any person other than the broker, regardless of whether that person may execute and bind the broker to a brokerage agreement.



Brokers must disclose to the owner at or before the time the owner executes the brokerage agreement that F.S. section 475.700 creates lien rights for a commission earned by the broker that are not waivable before the commission is earned by the broker. Brokers who do not make the disclosure may not enforce a lien for a commission earned under a brokerage agreement.



The disclosure must state:

“The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker’s commission. The broker’s lien rights under the act cannot be waived before the commission is earned.”

Knowledge Check 57. Bobby Brokers must disclose to an owner that F.S. section 475.700 creates lien rights for a commission earned by Bobby that can’t be waived before the commission is earned by Bobby:

- A. Within 3 days of the time the owner executes the brokerage agreement.
- B. Simultaneously of the time the owner executes the brokerage agreement.
- C. At or before the time the owner executes the brokerage agreement.
- D. Any time after the owner executes the brokerage agreement but not more than 90 days after.



F.S. section 475.705 provides the contents for a commission notice and states that a commission notice made by a broker with respect to a commission claimed must be in writing, signed and sworn to or affirmed by the broker under penalty of perjury before a notary public, and include:



- (a) The name of the owner of the commercial real estate who is obligated to pay the claimed commission.
- (b) The legal description of the commercial real estate.
- (c) The name, mailing address, telephone number, and license number of the broker.
- (d) The effective date of the brokerage agreement.
- (e) The amount of the commission claimed by the broker, which may be stated in a dollar amount or may be stated in the form of a formula determining the amount, such as a percentage of the sales price.
- (f) A statement under penalty of perjury that the broker has read the commission notice, knows its contents, believes the same to be true and correct, and makes the commission claim pursuant to the brokerage agreement described in the notice.
- (g) A statement that the commission notice or a copy thereof has been delivered to the owner and that the commission notice may be recorded in the public records of the county or counties where the commercial real estate is located.
- (h) A statement that this part provides that if the owner disputes the claimed commission the owner shall notify the closing agent of such dispute not later than 5 days after the closing, or the owner will be deemed to have confirmed the commission and this part will require the closing agent to pay the commission to the broker from the owner's net proceeds from the disposition of the commercial real estate.



A commission notice that states the following is sufficient:

BROKER'S COMMISSION NOTICE UNDER
FLORIDA COMMERCIAL REAL ESTATE
SALES COMMISSION LIEN ACT

Notice is hereby given pursuant to the Florida Commercial Real Estate Sales Commission Lien Act, part III of chapter 475, Florida Statutes (the "Act"), that the undersigned real estate broker is entitled to receive a sales commission in the amount set forth below from the owner named below pursuant to the terms of a written brokerage commission agreement regarding the commercial real estate described below, and the undersigned broker claims a lien under the Act against the owner's net proceeds from the disposition of the commercial real estate. The Act and this commission notice do not create a lien against the commercial real estate itself, but only against the owner's net proceeds.

1. Name of the owner who is obligated to pay the commission:
2. Legal description of the commercial real estate:
3. Name, mailing address, telephone number, and Florida broker license number of the undersigned broker:
4. Effective date of the written brokerage commission agreement between the owner and the broker under which the commission is or will be payable:
5. Amount of commission claimed by the undersigned broker:
\$ _____, or _____ percent of sales price, or
[specify other formula for determination of commission amount]: .
6. The undersigned broker, under penalty of perjury, hereby swears or affirms that the undersigned broker has read this commission notice, knows its contents and believes the same to be true and correct, and that the undersigned broker is making this commission claim pursuant to the written brokerage commission agreement described in this commission notice.
7. The undersigned broker confirms that this commission notice or a copy thereof has been delivered to the owner.

Signed: (broker)

Signed and sworn to or affirmed under penalty of perjury before me, a notary public, this _____ day
of _____, _____, by _____.

Signed: (notary public)

WARNING TO OWNER: The act provides that if you dispute the commission claimed in this commission notice, you must notify the closing agent of the dispute no later than 5 days after the closing. If you fail to notify the closing agent before that date that you dispute the commission, you will be deemed to have confirmed the commission and the act will require the closing agent to pay the commission to the broker from your net proceeds from the disposition of the commercial real estate.

This commission notice may be recorded in the public records of the county or counties where the commercial real estate is located.



If a broker wishes to enforce a lien for a commission, he or she must deliver a copy of the commission notice within 30 days after a commission is earned by the broker pursuant to F.S. section 475.703(2) and at least 1 day before the closing to:



- (a) The owner of the commercial real estate specified in the brokerage agreement.
- (b) The closing agent designated to close the transaction for the disposition of the commercial real estate, if the broker then knows the identity of the closing agent. If the identity of the closing agent thereafter becomes known to the broker, then the broker shall deliver a copy of the commission notice to the closing agent within 3 days after the broker acquires such knowledge and at least 1 day before the closing.

A broker who fails to deliver a copy of a commission notice as required within the period specified may not enforce a lien for the commission.

