

# CODE OF ETHICS AND STANDARDS OF PRACTICE OF THE NATIONAL ASSOCIATION OF REALTORS®

*Effective January 1, 2026*



Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

## Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of

the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

## Duties to Clients and Customers

### Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

- **Standard of Practice 1-1**

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

- **Standard of Practice 1-2**

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, “client” means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®’s firm has an agency or legally recognized non-agency relationship; “customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®’s firm; “prospect” means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®’s firm; “agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and “broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

- **Standard of Practice 1-3**

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

- **Standard of Practice 1-4**

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®’s services. (Amended 1/93)

- **Standard of Practice 1-5**

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. (Adopted 1/93)

- **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. (Adopted 1/93, Amended 1/95)

- **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who

submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/20)

- **Standard of Practice 1-8**

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Upon the written request of the listing broker who submits a counter-offer to the buyer’s/tenant’s broker, the buyer’s/tenant’s broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. (Adopted 1/93, Amended 1/22)

- **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR®’s advantage or the advantage of third parties unless:
  - a) clients consent after full disclosure; or
  - b) REALTORS® are required by court order; or
  - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
  - d) it is necessary to defend a REALTOR® or the REALTOR®’s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. (Adopted 1/93, Amended 1/01)

- **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. (Adopted 1/95, Amended 1/00)

- **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. (Adopted 1/95)

- **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'s company policies regarding cooperation;
- 2) the fact that broker compensation is not set by law and is fully negotiable;
- 3) The options and amounts of compensation, if any, that may be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 4) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 5) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. (Adopted 1/93, Renumbered 1/98, Amended 1/03, Amended and effective June 5, 2025)

- **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR®'s company policies regarding cooperation;
- 2) the fact that broker compensation is not set by law and is fully negotiable;
- 3) the amount of compensation to be paid by the client, if any;
- 4) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 5) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and

- 6) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. (Adopted 1/93, Renumbered 1/98, Amended 1/06, Amended and effective June 5, 2025)

- **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. (Adopted 1/02)

- **Standard of Practice 1-15**

REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. (Adopted 1/03, Amended 1/09)

- **Standard of Practice 1-16**

When acting as a listing broker or property manager, REALTORS® shall not access or use, or permit or enable others to access or use property on terms or conditions other than those established by the owner or seller. (Adopted 1/12, Amended and effective June 5, 2025)

## Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. (Amended 1/00)

- **Standard of Practice 2-1**

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. (Amended 1/96)

- **Standard of Practice 2-2**

(Renumbered as Standard of Practice 1-12 1/98)

- **Standard of Practice 2-3**

(Renumbered as Standard of Practice 1-13 1/98)

- **Standard of Practice 2-4**

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**

Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation

as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. (Adopted 1/93)

## Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. (Amended 1/95)

- **Standard of Practice 3-1**

When acting as exclusive agents or brokers of sellers/landlords, REALTORS® will work with sellers/landlords to establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. (Amended 1/99, Amended and effective June 5, 2025)

- **Standard of Practice 3-2**

If compensation is offered or advertised by the listing broker, any change in offered compensation must be communicated as soon as practical. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not unilaterally modify the offered compensation. (Amended 1/14, Amended and effective June 5, 2025)

REALTORS® are prohibited from delaying or withholding delivery of a buyer's/tenant's offer while attempting to negotiate compensation. These ethical obligations in no way restrict the REALTORS®' or clients' ability to negotiate compensation in the clients' best interest, including in offers to purchase or lease. (Adopted and effective June 5, 2025)

- **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. (Adopted 1/94)

- **Standard of Practice 3-4**

(Deleted 1/26)

- **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. (Amended 1/93)

- **Standard of Practice 3-6**

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. (Adopted 5/86, Amended 1/04)

- **Standard of Practice 3-7**

When seeking information from another REALTOR® concerning property under a management or listing

agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. (Amended 1/11)

- **Standard of Practice 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. (Amended 11/87)

- **Standard of Practice 3-9**

When acting as a cooperating broker, or in a capacity other than as a listing broker or property manager, REALTORS® shall not access or use, or permit or enable others to access or use, property on terms or conditions other than those established by the owner or the seller. (Adopted 1/10, Amended 1/23, Amended and effective June 5, 2025)

- **Standard of Practice 3-10**

The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. (Adopted 1/11)

- **Standard of Practice 3-11**

REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/20, Amended 1/23)

## Article 4

REALTORS® who have a present ownership interest in property for sale or lease, or contemplated interest to purchase or lease property, must disclose in writing the existence of such interest to all parties to the transaction prior to a party signing any agreement. (Amended 1/25)

- **Standard of Practice 4-1**

The present ownership interest in property for sale or lease, or contemplated interest to purchase or lease property, includes transactions in which REALTORS®:

- 1) represent themselves
- 2) represent a member of their immediate family
- 3) represent their firm or any broker or agent thereof
- 4) represent an entity in which the REALTOR® or member of their immediate family has a legal interest. (Adopted 2/86, Amended 1/25)

- **Standard of Practice 4-2**

REALTORS® are not required to disclose the identity of the client or customer, nor the specific nature of the interest referred to in Article 4, but must disclose that an interest exists. (Adopted 1/25)



## Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

## Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. (Amended 1/99)

### • Standard of Practice 6-1

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. (Amended 5/88)

## Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to, and the informed consent of, the REALTOR®'s client or clients. (Amended 1/93 and 1/26)

## Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

## Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. (Amended 1/04)

### • Standard of Practice 9-1

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. (Amended 1/93)

### • Standard of Practice 9-2

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) in person, electronically, or through any other means, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. (Adopted 1/07, Amended and effective June 5, 2025)

## Duties to the Public

## Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Amended 1/23)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. (Amended 1/23)

### • Standard of Practice 10-1

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood, however, REALTORS® may provide other demographic information. REALTORS® shall not engage in any activity which may result in panic selling or steering. (Adopted 1/94, Amended 1/06, Amended and effective June 5, 2025)

### • Standard of Practice 10-2

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. (Adopted 1/05, Renumbered 1/06)

### • Standard of Practice 10-3

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, disability, familial status, national origin,

sexual orientation, or gender identity. (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/23)

- **Standard of Practice 10-4**

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. (Adopted 1/00, Renumbered 1/05 and 1/06)

- **Standard of Practice 10-5**

REALTORS®, in their capacity as real estate professionals, in association with their real estate businesses, or in their real estate-related activities, shall not harass any person or persons based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.

As used in this Code of Ethics, harassment is unwelcome behavior directed at an individual or group based on one or more of the above protected characteristics where the purpose or effect of the behavior is to create a hostile, abusive, or intimidating environment which adversely affects their ability to access equal professional services or employment opportunities. (Adopted and effective November 13, 2020, Amended 1/23, Amended and effective June 5, 2025)

## Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. (Amended 1/10)

- **Standard of Practice 11-1**

When REALTORS® prepare opinions of real property value or price they must:

- 1) be knowledgeable about the type of property being valued,
- 2) have access to the information and resources necessary to formulate an accurate opinion, and

- 3) be familiar with the area where the subject property is located

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
- 2) date prepared
- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect
- 8) disclosure of whether and when a physical inspection of the property's exterior was conducted
- 9) disclosure of whether and when a physical inspection of the property's interior was conducted
- 10) disclosure of whether the REALTOR® has any conflicts of interest (Amended 1/14)

- **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary or the applicable agency duties required by law. (Amended 1/25)

- **Standard of Practice 11-3**

When REALTORS® provide consultative services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultative services, a separate compensation may be paid with prior agreement between the client and REALTOR®. (Adopted 1/96)

- **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their

clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. (Adopted 1/02)

## Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (Amended 1/08)

- **Standard of Practice 12-1**

REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services. (Amended 1/22)

- **Standard of Practice 12-2**

(Deleted 1/20)

- **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. (Amended 1/95)

- **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. (Amended 1/93)

- **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. (Adopted 11/86, Amended 1/16)

- **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. (Amended 1/93)

- **Standard of Practice 12-7**

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign only with the consent of the listing broker. (Amended 1/96)

- **Standard of Practice 12-8**

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS®' websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'s website is no longer current or accurate, REALTORS® shall promptly take corrective action. (Adopted 1/07)

- **Standard of Practice 12-9**

REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. (Adopted 1/07)

- **Standard of Practice 12-10**

REALTORS®' obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
- 4) presenting content developed by others without either attribution or without permission; or
- 5) otherwise misleading consumers, including use of misleading images. (Adopted 1/07, Amended 1/18)

- **Standard of Practice 12-11**

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. (Adopted 1/07)

- **Standard of Practice 12-12**

REALTORS® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. (Adopted 1/08)

- **Standard of Practice 12-13**

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. (Adopted 1/08)

## Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

## Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. (Amended 1/99)

- **Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. (Amended 1/95)

- **Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. (Amended 1/92)

- **Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. (Adopted 11/87, Amended 1/99)

- **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. (Adopted 11/88)

## Duties to REALTORS®

## Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. (Amended 1/12)

- **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. (Adopted 1/00)

- **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. (Adopted 1/07, Amended 1/12)

- **Standard of Practice 15-3**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. (Adopted 1/10, Amended 1/12)

## Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. (Amended 1/04)

- **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. (Adopted 1/93, Amended 1/95)

- **Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another



REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. (Amended 1/04)

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR® and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. (Amended 1/04)

- **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. (Amended 1/04)

- **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. (Amended 1/94)

- **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the

exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. (Adopted 1/94, Amended 1/98)

- **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. (Amended 1/98)

- **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. (Amended 1/04)

- **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. (Amended 1/98)

- **Standard of Practice 16-9**

REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. (Amended 1/04)

- **Standard of Practice 16-10**

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. (Amended 1/04)

- **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. (Amended 1/04)

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. (Amended 1/98)

This ethical obligation in no way impacts REALTORS® or consumers' ability to negotiate compensation. (Adopted and effective June 5, 2025)

- **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. (Amended 1/04)

- **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. (Adopted 1/93, Amended 1/04)

- **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. (Amended 1/98)

- **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

- **Standard of Practice 16-16**

(Deleted effective June 5, 2025)

- **Standard of Practice 16-17**

REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. (Amended 1/04)

- **Standard of Practice 16-18**

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. (Amended 1/02)

- **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. (Amended 1/93)

- **Standard of Practice 16-20**

REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. (Adopted 1/98, Amended 1/10)

## Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

- **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86)

- **Standard of Practice 17-2**

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. (Amended 1/12)

• **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. (Adopted 1/96)

• **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, or the amount of compensation outlined within the terms of any valid buyer representation agreement between the buyer and the complainant, whichever is less, and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07 and 1/26)
- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord, or the amount of compensation outlined within the terms of any valid buyer representation agreement between the buyer and the complainant, whichever is less, and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07 and 1/26)
- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the buyer or tenant, or the amount of compensation outlined within the terms of any valid buyer representation agreement between the buyer and the complainant, whichever is less. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/26)
- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. (Adopted 1/97)
- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker

and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. (Adopted 1/05)

- **Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. (Adopted 1/07)

## Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in Interpretations of the Code of Ethics.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.



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# The 2025 Florida Statutes

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<a href="#">Title XXXII</a>	<a href="#">Chapter 475</a>	<a href="#">View Entire Chapter</a>
REGULATION OF PROFESSIONS AND OCCUPATIONS	REAL ESTATE BROKERS, SALES ASSOCIATES, SCHOOLS, AND APPRAISERS	

CHAPTER 475  
REAL ESTATE BROKERS, SALES ASSOCIATES, SCHOOLS, AND APPRAISERS

PART I  
REAL ESTATE BROKERS, SALES ASSOCIATES, AND SCHOOLS  
(ss. 475.001-475.5018)

PART II  
APPRAISERS  
(ss. 475.610-475.631)

PART III  
COMMERCIAL REAL ESTATE SALES COMMISSION LIEN ACT  
(ss. 475.700-475.719)

PART IV  
COMMERCIAL REAL ESTATE LEASING COMMISSION LIEN ACT  
(ss. 475.800-475.813)

PART I  
REAL ESTATE BROKERS, SALES ASSOCIATES, AND SCHOOLS

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- 475.01 Definitions.
- 475.011 Exemptions.
- 475.02 Florida Real Estate Commission.
- 475.021 Division of Real Estate.
- 475.03 Delegation of powers and duties; legal services.
- 475.04 Duty of commission to educate members of profession.
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- 475.05 Power of commission to enact bylaws and rules and decide questions of practice.
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**475.001 Purpose.**—The Legislature deems it necessary in the interest of the public welfare to regulate real estate brokers, sales associates, and schools in this state.

**History.**—ss. 1, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 1, ch. 93-261; s. 13, ch. 2000-332; s. 21, ch. 2003-164.

**475.01 Definitions.**—

(1) As used in this part:

(a) “Broker” means 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. A broker renders a professional service and is a professional within the meaning of s. 95.11(5)(b). Where the term “appraise” or “appraising” appears in the definition of the term “broker,” it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term “broker” also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term “broker” also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

(b) “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.

(c) “Commission” means the Florida Real Estate Commission.

(d) “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.

(e) “Department” means the Department of Business and Professional Regulation.

(f) “Fiduciary” means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

(g) “Involuntarily inactive status” means the licensure status that results when a license is not renewed at the end of the license period prescribed by the department.

(h) “Principal” means the party with whom a real estate licensee has entered into a single agent relationship.

(i) “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, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

(j) “Sales associate” means 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. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(5)(b).

(k) “Single agent” means a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.

(l) “Transaction broker” means 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. In a transaction broker relationship, a buyer or seller is not responsible for the acts of a licensee. Additionally, the parties to a real estate transaction are giving up their rights to the undivided loyalty of a 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.

(m) “Voluntarily inactive status” means the licensure status that results when a licensee has applied to the department to be placed on inactive status and has paid the fee prescribed by rule.

(2) The terms “employ,” “employment,” “employer,” and “employee,” when used in this chapter and in rules adopted pursuant thereto to describe the relationship between a broker and a sales associate, include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate. The existence of such relationship shall not relieve either the broker or the sales associate of her or his duties, obligations, or responsibilities under this chapter.

(3) Wherever the word “operate” or “operating” as a broker, broker associate, or sales associate appears in this chapter; in any order, rule, or regulation of the commission; in any pleading, indictment, or information under this chapter; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this chapter as constituting or defining a broker, broker associate, or sales associate, not including, however, any of the exceptions stated therein. A single such act is sufficient to bring a person within the meaning of this chapter, and each act, if prohibited herein, constitutes a separate offense.

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12.

**History.**—s. 1, ch. 12223, 1927; CGL 4062; s. 1, ch. 29983, 1955; s. 1, ch. 59-199; s. 1, ch. 59-197; s. 1, ch. 59-438; ss. 30, 35, ch. 69-106; s. 1, ch. 75-112; s. 7, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-239; s. 1, ch. 77-355; s. 1, ch. 77-457; s. 1, ch. 78-215; s. 1, ch. 78-366; ss. 2, 42, 43, ch. 79-239; ss. 2, 3, 5, ch. 80-405; ss. 2, 3, ch. 81-318; ss. 5, 38, ch. 82-1; ss. 18, 45, ch. 82-179; ss. 1, 28, 30, ch. 88-20; s. 1, ch. 89-368; s. 10, ch. 90-228; s. 10, ch. 90-341; s. 13, ch. 90-345; ss. 2, 10, ch. 91-89; s. 1, ch. 91-289; s. 4, ch. 91-429; s. 2, ch. 93-261; s. 134, ch. 94-119; s. 159, ch. 94-218; s. 1, ch. 94-337; s. 1, ch. 97-42; s. 361, ch. 97-103; s. 1, ch. 98-250; s. 1, ch. 99-384; s. 1, ch. 2002-233; ss. 1, 22, ch. 2003-164; s. 78, ch. 2004-5; s. 2, ch. 2022-178; s. 13, ch. 2023-15; s. 10, ch. 2024-183.

#### **475.011 Exemptions.**—This part does not apply to:

(1) Any person acting as an attorney in fact for the purpose of the execution of contracts or conveyances only; as an attorney at law within the scope of her or his duties as such; as a certified public accountant, as defined in chapter 473, within the scope of her or his duties as such; as the personal representative, receiver, trustee, or general or special magistrate under, or by virtue of, an appointment by will or by order of a court of competent jurisdiction; or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and intent whereof is charitable, is philanthropic, or provides for those having a natural right to the bounty of the donor or trustor.

(2) Any individual, corporation, partnership, trust, joint venture, or other entity which sells, exchanges, or leases its own real property; however, this exemption shall not be available if and to the extent that an agent, employee, or independent contractor paid a commission or other compensation strictly on a transactional basis is employed to make sales, exchanges, or leases to or with customers in the ordinary course of an owner’s business of selling, exchanging, or leasing real property to the public.

(3) Any employee of a public utility, a rural electric cooperative, a railroad, or a state or local governmental agency who acts within the scope of her or his employment, for which no compensation in addition to the employee’s salary is paid, to buy, sell, appraise, exchange, rent, auction, or lease any real property or any interest in real property for the use of her or his employer.

(4) Any salaried employee of an owner, or of a registered broker for an owner, of an apartment community who works in an onsite rental office of the apartment community in a leasing capacity.

(5) Any person employed for a salary as a manager of a condominium or cooperative apartment complex as a result of any activities or duties which the person may have in relation to the renting of individual units within such condominium or cooperative apartment complex if rentals arranged by the person are for periods no greater than 1 year.

(6) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, sells, offers to sell, advertises for sale, buys, offers to buy, or negotiates the sale or purchase of radio, television, or cable enterprises licensed and regulated by the Federal Communications Commission pursuant to the Communications Act of 1934. However, if the sale or purchase of the radio, television,



or cable enterprise involves the sale or lease of land, buildings, fixtures, and all other improvements to the land, a broker or sales associate licensed under this chapter shall be retained for the portion of the transaction which includes the land, buildings, fixtures, and all other improvements to the land.

(7) Any full-time graduate student who is enrolled in a commission-approved degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a licensed broker or a licensed or certified appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual.

(8)(a) An owner of one or part of one or more timeshare periods for the owner's own use and occupancy who later offers one or more of such periods for resale.

(b) An exchange company, as that term is defined by s. 721.05(15), but only to the extent that the exchange company is engaged in exchange program activities as described in and is in compliance with s. 721.18.

(9) Any person registered, licensed, or certified by the department under part II as an appraiser or trainee appraiser performing appraisals in accordance with that part.

(10) Any person who appraises under the unit-rule method of valuation a railroad or railroad terminal company assessed for ad valorem tax purposes pursuant to s. 193.085.

(11) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, rents or advertises for rent, for transient occupancy, any public lodging establishment licensed under chapter 509.