If a broker fails to deliver a copy of the commission notice solely because the owner entered into a contract for the disposition of the commercial real estate without the knowledge of the broker, the broker may enforce a lien for the commission under this part if:

- (a) The copy of the commission notice is delivered to the owner and the closing agent before the closing agent disburses the owner's net proceeds to the owner.
- (b) The broker executes and delivers to the closing agent a sworn affidavit stating that the copy of the commission notice was not delivered within the time period specified in subsection (3) solely because the owner entered into a contract for the disposition of the commercial real estate without the knowledge of the broker.



A broker who fails to deliver a copy of a commission notice to the owner and the closing agent before the disbursement of the owner's net proceeds may not enforce a lien for the commission, and delivery of a copy of a commission notice after disbursement is ineffective.

Knowledge Check 58. Bobby Broker failed to deliver a copy of a commission notice to Oprah Owner and the closing agent before the disbursement of the Oprah's net proceeds. What may Bobby do or not do?

- A. Enforce a lien for the commission, and delivery of a copy of a commission notice after disbursement remains effective.
- B. Not enforce a lien for the commission, and delivery of a copy of a commission notice after disbursement is ineffective.
- C. Enforce a lien for the commission provided the commission notice is delivered within 10 days of the day of disbursement.
- D. Enforce a lien for the commission regardless of the timing of the delivery of the cCommission notice because the brokers never lose the right to enforce a lien for the commission.

Section 475.707, F.S. allows for the recording of commission notices and states that after a broker delivers the commission notice, he or she may record the commission notice in the public records maintained by the clerk of court in the county or counties in which the commercial real estate is located.

Recording the commission notice serves to perfect the broker's lien created against the owner's net proceeds and thus takes priority as of the date of its recording. The priority of the lien does not relate back to the date of the brokerage agreement.



The recording of the commission notice does not constitute constructive notice to a closing agent unless the commission notice has been of record for at least 60 days.

A recorded commission notice is effective only with respect to dispositions made by the owner named in the commission notice, and after the recordation of a deed from the owner conveying the commercial real estate specified in the commission notice to a bona fide purchaser for value. The commission notice is ineffective with respect to any subsequent dispositions of that commercial real estate.





A commission notice that has been recorded expires 1 year after the date of recording, unless the owner remains obligated to pay a commission to the broker after the expiration date of the commission notice and the broker records an extension notice in the same public records within the last 60 days before such expiration date.

An extension notice must refer to the recording information of the original commission notice, state that the owner remains obligated to pay a commission to the broker, and include the information and be executed in the manner required by F.S. section 475.705(1) for the original commission notice.

A timely recorded extension notice extends the expiration date of the original recorded commission notice by 1 additional year.

Successive extension notices may be recorded for as long as the owner remains obligated to pay a commission to the broker. Within 10 days after recording an extension notice, the broker must deliver a copy to the owner. The delivery or recording of a commission notice or the enforcement of a commission claim by a broker does not relieve the owner from the owner's obligation to close a disposition transaction for any commercial real estate.

Whenever a commission notice is recorded and a condition or event occurs or fails to occur that would preclude the broker from receiving the claimed commission under the terms of the brokerage agreement, including the filing of a commission notice in a manner that does not comply with the legal requirements, the broker must record a written release of the commission notice in the public records of the county where the commission notice was recorded, within 7 days following demand by the owner.



If a broker records a commission notice and the claimed commission is paid or the commission notice is otherwise discharged or satisfied, the broker must record a written release of the commission notice in the public records of the county where the commission notice was recorded, within 7 days after the commission is paid or the commission notice is otherwise discharged or satisfied.

F.S. section 475.709 prescribes the duties of closing agent and the reservation of the owner's net proceeds and states that the closing agent must reserve from the owner's net proceeds an amount equal to the commission claimed by the broker in the commission notice if, before the closing agent disburses the owner's net proceeds from the closing of a disposition of commercial real estate:



1. A commission notice pertaining to the commercial real estate is delivered to the closing agent in accordance with F.S. section 475.705;
2. A commission notice pertaining to the commercial real estate has been recorded for at least 60 days pursuant to section 475.707 and has not expired or been released or canceled as provided in this part; or
3. The closing agent has actual knowledge of a commission notice pertaining to the commercial real estate that has been recorded pursuant to section 475.707 and has not expired or been released or canceled as provided in this part.

If the owner's net proceeds are insufficient to pay the full amount of the claimed commission, the closing agent is required to reserve the entire amount of the owner's net proceeds. The closing agent designated to close a transaction for the disposition of commercial real estate may require the owner of the commercial real estate to deliver a sworn affidavit identifying the commercial real estate and disclosing to the closing agent:

1. Whether the owner is a party to any brokerage agreement under which any broker or brokers may have a right to claim a commission from the disposition of the commercial real estate.
2. The name, mailing address, and telephone number of any brokers who may have a right to claim a commission, if known to the owner.
3. The amount of any and all commissions that may be claimed under any brokerage agreement disclosed in the owner's affidavit, to the best of the owner's knowledge and belief.
4. Whether the owner confirms or disputes the amount of any commission claimed from the disposition of the commercial real estate as disclosed in the owner's affidavit.

If the closing agent receives an affidavit from the owner disclosing that any commission may be claimed from the disposition of the commercial real estate, regardless of whether the owner confirms or disputes the commission, the closing agent must reserve from the owner's net proceeds an amount equal to the total commission amount disclosed by the owner in the affidavit.





Upon request by a broker who has a brokerage agreement with the owner covering the commercial real estate identified in the owner's affidavit, the closing agent must deliver a copy of the affidavit to the broker.

If the owner's net proceeds are insufficient to pay the full amount of the commission, the closing agent must reserve the entire amount of the owner's net proceeds. If the owner's affidavit discloses a commission amount that is different from the commission amount required to be reserved, the closing agent must reserve the greater of the two commission amounts.

If the closing agent is not required to reserve against the owner's net proceeds on account of a commission notice pertaining to the commercial real estate, and if the closing agent receives an owner's affidavit stating that the owner is not a party to any brokerage agreement under which any commission may be claimed from the disposition of the commercial real estate, the closing agent has no duty to reserve any money or property for a commission from the owner's net proceeds from the disposition of the commercial real estate.

If the closing agent determines that the owner's net proceeds from a disposition of commercial real estate are insufficient to pay the full amount of the commission claimed in a commission notice or disclosed in an owner's affidavit, the closing agent must notify the owner and the broker of the determination, within 3 days after making that determination but no later than the closing of the disposition.

The closing agent's determination that the owner's net proceeds are insufficient does not relieve the owner from the owner's contractual obligations under the brokerage agreement to pay the full commission owing to the broker. If the owner confirms that a commission is payable to the broker, at the closing of the disposition of the commercial real estate the closing agent must release the confirmed amount of the commission from the reserved proceeds to the broker.

A settlement statement executed by the owner and showing the payment of a commission to the broker is confirmation by the owner of the commission amount shown on the settlement statement.

If the owner disputes the broker's right to receive all or any portion of the claimed commission, the closing agent must release the undisputed portion of the commission to the broker.

Until the rights of the owner and the broker with respect to the disputed reserved proceeds are determined or the owner and the broker otherwise agree in writing, the closing agent may not release the disputed reserved proceeds to any person other than to deposit the same in the registry of the court having jurisdiction of the dispute.



The commission claimed in the commission notice is deemed confirmed by the owner, and the closing agent must release the reserved proceeds to the broker, if the closing agent is required to reserve any or all of the owner's net proceeds and if all of the following conditions have been met:

- (a) Five days have passed after the closing.
- (b) The owner has neither confirmed nor disputed the claimed commission to the closing agent.
- (c) The closing agent receives reasonably satisfactory evidence that the broker delivered a copy of the commission notice to the owner in accordance with F.S. section 475.705.



If the owner's net proceeds consist in whole or in part of a purchase-money note, and if the money portion of the owner's net proceeds is insufficient to pay the full amount of the commission claimed, the broker's lien for the portion of the commission not paid from the money proceeds must attach to the purchase-money note and any security therefor, and the closing agent must reserve and release the purchase-money note in the same manner as the money portion of the reserved proceeds.

If the owner and the broker are unable to agree within 5 days after the closing regarding the closing agent's release of the purchase-money note, the closing agent must interplead¹ the purchase-money note along with any money reserved proceeds in accordance with F.S. section 475.711. To interplead is to ask a court to determine the ownership rights of competing claimants to the same money or property that is held by that third person, or interpleader.

When a broker who has recorded a commission notice makes a request upon the closing agent or the owner must submit a satisfaction or release of the commission notice in recordable form to the closing agent to be held in escrow pending the closing and the closing agent's release to the broker of the portion of the owner's net proceeds reserved by the closing agent.

Under F.S. section 475.713 if a commission notice claiming a commission is delivered to an owner pursuant to section 475.705 and the owner disputes the claimed commission, the owner or the broker may file a civil action concerning the commission claim in the county court or circuit court, whichever has jurisdiction of controversies in the amount of the



¹ Interplead means "to ask."



claimed commission, of the county where the commercial real estate or a portion of the commercial real estate is located.

F.S. section 475.717 requires notices to be delivered to a party, other than service of process as required in civil actions, must be by service of process, by registered or certified mail with return receipt requested, or by personal or electronic delivery and obtaining evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered.

Delivery is effective at the time of personal service, personal or electronic delivery, or 3 days following deposit in the mail as required by this section. Notice to a broker or owner may be given to the address of the broker or owner that is contained in the brokerage agreement or such other address as is contained in a written notice from the broker or owner to the party giving the notice.

If no address was provided in the brokerage agreement, the notice to the broker may be given to the broker's address contained in the commission notice. Notice to a closing agent must be addressed to the individual responsible for the closing if the person sending the notice knows that individual's name.

Under F.S. section 475.719 a "buyer's broker" means a broker that is entitled to receive payment from the buyer of commercial real estate of any fee or other compensation for licensed services, as specified in a written contract made between the buyer and the broker relating to the buyer's purchase of commercial real estate.

A written contract between a buyer and a buyer's broker for the payment by the buyer of any fee or other compensation to the buyer's broker for licensed services relating to the sale or disposition of commercial real estate to the buyer is not a brokerage agreement with the owner and the buyer's broker is not entitled to record any commission notice, to claim any lien against commercial real estate, or to claim any lien against the owner's net proceeds from the sale or disposition of commercial real estate.