(12) Any dealer registered under the Securities and Exchange Act of 1934, as amended, or any federally insured depository institution and any parent, subsidiary, or affiliate thereof, in connection with the sale, exchange, purchase, or rental of a business enterprise to or by a person who is an accredited investor as defined by 15 U.S.C. s. 77b, the Securities Act of 1933, or any regulation adopted thereunder. This exemption applies whether stock or assets of the business enterprise are purchased or sold. The exemption does not apply to a sale, exchange, purchase, or rental of land, buildings, fixtures or other improvements to the land which is not made in connection with the sale, exchange, purchase, or rental of a business enterprise. Any reference to rental in this subsection includes a lease transaction.

(13) Any property management firm or any owner of an apartment complex for the act of paying a finder's fee or referral fee to an unlicensed person who is a tenant in such apartment complex provided the value of the fee does not exceed \$50 per transaction. Nothing in this subsection authorizes an unlicensed person to advertise or otherwise promote the person's services in procuring or assisting in procuring prospective lessees or tenants of apartment units. For purposes of this subsection, "finder's fee" or "referral fee" means a fee paid, credit towards rent, or some other thing of value provided to a person for introducing or arranging an introduction between parties to a transaction involving the rental or lease of an apartment unit. It is a violation of s. 475.25(1)(h) and punishable under s. 475.42 for a property management firm or any owner of an apartment complex to pay a finder's fee or a referral fee to an unlicensed person unless expressly authorized by this subsection.

**History.**—ss. 3, 42, ch. 79-239; ss. 1, 5, ch. 80-307; ss. 2, 3, ch. 81-318; ss. 31, 45, ch. 82-179; s. 3, ch. 85-84; ss. 1, 2, ch. 85-215; s. 1, ch. 86-107; s. 1, ch. 87-205; ss. 2, 28, 30, ch. 88-20; s. 2, ch. 89-368; ss. 3, 10, ch. 91-89; s. 2, ch. 91-289; s. 4, ch. 91-429; s. 3, ch. 93-261; s. 135, ch. 94-119; s. 2, ch. 94-337; s. 362, ch. 97-103; s. 2, ch. 98-250; s. 2, ch. 99-384; s. 7, ch. 2001-179; ss. 2, 23, ch. 2003-164; s. 85, ch. 2004-11; s. 33, ch. 2004-279.

#### **475.02 Florida Real Estate Commission.—**

(1) There is created within the department the Florida Real Estate Commission. The commission shall consist of seven members who shall be appointed by the Governor, subject to confirmation by the Senate. Four members must be licensed brokers, each of whom has held an active license for the 5 years preceding appointment; one member must be a licensed broker or a licensed sales associate who has held an active license for the 2 years preceding appointment; and two members must be persons who are not, and have never been, brokers or sales associates. At least one member of the commission must be 60 years of age or older. The current members may complete their present terms unless removed for cause.

(2) Members shall be appointed for 4-year terms.

(3) Notwithstanding s. 112.313, 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 department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the commission or the department.

**History.**—ss. 2, 3, ch. 12223, 1927; CGL 4063, 4064; ss. 30, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 6, 38, ch. 82-1; s. 22, ch. 87-172; ss. 3, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 4, ch. 93-261; s. 160, ch. 94-218; s. 24, ch. 2003-164; s. 35, ch. 2010-106; s. 9, ch. 2012-208.

#### **475.021 Division of Real Estate.—**

(1) All services concerning this chapter, including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in chapter 455 necessary to perform the duties of this chapter shall be provided by the Division of Real Estate. The commission may, by majority vote, delegate a duty or duties to the appropriate division within the department. The commission may, by majority vote, rescind any such delegation of duties at any time.

(2) The Division of Real Estate shall be funded by fees and assessments of the commission, and funds collected by the commission shall be used only to fund real estate regulation.

**History.**—s. 1, ch. 82-1; s. 2, ch. 87-50; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 121, ch. 98-166; s. 181, ch. 2000-160.

#### **475.03 Delegation of powers and duties; legal services.—**

(1) Any of the duties and powers of the commission, except disciplinary powers and the power to adopt rules, may be delegated, by resolution, to any member; but the chair may exercise such duties and powers without such resolution.

(2) Subject to the prior approval of the Attorney General, the commission may retain independent legal counsel to provide legal advice to the commission on a specific matter.

(3) No attorney employed or utilized by the commission shall prosecute a matter and provide legal services to the commission with respect to the same matter.

**History.**—s. 4, ch. 12223, 1927; CGL 4065; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 7, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 363, ch. 97-103.

#### **475.04 Duty of commission to educate members of profession.—**

(1) The commission shall foster the education of brokers, broker associates, sales associates, and instructors concerning the ethical, legal, and business principles which should govern their conduct.

(2) For the purpose of performing its duty under subsection (1) to educate persons holding a license or permit, the commission may conduct, offer, sponsor, prescribe, or approve real estate educational courses for all persons licensed or permitted by the department as brokers, broker associates, sales associates, or instructors; and the cost and expense of such courses shall be paid as provided in s. 475.125.

(3) The commission may also publish and sell, at a reasonable price intended to cover costs, a handbook on this chapter and other publications intended to be textbooks or guidelines for study and guidance of students, applicants, licensees, certificateholders, and permitholders, and members of the general public, copyright of which shall be the property of the state.

**History.**—s. 5, ch. 12223, 1927; CGL 4066; s. 1, ch. 59-200; s. 1, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 8, 38, ch. 82-1; ss. 4, 28, 30, ch. 88-20; s. 11, ch. 90-228; s. 11, ch. 90-341; s. 14, ch. 90-345; s. 4, ch. 91-89; s. 4, ch. 91-429; s. 25, ch. 2003-164.

#### **475.045 Florida Real Estate Commission Education and Research Foundation.—**

(1)(a) There is established a Florida Real Estate Commission Education and Research Foundation, hereinafter referred to as the “foundation,” which shall be administered by the commission.

(b) The purposes, objectives, and duties of the foundation are as follows:

1. To create and promote educational projects to expand the knowledge of the public and real estate licensees in matters pertaining to Florida real estate.

2. To augment the existing real estate programs by increasing the number of teaching personnel and real estate courses in the state in degree-granting programs in universities and colleges in this state.

3. To conduct 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.

4. To assist the teaching program in real estate offered by the universities, colleges, and real estate schools registered pursuant to this chapter in the state, when requested to do so.

5. To 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 registered pursuant to this chapter in the state, when requested to do so.

6. To make studies of, and recommend changes in, state statutes and municipal ordinances; provided, however, that such studies are requested by the Governor or the presiding officers of the Legislature. The foundation shall maintain political nonadvocacy.

7. To periodically review the progress of persons conducting such research and studies. The results of any research project or study shall not be published or disseminated until it has been reviewed and approved in writing by the commission or its designated representative.

8. To prepare information of consumer interest concerning Florida real estate and to make the information available to the public and appropriate state agencies.

(c) The foundation may make a charge for its publications and may receive gifts and grants from foundations, individuals, and other sources for the benefit of the foundation.

(d) A report of the activities and accomplishments of the foundation shall be published annually.

(e) On or before January 1 of each year, the commission shall file with the Governor, the presiding officer of each house of the Legislature, and the secretary of the department a complete and detailed written report accounting for all funds received and disbursed by the foundation during the preceding year.

(2)(a) The commission shall solicit advice and information from real estate licensees, the commission, universities, colleges, real estate schools registered pursuant to this chapter and the general public for the purpose of submitting proposals for carrying out the purposes, objectives, and duties of the foundation.

(b) The commission shall select the proposals that shall be funded and shall give priority to projects with the greatest potential for direct or indirect benefit to the public.

(c) The commission shall select the university or college within the state or qualified full-time faculty member of a university or college within the state with the consent of the institution to perform the education study, research study, or other project in accordance with the purposes, objectives, and duties of the foundation. In those instances where no university or college within the state, or qualified full-time faculty member of a university or college within the state with the consent of the institution, submits an acceptable proposal, a qualified person or persons may be selected in accordance with law to perform the education study, research study, or other project in accordance with the purposes, objectives, and duties of the foundation.

(3)(a) The director of the Division of Real Estate of the department, hereinafter referred to as the "director," or her or his designated representative shall submit to the commission, in advance of each fiscal year, a budget for expenditures of all funds provided for the foundation in a form that is related to the proposed schedule of activities for the review and approval of the commission.

(b) The director shall submit to the commission all proposals received for its review and approval in developing an educational and research agenda at the beginning of each fiscal year and shall continuously inform the commission of changes in its substance and scheduling.

(4) The commission shall have the power and authority to adopt all rules necessary to administer this section.

(5) The foundation may not fund or offer educational courses designed to qualify persons for licensure or the renewal of licenses pursuant to this chapter.

(6) The foundation may not expend any funds for the purpose of employing staff.

(7) The Chief Financial Officer shall invest \$3 million from the portion of the Professional Regulation Trust Fund credited to the real estate profession, under the same limitations as applied to investments of other state funds, and the income earned thereon shall be available to the foundation to fund the activities and projects authorized

under this section. However, any balance of such interest in excess of \$1 million shall revert to the portion of the Professional Regulation Trust Fund credited to the real estate profession. In the event the foundation is abolished, the funds in the trust fund shall revert to such portion of the Professional Regulation Trust Fund.

**History.**—ss. 1, 2, ch. 85-199; ss. 5, 29, 31, ch. 88-20; s. 12, ch. 90-228; s. 12, ch. 90-341; s. 15, ch. 90-345; s. 10, ch. 91-89; s. 3, ch. 91-289; s. 5, ch. 91-429; s. 5, ch. 93-261; s. 161, ch. 94-218; s. 65, ch. 95-144; s. 42, ch. 96-418; s. 1118, ch. 97-103; s. 25, ch. 99-333; s. 52, ch. 2000-356; s. 505, ch. 2003-261.

**475.05 Power of commission to enact bylaws and rules and decide questions of practice.**—The commission may enact bylaws for its own government and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring powers or duties upon it. The commission may decide questions of practice arising in the proceedings before it, having regard to this chapter and the rules then in force. Printed copies of rules, or written copies under the seal of the commission, shall be prima facie evidence of their existence and substance, and the courts shall judicially notice such rules.

**History.**—s. 6, ch. 12223, 1927; CGL 4067; s. 2, ch. 59-199; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 9, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 146, ch. 98-200; s. 4, ch. 2002-9.

**475.10 Seal.**—The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records, and acts of the commission, and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chair, the custodian of such records, or another person authorized to make such certification and authenticated by such seal, shall be prima facie evidence thereof in all the courts of this state.

**History.**—s. 11, ch. 12223, 1927; CGL 4072; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 8, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 10, 38, ch. 82-1; ss. 19, 45, ch. 82-179; s. 92, ch. 83-218; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 364, ch. 97-103.

**475.125 Fees.**—

(1) The commission by rule may establish fees to be paid for application, examination, reexamination, licensing and renewal, certification and recertification, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination may not exceed \$100. The initial license fee and the license renewal fee may not exceed \$50 for each year of the duration of the license. The commission may also establish by rule a late renewal penalty. The commission shall establish fees which are adequate to ensure its continued operation. Fees shall be based on estimates made by the department of the revenue required to implement this chapter and other provisions of law relating to the regulation of real estate practitioners.

(2) Application and license fees shall be refunded upon a determination by the commission that the state is not entitled to the fees or that only a portion of the resources have been expended in the processing of the application, or if for any other reason the application is not completely processed. The commission shall implement this provision by rule.

**History.**—ss. 9, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 11, 38, ch. 82-1; s. 56, ch. 83-329; ss. 6, 28, 30, ch. 88-20; s. 4, ch. 91-429.

**475.15 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 shall register with the commission and shall 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 this part. 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. The commission shall adopt rules that allow a brokerage to register a broker on a temporary, emergency basis if a sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

**History.**—s. 16, ch. 12223, 1927; CGL 4077; s. 4, ch. 59-199; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 12, 38, ch. 82-1; ss. 7, 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 136, ch. 94-119; s. 3, ch. 98-250; s. 1, ch. 2015-54.

**475.161 Licensing of broker associates and sales associates.**—The commission shall license a broker associate or sales associate as an individual or, upon the licensee providing the commission with authorization from



the Department of State, as a professional corporation, limited liability company, or professional limited liability company. A license shall be issued in the licensee's legal name only and, when appropriate, shall include the entity designation. This section shall not operate to permit a broker associate or sales associate to register or be licensed as a general partner, member, manager, officer, or director of a brokerage firm under s. 475.15.

History.—s. 26, ch. 2003-164; s. 1, ch. 2006-210.

#### **475.17 Qualifications for practice.—**

(1)(a) An applicant for licensure who is a natural person must be at least 18 years of age; hold a high school diploma or its equivalent; be honest, truthful, trustworthy, and of good character; and have a good reputation for fair dealing. 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 therefor with safety to investors and 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 this 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 this state or elsewhere which would have been grounds for revoking or suspending her or his license under this chapter 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.

(b) 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 1 year next prior to the filing of the application, as a real estate broker or sales associate in the state in violation of this chapter. This paragraph may be deemed to bar any person from licensure who has performed any of the acts or services described in s. 475.01(3), unless exempt pursuant to s. 475.011, during a period of 1 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.

(2)(a)1. In addition to other requirements under this part, 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 s. 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 one to become initially licensed shall not exceed a total of 63 classroom hours of 50 minutes each, inclusive of examination, for a sales associate and 72 classroom hours of 50 minutes each, inclusive of examination, 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. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 8 classroom hours.

2. A distance learning course or courses shall be approved by the commission as an option to classroom hours as satisfactory completion of the course or courses as required by this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both. However, satisfactory completion of a distance learning course requires the satisfactory completion of a timed distance learning course examination. Such examination shall not be required to be monitored or given at a centralized location.

3. Such required course or courses must 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 the course or courses are regularly conducted or does not have access to the distance learning course or courses.

(b) A person may not be licensed as a real estate broker unless, in addition to the other requirements of law, the person has held:

1. An active real estate sales associate's license for at least 24 months during the preceding 5 years in the office of one or more real estate brokers licensed in this state or any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction;
2. A current and valid real estate sales associate's license for at least 24 months during the preceding 5 years in the employ of a governmental agency for a salary and performing the duties authorized in this part for real estate licensees; or
3. A current and valid real estate broker's license for at least 24 months during the preceding 5 years in any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction.

(c) A person who has been licensed as a real estate sales associate in Florida during the preceding 5 years may not be licensed as a real estate broker unless, in addition to the other requirements of law, she or he has completed the sales associate postlicensure educational requirements, if these requirements have been prescribed by the commission pursuant to paragraph (3)(a).

(3)(a) The commission may prescribe a postlicensure 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, inclusive of examination, prior to the first renewal following initial licensure. If prescribed, this shall consist of one or more commission-approved courses which total at least 45 classroom hours on one or more subjects which include, but are not limited to, 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 postlicensure education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.

(b) Satisfactory completion of the postlicensure education requirement is demonstrated by successfully meeting all standards established for the commission-prescribed or commission-approved institution or school. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 10 percent of the required classroom hours or has not satisfactorily completed a timed distance learning course examination.

(c) The license of any sales associate who does not complete the postlicensure education requirement prior to the first renewal following initial licensure shall be considered null and void. Such person wishing to again operate as a real estate sales associate must requalify by satisfactorily completing the sales associate's prelicensure course and passing the state examination for licensure as a sales associate.

(d) A sales associate who is required to complete any postlicensure education requirement must complete any postlicensure education requirement and hold a current and valid license in order to be eligible for licensure as a broker.

(4)(a) The commission may prescribe a postlicensure education requirement in order for a person to maintain a valid broker's license, which shall not exceed 60 classroom hours of 50 minutes each, inclusive of examination, prior to the first renewal following initial licensure. If prescribed, this shall consist of one or more commission-approved courses which total at least 60 classroom hours on one or more subjects which include, but are not limited to, 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 postlicensure education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.

(b) Satisfactory completion of the postlicensure education requirement is demonstrated by successfully meeting all standards established for the commission-prescribed or commission-approved institution or school. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 10 percent of the required classroom hours or has not satisfactorily completed a timed distance learning course examination.

(c) The license of any broker who does not complete the postlicensure 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 6 months following expiration of her or his broker's license. To operate as a broker, the licensee must requalify by satisfactorily completing the broker's prelicensure course and passing the state examination for licensure as a broker.

(5)(a) The commission may allow an additional 6-month period after the first renewal following initial licensure for completing the postlicensure education courses for sales associates and brokers who cannot, due to individual physical hardship, as defined by rule, complete the courses within the required time.

(b) Except as provided in subsection (4), sales associates and brokers are not required to meet the 14-hour continuing education requirement prior to the first renewal following initial licensure.

(c)1. A distance learning course or courses shall be approved by the commission as an option to classroom hours as satisfactory completion of the postlicensure education course or courses as required by this section. The schools or sponsors authorized by this section have the option of providing classroom courses, distance learning courses, or both. However, satisfactory completion of a distance learning postlicensure education course or courses requires the satisfactory completion of a timed distance learning course examination. Such examination shall not be required to be monitored or given at a centralized location.

2. The commission shall provide for postlicensure 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.

(6) The postlicensure education requirements of this section, and the education course requirements for one to become initially licensed, do not apply to any applicant or licensee who has received a 4-year degree, or higher, in real estate from an accredited institution of higher education.

(7) The commission may not approve prelicensure or postlicensure distance learning courses for brokers, broker associates, and sales associates by correspondence methods, except in instances of hardship pursuant to subparagraphs (2)(a)3. and (5)(c)2.

**History.**—s. 18, ch. 12223, 1927; CGL 4079; s. 1, ch. 24090, 1947; s. 1, ch. 57-244; s. 2, ch. 59-200; ss. 2, 3, ch. 69-378; s. 1, ch. 74-343; s. 1, ch. 75-106; s. 1, ch. 75-117; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-238; s. 1, ch. 77-457; ss. 11, 42, 43, ch. 79-239; s. 206, ch. 79-400; ss. 2, 4, 5, ch. 80-405; ss. 2, 3, ch. 81-318; ss. 13, 38, ch. 82-1; s. 57, ch. 83-329; ss. 8, 28, 30, ch. 88-20; s. 26, ch. 88-392; s. 1, ch. 89-76; s. 13, ch. 90-228; s. 13, ch. 90-341; s. 16, ch. 90-345; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 6, ch. 93-62; s. 6, ch. 93-261; s. 137, ch. 94-119; s. 365, ch. 97-103; s. 1, ch. 98-116; s. 4, ch. 98-250; s. 1, ch. 2002-9; s. 27, ch. 2003-164; s. 51, ch. 2004-357; s. 26, ch. 2008-240; s. 2, ch. 2015-54.