If an owner enters into a written contract with a buyer for the sale or disposition of any commercial real estate that will entitle the buyer's broker to receive a fee or other compensation from the buyer under the terms of the buyer's broker's written contract with the buyer, the buyer's broker may give notice of the buyer's broker's right to receive such payment to the closing agent, the owner, the buyer, or any other party to the sale or disposition or the financing thereof, provided that such notice may be given without violating any confidentiality provisions contained in either such written contract.



KNOWLEDGE CHECK ANSWERS FOR PART II

HELPFUL HINT: After you've visited the page where the Knowledge Check information is, return to this page:

Windows: Return TO THIS PAGE **Alt + ←** (back arrow)

MAC: Return TO THIS PAGE Acrobat: **CMD + ←** or--Default MAC PDF: **CMD + [** (bracket next to "P")

- [Knowledge Check 18.](#) **Bobby Broker violated a provision of licensing law. He's worried about the punishment he may receive by the Commission. He knows he could have to serve probation and pay a fine. How long and how much?**
A. 10 years, \$5,000
- [Knowledge Check 19.](#) **Bobby Broker must be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and –**
C. The errors don't pose a significant threat to economically harm the public
- [Knowledge Check 20.](#) **Under F.A.C. 61J2-14.001 a broker who receives a deposit does not have any right to or lien upon the deposit except –**
B. Upon the written agreement or order of the depositor so long as the depositor or depositor's legal representative has sole control of the deposit
- [Knowledge Check 21.](#) **Bobby Broker just threw out a lot of his old files, including copies of all books, accounts, and records pertaining to his real estate brokerage business. Has he violated any laws?**
A. No, so long as it has been 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to him
- [Knowledge Check 22.](#) **The effective date for notifications is deemed to be –**
C. The date of the postmark or other dispatch of notification
- [Knowledge Check 23.](#) **Leonard Lender wants to be sure to comply with RESPA, so what should he provide to consumers?**
C. The cost of the mortgage settlement
- [Knowledge Check 24.](#) **Betsy Buyer is buying a house. Under the Truth in Lending Act, TILA, Betsy may –**
D. Cancel certain credit transactions that involve a lien on Betsy's principal dwelling
- [Knowledge Check 25.](#) **Suzie Seller and Betsy Buyer have a contract for the sale of Suzie's unit in a condominium community. Suzie has been leasing the property to Leslie Lessee . What must the parties do?**
B. Attach a copy of the executed lease to the contract and include the words, "The unit is subject to a lease (or sublease) in conspicuous type



- [Knowledge Check 26.](#) Oprah Owner, who owns a unit in a condominium, is not a developer. She is selling the unit to Betsy Buyer and has entered into a contract with Betsy. Betsy is entitled to all but which of the following?
D. A list of all owners in the condominium
- [Knowledge Check 27.](#) Penny Purchase is buying a unit in a residential condominium, but construction is not yet complete. What must Danny Developer make available to Penny?
B. A copy of the complete plans and specifications for the construction
- [Knowledge Check 28.](#) Ricky Realtor has violated provisions of Florida licensing law and is waiting to find out what discipline the Commission will impose. All but one of the following is a type of discipline that the Commission may impose –
C. Suspend Ricky's license for up to 20 years and impose a fine of up to \$10,000
- [Knowledge Check 29.](#) The Commission may deny an application for license renewal if:
A. If the licensee has failed to inform the Commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.
- [Knowledge Check 30.](#) Agnes Agent has committed a minor violation found in F.A.C. 61J2-24.003, what punishment may she expect?
C. A notice of non-compliance from the DBPR
- [Knowledge Check 31.](#) F. S. section 119.07 governs the inspection and copying of records, photographing public records, fees and exemptions. Without an exemption, every person who has custody of a public record must –
D. Permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records
- [Knowledge Check 32.](#) Risky Realtor not only stole money from several of his clients, he also stole property from houses that were on the market for sale. Which is not a punishment that the Department may impose?
C. Imposition of a jail sentence not to exceed one year
- [Knowledge Check 33.](#) Agnes Agent was involved in a terrible car wreck and was unable to work for six month. During that same period Agnes was on probation, which she completed 30 days ago, but she can't afford to pay the fines that were imposed. What will happen to Agnes?
B. She'll be granted a one-time extension of 180 days if the only requirement left of her probation is to pay the fine
- [Knowledge Check 34.](#) The locale of property –
A. Is more than an estimate
- [Knowledge Check 35.](#) John Q. Public is offering a plat for recording, may he do so?
B. Yes, if he is a professional surveyor and mapper and the survey contains his printed name and registration number



- [Knowledge Check 36.](#) **Which of the following statements does not accurately reflect legal descriptions in Florida?**
C. Land in Florida may not be conveyed by a mere reference to a plat made in compliance with F.S. chapter 177.
- [Knowledge Check 37.](#) **Appraisals conclude with a certification –**
A. Always and the certification verifies that the appraiser actually personally conducted the appraisal in an unbiased and object manner and in accordance with USPAP.
- [Knowledge Check 38.](#) **Appraisal reports must contain all but the following:**
B. The selling price of the property when it sold last
- [Knowledge Check 39.](#) **Personal property, also known as chattel or personalty, may be thought of as items having a limited lifespan, and which are moveable from one place to another. Which of the following item of personal property has likely become real property?**
D. A cooking range that is built into the kitchen cabinetry
- [Knowledge Check 40.](#) **John owned a house when he married Jane, and Jane moved from an apartment she rented to live with John when they married. The couple decides to buy a larger house in Jacksonville. Which statement is true about the sale of John's house?**
C. John and Jane must both sign documents to sell the home if the home is their homestead
- [Knowledge Check 41.](#) **Which of the following statements is accurate?**
A. A fee simple absolute is not limited to the individual property owner and his or her heirs and assigns
- [Knowledge Check 42.](#) **John bought a house, and two years later asked his brother-in-law to buy half an interest in the house. What type of ownership have the two created?**
A. A tenancy in common
- [Knowledge Check 43.](#) **Generally, real estate sales in Florida begin with a Contract for Sale and Purchase in a form standardized by -**
B. State Bar of Florida and the Florida Association of Realtors



- [Knowledge Check 44.](#) **Suzie Seller sold her house to Betsy Buyer and Betsy needs to transfer title to the property into her name. Which of the following steps is not required for Suzie to successfully transfer the title to real property to Betsy?**
D. Notify all living prior owners, or if deceased, the legal heirs at law, that title to the property has transferred
- [Knowledge Check 45.](#) **Suzie Seller’s warranty deed transfers the title of real property from her to Betsy Buyer and it asserts –**
B. Title to the property is free and clear from any claims
- [Knowledge Check 46.](#) **A mortgage, also called mortgage loan, consists of the financing instruments used to secure a lien against real property in exchange for -**
A. The money used to purchase the property
- [Knowledge Check 47.](#) **Beatrice Borrower has obtained a loan from Big Time Bank and the terms of the mortgage must include all but which of the following?**
C. The seller’s new address
- [Knowledge Check 48.](#) **Mortgages secure the payment of money for real or personal property and are subject to the rules of –**
D. Foreclosure
- [Knowledge Check 49.](#) **A deed of trust –**
D. Has a third party to the transaction who acts as a Trustee and which grants temporary title to the third party, which remains in effect until the loan is paid in full
- [Knowledge Check 50.](#) **Under the Mortgage Fraud Rescue Act, homeowners are protected from fraud when they are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment of taxes. Helpless Homeowner is near foreclosure on his home, what is he protected from under the statute?**
B. Fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers
- [Knowledge Check 51.](#) **Within F.S. section 501.1377, “Equity purchaser” means a person –**
C. Who acquires a legal, equitable, or beneficial ownership interest in any residential real property as a result of a foreclosure-rescue transaction
- [Knowledge Check 52.](#) **Helpless Homeowner entered into an agreement with Henry Helper for foreclosure-rescue services. May Helpless cancel the agreement without penalty?–**
A. Yes, by notifying the equity purchaser of cancellation no later than 5 p.m. on the 3rd business day after signing the written agreement.



- [Knowledge Check 53.](#) A reasonable ability to make payments means that Henry Homeowner's monthly payments for primary housing expenses and regular monthly principal and interest payments on other personal debt do not exceed –
B. 60 percent of the Henry's monthly gross income
- [Knowledge Check 54.](#) A payment of \$50,000 was made from the Real Estate Recovery Fund in settlement of a claim in satisfaction of a judgment against Bobby Broker. Bobby's license was then:
C. Automatically suspended until Bobby has repaid in full, plus interest, the amount paid from the fund
- [Knowledge Check 55.](#) Bobby Broker's agent, Agnes filed a false statement with the Commission in that she knew a material fact was misstated. Agnes is guilty of :
A. A second degree misdemeanor
- [Knowledge Check 56.](#) Bobby Broker has a lien upon the _____ from the disposition of commercial real estate for any commission he earned.
D. Owner's net proceeds
- [Knowledge Check 57.](#) Bobby Brokers must disclose to an owner that F.S. section 475.700 creates lien rights for a commission earned by Bobby that can't be waived before the commission is earned by Bobby –
C. At or before the time the owner executes the brokerage agreement.
- [Knowledge Check 58.](#) Bobby Broker failed to deliver a copy of a commission notice to Oprah Owner and the closing agent before the disbursement of the Oprah's net proceeds. What may Bobby do or not do?
B. Not enforce a lien for the commission, and delivery of a copy of a commission notice after disbursement is ineffective.



HELPFUL HINT: Keystroke to:

- Windows:** Return to this page **Alt + ←**
 Find (search for keywords) – **Ctrl+F**
 Go to Page (from index) – **Shift+Ctrl+N**
- MAC:** Return TO THIS PAGE (Acrobat): **CMD + ←** (Default MAC PDF): **CMD + [** (bracket next to “P”)
 Find (search for keywords) – **CMD+F**
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ABOUT THE COURSE EXAMINATION

EXAM INSTRUCTION: 2 WAYS TO TAKE YOUR CORRESPONDENCE EXAM!

1. You can take your exam online. By taking the online exam, you'll INSTANTLY receive your

- exam results
- *Certificate of Completion*, for printing, if you desire, or saving it as a file
- credit to the DBPR Queue for process*.