#### **475.175 Examinations.—**

(1) A person shall be entitled to take the license examination to practice in this state if the person:

(a) Submits to the department the appropriate signed or electronically authenticated application, digital fingerprint data, and fee. The digital fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprints to determine if the applicant has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprints to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for examination.

(b) Submits at the time of examination the certificate specified in subsection (2), the examination admissions authorization letter, and proof of identification.

(2) Each accredited college, university, community college, or registered real estate school shall notify the commission of the names of all persons who have satisfactorily completed the educational requirements provided for in s. 475.17(2), (3), and (4) in a manner prescribed by the commission. Furthermore, each such educational institution shall provide to each person satisfactorily completing the educational requirements provided for in s. 475.17(2), (3), and (4) a certificate as proof of such satisfactory completion.

**History.**—ss. 12, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 14, 38, ch. 82-1; s. 58, ch. 83-329; ss. 9, 28, 30, ch. 88-20; s. 14, ch. 90-228; s. 14, ch. 90-341; s. 17, ch. 90-345; s. 4, ch. 91-429; s. 366, ch. 97-103; s. 141, ch. 99-251; s. 28, ch. 2003-164; s. 16, ch. 2009-195; s. 36, ch. 2010-106.

#### **475.180 Nonresident licenses.—**

(1) Notwithstanding the prelicensure requirements set forth under ss. 475.17(2) and (6) and 475.175, the commission in its discretion may enter into written agreements with similar licensing authorities of other states, territories, or jurisdictions of the United States or foreign national jurisdictions to ensure for Florida licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this section. Whenever the commission determines that another jurisdiction does not offer nonresident licensure to Florida licensees substantially comparable to those afforded to licensees of that jurisdiction by this section, the commission shall 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, not to exceed such requirements as prescribed in ss. 475.17(2) and (6) and 475.175.

(2)(a) Any resident licensee who becomes a nonresident shall, within 60 days, notify the commission of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.25.

(b) All nonresident applicants and licensees shall comply with all requirements of commission rules and this part. The commission may adopt rules necessary for the regulation of nonresident licensees.

**History.**—s. 138, ch. 94-119; s. 367, ch. 97-103; s. 12, ch. 98-246; s. 10, ch. 2012-208.

#### **475.181 Licensure.—**

(1) The department shall license any applicant whom the commission certifies, pursuant to subsection (2), to be qualified to practice as a broker or sales associate.

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25. The application shall expire 2 years after the date received if the applicant does not pass the appropriate examination. Additionally, if an applicant does not pass the licensing examination within 2 years after the successful course completion date, the applicant's successful course completion is invalid for licensure.

(3) The department 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 this part or chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

**History.**—ss. 13, 42, ch. 79-239; s. 351, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 15, 38, ch. 82-1; s. 59, ch. 83-329; ss. 27, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 7, ch. 93-261; s. 139, ch. 94-119; s. 4, ch. 94-337; s. 122, ch. 98-166; s. 3, ch. 99-384; s. 182, ch. 2000-160; s. 29, ch. 2003-164; s. 2, ch. 2006-210.

#### **475.182 Renewal of license; continuing education.—**

(1)(a) The department shall 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 shall include proof satisfactory to the commission that the licensee has, since the issuance or renewal of her or his current license, satisfactorily completed at least 14 classroom hours of 50 minutes each of a continuing education course during each biennium of a license period, as prescribed by the commission. 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 within the intent of this section, including an approved distance learning course. However, the commission may not require, for the purpose



of satisfactorily completing an approved correspondence or distance learning course, a written examination that is to be taken at a centralized location and is to be monitored.

(b) The commission may accept as a substitute for 3 classroom hours, one time per renewal cycle, attendance at one legal agenda session of the commission. In order to obtain credit, the licensee must notify the division at least 7 days in advance of his or her intent to attend. 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.

(2) The department shall adopt rules establishing a procedure for the renewal of licenses at least every 4 years.

(3) Any license that is not renewed at the end of the license period prescribed by the department shall automatically revert to involuntarily inactive status. Such license may subsequently be renewed only if the licensee meets the other qualifications specified in s. 475.183.

(4) Sixty days before the end of the license period and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

**History.**—ss. 14, 42, ch. 79-239; ss. 2, 5, ch. 80-307; ss. 2, 3, ch. 81-318; ss. 16, 38, ch. 82-1; ss. 32, 45, ch. 82-179; s. 93, ch. 83-218; ss. 10, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 8, ch. 93-261; s. 140, ch. 94-119; s. 5, ch. 94-337; s. 368, ch. 97-103; s. 2, ch. 2002-9; s. 30, ch. 2003-164; s. 5, ch. 2007-86.

#### **475.183 Inactive status.—**

(1) A license which has become voluntarily inactive may be renewed pursuant to s. 475.182 upon application to the department. The commission shall prescribe by rule continuing education requirements, not to exceed 12 classroom hours for each year the license was inactive, as a condition of renewing a voluntarily inactive license. The commission shall substitute for such continuing education requirements, on a classroom-hour-for-classroom-hour basis, any satisfactorily completed education course approved in the manner specified in s. 475.182(1). A person whose license is voluntarily inactive and who renews the license may elect to continue her or his voluntarily inactive status.

(2)(a) 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. Notwithstanding the provisions of s. 455.271, a licensee may reactivate a license that has been involuntarily inactive for more than 12 months but fewer than 24 months by satisfactorily completing 28 hours of a commission-prescribed education course.

(b) Any license that has been involuntarily inactive for more than 2 years shall automatically expire. Once a license expires, it becomes null and void without any further action by the commission or department. Ninety days prior to expiration of the license, the department shall give notice to the licensee. The commission shall prescribe by rule a fee not to exceed \$100 for the late renewal of an involuntarily inactive license. The department shall collect the current renewal fee for each renewal period in which the license was involuntarily inactive in addition to any applicable late renewal fee.

(3) The commission shall adopt rules relating to voluntarily inactive and involuntarily inactive licenses, and for the renewal of such licenses.

(4) The commission may reinstate the license of an individual whose license has become void if the commission determines that the individual failed to comply because of illness or economic hardship, as defined by rule. The individual must apply to the commission for reinstatement within 6 months after the date that the license becomes void. Such individual must meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this section.

**History.**—ss. 15, 42, ch. 79-239; s. 352, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 17, 38, ch. 82-1; ss. 33, 45, ch. 82-179; s. 108, ch. 83-329; ss. 11, 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 369, ch. 97-103; s. 5, ch. 98-250; s. 3, ch. 2006-210; s. 3, ch. 2015-54.

#### **475.215 Multiple licenses.—**

(1) A licensed broker may be issued upon request additional licenses as a broker, but not as a sales associate or as a broker associate, whenever it is clearly shown that the requested additional licenses are necessary to the conduct of real estate brokerage business and that the additional licenses will not be used in a manner likely to be prejudicial or harmful to any person, including a licensee under this chapter. The commission may also deny a

multiple license request pursuant to s. 475.17(1)(a). A final order of discipline rendered against a broker for a violation of this part or s. 455.227(1) applies to the primary license of the broker as well as any multiple licenses held by that broker at the time the final order becomes effective.

(2) A sales associate or broker associate shall have no more than one registered employer at any one time.

**History.**—ss. 20, 45, ch. 82-179; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 9, ch. 93-261; s. 31, ch. 2003-164; s. 1, ch. 2013-144.

**475.22 Broker to maintain office and sign at entrance of office; registered office outside state; broker required to cooperate in investigation.—**

(1) Each active broker shall maintain an office, which shall consist of at least one enclosed room in a building of stationary construction. Each active broker shall maintain a sign on or about the entrance of her or his principal office and each branch office, which sign may be easily observed and read by any person about to enter such office. Each sign must contain the name of the broker, together with the trade name, if any. For a partnership or corporation, the sign must contain the name of the firm or corporation or trade name of the firm or corporation, together with the name of at least one of the brokers. At a minimum, the words “licensed real estate broker” or “lic. real estate broker” must appear on the office entrance signs.

(2) If a broker’s registered office is located outside the State of Florida, prior to registering such office or branch office, the broker shall agree in writing to cooperate and shall cooperate with any investigation initiated in accordance with this chapter or commission rules including, but not limited to, the broker promptly supplying any documents requested by any authorized representative of the department and by personally appearing at any designated office of the department or other location in the state or elsewhere as reasonably requested by the department. If the department sends, by certified mail to the broker at the broker’s last known business address as registered with the department, a notice or request to produce any documents or to appear for an interview with an authorized representative of the department and the broker fails to substantially comply with that request or notice, then such failure by the broker is a violation of the license law, subject to the penalties of s. 475.25.

**History.**—s. 23, ch. 12223, 1927; CGL 4084; s. 3, ch. 76-168; s. 2, ch. 77-355; s. 1, ch. 77-457; ss. 16, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 18, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-289; s. 4, ch. 91-429; s. 370, ch. 97-103; s. 32, ch. 2003-164.

**475.23 License to expire on change of address.—**A license shall 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 s. 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 permitholder must file with the commission a notice of the change of address, along with the names of any sales associates or instructors who are no longer employed by the brokerage or school. Such notification shall also fulfill the change of address notification requirements for sales associates who remain employed by the brokerage and instructors who remain employed by the school.

**History.**—s. 24, ch. 12223, 1927; CGL 4085; s. 4, ch. 29983, 1955; s. 2, ch. 74-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-366; ss. 17, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 19, 38, ch. 82-1; s. 60, ch. 83-329; ss. 12, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 10, ch. 93-261; s. 371, ch. 97-103; s. 33, ch. 2003-164.

**475.24 Branch office; fees.—**Whenever any licensee desires to conduct business at some other location, either in the same or a different municipality or county than that in which she or he is licensed, such other place of business shall be registered as a branch office, and an annual registration fee prescribed by the commission, in an amount not exceeding \$50, shall be paid for each such office. It shall be necessary to maintain and register a branch office whenever, in the judgment of the commission, the business conducted at a place other than the principal office is of such a nature that the public interest requires registration of the branch office. Any office shall be deemed to be 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.

**History.**—s. 25, ch. 12223, 1927; CGL 4086; s. 3, ch. 74-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-366; ss. 18, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 20, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 51, ch. 89-162; s. 4, ch. 91-429; s. 372, ch. 97-103.

#### **475.25 Discipline.—**

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(a) Has violated any provision of s. 455.227(1) or s. 475.42. However, licensees under this part are exempt from the provisions of s. 455.227(1)(i).

(b) Has been 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 this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; 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 that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such 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.

(c) Has advertised property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content. The commission may adopt rules defining methods of advertising that violate this paragraph.

(d)1. Has failed to account or deliver to any person, including a licensee under this chapter, at the time which has been 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 said 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 thereof, 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, 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 the escrowed property, which property she or he still maintains in her or his escrow or trust account, the licensee shall promptly notify the commission of such doubts or conflicting demands and shall promptly:

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. The department may conduct mediation or may contract with public or private entities for mediation services. However, the mediation process must be successfully completed within 90 days following the last demand or the licensee shall promptly employ one of the other escape procedures contained in this section. Payment for mediation will be as agreed to in writing by the parties. The department may adopt rules to implement this section.

If the licensee promptly employs one of the escape procedures contained herein and abides by the order or judgment resulting therefrom, 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 shall set forth by rule, a licensee may disburse property from the licensee's escrow account without notifying the commission or employing one of the procedures listed in sub-subparagraphs a.-d. 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 s. 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 procedures listed in sub-subparagraphs a.-d.

2. 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.

(e) Has violated any of the provisions of this chapter or any lawful order or rule made or issued under the provisions of this chapter or chapter 455.

(f) 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. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(g) 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.

(h) 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 the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a). For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state 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 so long as the foreign broker does not violate any law of this state.

(i) Has become temporarily incapacitated from acting as a broker or sales associate with safety to investors or those in a fiduciary relation with her or him because of drunkenness, use of drugs, or temporary mental derangement; but suspension of a license in such a case shall be only for the period of such incapacity.

(j) 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.

(k) Has failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as a broker in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in this state, or to deposit such funds in a trust or escrow account maintained by her or him with some bank, credit union, or savings and loan association located and doing business in this state, wherein the funds shall be kept until disbursement thereof is properly authorized; or has failed, if a sales associate, to immediately place with her or his registered employer any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as agent of the registered employer. The commission shall establish rules to provide for records to be maintained by the broker and the manner in which such deposits shall 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 shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. It is the intent of the Legislature that, in the event of legal proceedings concerning a broker's escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.

(l) Has made or filed a report or record which the licensee knows to be false, has willfully failed to file a report or record required by state or federal law, has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing; but such reports or records shall include only those which are signed in the capacity of a licensed broker or sales associate.

(m) Has obtained a license by means of fraud, misrepresentation, or concealment.

(n) Is confined in any county jail, postadjudication; is 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.

(o) Has been found guilty, for a second time, of any misconduct that warrants her or his suspension or has been found guilty of a course of conduct or practices which show that she or he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom she or he may sustain a confidential relation, may not safely be entrusted to her or him.

(p) 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.

(q) Has violated any provision of s. 475.2755 or s. 475.278, including the duties owed under those sections.

(r) 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(s); and has failed to give the principal(s) a legible, signed, true and correct copy of the listing agreement within 24 hours of obtaining the written listing agreement. The written listing agreement shall contain no provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.

(s) Has had a registration suspended, revoked, or otherwise acted against in any jurisdiction. The record of the disciplinary action certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such disciplinary action.

(t) 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 s. 475.611. This paragraph 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. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

(u) 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 department establish that the broker associate or sales associate is registered with that broker. A record of licensure which is certified or authenticated in such form as to be admissible in evidence under the laws of the state is admissible as prima facie evidence of such registration.

(v) Has failed, if a broker, to review the brokerage's trust accounting procedures in order to ensure compliance with this chapter.

(2) A license may be revoked or canceled if it was issued through the mistake or inadvertence of the commission. Such revocation or cancellation shall not prejudice any subsequent application for licensure filed by the person against whom such action was taken.

(3) The department shall 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.

(4) The commission may adopt rules allowing the director of the Division of Real Estate to grant to a licensee placed on probation additional time within which to complete the terms of probation, but the rules must allow the licensee to appeal any denial to the commission.

(5) An administrative complaint against a broker, broker associate, or sales associate shall 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.

(6) The department or commission shall promptly notify a licensee's broker or employer, as defined in this part, in writing, when a formal complaint is filed against the licensee alleging violations of this chapter or chapter 455. The department shall 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 department, or until the licensee waives his or her privilege of confidentiality under s. 455.225, whichever occurs first.



(7) The commission shall 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.

**History.**—s. 26, ch. 12223, 1927; CGL 4087; s. 3, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; s. 5, ch. 29983, 1955; s. 1, ch. 61-108; ss. 1, 2, ch. 70-421; s. 3, ch. 75-112; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-117; s. 9, ch. 78-366; ss. 19, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 21, 38, ch. 82-1; ss. 21, 45, ch. 82-179; s. 61, ch. 83-329; ss. 13, 28, 30, ch. 88-20; s. 2, ch. 89-76; s. 15, ch. 90-228; s. 15, ch. 90-341; s. 18, ch. 90-345; s. 5, ch. 91-89; s. 5, ch. 91-289; s. 4, ch. 91-429; s. 147, ch. 92-149; ss. 10, 141, ch. 94-119; s. 3, ch. 94-337; s. 2, ch. 97-42; s. 373, ch. 97-103; s. 2, ch. 98-116; s. 123, ch. 98-166; s. 6, ch. 98-250; s. 4, ch. 99-384; s. 183, ch. 2000-160; s. 1, ch. 2000-198; s. 1, ch. 2001-274; s. 34, ch. 2003-164; s. 4, ch. 2006-210; s. 56, ch. 2009-195; s. 47, ch. 2010-106; s. 10, ch. 2012-61.

**475.255 Determination of agency or transactional brokerage relationship.**—Without consideration of the related facts and circumstances, 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.

**History.**—s. 142, ch. 94-119.

**475.2701 Short title.**—Sections 475.2701-475.2801 may be cited as the “Brokerage Relationship Disclosure Act.”

**History.**—s. 3, ch. 97-42.

**475.272 Purpose.**—In order to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions, the Legislature finds that the intent of the Brokerage Relationship Disclosure Act is to provide that:

(1) Disclosed dual agency as an authorized form of representation by a real estate licensee in this state is expressly revoked;

(2) Disclosure requirements for real estate licensees relating to authorized forms of brokerage representation are established;

(3) Single agents may represent either a buyer or a seller, but not both, in a real estate transaction; and

(4) Transaction brokers provide a limited form of nonfiduciary representation to a buyer, a seller, or both in a real estate transaction.

**History.**—s. 3, ch. 97-42; s. 8, ch. 98-250; s. 5, ch. 99-384.

**475.274 Scope of coverage.**—The authorized brokerage relationships described in ss. 475.2755 and 475.278 apply in all brokerage activities as defined in s. 475.01(1)(a). The disclosure requirements of s. 475.278 apply only to residential sales as defined in s. 475.278(5)(a).

**History.**—s. 3, ch. 97-42; s. 9, ch. 98-250; s. 6, ch. 99-384.

**475.2755 Designated sales associate.**—

(1) For purposes of this part, in any real estate transaction other than a residential sale as defined in s. 475.278(5)(a), and where the buyer and seller have assets of \$1 million or more, the broker at the request of the customers may designate sales associates to act as single agents for different customers in the same transaction. Such designated sales associates shall have the duties of a single agent as outlined in s. 475.278(3), including disclosure requirements in s. 475.278(3)(b) and (c). In addition to disclosure requirements in s. 475.278(3)(b) and (c), the buyer and seller as customers shall both sign disclosures stating that their assets meet the threshold described in this subsection and requesting that the broker use the designated sales associate form of representation. In lieu of the transition disclosure requirement in s. 475.278(3)(c)2., the required disclosure notice shall 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.

(2) For purposes of this section, the term “buyer” means a transferee or lessee in a real property transaction, and the term “seller” means the transferor or lessor in a real property transaction.

History.—s. 10, ch. 98-250; s. 7, ch. 99-384; s. 35, ch. 2003-164.

#### **475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.**

##### **(1) BROKERAGE RELATIONSHIPS.—**

(a) *Authorized brokerage relationships.*—A real estate licensee in this state 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 nondisclosed dual agent. As used in this section, the term “dual agent” means a broker who represents as a fiduciary both the prospective buyer and the prospective seller in a real estate transaction. This part does not prevent a licensee from changing from one brokerage relationship to the other as long as the buyer or the seller, or both, gives consent as required by subparagraph (3)(c)2. before the change and the appropriate disclosure of duties as provided in this part is made to the buyer or seller. This part does not require a customer to enter into a brokerage relationship with any real estate licensee.

(b) *Presumption of transaction brokerage.*—It shall be presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer.