To take the ONLINE EXAM, [click on this link and you will be taken directly to the purchase page.](#)

Please note that when you purchase the exam, you will receive a confirmation email. That email will contain a link to the online exam, as well as detailed instructions on how to access the exam online.

Again, should you have any questions, please call (800) 223-5457 or email Fred Gray at fgray@graysystems.com

2. You can also take your exam using the answer sheet at the end of the exam.

Instructions for submitting the answer sheet by mail, FAX, or scan and email are included on the [answer sheet](#) page 229.

We'll report your credits to DBPR each *business* day, and you may check on your continuing education credits at www.myfloridalicense.com. ***It normally takes the DBPR 24-48 hours for the continuing education completion to be recorded in your records.**

THE 30 MULTIPLE CHOICE QUESTION EXAMINATION

- The course exam consists of 30 multiple choice questions, each with four answer choices, only one being correct. These questions may or may not be presented in the same order as the material.
- A passing score is 80% or better. Examinees must answer a minimum of twenty-four questions correctly in order to satisfactorily complete the course.
- If an examinee fails the final exam, he or she must complete an exam that is different from the one initially failed.
- Use the Exam below to practice for the ONLINE exam should you wish immediate results.



14 HOUR FLORIDA REAL ESTATE CONTINUING EDUCATION COURSE

END OF COURSE EXAMINATION (A) DBPR COURSE #0015359

- 1. Connie Commissioner wants to serve on the Florida Real Estate Commission but is moving to another state in 3 years, should she serve?**
 - A. Yes, because terms are for 2 years
 - B. Yes, because terms are for 2 years unless removed for cause
 - C. No, because terms are for 4 years
 - D. No, because terms are for 4 years unless removed for cause

- 2. Ricky Realtor wants to become a Florida licensed real estate agent, but is worried that his outstanding traffic tickets may impede his licensure. Are his traffic tickets a problem?**
 - A. No, all he needs to be is a natural person who is at least 18 years of age
 - B. No as long as he is a high school graduate or its equivalent
 - C. No, so long as he is honest, truthful, trustworthy
 - D. No, so long as his traffic tickets do not lead to a felony convictions

- 3. Agnes Agent attended a legal agenda session of the Commission during her renewal cycle twice for a total of 6 hours. Is Agnes able to substitute the 6 hours for other required real estate courses to renew her license?**
 - A. Yes, but only up to three classroom hours for her attendance at one legal agenda session of the Commission
 - B. Yes so long as a notice of intent to attend both sessions of the Commission was received at least seven days in advance of the session
 - C. Yes, so long as her attendance at the legal agenda sessions of the Commission were taken as a party to a disciplinary action
 - D. Yes because Agnes may substitute any classes taken within the 12-month period preceding renewal

- 4. What is the maximum amount that can be dispursed from Real Estate Recovery Fund per receivership?**
 - A. \$150,000.
 - B. \$200,000.
 - C. \$100,000.
 - D. \$ 50,000.



5. **Agnes Agent works for Bobby Broker's real estate agency and she's about to close on a sale for Sally Seller. What roles do each have in a real estate transaction? may be defined as "he who acts through another is deemed in law to do it himself," or in Latin, "Qui facit per alium, facit per se" and –**
- A. Agnes is the agent, and Bobby is the principal. Seller has no role.
 - B. Agnes is the agent and Bobby is the third party to the transaction with the principal, Seller.
 - C. Agent is the principal, Bobby is the agent, and Seller is a third party
 - D. Agnes is the agent, Bobby is the principal and Seller is a third party
6. **Suzie Seller paid compensation to Agnes Agent for the sale of her house. Have the two created an agency or transactional brokerage relationship?**
- A. Yes, because a payment determines that an agency relationship exists
 - B. No, because the mere payment does not determine whether an agency or transactional brokerage relationship exists
 - C. Yes, because the payment determines whether an agency or transactional brokerage relationship exists between the licensee and a seller, landlord, buyer, or tenant
 - D. No, because the mere payment may only determine a transactional brokerage relationship
7. **Bobby Broker had a great day and brought in \$17,000 in payments from transactions. \$11,000 was in cash from three different transactions and \$6,000 was by check from one transaction. What must Bobby report under the U.S.A Patriot Act?**
- A. Nothing because the cash he received wasn't from a single transaction in which he received more than \$10,000.
 - B. \$17,000 because he must report all transactions
 - C. \$10,000 of the \$11,000 in cash if the \$10,000 was from a series of related transactions
 - D. \$11,000 in cash if the cash was from a series of related transactions
8. **Martin Marine just terminated a sales contract for the purchase of real property because he just found out he can live on the base where he is stationed for a lot less. Does the real estate broker involved have any legal recourse?**
- A. Yes, because a service member does not have the right to terminate the contract for sale
 - B. Yes, unless Martin has received permanent change of station orders requiring him to move 35 miles from the location of the property.
 - C. Yes, unless the service member has an opportunity to move into military housing and the housing is nicer than the subject property
 - D. No if the service member received temporary change of station orders, regardless of the distance to the location of the property