(2) **TRANSACTION BROKER RELATIONSHIP.**—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 this limited form of representation include the following:

- (a) Dealing honestly and fairly;
- (b) Accounting for all funds;
- (c) Using skill, care, and diligence in the transaction;
- (d) Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
- (e) Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
- (f) 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
- (g) Any additional duties that are mutually agreed to with a party.

##### **(3) SINGLE AGENT RELATIONSHIP.—**

(a) *Single agent; duties.*—The duties of a real estate licensee owed to a buyer or seller who engages the real estate licensee as a single agent include the following:

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. Obedience;
5. Full disclosure;
6. Accounting for all funds;
7. Skill, care, and diligence in the transaction;

8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and

9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

(b) *Disclosure requirements.*—

1. Single agent disclosure.—Duties of a single agent must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a single agent, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type.

2. Transition to transaction broker disclosure.—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. This 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, except that the first sentence of the information identified in subparagraph (c)2. must be printed in uppercase and bold type.

(c) *Contents of disclosure.*—

1. Single agent duties disclosure.—The notice required under subparagraph (b)1. must include the following information in the following form:

**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, (insert name of Real Estate Entity and its Associates) 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.

Date

Signature

2. Transition disclosure.—To gain the principal’s written consent to a change in relationship, a licensee must use the following disclosure:

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, \_(insert name of Real Estate Firm and its Associates)\_, 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. [must be initialed or signed]

(4) **NO BROKERAGE RELATIONSHIP.—**

(a) *No brokerage relationship; duties.*—A real estate licensee owes to a potential seller or buyer with whom the licensee has no brokerage relationship the following duties:

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

(b) *Disclosure requirements.*—Duties of a licensee who has no brokerage relationship with a buyer or seller must be fully described and disclosed in writing to the buyer or seller. The disclosure must be made before the showing of property. 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 licensee that has no brokerage relationship with a buyer or seller, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase bold type.

(c) *Contents of disclosure.*—The notice required under paragraph (b) must include the following information in the following form:

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, (insert name of Real Estate Entity and its Associates) 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.

(Date) (Signature)

(5) **APPLICABILITY.—**

(a) *Residential sales.*—The real estate licensee disclosure requirements of this section apply to all residential sales. As used in this subsection, 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.

(b) *Disclosure limitations.*—

1. The real estate disclosure requirements of this section 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.

2. The real estate licensee disclosure requirements of this section 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; unanticipated casual conversations between a licensee and a seller or buyer which do not involve eliciting confidential information, the execution of a contractual offer or agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; 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.

**History.**—s. 3, ch. 97-42; s. 12, ch. 98-250; s. 9, ch. 99-384; s. 2, ch. 2000-198; s. 36, ch. 2003-164; s. 79, ch. 2004-5; s. 5, ch. 2006-210; s. 13, ch. 2009-20.

**475.279 Residential loan alternative agreements for the disposition of residential real property.—**

(1) As used in this section, the term:

(a) “Disposition” means a transfer or voluntary conveyance of the title or other ownership interest in residential real property.

(b) “Residential loan alternative agreement” means a signed writing or a signed and written legal instrument or contract between a person and a seller or an owner of residential real property which:

1. Grants an exclusive right to a person to act as a broker for the disposition of the property;
2. Has an effective duration, inclusive of renewals, of more than 2 years; and
3. Requires the person to pay monetary compensation to the seller or owner.

(c) “Residential real property” means improved residential property of four or fewer residential dwelling units or unimproved residential real property on which four or fewer residential dwelling units may be built.



(2) A residential loan alternative agreement may not authorize a person to place a lien on or otherwise encumber any residential real property. A residential loan alternative agreement may not constitute a lien, an encumbrance, or a security interest in the residential real property. A court may not enforce a residential loan alternative agreement by a lien or constructive trust in the residential real property or upon the proceeds of the disposition of the residential real property.

(3) A residential loan alternative agreement may not be assigned.

(4) A residential loan alternative agreement is void if listing services do not begin within 90 days after the execution of the agreement by both parties.

(5) A residential loan alternative agreement may not be recorded by the clerk of the circuit court.

(6) A residential loan alternative agreement must meet all of the requirements of this section or it is unenforceable in law or equity.

(7) Notwithstanding s. 501.212, a violation of this section is deemed an unfair or deceptive trade practice within the meaning of part II of chapter 501, and a person who violates this section is subject to the penalties and remedies provided therein.

*History.*—s. 1, ch. 2023-117.

#### **475.28 Rules of evidence.—**

(1) In all proceedings before the commission or the courts, civil or criminal, in which the payment, receipt, or expectation of a commission, compensation, or a valuable consideration is a necessary element of the offense, proof of the performance of the act, service, or condition for which such commission, compensation, or valuable consideration is required to be shown shall be prima facie evidence that such act, service, or condition was performed or existed for or in expectation of the payment or receipt of a commission, compensation, or a valuable consideration. If it is material to determine whether or not a party to any action, civil or criminal, is properly licensed, the burden of proof shall be on such party.

(2) Photostatic copies of any papers or documents may be introduced in lieu of the originals in any proceeding or prosecution under this chapter. The books of account and records of any person shall be admissible upon a showing that they were made in the regular course of business, without introducing the person who made the entries, the weight of such evidence to be decided by the court or commission.

*History.*—s. 30, ch. 12223, 1927; CGL 4091; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 20, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 22, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429.

**475.2801 Rules.**—The commission may adopt rules establishing disciplinary guidelines, notices of noncompliance, and citations for violations of ss. 475.2755 and 475.278.

*History.*—s. 3, ch. 97-42; s. 14, ch. 98-250; s. 10, ch. 99-384.

#### **475.31 Final orders.—**

(1) An order revoking or suspending the license of a broker shall automatically cause the licenses of all sales associates and broker associates registered with the broker, and, if a partnership or corporation, of all members, officers, and directors thereof to become involuntarily inactive, while the license of the broker is inoperative or until new employment or connection is secured.

(2) The commission may publish and distribute in such manner and form as it may prescribe any of its final orders or decisions made under this chapter, after they become final by lapse of time or upon affirmance on appeal, or opinions of appellate courts for the guidance of registrants and the public; and it may publish or withhold from publication the names and addresses of any parties concerned. This subsection shall not be construed to affect the operation of chapter 119.

*History.*—s. 33, ch. 12223, 1927; CGL 4094; s. 2, ch. 22861, 1945; s. 8, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 3, ch. 59-197; s. 3, ch. 76-168; s. 3, ch. 77-355; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 21, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 23, 38, ch. 82-1; ss. 14, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 11, ch. 93-261; s. 37, ch. 2003-164.

**475.37 Effect of reversal of order of court or commission.**—If the order of the court or commission denying a license or taking any disciplinary action against a licensee is finally reversed and set aside, the defendant shall be

restored to her or his rights and privileges as a broker or sales associate as of the date of filing the mandate or a copy thereof with the commission. The matters and things alleged in the information shall not thereafter be reexamined in any other proceeding concerning the licensure of the defendant. If the inquiry concerned was in reference to an application for licensure, the application shall stand approved, and such application shall be remanded for further proceedings according to law.

**History.**—s. 40, ch. 12223, 1927; CGL 4101; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 22, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 24, 38, ch. 82-1; ss. 15, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 12, ch. 93-261; s. 374, ch. 97-103; s. 38, ch. 2003-164.

**475.38 Payment of costs.**—The commission shall not be required to advance any fees or costs to any officer or witness, or to execute any bond in any proceeding in the courts, any general statute to the contrary notwithstanding, but in every case in which the commission is liable for any fees or costs, a voucher therefor shall be presented to the commission and, if approved, shall be audited and paid as are other expenses of the commission.

**History.**—s. 41, ch. 12223, 1927; CGL 4102; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 23, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 25, 38, ch. 82-1; ss. 16, 28, 30, ch. 88-20; s. 4, ch. 91-429.

**475.41 Contracts of unlicensed person for commissions invalid.**—No contract for a commission or compensation for any act or service enumerated in s. 475.01(3) is valid unless the broker or sales associate has complied with this chapter in regard to issuance and renewal of the license at the time the act or service was performed.

**History.**—s. 44, ch. 12223, 1927; CGL 4105; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 24, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 13, ch. 93-261; s. 39, ch. 2003-164.

**475.42 Violations and penalties.**—

(1) VIOLATIONS.—

(a) A person may not operate as a broker or sales associate without being the holder of a valid and current active license therefor. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, as provided in s. 775.083.

(b) A person licensed as a sales associate may not operate as a broker or operate as a sales associate for any person not registered as her or his employer.

(c) A broker may not employ, or continue in employment, any person as a sales associate who is not the holder of a valid and current license as sales associate; but a license as sales associate may be issued to a person licensed as an active broker, upon request and surrender of the license as broker, without a fee in addition to that paid for the issuance of the broker's active license.

(d) A sales associate may not collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer and with the express consent of the employer; and no real estate sales associate, whether the holder of a valid and current license or not, shall commence or maintain any action for a commission or compensation in connection with a real estate brokerage transaction against any person except a person registered as her or his employer at the time the sales associate performed the act or rendered the service for which the commission or compensation is due.

(e) A person may not commit any conduct or practice set forth in s. 475.25(1)(b), (c), (d), or (h).

(f) A person may not make any false affidavit or affirmation intended for use as evidence by or before the commission or a member thereof, or by any of its authorized representatives, nor may any person give false testimony under oath or affirmation to or before the commission or any member thereof in any proceeding authorized by this chapter.

(g) A person may not fail or refuse to appear at the time and place designated in a subpoena issued with respect to a violation of this chapter, unless because of facts that are sufficient to excuse appearance in response to a subpoena from the circuit court; nor may a person who is present before the commission or a member thereof or one of its authorized representatives acting under authority of this chapter refuse to be sworn or to affirm or fail or refuse to answer fully any question propounded by the commission, the member, or such representative, or by

any person by the authority of such officer or appointee; nor may any person, so being present, conduct herself or himself in a disorderly, disrespectful, or contumacious manner.

(h) A person may not obstruct or hinder in any manner the enforcement of this chapter or the performance of any lawful duty by any person acting under the authority of this chapter or interfere with, intimidate, or offer any bribe to any member of the commission or any of its employees or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this chapter.

(i) A broker or sales associate may not place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose. However, nothing in this paragraph shall be construed to prohibit a broker or a sales associate from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.

(j) A person may not operate as a broker under a trade name without causing the trade name to be noted in the records of the commission and placed on the person's license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless such partnership or corporation is the holder of a valid current registration.

(k) A person may not knowingly conceal any information relating to violations of this chapter.

(l) A person may not undertake to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons without first being the holder of a valid and current license as a broker or sales associate pursuant to this chapter, except as provided in s. 475.011 and chapter 721.

(m) A broker or sales associate may not enter into any listing or other agreement regarding her or his services in connection with the resale of a timeshare period unless the broker or sales associate fully and fairly discloses all material aspects of the agreement to the owner of the timeshare period. Further, a broker or sales associate may not use any form of contract or purchase and sale agreement in connection with the resale of a timeshare period unless the contract or purchase and sale agreement fully and fairly discloses all material aspects of the timeshare plan and the rights and obligations of both buyer and seller. The commission is authorized to adopt rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this paragraph.

(n) A person may not disseminate or cause to be disseminated by any means any false or misleading information for the purpose of offering for sale, or for the purpose of causing or inducing any other person to purchase, lease, or rent, real estate located in the state or for the purpose of causing or inducing any other person to acquire an interest in the title to real estate located in the state.

(2) **PENALTIES.**—Any person who violates any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, it is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except when a different punishment is prescribed by this chapter. Nothing in this chapter shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

**History.**—s. 45, ch. 12223, 1927; CGL 8134; s. 11, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; s. 22, ch. 63-129; s. 418, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 25, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 26, 38, ch. 82-1; ss. 22, 45, ch. 82-179; s. 1, ch. 85-90; s. 1, ch. 85-101; ss. 17, 28, 30, ch. 88-20; s. 3, ch. 89-76; s. 3, ch. 89-368; s. 16, ch. 90-228; s. 16, ch. 90-341; s. 19, ch. 90-345; ss. 6, 10, ch. 91-89; s. 254, ch. 91-224; s. 7, ch. 91-289; s. 4, ch. 91-429; s. 14, ch. 93-261; s. 375, ch. 97-103; s. 40, ch. 2003-164; s. 3, ch. 2005-275; s. 6, ch. 2006-210; s. 11, ch. 2012-61.

**475.43 Presumptions.**—In all criminal cases, contempt cases, and other cases filed pursuant to this chapter, if a party has sold, leased, or let real estate, the title to which was not in the party when it was offered for sale, lease, or letting, or such party has maintained an office bearing signs that real estate is for sale, lease, or rental thereat, or has advertised real estate for sale, lease, or rental, generally, or describing property, the title to which was not in such party at the time, it shall be a presumption that such party was acting or attempting to act as a real estate broker, and the burden of proof shall be upon him or her to show that he or she was not acting or attempting to act as a broker or sales associate. All contracts, options, or other devices not based upon a substantial consideration, or that are otherwise employed to permit an unlicensed person to sell, lease, or let real estate, the beneficial title to which has not, in good faith, passed to such party for a substantial consideration, are hereby declared void and ineffective in all cases, suits, or proceedings had or taken under this chapter; however, this section shall not apply to irrevocable gifts, to unconditional contracts to purchase, or to options based upon a substantial consideration actually paid and not subject to any agreements to return or right of return reserved.

**History.**—s. 3, ch. 22861, 1945; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 27, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 15, ch. 93-261; s. 376, ch. 97-103; s. 41, ch. 2003-164.

**475.451 Schools teaching real estate practice.—**

(1) Each person, school, or institution, except approved and accredited colleges, universities, community colleges, and career centers in this state, which offers or conducts any course of study in real estate practice, teaches any course prescribed by the commission as a condition precedent to licensure or renewal of licensure as a broker or sales associate, or teaches any course designed or represented to enable or assist applicants for licensure as brokers or sales associates to pass examinations for such licensure shall, before commencing or continuing further to offer or conduct such course or courses, obtain a permit from the department and abide by the regulations imposed upon such person, school, or institution by this chapter and rules of the commission adopted pursuant to this chapter. The exemption for colleges, universities, community colleges, and career centers is limited to transferable college credit courses offered by such institutions.

(2) 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) and the following minimal requirements:

(a) “School permitholder” means the individual who is responsible for directing the overall operation of a proprietary real estate school. A school permitholder must be the holder of a license as a broker, either active or voluntarily inactive, or must have passed an instructor’s examination approved by the commission. A school permitholder must also meet the requirements of a school instructor if actively engaged in teaching.

(b) “School instructor” means an individual who instructs persons in the classroom in noncredit college courses in a college, university, or community college or courses in a career center or proprietary real estate school.

1. Before commencing to provide such instruction, the applicant must certify the applicant’s competency and obtain an instructor permit by meeting one of the following requirements:

a. Hold a bachelor’s degree in a business-related subject, such as real estate, finance, accounting, business administration, or its equivalent and hold a valid broker’s license in this state.

b. Hold a bachelor’s degree, have extensive real estate experience, as defined by rule, and hold a valid broker’s license in this state.

c. Pass an instructor’s examination approved by the commission.

2. Any requirement by the commission for a teaching demonstration or practical examination must apply to all school instructor applicants.

3. The department shall renew an instructor permit upon receipt of a renewal application and fee. The renewal application shall include proof that the permitholder has, since the issuance or renewal of the current permit, successfully completed a minimum of 7 classroom or distance learning hours of instruction in real estate subjects or instructional techniques, as prescribed by the commission. The commission shall adopt rules providing for the renewal of instructor permits at least every 2 years. A permit that is not renewed at the end of the permit period established by the department automatically reverts to involuntarily inactive status.

The department may require an applicant to submit names of persons having knowledge concerning the applicant and the enterprise; may propound interrogatories to such persons and to the applicant concerning the character of the applicant, including the taking of fingerprints for processing through the Federal Bureau of Investigation; and shall make such investigation of the applicant or the school or institution as it may deem necessary to the granting of the permit. If an objection is filed, it shall be considered in the same manner as objections or administrative complaints against other applicants for licensure by the department.

(3) It is unlawful for any person, school, or institution to offer the courses described in subsection (1) or to conduct classes in such courses, regardless of the number of pupils, whether by correspondence or otherwise, without first procuring a permit, or to guarantee that its pupils will pass any examinations required for licensure, or to represent that the issuance of a permit is any recommendation or endorsement of the person, school, or institution to which it is issued or of any course of instruction given thereunder.

(4) Any person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) The location of classes and frequency of class meetings and the provision of distance learning courses shall be in the discretion of the school offering real estate courses, so long as such courses conform to s. 475.17(2).

(6) Any course prescribed by the commission as a condition precedent to a person's becoming initially licensed as a sales associate or broker may be taught by a real estate school in a classroom or via distance learning pursuant to s. 475.17(2) by a currently permitted instructor from any such school. All other prescribed courses, except the continuing education course required by s. 475.182, shall be taught by a currently permitted school instructor personally in attendance at such course or by distance learning pursuant to s. 475.17. The continuing education course required by s. 475.182 may be taught by distance learning pursuant to s. 475.17 or by an equivalent correspondence course; however, any such correspondence course shall be required to have a final examination, prepared and administered by the school or course provider issuing the correspondence course. The continuing education requirements provided in this chapter do not apply to an attorney who is otherwise qualified under this chapter and who is a member in good standing of The Florida Bar.

(7) A permitholder under this section may be issued additional permits whenever it is clearly shown that the requested additional permits are necessary to the conduct of the business of a real estate school and that the additional permits will not be used in a manner likely to be prejudicial to any person, including a licensee or a permitholder under this chapter.

(8) Each person, school, or institution permitted under this section is required 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.

(9) A real estate school may offer any course through distance learning if the course complies with <sup>1</sup>s. 475.17.

**History.**—s. 1, ch. 57-817; s. 420, ch. 71-136; s. 3, ch. 76-168; ss. 3, 4, ch. 77-238; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 1, 3, ch. 78-244; s. 10, ch. 78-366; s. 129, ch. 79-164; ss. 28, 42, 43, ch. 79-239; ss. 1, 3, ch. 80-51; ss. 22, 24, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 27, 38, ch. 82-1; ss. 20, 23, 45, ch. 82-179; s. 95, ch. 83-218; s. 3, ch. 83-265; s. 62, ch. 83-329; ss. 18, 28, 30, ch. 88-20; s. 17, ch. 90-228; s. 17, ch. 90-341; s. 20, ch. 90-345; ss. 7, 10, ch. 91-89; s. 4, ch. 91-429; s. 16, ch. 93-261; s. 377, ch. 97-103; s. 15, ch. 98-250; s. 3, ch. 2002-9; s. 42, ch. 2003-164; s. 52, ch. 2004-357; s. 7, ch. 2006-210; s. 27, ch. 2008-240; s. 17, ch. 2009-195; s. 12, ch. 2012-61; s. 8, ch. 2012-72; s. 11, ch. 2012-208; s. 1, ch. 2017-30; s. 65, ch. 2018-110.

<sup>1</sup>**Note.**—As amended by s. 12, ch. 2012-61. The amendment by s. 8, ch. 2012-72, cited “s. 475.17(2)” instead of “s. 475.17.”

#### **475.4511 Advertising by real estate schools.—**

(1) No person representing a real estate school offering and teaching real estate courses under this chapter shall 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 such person knows or believes, or reasonably should know or believe, the statement, representation, or act to be false, inaccurate, misleading, or exaggerated.

(2) A school shall not use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a real estate school, or of its representative, shall be based upon relevant facts and



supported by evidence establishing their truth.

(3) No representative of any school or institution coming within the provisions of this chapter shall 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.

**History.**—s. 2, ch. 78-244; ss. 29, 42, 43, ch. 79-239; ss. 2, 3, ch. 80-51; ss. 2, 3, ch. 81-318; ss. 28, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 43, ch. 2003-164.

**475.453 Rental information; contract or receipt; refund; penalty.—**

(1) Each broker or sales associate who furnishes a rental information list to a prospective tenant, for a fee paid by the prospective tenant, shall provide such prospective tenant with a contract or receipt, which contract or receipt contains a provision for the repayment of any amount over 25 percent of the fee to the prospective tenant if the prospective tenant does not obtain a rental. If the rental information list provided by the broker or sales associate to a prospective tenant is not current or accurate in any material respect, the full fee shall be repaid to the prospective tenant upon demand. A demand from the prospective tenant for the return of the fee, or any part thereof, shall be made within 30 days following the day on which the real estate broker or sales associate has contracted to perform services to the prospective tenant. The contract or receipt shall also conform to the guidelines adopted by the commission in order to effect disclosure of material information regarding the service to be provided to the prospective tenant.

(2) The commission may adopt a guideline for the form of the contract or receipt required to be provided by brokers or sales associates pursuant to the provisions of subsection (1).

(3)(a) Any person who violates any provision of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) In addition to the penalty prescribed in paragraph (a), the license of any broker or sales associate who participates in any rental information transaction which is in violation of the provisions of subsection (1) shall be subject to suspension or revocation by the commission in the manner prescribed by law.

**History.**—s. 1, ch. 78-214; ss. 31, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 30, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 108, ch. 91-224; s. 4, ch. 91-429; s. 17, ch. 93-261; s. 44, ch. 2003-164; s. 8, ch. 2006-210.

**475.455 Exchange of disciplinary information.—**The commission shall inform the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation of any disciplinary action the commission has taken against any of its licensees. The division shall inform the commission of any disciplinary action the division has taken against any broker or sales associate registered with the division.

**History.**—ss. 33, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 32, 38, ch. 82-1; s. 2, ch. 85-60; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 18, ch. 93-261; s. 143, ch. 94-119; s. 162, ch. 94-218; s. 45, ch. 2003-164; s. 28, ch. 2008-240.

**475.482 Real Estate Recovery Fund.—**There is created the Florida Real Estate Recovery Fund as a separate account in the Professional Regulation Trust Fund.

(1) The Florida Real Estate Recovery Fund shall be disbursed as provided in s. 475.484, on order of the commission, as reimbursement to any person, partnership, or corporation adjudged by a court of competent civil jurisdiction in this state to have suffered monetary damages by reason of any act committed, as a part of any real estate brokerage transaction involving real property in this state, by any broker or sales associate who:

(a) Was, at the time the alleged act was committed, the holder of a current, valid, active real estate license issued under this part;

(b) 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

(c) Was acting solely in the capacity of a real estate licensee in the transaction;

provided the act was a violation proscribed in s. 475.25 or s. 475.42.

(2) The Real Estate Recovery Fund shall also be disbursed as provided in s. 475.484, on order of the commission, 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. However, in no case shall the fund 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.

(3) A fee of \$3.50 per year shall be added to the license fee for both new licenses and renewals of licenses for brokers, and a fee of \$1.50 per year shall be added for new licenses and renewals of licenses for sales associates. This fee shall be in addition to the regular license fee and shall be deposited in or transferred to the Real Estate Recovery Fund. If the fund at any time exceeds \$1 million, collection of special fees for this fund shall be discontinued at the end of the licensing renewal cycle. Such special fees shall not be reimposed unless the fund is reduced below \$500,000 by disbursement made in accordance with this chapter.

(4) In addition, all moneys collected from fines imposed by the commission and collected by the department shall be transferred into the Real Estate Recovery Fund.

**History.**—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 34, 42, 43, ch. 79-239; ss. 3, 5, ch. 80-307; ss. 23, 24, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 33, 38, ch. 82-1; s. 3, ch. 83-265; ss. 20, 28, 30, ch. 88-20; s. 4, ch. 89-76; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 19, ch. 93-261; s. 144, ch. 94-119; s. 4, ch. 94-337; s. 7, ch. 98-250; s. 11, ch. 99-384; s. 46, ch. 2003-164.

#### **475.483 Conditions for recovery; eligibility.—**

(1) Any person is eligible to seek recovery from the Real Estate Recovery Fund if:

(a) 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.

(b) 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.

(c) 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.

(d)1. 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

2. 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.

(e) 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.

(f) Such person is not a person who is precluded by this act from making a claim for recovery.

(g) 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.

(2) A person is not qualified to make a claim for recovery from the Real Estate Recovery Fund, if:

(a) Such person is the spouse of the judgment debtor or a personal representative of such spouse;

(b) 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;

(c) 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;

(d) 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

(e) The judgment is against a real estate brokerage corporation, partnership, limited liability company, or limited liability partnership.

(3) If the claim is of the type described in s. 475.482(2), the commission shall 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.

**History.**—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 35, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 34, 38, ch. 82-1; s. 63, ch. 83-329; s. 2, ch. 85-90; ss. 21, 28, 30, ch. 88-20; s. 5, ch. 89-76; s. 18, ch. 90-228; s. 21, ch. 90-345; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 20, ch. 93-261; s. 145, ch. 94-119; s. 15, ch. 94-170; s. 4, ch. 94-337; s. 378, ch. 97-103; s. 12, ch. 99-384; s. 47, ch. 2003-164.

**475.4835 Commission powers upon notification of commencement of action.**—When the commission receives certified notice of any action, as required by s. 475.483(1)(b), the commission may intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review on behalf of the State of Florida.

**History.**—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 36, 42, ch. 79-239; s. 354, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 35, 38, ch. 82-1; ss. 22, 28, 30, ch. 88-20; s. 4, ch. 91-429.

**475.484 Payment from the fund.—**

(1) Any person who meets all of the conditions prescribed in s. 475.482(1) or (2) may apply to the commission to cause payment to be made to such person from the Real Estate Recovery Fund:

(a) Under s. 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 s. 475.483, treble damages, court costs, attorney's fees, and interest shall not be recovered from the fund.

(b) Under s. 475.482(2), in an amount equal to the judgment against the broker or sales associate or \$50,000, whichever is less.

(2) Upon receipt by a claimant under paragraph (1)(a) of payment from the Real Estate Recovery Fund, the claimant shall 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.

(3) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to \$50,000, regardless of the number of claimants or parcels of real estate involved in the transaction.

(4) Payments for claims based upon judgments against any one broker or sales associate may not exceed, in the aggregate, \$150,000.

(5) If at any time the moneys in the Real Estate Recovery Fund are insufficient to satisfy any valid claim or portion thereof, the commission shall 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.

(6) All payments and disbursements from the Real Estate Recovery Fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department.

(7) 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 s. 475.482(1), the license of such broker or sales associate shall be 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. s. 525, in which case the commission may order the license not to be suspended or otherwise discriminated against.

**History.**—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 37, 42, 43, ch. 79-239; ss. 4, 5, ch. 80-307; ss. 2, 3, ch. 81-318; ss. 36, 38, ch. 82-1; s. 64, ch. 83-329; ss. 23, 28, 30, ch. 88-20; s. 6, ch. 89-76; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 21, ch. 93-261; s. 146, ch. 94-119; s. 379, ch. 97-103; s. 17, ch. 98-250; s. 48, ch. 2003-164; s. 506, ch. 2003-261; s. 55, ch. 2005-152.

**475.485 Investment of the fund.**—The funds in the Real Estate Recovery Fund may be invested by the Chief Financial Officer under the same limitations as apply to investment of other state funds, and 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.

**History.**—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 38, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 507, ch. 2003-261.

**475.486 Rules; violations.**—

(1) The commission shall adopt such rules as are necessary to effect the efficient administration of ss. 475.482-475.486.

(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 ss. 475.482-475.486 which is false or contains any material misstatement of fact. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 39, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 37, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 380, ch. 97-103.

**475.5015 Brokerage business records.**—Each broker shall keep and make available to the department such books, accounts, and records as will enable the department to determine whether such broker is in compliance with the provisions of this chapter. Each broker shall 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 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. 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 as set above. Disclosure documents required under ss. 475.2755 and 475.278 shall be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.

**History.**—s. 20, ch. 90-228; s. 19, ch. 90-341; s. 23, ch. 90-345; s. 9, ch. 91-201; s. 6, ch. 91-289; s. 4, ch. 91-429; s. 4, ch. 97-42; s. 381, ch. 97-103; s. 18, ch. 98-250; s. 13, ch. 99-384.

**475.5016 Authority to inspect and audit.**—Duly authorized agents and employees of the department shall have the power to inspect and audit in a lawful manner at all reasonable hours any broker or brokerage office

licensed under this chapter, for the purpose of determining if any of the provisions of this chapter, chapter 455, or any rule promulgated under authority of either chapter is being violated.

**History.**—s. 19, ch. 98-250.

**475.5017 Injunctive relief; powers.—**

(1) Appropriate civil action may be brought by the department in circuit court to enjoin a broker from engaging in, or continuing, a violation of this part or doing any act or acts in furtherance thereof. 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 shall have 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 pertaining thereto, or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through, or by means of, the use of such property and business. Such receiver, when so appointed and qualified, shall have such 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.

(2) All expenses of the receiver shall be 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.

**History.**—s. 21, ch. 90-228; s. 20, ch. 90-341; s. 24, ch. 90-345; s. 9, ch. 91-201; s. 4, ch. 91-429; s. 147, ch. 94-119; s. 382, ch. 97-103; s. 49, ch. 2003-164.

**475.5018 Facsimile signatures or writing accepted.—**When any act performed under this part 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.

**History.**—s. 13, ch. 98-250.

## **PART II APPRAISERS**

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**475.610 Purpose.**—The Legislature deems it necessary in the interest of the public welfare to regulate real estate appraisers in this state.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 14, ch. 2000-332.

**475.611 Definitions.**—

(1) As used in this part, the term:

(a) “Appraisal” or “appraisal services” means the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. “Appraisal assignment” denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

2. “Analysis assignment” denotes appraisal services that relate to the employer’s or client’s individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.

3. “Appraisal review assignment” denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser’s appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser’s opinion of value.

(b) “Appraisal Foundation” or “foundation” means The Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) “Appraisal management company” means a person who, within a 12-month period, oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state, or 25 or more state-certified or state-licensed appraisers in two or more states, and who performs appraisal management services regardless of the use of the term “appraisal management company,” “appraiser cooperative,” “appraiser portal,” “mortgage technology company,” or other term.

(d) “Appraisal management services” means the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or

2. Acting as a broker or intermediary between a client and one or more licensed or certified appraisers to facilitate the client’s employing, contracting with, or otherwise retaining the appraisers.

(e) “Appraisal report” means any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property, and includes any report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

(f) “Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s appraisal, appraisal report, or work.

(g) “Appraisal subcommittee” means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

(h) “Appraiser” means any person who is a registered trainee real estate appraiser, a licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(5)(b).

(i) “Appraiser panel” means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. An appraiser is an independent contractor for purposes of this paragraph if the appraiser is treated as an independent contractor by the appraisal management company for federal income tax purposes. The term “appraiser panel” includes:

1. Appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or secondary mortgage market participants in connection with covered transactions.

2. Appraisers employed by, contracted with, or otherwise retained by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.

(j) “Board” means the Florida Real Estate Appraisal Board established under s. 475.613.

(k) “Certified general appraiser” means a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

(l) “Certified residential appraiser” means a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(m) “Client” means a person who contracts with an appraiser or appraisal management company for the performance of appraisal services.

(n) “Covered transaction” means a consumer credit transaction secured by the consumer’s principal dwelling.

(o) “Department” means the Department of Business and Professional Regulation.

(p) “Direct supervision” means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

(q) “Evaluation” means a valuation permitted by any federal financial institutions regulatory agency appraisal regulations for transactions that do not require an appraisal, as such valuations qualify for an applicable exemption under federal law. The board shall adopt rules, as necessary, to define the term “evaluation” and the applicable exemptions under federal law.

(r) “Federally regulated appraisal management company” means an appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. s. 1813, and regulated by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(s) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

(t) “Licensed appraiser” means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

(u) “Order file” means the documentation necessary to support the performance of appraisal management services.

(v) “Registered trainee appraiser” means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

(w) “Secondary mortgage market participant” means a guarantor, insurer, underwriter, or issuer of mortgage-backed securities. The term includes an individual investor in a mortgage-backed security only if such investor also serves in the capacity of a guarantor, an insurer, an underwriter, or an issuer for the mortgage-backed security.

(x) “Signature” means personalized evidence indicating authentication of work performed by an appraiser and the acceptance of responsibility for the content of an appraisal, appraisal review, or appraisal consulting service or conclusions in an appraisal report.

(y) “Subsidiary” means an organization that is owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency.

(z) “Supervisory appraiser” means a certified residential appraiser or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the responsibilities of a supervisory appraiser, the geographic proximity required, the minimum qualifications and standards required of a certified appraiser before she or he may act in the capacity of a supervisory appraiser, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

(aa) “Training” means the process of providing for and making available to a registered trainee appraiser, under direct supervision, a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical appraisal skills as determined by rule of the board.

(bb) “Uniform Standards of Professional Appraisal Practice” means the most recent standards approved and adopted by the Appraisal Standards Board of The Appraisal Foundation.

(cc) “Valuation services” means services pertaining to aspects of property value and includes such services performed by certified appraisers, registered trainee appraisers, and others.

(dd) “Work file” means the documentation necessary to support an appraiser’s analysis, opinions, and conclusions.

(2) Wherever the word “operate” or “operating” appears in this part with respect to a registered trainee appraiser, registered appraisal management company, licensed appraiser, or certified appraiser; in any order, rule, or regulation of the board; in any pleading, indictment, or information under this part; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this part as constituting or defining a registered trainee appraiser, registered appraisal management company, licensed appraiser, or certified appraiser, not including, however, any of the exceptions stated therein. A single act is sufficient to bring a person within the meaning of this subsection, and each act, if prohibited herein, constitutes a separate offense.

(3) For the purposes of service on any probable cause panel appointed pursuant to s. 455.225(4), “former board member” includes any person who is a former member of the Appraisal Subcommittee of the Florida Real Estate Commission.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 149, ch. 92-149; s. 148, ch. 94-119; s. 163, ch. 94-218; s. 20, ch. 98-250; s. 3, ch. 2003-164; s. 80, ch. 2004-5; s. 1, ch. 2006-198; s. 1, ch. 2010-84; s. 13, ch. 2012-61; s. 9, ch. 2012-72; s. 2, ch. 2013-144; s. 4, ch. 2015-54; s. 2, ch. 2017-30; s. 66, ch. 2018-110; s. 14, ch. 2023-15; s. 11, ch. 2024-183.

#### **475.612 Certification, licensure, or registration required.—**

(1) A person may not use the title “certified real estate appraiser,” “licensed real estate appraiser,” or “registered trainee real estate appraiser,” or any abbreviation or words to that effect, or issue an appraisal report, unless such person is certified, licensed, or registered by the department under this part. However, the work upon which an appraisal report is based may be performed by a person who is not a certified or licensed appraiser or registered trainee appraiser if the work is supervised and approved, and the report is signed, by a certified or

licensed appraiser who has full responsibility for all requirements of the report and valuation service. Only a certified or licensed appraiser may issue an appraisal report and receive direct compensation for providing valuation services for the appraisal report. A registered trainee appraiser may only receive compensation for appraisal services from her or his authorized certified appraiser.

(2) This section does not preclude a Florida licensed real estate broker, sales associate, or broker associate who is not a Florida certified or licensed real estate appraiser from providing valuation services for compensation. Such persons may continue to provide valuation services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.

(3) This section 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 price opinion, or gives an opinion of the value of real estate. However, in no event may this comparative market analysis, price opinion, or opinion of value of real estate be referred to or construed as an appraisal.

(4) This section does not prevent any state court or administrative law judge from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, or registered; nor does it prevent any appraiser from testifying, with respect to the results of an appraisal.

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual who is responsible for the report's content.

(6) This section does not apply to any employee of a local, state, or federal agency who performs appraisal services within the scope of her or his employment. However, this exemption does not apply where any local, state, or federal agency requires an employee to be registered, licensed, or certified to perform appraisal services.

(7) Notwithstanding any other provision of law, an appraiser may perform an evaluation of real property in connection with a real estate-related financial transaction, as defined by rule of the board, which is regulated by a federal financial institutions regulatory agency. The appraiser shall comply with the standards for evaluations imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board. However, an evaluation may not be referred to or construed as an appraisal.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 224, ch. 96-410; s. 1119, ch. 97-103; s. 21, ch. 98-250; s. 3, ch. 2000-198; ss. 4, 50, ch. 2003-164; s. 2, ch. 2006-198; s. 3, ch. 2013-144; s. 5, ch. 2015-54; s. 3, ch. 2017-30.

#### **475.613 Florida Real Estate Appraisal Board.—**

(1) There is created the Florida Real Estate Appraisal Board, which shall consist of nine members appointed by the Governor, subject to confirmation by the Senate. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. In appointing real estate appraisers to the board, while not excluding other appraisers, the Governor shall give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. One member of the board must represent the appraisal management industry. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Three members of the board must represent the general public and may not be connected in any way with the practice of real estate appraisal. The appraiser members shall be as representative of the entire industry as possible, and membership in a nationally recognized or state-recognized appraisal organization may not be a prerequisite to membership on the board. To the extent possible, no more than two members of the board shall be primarily affiliated with any one particular national or state appraisal association. Two of the members must be licensed or certified residential real estate appraisers and two of the members must be certified general real estate appraisers at the time of their appointment.