- 9. Leonard Landlord and Peter Partner have several rental properties in and around Miami. Some renters pay rent with no problems, but sometimes the partners must evict renters, creating a loss in rental income. What should they do?**
- A. File a Schedule E to report income or loss from rental real estate
 - B. File a Schedule K-1 to report income from partnerships
 - C. File a Schedule C for independent contractors or sole proprietors to record the profit and loss from business
 - D. Nothing, the partners have no recourse in Federal tax law
- 10. Bobby Broker just threw out a lot of his old files, including copies of all books, accounts, and records pertaining to his real estate brokerage business. Has he violated any laws?**
- A. No, so long as it has been 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to him
 - B. No, so long as it has been 5 years from the date of execution of the sales and purchase contract
 - C. No, so long as it has been 7 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to him
 - D. No, so long as it has been 7 years from the date of execution of the sales and purchase contract
- 11. Suzie Seller and Betsy Buyer have a contract for the sale of Suzie's unit in a condominium community. Suzie has been leasing the property to Leslie Lessee . What must the parties do?**
- A. The parties may not lawfully enter into a sale and a lease at the same time
 - B. Attach a copy of the executed lease to the contract and include the words, "The unit is subject to a lease (or sublease) in conspicuous type
 - C. Attach a copy of the executed lease to the contract and include the words, "The sale of the unit is contingent upon Suzie leasing the unit for a specified term" in conspicuous type
 - D. Ensure that each party has obtained their own attorney to handle the transactions
- 12. The Commission may deny an application for license renewal if**
- A. If the licensee has failed to inform the Commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.
 - B. If the licensee has failed to inform the Commission in writing within 60 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.
 - C. If the licensee has failed to inform the Commission in writing within 90 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.
 - D. If the licensee has failed to inform the Commission in writing immediately upon pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.



- 13. Agnes Agent was involved in a terrible car wreck and was unable to work for six months. During that same period Agnes was on probation, which she completed 30 days ago, but she can't afford to pay the fines that were imposed. What will happen to Agnes?**
- A. She'll be granted a one-time extension of 90 days if the only requirement left of her probation is to pay the fine
 - B. She'll be granted a one-time extension of 180 days if the only requirement left of her probation is to pay the fine
 - C. Her real estate license must be revoked because she failed to complete all of the terms of her probation
 - D. Her real estate license must be suspended until she completes all of the terms of her probation and pays the fines
- 14. Under F.S. section 177.091 all plats of subdivisions offered for recording must conform to a standard, and must be:**
- A. An original drawing made with black permanent drawing ink
 - B. An original drawing made with black pencil
 - C. An original or copy of a drawing that may be made from a combination of pencil and drawing ink, regardless of color
 - D. An original or copy of a drawing made with black or blue permanent drawing ink
- 15. Using the sales comparison approach the subject property's particular characteristics are –**
- A. Compared to its own characteristics when the property was originally platted, recorded and any improvements built.
 - B. Compared to other properties with the exact list of characters regardless of any recent sales.
 - C. Compared to other properties that have recently sold.
 - D. Not compared to other properties that have recently sold unless the selling prices were at least \$250,000.
- 16. John owned a house when he married Jane, and Jane moved from an apartment she rented to live with John when they married. The couple decides to buy a larger house in Jacksonville. Which statement is true about the sale of John's house?**
- A. John owned the house before marriage so he'll have to sign all of the documents required to sell the house
 - B. John may sign all of the documents required to sell the house so long as he Jane signs a valid Waiver of Interest in the house
 - C. John and Jane must both sign documents to sell the home if the home is their homestead
 - D. Jane may sign the all of the required documents to sell the house if John gives her a Power of Attorney



- 17. John said to Jane, “I will sell you my house for \$150.00.” Has John made an offer to Jane to sell his house?**
- A. Yes because he said the words, “I will sell you my house” and the price does not matter.
 - B. No because he didn’t give any specifics in his offer such as the street address, size or other information about the house.
 - C. No because an offer must be serious to be valid.
 - D. Yes, if he gave her his offer in writing.
- 18. Which of the following does not describe a proper listing agreement?**
- A. An Exclusive Right of Sale Listing Agreement for Commercial Property is a listing agreement for commercial property, granted by the seller, grants to the listing broker for the sole right to sell the commercial property.
 - B. An Exclusive Brokerage Listing Agreement is a listing agreement granted by the seller to the listing broker, authorizing the listing broker to sell the property and to offer cooperation to other agents and/or transaction brokers but also reserves the right to sell the property himself/herself.
 - C. An Exclusive Right of Sale Listing Agreement – Non-Representation - is a listing agreement granted by the seller to the listing broker, granting the sole right to sell the property. The agreement requires the right to cooperate with buyer’s agents and transaction brokers.
 - D. An Exclusive Right of Sale Listing Agreement - Multiple Agents - is a listing agreement granted by the seller to several listing brokers,
- 19. A special warranty deed is a bit of a hybrid between a _____ and a _____. A special warranty deed is granted to convey the seller’s (grantor’s) interest in the real property, which he asserts he does have an interest in, but without dating the warranty back to the property’s origin, thus no “warranty” at all.**
- A. Quitclaim, Warranty Deed
 - B. Executor’s Deed, Warranty Deed
 - C. Quitclaim, Executor’s Deed
 - D. Executor’s Deed, Guardian’s Deed
- 20. Mortgages secure the payment of money for real or personal property and are subject to the rules of:**
- A. Default
 - B. Timely Payment
 - C. Estoppel for non-payment
 - D. Foreclosure