(a) Members of the board shall be appointed for 4-year terms. Any vacancy occurring in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Upon expiration of her or his term, a member of the board shall continue to hold office until the appointment and qualification of the member's

successor. A member may not be appointed for more than two consecutive terms. The Governor may remove any member for cause.

- (b) The headquarters for the board shall be in Orlando.
- (c) The board shall meet at least once each calendar quarter to conduct its business.
- (d) The members of the board shall elect a chairperson at the first meeting each year.
- (e) Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.

(2) The board shall have, through its rules, full power to regulate the issuance of licenses, certifications, registrations, and permits; to discipline appraisers in any manner permitted under this section; to establish qualifications for licenses, certifications, registrations, and permits consistent with this section; to regulate approved courses; to establish standards for real estate appraisals; and to establish standards for and regulate supervisory appraisers.

(3) Notwithstanding s. 112.313, any member of the board who is a licensed or certified real estate appraiser and who holds an active appraiser instructor permit issued by the department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the board or the department.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 150, ch. 92-149; s. 383, ch. 97-103; s. 5, ch. 2003-164; s. 2, ch. 2010-84; s. 37, ch. 2010-106; s. 1, ch. 2021-94.

**475.614 Power of board to adopt rules and decide questions of practice; requirements for protection of appraiser's signature.—**

(1) The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon it. The board may decide questions of practice arising in the proceedings before it, having regard to this section and the rules then in force.

(2) The board shall adopt rules specifying the means by which an appraiser's signature may be affixed to an appraisal report or other work performed by the appraiser. The rules shall include requirements for protecting the security of an appraiser's signature and prohibiting practices that may discredit the use of an appraiser's signature to authenticate the work performed by the appraiser.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 147, ch. 98-200; s. 3, ch. 2010-84.

**475.6145 Seal.—**The board shall adopt a seal by which it shall authenticate its proceedings, records, and acts. Copies of the proceedings, records, and acts of the board, and certificates purporting to relate the facts concerning such proceedings, records, and acts, which are signed by the board chair, the custodian of such records, or any other person authorized to make such certification and which are authenticated by such seal, shall be prima facie evidence of such proceedings, records, and acts in all courts of this state.

**History.**—s. 22, ch. 98-250.

**475.6147 Fees.—**

(1)(a) The board by rule may establish fees to be paid for application, licensing and renewal, certification and recertification, registration and reregistration, reinstatement, and recordmaking and recordkeeping.

(b) The fee for initial application of an appraiser may not exceed \$150, and the combined cost of the application and examination may not exceed \$300. The initial certification, registration, or license fee and the certification, registration, or license renewal fee may not exceed \$150 for each year of the duration of the certification, registration, or license.

(c) The fee for initial application of an appraisal management company may not exceed \$150. The initial registration and registration renewal fee may not exceed \$150 for each year of the duration of the registration.

(d) The board may also establish by rule a late renewal penalty.

(e) The board shall establish fees which are adequate to ensure its continued operation. Fees shall be based on estimates made by the department of the revenue required to implement this part and other provisions of law relating to the regulation of real estate appraisers.



(2) Application and certification, registration, and license fees shall be refunded upon a determination by the board that the state is not entitled to the fees or that only a portion of the resources have been expended in the processing of the application or shall be refunded if for any other reason the application is not completely processed. The board shall implement this subsection by rule.

**History.**—s. 23, ch. 98-250; s. 6, ch. 2003-164; s. 4, ch. 2010-84.

**475.615 Qualifications for registration or certification.—**

(1) Any person desiring to act as a registered trainee appraiser or as a certified appraiser must make application in writing to the department in such form and detail as the board shall prescribe. Each applicant must be at least 18 years of age and hold a high school diploma or its equivalent.

(2) The board is authorized to waive or modify any education, experience, or examination requirements established in this part in order to conform with any such requirements established by the Appraiser Qualifications Board of the Appraisal Foundation or any successor body recognized by federal law, including any requirements adopted on December 9, 2011. The board shall implement this section by rule.

(3) Appropriate fees, as set forth in the rules of the board pursuant to s. 475.6147, and a set of fingerprints must accompany all applications for registration or certification. The fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for processing to determine whether the applicant has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation to determine whether the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department to determine whether the applicant is statutorily qualified for registration or certification.

(4) In the event that the applicant is currently a registered trainee appraiser or a licensed or certified appraiser and is making application to obtain a different status of appraisal credential, should such application be received by the department within 180 days prior to through 180 days after the applicant's scheduled renewal, the charge for the application shall be established by the rules of the board pursuant to s. 475.6147.

(5) At the time of filing an application for registration or certification, the applicant must sign a pledge indicating that upon becoming registered or certified, she or he will comply with the standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application expires 1 year after the date received by the department.

(6) All applicants must be competent and qualified to make real estate appraisals with safety to those with whom they may undertake a relationship of trust and confidence and the general public. If any applicant has been denied registration, licensure, or certification, or has been disbarred, or the applicant's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this 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 part, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee appraiser or a licensed or certified appraiser, the applicant is deemed not to be qualified unless the applicant has met the conditions adopted by the Appraiser Qualifications Board of the Appraisal Foundation on December 9, 2011, as prescribed by rule of the board and it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.

(7) No applicant seeking to become registered or certified under this part may be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 384, ch. 97-103; s. 24, ch. 98-250; s. 142, ch. 99-251; s. 7, ch. 2003-164; s. 84, ch. 2005-2; s. 3, ch. 2006-198; s. 18, ch. 2009-195; s. 14, ch. 2012-61; s. 42, ch. 2013-116; s. 4, ch. 2013-144.

**475.616 Examination requirements.**—To be certified as an appraiser, the applicant must demonstrate, by passing a written examination, that she or he possesses:

- (1) A knowledge of technical terms commonly used in real estate appraisal.
- (2) An understanding of the principles of land economics, real estate appraisal processes, reliable sources of appraising data, and problems likely to be encountered in the gathering, interpreting, and processing of data in carrying out appraisal disciplines.
- (3) An understanding of the standards for the development and communication of real estate appraisals as provided in this part.
- (4) An understanding of the types of misconduct for which disciplinary proceedings may be initiated against a licensed or certified appraiser, as set forth in this part.
- (5) Knowledge of the theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 385, ch. 97-103; s. 25, ch. 98-250; s. 4, ch. 2006-198.

**475.617 Education and experience requirements.**—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved qualifying education courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011, by the Appraiser Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved qualifying education courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011, by the Appraiser Qualifications Board of the Appraisal Foundation:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 300 classroom hours, inclusive of examination, of approved qualifying education courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a

nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(4) A distance learning course may be approved by the board as an option to classroom hours for satisfactory completion of the academic courses required under this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both.

(a) A distance learning course must use a delivery method that is certified or approved by a board-authorized independent certifying organization.

(b) A distance learning course intended for use as academic education must include a written, closed-book final examination. As used in this paragraph, the term “written” refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable.

(5) Each applicant must furnish, under oath, a detailed statement of the experience for each year of experience she or he claims. Upon request, the applicant shall furnish to the board, for its examination, copies of appraisal reports or file memoranda to support the claim for experience. Any appraisal report or file memoranda used to support a claim for experience must be maintained by the applicant for no less than 5 years after the date of certification.

(6) The board may implement the provisions of this section by rule.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 386, ch. 97-103; s. 26, ch. 98-250; s. 8, ch. 2003-164; s. 53, ch. 2004-357; s. 5, ch. 2006-198; s. 15, ch. 2012-61; s. 1, ch. 2013-182; s. 120, ch. 2014-17.

**475.6171 Issuance of registration or certification.**—The registration or certification of an applicant may be issued upon receipt by the board of the following:

(1) A complete application indicating compliance with qualifications as specified in s. 475.615.

(2) Proof of successful course completion as specified in s. 475.617.

(3) Proof of experience for certification as specified in s. 475.617.

(4) If required, proof of passing a written examination as specified in s. 475.616.

(5) The board shall implement this section by rule.

**History.**—s. 6, ch. 2006-198; s. 16, ch. 2012-61; s. 10, ch. 2012-72.

**475.618 Renewal of registration, license, certification, or instructor permit; continuing education.**—

(1)(a) The department shall renew a registration, license, certification, or instructor permit upon receipt of the renewal application and proper fee. Such application shall include proof satisfactory to the board that the individual has satisfactorily completed any continuing education that has been prescribed by the board.

(b) A distance learning course or courses shall be approved by the board as an option to classroom hours as satisfactory completion of the course or courses as required by this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both.

(c) The board may authorize independent certification organizations to certify or approve the delivery method of distance learning courses. Certification from such authorized organizations must be provided at the time a distance learning course is submitted to the board by an accredited college, university, community college, career center, proprietary real estate school, or board-approved sponsor for content approval.

(2) The department shall adopt rules establishing a procedure for the renewal of registration, licenses, certifications, and instructor permits at least every 4 years.

(3) Any registration, license, certification, or instructor permit which is not renewed at the end of the registration, license, certification, or instructor permit period prescribed by the department shall automatically revert to inactive status.

(4) At least 60 days prior to the end of the registration, license, certification, or instructor permit period, the department shall cause to be mailed a notice of renewal and possible reversion to the last known address of the registered trainee, licensee, certificateholder, or permitholder.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 151, ch. 92-149; s. 27, ch. 98-250; s. 5, ch. 2002-9; s. 10, ch. 2003-164; s. 55, ch. 2004-357.

**475.619 Inactive status.—**

(1) A registration, license, or certification which has become inactive may be renewed upon application to the department. The board shall prescribe by rule continuing education requirements for each year the registration, license, or certification was inactive, as a condition of renewing an inactive registration, license, or certification.

(2) Any registration, license, or certification which has been inactive for more than 4 years shall automatically expire. Once a registration, license, or certification expires, it becomes null and void without any further action by the board or department. Two years prior to the expiration of the registration, license, or certification, the department shall give notice by mail to the registered trainee, licensee, or certificateholder at her or his last known address. The board shall prescribe by rule a fee not to exceed \$100 for the late renewal of an inactive registration, license, or certification. The department shall collect the current renewal fee for each renewal period in which the registration, license, or certification was inactive, in addition to any applicable late renewal fee.

(3) The board shall adopt rules relating to inactive registrations, licenses, and certifications and for the renewal of such registrations, licenses, and certifications.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 387, ch. 97-103; s. 28, ch. 98-250; s. 11, ch. 2003-164.

**475.620 Corporations and partnerships ineligible for licensure or certification.—**

(1) A license or certification may not be issued under this part to a corporation, partnership, firm, or group. However, an appraiser licensed or certified under this part may provide an appraisal report for or on behalf of a corporation, partnership, firm, or group, if the report is prepared by, or under the personal direction of, such appraiser and is reviewed and signed by her or him.

(2) The term “state-registered trainee appraiser,” “state-licensed appraiser,” or “state-certified appraiser” may only be used to refer to an individual who is registered, licensed, or certified under this part and may not be used following or immediately in connection with the name or signature of a corporation, partnership, firm, or group, or in such manner that it could be interpreted as implying registration, licensure, or certification under this part of a corporation, partnership, firm, or group, or anyone other than an individual appraiser. Corporations, partnerships, firms, or groups which employ certified or licensed appraisers or registered trainee appraisers who provide appraisal reports, as defined by this part, may represent to the public and advertise that they offer appraisals performed by registered, licensed, or certified appraisers.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 388, ch. 97-103; s. 29, ch. 98-250; s. 12, ch. 2003-164.

**475.621 Registry of licensed and certified appraisers; registry of appraisal management companies.—**

(1) The department shall transmit to the appraisal subcommittee, at least annually, a roster listing individuals who hold a valid state license or certification as an appraiser. The department shall transmit to the appraisal subcommittee, at least annually, a roster listing individuals or companies that hold a valid state registration as an appraisal management company.

(2) The department shall collect from such individuals who perform or seek to perform appraisals in federally related transactions an annual fee as set by rule of, and transmitted to, the appraisal subcommittee. The department shall collect from such appraisal management companies that perform or seek to perform appraisal management services in covered transactions an annual fee set by rule of the board and transmitted to the appraisal subcommittee.

(3) Notwithstanding the prohibition against requiring registration of a federally regulated appraisal management company as provided in s. 475.6235(8)(b), the board shall establish a procedure to collect from a federally regulated appraisal management company an annual fee as set by rule of the board and transmitted to the appraisal subcommittee.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 6, ch. 2015-54; s. 5, ch. 2017-30.

**475.622 Display and disclosure of licensure, certification, or registration.—**

(1) Each appraiser registered, licensed, or certified under this part shall place her or his registration, license, or certification number adjacent to or immediately beneath the designation “state-registered trainee real estate appraiser,” “state-licensed real estate appraiser,” “state-certified residential real estate appraiser,” or “state-certified general real estate appraiser,” or their appropriate abbreviations as defined by rule, as applicable, when such term is used in an appraisal report or in a contract or other instrument used by the appraiser in conducting real property appraisal activities. The applicable designation shall be included in any newspaper, telephone directory, or other advertising medium, as defined by rule, used by the appraiser.

(2) A registered trainee appraiser or licensed or certified appraiser may not sign any appraisal report or certification or communicate same without disclosing in writing that she or he is a state-registered trainee appraiser or state-licensed, state-certified residential, or state-certified general appraiser, as applicable, even if the appraisal performed is outside of the scope of the appraiser’s registration, licensure, or certification as an appraiser.

(3) The primary or secondary supervisory appraiser of a registered trainee real estate appraiser must sign each appraisal report and certification signed by the registered trainee.

(4) The supervisory appraiser of a registered trainee real estate appraiser must disclose her or his appropriate designation and number any time the registered trainee is required to make such disclosures.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 152, ch. 92-149; s. 389, ch. 97-103; s. 30, ch. 98-250; s. 2, ch. 2001-274; s. 13, ch. 2003-164.

**475.6221 Employment of and by registered trainee real estate appraisers.—**

(1) A registered trainee real estate appraiser must perform appraisal services under the direct supervision of a certified appraiser who is designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional certified appraisers as secondary supervisory appraisers. A secondary supervisory appraiser must be affiliated with the same firm or business as the primary supervisory appraiser and the primary or secondary supervisory appraiser must have the same business address as the registered trainee real estate appraiser. The primary supervisory appraiser must notify the Division of Real Estate of the name and address of any primary and secondary supervisory appraiser for whom the registered trainee will perform appraisal services, and must also notify the division within 10 days after terminating such relationship. Termination of the relationship with a primary supervisory appraiser automatically terminates the relationship with the secondary supervisory appraiser.

(2) A registered trainee real estate appraiser may only receive compensation through or from the primary supervisory appraiser.

(3) A supervisory appraiser may not be employed by a trainee or by a corporation, partnership, firm, or group in which the trainee has a controlling interest.

**History.**—s. 3, ch. 2001-274; s. 14, ch. 2003-164; s. 81, ch. 2004-5; s. 7, ch. 2006-198; s. 5, ch. 2013-144.

**475.6222 Supervision and training of registered trainee appraisers.—**The primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser. The role and responsibility of the supervisory appraiser is determined by rule of the board.

**History.**—s. 15, ch. 2003-164; s. 8, ch. 2006-198.

**475.623 Registration of firm or business name and office location.—**Each appraiser registered, licensed, or certified under this part shall furnish in writing to the department each firm or business name and address from which she or he operates in the performance of appraisal services. Each appraiser must notify the department of any change of firm or business name and any change of address within 10 days on a form provided by the department.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 390, ch. 97-103; s. 31, ch. 98-250; s. 9, ch. 2006-198.

**475.6235 Registration of appraisal management companies required; exemptions.—**

(1) A person may not engage, or offer to engage, in appraisal management services for compensation in this state, or advertise or represent herself or himself as an appraisal management company, unless the person is



registered with the department as an appraisal management company under this section. However, an employee of an appraisal management company is not required to obtain a separate registration.

(2) An application for registration must be submitted to the department in the format prescribed by the department and must include, at a minimum, the following:

(a) The firm or business name under which the appraisal management company conducts business in this state. The appraisal management company must notify the department of any change in the firm or business name, on a form provided by the department, within 10 days after such change.

(b) The mailing address, street address, and telephone number of the appraisal management company's principal business location. The appraisal management company must notify the department of any change in the mailing or street address, on a form provided by the department, within 10 days after such change.

(c) The appraisal management company's federal employer identification number.

(d) The appraisal management company's type of business organization, such as a corporation, partnership, limited liability company, or sole proprietorship.

(e) A statement as to whether the appraisal management company, if incorporated, is a domestic or foreign corporation, the company's date of incorporation, the state in which the company was incorporated, its charter number, and, if it is a foreign corporation, the date that the company first registered with the Department of State to conduct business in this state.

(f) The full name, street address, telephone number, corporate title, and social security number or federal employer identification number of any person who possesses the authority, directly or indirectly, to direct the management or policies of the appraisal management company, whether through ownership, by contract, or otherwise, including, but not limited to:

1. Each officer and director if the appraisal management company is a corporation.
2. Each general partner if the appraisal management company is a partnership.
3. Each manager or managing member if the appraisal management company is a limited liability company.
4. The owner if the appraisal management company is a sole proprietorship.
5. Each other person who, directly or indirectly, owns or controls 10 percent or more of an ownership interest in the appraisal management company.

(g) The firm or business name under which any person listed in paragraph (f) conducted business as an appraisal management company within the 5 years preceding the date of the application.

(h) The appraisal management company's registered agent for service of process in this state.

(3) Appropriate fees, as set forth in the rules of the board pursuant to s. 475.6147, and a complete set of fingerprints for each person listed in paragraph (2)(f) must accompany all applications for registration. The fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprints to determine whether the person has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprints to determine whether the person has a criminal history record. The information obtained by the processing of fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining whether the appraisal management company is statutorily qualified for registration.

(4) At the time of filing an application for registration of an appraisal management company, each person listed in paragraph (2)(f) must sign a pledge to comply with applicable standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application expires 1 year after the date received.

(5) Each person listed in paragraph (2)(f) must be competent and qualified to engage in appraisal management services with safety to the general public and those with whom the person may undertake a relationship of trust and confidence. If any person listed in paragraph (2)(f) has been denied registration, licensure, or certification as an appraiser or has been disbarred, or if the person's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, any nation,

any possession or district of the United States, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result under this part, or if the person has been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining her or his registration, license, or certification under this part had the person then been a registered trainee appraiser or a licensed or certified appraiser, the person shall be deemed not to be qualified to be registered.

(6) An applicant seeking to become registered under this part as an appraisal management company may not be rejected solely by virtue of membership or lack of membership of any person listed in paragraph (2)(f) or any employee of the company in any particular appraisal organization.

(7) The department shall renew the registration of an appraisal management company upon receipt of the renewal application and the proper fee. The department shall adopt rules establishing a procedure for renewal of the registration of an appraisal management company at least every 4 years.

(8) This section does not apply to:

(a) A financial institution, as defined in s. 655.005, which owns and operates an internal appraisal office, business unit, or department; or

(b) A federally regulated appraisal management company.

**History.**—s. 5, ch. 2010-84; s. 18, ch. 2012-61; s. 11, ch. 2012-72; s. 12, ch. 2012-208; s. 86, ch. 2013-15; s. 6, ch. 2017-30.

**475.624 Discipline of appraisers.**—The board may deny an application for registration or certification of an appraiser; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if the board finds that the registered trainee, licensee, or certificateholder:

(1) Has violated any provision of this part or s. 455.227(1); however, any appraiser registered, licensed, or certified under this part is exempt from s. 455.227(1)(i).

(2) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the registered trainee appraiser or licensed or certified appraiser that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the registered trainee appraiser or licensed or certified appraiser, or was an identified member of the general public.

(3) Has advertised services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(4) Has violated any provision of this part or any lawful order or rule issued under this part or chapter 455.

(5) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the activities of a registered trainee appraiser or licensed or certified appraiser or that involves moral turpitude or fraudulent or dishonest conduct. The record of a conviction certified or authenticated in such form as admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(6) Has had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has been disbarred; has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

- (7) Has become temporarily incapacitated from acting as an appraiser with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however, suspension of a license, certification, or registration in such cases shall only be for the period of such incapacity.
- (8) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.
- (9) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.
- (10) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice that shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.
- (11) Has made or filed a report or record, either written or oral, that the registered trainee appraiser or licensed or certified appraiser knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing; or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those that are signed or presented in the capacity of a registered trainee appraiser or licensed or certified appraiser.
- (12) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.
- (13) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.
- (14) Has violated any standard of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal.
- (15) Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.
- (16) Has failed to communicate an appraisal without good cause.
- (17) Has accepted an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined result, analysis, or opinion or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.
- (18) Has failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which she or he operates as a registered trainee appraiser or licensed or certified appraiser.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; ss. 10, 149, ch. 94-119; s. 391, ch. 97-103; s. 124, ch. 98-166; s. 32, ch. 98-250; s. 184, ch. 2000-160; s. 16, ch. 2003-164; s. 10, ch. 2006-198; s. 57, ch. 2009-195; s. 6, ch. 2010-84; s. 48, ch. 2010-106; s. 19, ch. 2012-61.

#### **475.6245 Discipline of appraisal management companies.—**

(1) The board may deny an application for registration or renewal registration of an appraisal management company; may investigate the actions of any appraisal management company registered under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraisal management company; and may revoke or suspend, for a period not to exceed 10 years, the registration of any such appraisal management company, or place any such appraisal management company on probation, if the board finds that the appraisal management company or any person listed in s. 475.6235(2)(f):

- (a) Has violated any provision of this part or s. 455.227(1); however, any appraisal management company registered under this part is exempt from s. 455.227(1)(i).
- (b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written,

oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the appraisal management company that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the appraisal management company or was an identified member of the general public.

(c) Has advertised services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(d) Has violated any provision of this part or any lawful order or rule issued under this part or chapter 455.

(e) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the activities of an appraisal management company or that involves moral turpitude or fraudulent or dishonest conduct. The record of a conviction certified or authenticated in such form as admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(f) Has had a registration, license, or certification as an appraiser or a registration as an appraisal management company revoked, suspended, or otherwise acted against; has been disbarred; has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(g) Has become temporarily incapacitated from acting as an appraisal management company with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however, suspension of a registration in such cases shall only be for the period of such incapacity.

(h) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(i) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(j) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice that shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

(k) Has made or filed a report or record, either written or oral, that the appraisal management company knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing; or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those that are signed or presented in the capacity of an appraisal management company.

(l) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.

(m) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.

(n) Has instructed an appraiser to violate any standard of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

(o) Has engaged in the development of an appraisal or the preparation of an appraisal report, unless the appraisal management company is owned or controlled by certified appraisers.

(p) Has failed to communicate an appraisal without good cause.

(q) Has accepted an appraisal assignment if the employment itself is contingent upon the appraisal management company reporting a predetermined result, analysis, or opinion or if the fee to be paid for the

performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(r) Has failed to timely notify the department of any change in principal business location as an appraisal management company.

(s) Has influenced or attempted to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or any other means, including, but not limited to:

1. Withholding or threatening to withhold timely payment for an appraisal, unless such nonpayment is based upon specific quality or other service issues that constitute noncompliance with the appraisal engagement agreement.

2. Withholding or threatening to withhold future business from an appraiser.

3. Promising future business, promotions, or increased compensation for an appraiser, whether the promise is express or implied.

4. Conditioning a request for appraisal services or the payment of an appraisal fee, salary, or bonus upon the opinion, conclusion, or valuation to be reached or upon a preliminary estimate or opinion requested from an appraiser.

5. Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of appraisal services.

6. Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

7. Providing to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits.

8. Allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser.

9. Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is issued pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.

10. Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(t) Has altered, modified, or otherwise changed a completed appraisal report submitted by an appraiser to an appraisal management company.

(u) Has employed, contracted with, or otherwise retained an appraiser whose registration, license, or certification is suspended or revoked to perform appraisal services or appraisal management services.

(v) Has required or attempted to require an appraiser to sign any indemnification agreement that would require the appraiser to hold harmless the appraisal management company or its owners, agents, employees, or independent contractors from any liability, damage, loss, or claim arising from the services performed by the appraisal management company or its owners, agents, employees, or independent contractors and not the services performed by the appraiser.

(w) Has required or attempted to require a client to sign any indemnification agreement that would require the client to hold harmless the appraisal management company or its owners, agents, or employees from any liability, damage, loss, or claim arising from the services performed by an appraiser.

(2) The board may reprimand an appraisal management company, conditionally or unconditionally suspend or revoke any registration of an appraisal management company issued under this part, or impose administrative fines not to exceed \$5,000 for each count or separate offense against any such appraisal management company if the board determines that the appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following acts:



- (a) Committing any act in violation of this part.
  - (b) Violating any rule adopted by the board under this part.
  - (c) Obtaining a registration of an appraisal management company by fraud, misrepresentation, or deceit.
- (3) This section does not prohibit an appraisal management company from requesting an appraiser to:
- (a) Provide additional information about the basis of a valuation, including consideration of additional

comparable data; or

- (b) Correct objective factual errors in an appraisal report.

**History.**—s. 7, ch. 2010-84; s. 20, ch. 2012-61; s. 12, ch. 2012-72; s. 7, ch. 2017-30.

**475.625 Final orders.**—The board may publish and distribute, in such manner and form as it may prescribe, any of its final orders or decisions made under this section, after they become final by lapse of time or upon affirmance on appeal, or opinions of appellate courts for the guidance of appraisers, appraiser users, and the public. The board may also publish or withhold from publication the names and addresses of any parties concerned. This section shall not be construed to affect compliance with chapter 119.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429.

**475.626 Violations and penalties.**—

- (1) A person may not:

(a) Operate or attempt to operate as a registered trainee appraiser, a licensed or certified appraiser, or an appraisal management company without being the holder of a valid and current registration, license, or certification.

(b) If an appraisal management company, commit any conduct or practice set forth in s. 475.6245.

(c) Make any false affidavit or affirmation intended for use as evidence by or before the board or any member thereof, or by any of its authorized representatives, nor may any person give false testimony under oath or affirmation to or before the board or any member thereof in any proceeding authorized by this section.

(d) Fail or refuse to appear at the time and place designated in a subpoena issued with respect to a violation of this section, unless such failure to appear is the result of facts or circumstances that are sufficient to excuse appearance in response to a subpoena from the circuit court; nor may a person who is present before the board or a member thereof or one of its authorized representatives acting under authority of this section refuse to be sworn or to affirm or fail or refuse to answer fully any question propounded by the board, the member, or such representative, or by any person by the authority of such officer or appointee.

(e) Obstruct or hinder in any manner the enforcement of this section or the performance of any lawful duty by any person acting under the authority of this section, or interfere with, intimidate, or offer any bribe to any member of the board or any of its employees or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this section.

- (f) Knowingly conceal any information relating to violations of this section.

(2) A person who violates any provision of subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, except when a different punishment is prescribed by this section. This section does not prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, a criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 392, ch. 97-103; s. 33, ch. 98-250; s. 17, ch. 2003-164; s. 8, ch. 2010-84; s. 21, ch. 2012-61; s. 8, ch. 2017-30.

**475.627 Appraisal course instructors.—**

(1) Where the course or courses to be taught are prescribed by the board or approved precedent to registration, licensure, certification, or renewal as a registered trainee appraiser, licensed appraiser, or certified residential appraiser, before commencing to instruct noncredit college courses in a college, university, or community college, or courses in a career center or proprietary real estate school, a person must certify her or his competency by meeting one of the following requirements:

- (a) Hold a valid certification as a residential real estate appraiser in this or any other state.
- (b) Pass an appraiser instructor's examination which shall test knowledge of residential appraisal topics.

(2) Where the course or courses to be taught are prescribed by the board or approved precedent to registration, licensure, certification, or renewal as a registered trainee appraiser, licensed appraiser, or certified appraiser, before commencing to instruct noncredit college courses in a college, university, or community college, or courses in a career center or proprietary real estate school, a person must certify her or his competency by meeting one of the following requirements:

- (a) Hold a valid certification as a general real estate appraiser in this or any other state.
- (b) Pass an appraiser instructor's examination which shall test knowledge of residential and nonresidential appraisal topics.

(3) Possession of a permit to teach prescribed or approved appraisal courses does not entitle the permitholder to teach any courses outside the scope of the permit.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 153, ch. 92-149; s. 393, ch. 97-103; s. 34, ch. 98-250; s. 18, ch. 2003-164; s. 56, ch. 2004-357.

**475.628 Professional standards for appraisers registered, licensed, or certified under this part.—**

(1) The board shall 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. Each appraiser registered, licensed, or certified under this part must comply with the rules. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation are binding on any appraiser registered, licensed, or certified under this part, upon adoption by rule of the board.

(2) The board may adopt rules establishing standards of professional practice other than standards adopted by the Appraisal Standards Board of the Appraisal Foundation for nonfederally related transactions. The board shall require that when performing an appraisal or appraisal service for any purpose other than a federally related transaction, an appraiser must comply with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, and other requirements as determined by rule of the board. An assignment completed using alternate standards does not satisfy the experience requirements under s. 475.617 unless the assignment complies with the standards adopted by the Appraisal Standards Board of the Appraisal Foundation.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 35, ch. 98-250; s. 22, ch. 2012-61; s. 9, ch. 2017-30.

**475.629 Retention of records.—**An appraiser registered, licensed, or certified under this part shall prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting assignment. An appraisal management company registered under this part shall prepare and retain an order file for each appraisal, appraisal review, or appraisal consulting assignment. The work file and the order file shall be retained for 5 years or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater. The work file must contain original or true copies of any contracts engaging the appraiser's or appraisal management company's services, appraisal reports, and supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services and all other data, information, and documentation required by the 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 established by rule of the board. The order file must contain original or true copies of any contracts engaging the appraiser's services, the appraisal reports, any engagement materials or instructions from the client, and all other documents required by

the 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 established by rule of the board. Notwithstanding the foregoing, while general contracts and materials pertaining to impaneling of an appraiser by an appraisal management company shall be retained under this section, such contracts and materials are not required to be maintained within the order file. Except as otherwise specified in the Uniform Standards of Professional Appraisal Practice, the period for retention of the records applicable to each engagement of the services of the appraiser or appraisal management company runs from the date of the submission of the appraisal report to the client. Appraisal management companies shall also retain the company accounts, correspondence, memoranda, papers, books, and other records in accordance with administrative rules adopted by the board. These records must be made available by the appraiser or appraisal management company for inspection and copying by the department upon reasonable notice to the appraiser or company. If an appraisal has been the subject of or has served as evidence for litigation, reports and records must be retained for at least 2 years after the trial or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 36, ch. 98-250; s. 9, ch. 2010-84; s. 7, ch. 2015-54; s. 10, ch. 2017-30.

**475.6295 Authority to inspect.**—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any appraisal management company, appraiser, or appraisal office certified, registered, or licensed under this chapter, for the purpose of determining if any of the provisions of this chapter, chapter 455, or any rule promulgated under authority of either chapter is being violated.

**History.**—s. 37, ch. 98-250; s. 19, ch. 2003-164; s. 8, ch. 2015-54.

**475.630 Temporary practice.**—

(1) The board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state, if:

- (a) The property to be appraised is part of a federally related transaction.
- (b) The appraiser's business is of a temporary nature.
- (c) The appraiser registers with the board.
- (d) The person requesting recognition of a license or certification as an appraiser issued by another state is a nonresident of Florida.

(2) In order to register with the board, the appraiser must:

- (a) Pay any required fee as established by rule.
- (b) Provide, or cause the state where the applicant may be licensed or certified to furnish, proof of licensure or certification along with the copies of the records of any disciplinary actions taken against the applicant's license or certification in that or other jurisdictions.
- (c) Agree in writing to cooperate with any investigation initiated under this part by promptly supplying such documents that any authorized representative of the department may request. If the department sends a notice by certified mail to the last known address of a nonresident appraiser to produce documents or to appear in conjunction with an investigation and the nonresident appraiser fails to comply with that request, the board may impose on that nonresident appraiser any disciplinary action or penalty authorized under this part.

(d) Sign a notarized statement that the applicant has read this section and all applicable rules and agrees to abide by these provisions in all appraisal activities.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 38, ch. 98-250.

**475.631 Nonresident licenses and certifications.**—

(1) Any resident state-certified appraiser who becomes a nonresident shall, within 60 days, notify the board of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.624.

(2) All nonresident applicants, certified appraisers, and licensees shall comply with all requirements of board rules and this part.

**History.**—s. 20, ch. 2003-164; s. 13, ch. 2012-208; s. 9, ch. 2015-54; s. 4, ch. 2022-6.

**PART III**  
**COMMERCIAL REAL ESTATE**  
**SALES COMMISSION LIEN ACT**

- 475.700 Popular name.
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- 475.703 Broker's lien for sales commission.
- 475.705 Contents of commission notice; delivery to owner and closing agent.
- 475.707 Recording commission notice; effectiveness.
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- 475.715 Priority of recorded commission notice.
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- 475.719 Buyer's broker.

**475.700 Popular name.**—Sections 475.700-475.719 may be cited as the “Commercial Real Estate Sales Commission Lien Act.”

**History.**—s. 1, ch. 2005-275.

**475.701 Definitions.**—As used in this part:

- (1) “Broker” has the same meaning as in s. 475.01.
- (2) “Brokerage agreement” means a written contract entered into on or after the effective date of this act 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.
- (3) “Closing” means the delivery, exchange, and release of documents and funds for the completion of a transaction for the disposition of commercial real estate.
- (4) “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.
- (5) “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.
- (6) “Commission” means any fee or other compensation that an owner agrees to pay a broker for licensed services as specified in a brokerage agreement.
- (7) “Commission notice” means the written notice claiming a commission made by a broker under s. 475.705.
- (8) “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.
- (9) “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.

(10) “Disputed reserved proceeds” means the portion of the owner’s net proceeds reserved by a closing agent under s. 475.709 that the owner disputes the broker’s right to receive under s. 475.709(5).

(11) “Owner” means a person that is vested with fee simple title or a possessory estate in commercial real estate.

(12) “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 s. 475.715.

(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.

(13) “Real property” means one or more parcels or tracts of land located in this state, including any appurtenances and improvements.

**History.**—s. 1, ch. 2005-275; s. 9, ch. 2006-210.

#### **475.703 Broker’s lien for sales commission.—**

(1) 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 pursuant to this part 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.

(2) For purposes of this part, 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.

(3) For the purposes of this part, a commission is payable at the time provided 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 under this part.

(4) A broker’s lien for commission arising under this part:

(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.

(5) A broker shall disclose to the owner at or before the time the owner executes the brokerage agreement that this part creates lien rights for a commission earned by the broker that are not waivable before the commission is earned by the broker. A broker may not enforce a lien under this part for a commission earned under a brokerage agreement for which the disclosure required by this subsection was not made. A disclosure in substantially the following form shall be sufficient: “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.”

**History.**—s. 1, ch. 2005-275.

#### **475.705 Contents of commission notice; delivery to owner and closing agent.—**

(1) A commission notice made by a broker with respect to a commission claimed under this part shall be in writing, shall be signed and sworn to or affirmed by the broker under penalty of perjury before a notary public, and shall include the following:



- (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.
- (2) A commission notice in substantially the following form shall be sufficient for purposes of subsection (1):

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.

(3) Subject to subsection (4), if a broker wishes to enforce a lien for a commission under this part, the broker shall, within 30 days after a commission is earned by the broker pursuant to s. 475.703(2) and at least 1 day before the closing, deliver a copy of the commission notice 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.

(4) Except as provided in this subsection, a broker who fails to deliver a copy of a commission notice as required under subsection (3) within the period specified therein may not enforce a lien for the commission under this part. If a broker fails to deliver a copy of the commission notice within said period 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.

Notwithstanding the provisions of this subsection, 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 under this part, and the delivery of a copy of a commission notice after such disbursement is ineffective under this part.

**History.**—s. 1, ch. 2005-275.

#### **475.707      Recording commission notice; effectiveness.—**

(1) After a broker delivers the copies of a commission notice as provided in s. 475.705, the broker 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.

(a) Subject to the limitation in paragraph (b), the broker's lien created by this part against the owner's net proceeds is perfected by such recording of the commission notice and takes priority pursuant to this part as of the date of the recording of the commission notice. The priority of the lien does not relate back to the date of the brokerage agreement.

(b) The recording of the commission notice shall not constitute constructive notice to a closing agent unless the commission notice has been of record for at least 60 days.

(2) A recorded commission notice is effective under this part 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.

(3) A commission notice recorded under this part 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 shall refer to the recording information of the original commission notice, shall state that the owner remains obligated to pay a commission to the broker, and shall include the information and be executed in the manner as required by s. 475.705(1) for the original commission notice. A timely recorded extension notice shall extend the expiration date of the original recorded commission notice by 1 additional year. Successive extension notices may be recorded for so long as the owner remains obligated to pay a commission to the broker. Within 10 days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

(4) The delivery or recording of a commission notice or the enforcement of a commission claim by a broker under this part does not relieve the owner from the owner's obligation to close a disposition transaction for any commercial real estate.

(5) 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 this part, the broker shall, within 7 days following demand by the owner, record a written release of the commission notice in the public records of the county where the commission notice was recorded.