21. F.S. section 501.1377 is called the –

- A. Mortgage Repayment Act
- B. Mortgage Fraud and Repayment Act
- C. Mortgage Fraud Rescue Act
- D. Foreclosed Mortgages Act

22. A written agreement for foreclosure related services may be cancelled by a homeowner:

- A. Within 48 hours after signing.
- B. Within 10 days after signing.
- C. Within 3 business days after signing.
- D. Within 24 hours after signing.

23. If at any time the moneys in the Real Estate Recovery Fund are insufficient to satisfy any valid claims, the Commission must satisfy such unpaid claim –

- A. From a mandatory reserve fund set up for such cases
- B. As soon as a sufficient amount of money has been deposited in or transferred to the fund
- C. By increasing the amount each real estate agent or broker must pay into the fund annually
- D. Only if the claim was received through a court ordered judgment

24. Bobby Broker must disclose to an owner that F.S. section 475.700 creates lien rights for a commission earned by Bobby that can't be waived before the commission is earned by Bobby –

- A. Within 3 days of the time the owner executes the brokerage agreement
- B. Simultaneously of the time the owner executes the brokerage agreement
- C. At or before the time the owner executes the brokerage agreement
- D. Any time after the owner executes the brokerage agreement but not more than 90 days after

25. Ricky Realtor is a licensed real estate broker. After having some health problems, he decided to allow his real estate broker's license to become inactive for five years, but is ready to get back to work. He may expect to be charged fees for all but the following –

- A. Examination or re-examination
- B. Licensing or license renewal
- C. Certification or recertification
- D. Annual fee after license revocation



26. Sonya Surveyor is surveying property in Florida. Which of the following is not an appropriate method for her to classify the property?

- A. The lot and block survey system
- B. The legal address system
- C. The metes and bounds system
- D. The U.S. Public Land Survey System

27. Which of the following statements is accurate?

- A. A fee simple absolute is not limited to the individual property owner and his or her heirs and assigns
- B. A fee simple determinable continues until the occurrence of a predetermined event
- C. A fee simple subject to a condition subsequent terminates in the future automatically regardless of whether or not the grantor exercises the power of termination or right of re-entry
- D. A fee simple is the lowest ownership interest possible.

28. Risky Realtor was given a copy of part of a licensing examination by his best buddy, Shady Salesman. What crime has been committed, if any?

- A. A violation of licensing laws that may lead to suspension of the license
- B. A mandatory probationary period of not less than 1 year, but not more than 5 years
- C. A felony of the third degree punishable under sections 775.082 and 775.083 and 775.084
- D. A misdemeanor with a mandatory fine of not less than \$1,000, but not more than \$5,000

29. Which of the following bans providers of mortgage foreclosure rescue and loan modification services from collecting fees until homeowners have a written offer from their lender or servicer that they decide is acceptable?

- A. The Mortgage Assistance Relief Services
- B. The Mortgage Acts and Practices
- C. The Mortgage Reform and Anti-Predatory Lending Act
- D. The SAFE for Mortgage Licensing Act

30. Ollie Owner has a cemetery plot in Tallahassee and a home in Miami. Are his properties real estate?

- A. Yes, as long as they are both owned by Ollie
- B. Yes, they are both real estate as defined in the Florida statutes
- C. No, the cemetery lot or right of burial in any cemetery is not real estate
- D. No, only an assignment in a leasehold may be considered real estate



END OF COURSE EXAMINATION “A” ANSWER SHEET

INSTRUCTIONS: Complete this section on personal information in its entirety.. **PLEASE PRINT.**

License #	Last Name	First Name	MI	Friends Call You
Address		City	State	Zipcode
Daytime Phone		FAX	Email Address	

INSTRUCTIONS: Read the examination and complete the answer sheet below, CLEARLY **place an X** over your choice of answers from the multiple choice questions.

1	A	B	C	D	11	A	B	C	D	21	A	B	C	D
2	A	B	C	D	12	A	B	C	D	22	A	B	C	D
3	A	B	C	D	13	A	B	C	D	23	A	B	C	D
4	A	B	C	D	14	A	B	C	D	24	A	B	C	D
5	A	B	C	D	15	A	B	C	D	25	A	B	C	D
6	A	B	C	D	16	A	B	C	D	26	A	B	C	D
7	A	B	C	D	17	A	B	C	D	27	A	B	C	D
8	A	B	C	D	18	A	B	C	D	28	A	B	C	D
9	A	B	C	D	19	A	B	C	D	29	A	B	C	D
10	A	B	C	D	20	A	B	C	D	30	A	B	C	D

I HAVE COMPLETED THIS EXAMINATION ANSWER SHEET WITHOUT THE AID OF ANY OTHER PERSON.

SIGNATURE	DATE
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Payment Information: \$24.95



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Credit card Number: _____

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