(6) If a broker records a commission notice pursuant to this section and the claimed commission is paid or the commission notice is otherwise discharged or satisfied pursuant to this part, the broker shall, within 7 days after the commission is paid or the commission notice is otherwise discharged or satisfied, record a written release of the commission notice in the public records of the county where the commission notice was recorded.

History.—s. 1, ch. 2005-275; s. 10, ch. 2006-210.

#### **475.709 Duties of closing agent; reservation of owner's net proceeds.—**

(1)(a) The closing agent shall 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 s. 475.705;
2. A commission notice pertaining to the commercial real estate has been recorded for at least 60 days pursuant to s. 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 s. 475.707 and has not expired or been released or canceled as provided in this part.

(b) If the owner's net proceeds are insufficient to pay the full amount of the claimed commission, the closing agent shall reserve the entire amount of the owner's net proceeds. The closing agent shall release the reserved proceeds only in accordance with the provisions of this part.

(2)(a) 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.

(b) If the closing agent receives an affidavit from the owner under this subsection 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 shall 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 shall 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 so disclosed, the closing agent shall 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 under subsection (1), the closing agent shall reserve the greater of the two commission amounts. The closing agent shall release the reserved proceeds only in accordance with the provisions of this part.

(3) If the provisions of subsection (1) do not require the closing agent 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 pursuant to subsection (2) 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 under this part to reserve any money or property for a commission from the owner's net proceeds from the disposition of the commercial real estate.

(4) 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 shall, within 3 days after making that determination but no later than the closing of the disposition, notify the owner and the broker of the determination. The closing agent's determination that the owner's net proceeds are insufficient under this part, however, does not relieve the owner from the owner's contractual obligations under the brokerage agreement to pay the full commission owing to the broker.

(5) 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 shall release to the broker the confirmed amount of the commission from the reserved proceeds. 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 shall release to the broker from the reserved proceeds only the undisputed portion of the commission, if any. Until the rights of the owner and the broker with respect to the disputed reserved proceeds are determined pursuant to s. 475.711 or s. 475.713 or the owner and the broker otherwise agree in writing, the closing agent shall 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.

(6) The commission claimed in the commission notice shall be deemed confirmed by the owner, and the closing agent shall release the reserved proceeds to the broker, if the closing agent is required pursuant to subsection (1) 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 s. 475.705.

(7) 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 under this part for the portion of the commission not paid from the money proceeds shall attach to the purchase-money note and any security therefor, and the closing agent shall reserve and release the purchase-money note in accordance with this part 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 shall interplead the purchase-money note along with any money reserved proceeds in accordance with s. 475.711.

(8) If the disposition of the commercial real estate is part of a like-kind exchange by the owner which is deferred from federal income tax under s. 1031 of the Internal Revenue Code of 1986, as amended, and if all of the

owner's net proceeds in excess of undisputed commissions shall be delivered to a third party in order to qualify the disposition for such tax deferral treatment, the owner may substitute other cash, a surety bond, an unconditional letter of credit, or other liquid security acceptable to the broker in lieu of any disputed reserved proceeds held by the closing agent under this section or deposited in the court registry in accordance with s. 475.711.

(9) Upon request of the closing agent or the owner, any broker who has recorded a commission notice under s. 475.707 shall 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 this section. The closing agent is authorized to deduct from the reserved proceeds payable to the broker the cost of recording the satisfaction or release of the commission notice.

(10) Neither the closing agent's requirement for an owner's affidavit pursuant to subsection (2), nor the closing agent's reservation of any portion of an owner's net proceeds pursuant to subsection (1) or subsection (2), shall relieve the owner of the owner's obligation to close the transaction for the disposition of the commercial real estate, including, without limitation, any obligation of the owner to the buyer under the purchase and sale contract to discharge mortgages, liens, or encumbrances against the commercial real estate that were recorded after the commission notice and, therefore, are not subtracted from gross sales proceeds when computing the owner's net proceeds under s. 475.719.

(11) A closing agent is not liable to the owner, the broker, or any other person in any civil action for any action taken by the closing agent to comply with the provisions of this part.

(12) No provision of this part shall require a closing agent to serve involuntarily more than 5 days after a closing as an escrow agent or stakeholder for any moneys or other property that are disputed by the owner and the broker under the provisions of this part.

History.—s. 1, ch. 2005-275; s. 11, ch. 2006-210.

**475.711 Interpleader or other proceedings; deposit of reserved proceeds in court registry; discharge of closing agent from further liability.—**

(1) The closing agent shall, by interpleader action or other legal proceeding, seek adjudication of the rights of the parties with respect to disputed reserved proceeds by the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the disputed reserved proceeds, in a county where all or a portion of the commercial real estate is located if, after the closing of a transaction for the disposition of the commercial real estate, all of the following conditions are met:

(a) The closing agent has reserved all or a portion of the owner's net proceeds pursuant to s. 475.709 and the owner disputes the release to the broker of all or any portion of the reserved proceeds.

(b) The owner and the broker have not agreed in writing, within 5 days after the closing, regarding the closing agent's release of the disputed reserved proceeds.

(c) Neither the owner nor the broker have commenced a civil action to determine the rights of the parties with respect to the disputed reserved proceeds.

(2) Unless otherwise agreed to by the owner and the broker in writing, the closing agent shall deposit the net amount of disputed reserved proceeds in the registry of the court having jurisdiction of any legal action or proceeding to determine the rights of the parties in the disputed reserved proceeds, whether commenced by the closing agent under subsection (1) or commenced by the owner or the broker under s. 475.713 or otherwise. The closing agent shall determine the net amount of disputed reserved proceeds deposited in the court registry by deducting from the disputed reserved proceeds:

(a) Any costs incurred by the closing agent to commence such action or proceeding, or to appear in any such action or proceeding commenced by the owner or the broker, including reasonable attorney's fees.

(b) The costs of recording the affidavit described in subsection (3) if any commission notice has been recorded.

(c) The service charges of the clerk of court under s. 28.24 for receiving the net amount of such disputed reserved proceeds into the registry of the court.

(3) If a commission notice has been recorded in the public records of the county or counties where the commercial real estate is located, upon depositing the net disputed reserved proceeds with the clerk of court



pursuant to subsection (2), the closing agent shall execute and record an affidavit referring to the recorded commission notice and stating that the net disputed reserved proceeds have been so deposited in accordance with this part. The recording of the affidavit shall operate to release the recorded commission notice.

(4) If a closing agent deposits the net disputed reserved proceeds with the clerk of court pursuant to subsection (2), the closing agent is discharged from any further liability or responsibility concerning the disputed reserved proceeds.

History.—s. 1, ch. 2005-275; s. 12, ch. 2006-210.

**475.713 Civil action concerning commission; order to show cause; hearing; release of proceeds; award of costs and attorney's fees.—**

(1) If a commission notice claiming a commission is delivered to an owner pursuant to s. 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 claimed commission, of the county where the commercial real estate or a portion of the commercial real estate is located.

(2) In a civil action by the owner, at the time the summons is issued or at any time before the complaint is answered by the broker, the owner may apply to the court for an order directing the broker to appear before the court at a time not earlier than 7 days or later than 15 days after the date of service of the motion and order on the broker to show cause why the commission claim should not be dismissed. The motion must state the grounds upon which relief is sought and must be supported by the affidavit of the owner setting forth a concise statement of the facts upon which the motion is based. The order to show cause shall clearly state that if the broker fails to appear at the time and place specified in the order, the broker's claim of lien against the owner's net proceeds under this part shall be released, with prejudice, and the broker shall be ordered to pay the costs incurred by the owner and the closing agent, including reasonable attorney's fees.

(3) The court shall issue an order releasing the broker's claim of lien against the owner's net proceeds from such disposition, discharging any commission notice that may have been recorded, ordering the release to the owner of the disputed reserved proceeds, and awarding costs and reasonable attorney's fees to the owner to be paid by the broker if, following a hearing, the court determines that the owner is not a party to a brokerage agreement that will result in the owner being obligated to pay the broker the claimed commission or any portion thereof with respect to the disposition of the commercial real estate identified in the commission notice. If the court determines that the owner is a party to a brokerage agreement that will result in the owner being obligated to pay the broker the claimed commission or any portion thereof with respect to the disposition of the commercial real estate identified in the commission notice, the court shall issue an order so stating, ordering the release to the broker of the disputed reserved proceeds or such portion thereof to which the court determines that the broker is entitled, and awarding costs and reasonable attorney's fees to the broker to be paid by the owner. Such orders are final judgments.

(4) A certified copy of any order issued by the court pursuant to subsection (3) discharging a recorded commission notice shall be recorded at the expense of the broker in the public records where the commission notice was recorded, and such order shall operate as a cancellation of the recorded commission notice.

(5)(a) In a civil action commenced by the owner or the broker under this section or in an interpleader action or other proceeding commenced by the closing agent under s. 475.711, the owner or the broker that is not the prevailing party shall be required to pay:

1. The costs and reasonable attorney's fees incurred in the action by the prevailing party.
2. The costs and reasonable attorney's fees incurred in the action by the closing agent.
3. The amount of any costs, recording charges, and service charges of the clerk of court that were deducted from the disputed reserved proceeds under s. 475.711(2) in determining the net amount thereof deposited into the registry of the court.

(b) If the court determines that neither the owner nor the broker is the prevailing party, the amounts set forth in subparagraphs (a)2. and 3. shall be divided equally between and paid by the owner and the broker.

(6) Proceedings conducted pursuant to this section shall not affect rights and remedies otherwise available to the owner or the broker under other applicable law.

History.—s. 1, ch. 2005-275; s. 56, ch. 2006-1; s. 13, ch. 2006-210.

**475.715 Priority of recorded commission notice.**—All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a commission notice pursuant to the provisions of s. 475.707, have priority over the commission notice. The closing agent shall compute the owner's net proceeds by subtracting from the gross sales proceeds the amount required to discharge any such prior recorded lien and the amount of money secured by any such prior recorded lien that the buyer permits to remain a lien against the title to the commercial real estate. A prior recorded lien includes, without limitation, a valid construction lien claim that is recorded after the recording of the broker's commission notice but which relates back to a notice of commencement recorded under s. 713.13 prior to the recording date of the broker's commission notice.

History.—s. 1, ch. 2005-275; s. 14, ch. 2006-210.

**475.717 Service of notice.**—Notices to be delivered to a party pursuant to this part other than service of process as required in civil actions shall 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 is 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 shall be addressed to the individual responsible for the closing if the person sending the notice knows that individual's name.

History.—s. 1, ch. 2005-275.

**475.719 Buyer's broker.**—As used in this section, the term "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 on or after the effective date of this act relating to the buyer's purchase of the commercial real estate.

(1) 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 under this part, and the buyer's broker is not entitled under this part 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.

(2) 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.

(3) No such notice given by the buyer's broker pursuant to subsection (2) shall constitute a tortious interference with the sale or disposition or financing of the commercial real estate.

History.—s. 1, ch. 2005-275; s. 15, ch. 2006-210.

**PART IV**  
**COMMERCIAL REAL ESTATE**  
**LEASING COMMISSION LIEN ACT**

- 475.800 Short title.
- 475.801 Definitions.
- 475.803 Broker's lien for leasing commission.
- 475.805 Contents of lien notice.
- 475.807 Recording lien notice; effectiveness.
- 475.809 Foreclosure of lien; civil action by owner; award of costs and attorney's fees.
- 475.811 Transfer of lien to security.
- 475.813 Subordination of lien.

**475.800 Short title.**—Sections 475.800-475.813 may be cited as the “Commercial Real Estate Leasing Commission Lien Act.”

History.—s. 2, ch. 2005-275.

**475.801 Definitions.**—As used in this part:

- (1) “Automatic renewal commission” means a renewal commission for which the brokerage agreement does not expressly require the broker to perform any additional services in order to receive the renewal commission.
- (2) “Broker” has the same meaning as in s. 475.01.
- (3) “Brokerage agreement” means a written contract, entered into on or after the effective date of this act, 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 leasing of the commercial real estate as specified in the contract.
- (4) “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.
- (5) “Commission” means any fee or other compensation that an owner agrees to pay a broker for licensed services as specified in a brokerage agreement.
- (6) “Days” means calendar days, but if a period would end on a day other than a business day, the last day of that period shall instead be the next business day.
- (7) “Lease” means a written agreement creating a relationship of landlord and tenant with respect to commercial real estate, such that the tenant acquires from the landlord the right to possess the commercial real estate for a specified period of time.
- (8) “Lien notice” means the written notice of lien made by a broker claiming a commission under s. 475.805.
- (9) “Owner” means a person that is vested with fee simple title or a possessory estate, including a leasehold, in commercial real estate that is the subject of a lease. For purposes of this part, the owner obligated to pay a commission under a brokerage agreement may be a landlord or a tenant.
- (10) “Real property” means one or more parcels or tracts of land located in this state, including any appurtenances and improvements.
- (11) “Renewal commission” means an additional commission that may become payable to a broker under a brokerage agreement if a lease subject to that brokerage agreement is later renewed or is later modified to expand the leased premises or extend the lease term.

History.—s. 2, ch. 2005-275; s. 57, ch. 2006-1.

#### **475.803 Broker's lien for leasing commission.—**

(1) A broker has a lien upon the owner's interest in commercial real estate for any commission earned by the broker pursuant to a brokerage agreement with respect to a lease of the commercial real estate. If the owner obligated to pay the commission is the landlord, the broker's lien attaches to the landlord's interest in the commercial real estate identified in the brokerage agreement but not to the tenant's leasehold estate. If the owner obligated to pay the commission is the tenant, the broker's lien attaches to the tenant's leasehold estate but not to the landlord's interest in the commercial real estate.

(2) For purposes of this part, a commission other than a renewal commission is earned on the earlier of the date that:

(a) An event occurs that, under the brokerage agreement, defines when the commission is earned; or

(b) The owner enters into a lease 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 for that lease.

(3) For the purposes of this part, a renewal commission with respect to a lease renewal or lease modification is deemed earned when the broker performs all additional services relating to the lease renewal or lease modification that are expressly required by the brokerage agreement. If the brokerage agreement does not expressly require the broker to perform any additional services in order to receive the renewal commission, the renewal commission is an automatic renewal commission and is deemed earned when the broker first earned a commission for that lease.

(4) For purposes of this part, a commission is payable at the time provided 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 under this part.

(5) A broker's lien for commission arising under this part:

(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.

(6) A broker shall disclose to the owner at or before the time the owner executes the brokerage agreement that this part creates lien rights for a commission earned by the broker that are not waivable before the commission is earned by the broker. A broker may not enforce a lien under this part for a commission earned under a brokerage agreement for which the disclosure required by this subsection was not made. A disclosure in substantially the following form shall be sufficient: "The Florida Commercial Real Estate Leasing 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 interest in the property for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned."

*History.—s. 2, ch. 2005-275.*

#### **475.805 Contents of lien notice.—**

(1) A lien notice made by a broker with respect to a commission claimed under this part shall be in writing, shall be signed and sworn to or affirmed by the broker under penalty of perjury before a notary public, and shall include the following:

(a) The name of the owner of the commercial real estate who is obligated to pay the claimed commission.

(b) A statement whether the owner obligated to pay the commission is the landlord or the tenant under the lease for which the commission is claimed.

(c) The name of the person owning the fee simple interest in the commercial real estate, if other than the owner obligated to pay the commission.

(d) The legal description of the commercial real estate.

- (e) The name, mailing address, telephone number, and license number of the broker.
  - (f) The effective date of the brokerage agreement.
  - (g) 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 rents payable under the lease.
  - (h) A description of the lease sufficient to identify the lease for which the commission is claimed, including, if then known to the broker, the names of the landlord and tenant under the lease, the date of the lease, and the identification of the leased premises.
  - (i) A statement of whether the broker is claiming an automatic renewal commission and the amount of such automatic renewal commission or the formula for computing the same.
  - (j) A statement under penalty of perjury that the broker has read the lien 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 lien notice.
- (2) A lien notice in substantially the following form shall be sufficient for purposes of subsection (1):

BROKER'S COMMISSION LIEN NOTICE  
UNDER FLORIDA COMMERCIAL REAL ESTATE  
LEASING COMMISSION LIEN ACT

Notice is hereby given, pursuant to the Florida Commercial Real Estate Leasing Commission Lien Act, part IV of chapter 475, Florida Statutes (the "act"), that the undersigned real estate broker is entitled to receive a leasing commission from the owner named below pursuant to the terms of a written brokerage commission agreement regarding a lease of the commercial real estate described below, and the undersigned broker claims a lien under the act against the owner's interest in the commercial real estate in the amount set forth below.

1. Name of the owner who is obligated to pay the commission:
2. (Check one:) The owner obligated to pay the commission is:
  - ☐ the landlord under the lease.
  - ☐ the tenant under the lease.
3. Name of the person owning the fee simple interest in the commercial real estate, if other than the owner who is obligated to pay the commission:
4. Legal description of the commercial real estate:
5. Name, mailing address, telephone number, and Florida broker license number of the undersigned broker:
6. Effective date of the written brokerage commission agreement between the owner and the broker under which the commission is or will be payable:     ,     .
7. Amount of commission claimed by the undersigned broker:  
\$     , or     percent of rents payable under lease, or  
[specify other formula for determination of commission amount]:  
.  
.
8. The lease for which the commission is claimed is described as follows [provide all information known to the broker]:  
Name of landlord:  
Name of tenant:  
Date of lease:     ,



Leased premises:

9. Automatic renewal commissions (check yes or no): Is the undersigned broker claiming a commission that may become payable if the lease is later renewed or modified to expand the leased premises or to extend the lease term, but the written brokerage commission agreement does not expressly require the broker to perform any additional services in order to receive this later commission?

☐ Yes

☐ No

If yes, specify the amount of such later commission or the formula for computing the later commission:

10. The expiration date of this lien notice is 2 years after the date of recording, unless the answer to paragraph 9 is yes, in which case the expiration date of this lien notice for the commission described in paragraph 9 is 10 years after the date of recording.

11. The undersigned broker, under penalty of perjury, hereby swears or affirms that the undersigned broker has read this lien 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 lien notice.

Signed:                     (broker)                    

Signed and sworn to or affirmed under penalty of perjury before me, a notary public, this     day of     ,     ,  
by     .

Signed:                     (notary public)                    

History.—s. 2, ch. 2005-275; s. 58, ch. 2006-1.

**475.807 Recording lien notice; effectiveness.—**

(1)(a) After a commission is earned under this part, the broker may record a lien notice in the public records maintained by the clerk of court in the county or counties in which the commercial real estate is located. The lien notice shall be recorded no later than the earlier of:

1. Ninety days after the tenant takes possession of the leased premises or, in the case of a renewal commission that requires the broker to perform additional services as provided in s. 475.803(3), 90 days after the broker performs the additional services required for the renewal commission; or

2. The date on which the owner who is obligated to pay the commission records in the public records a deed or assignment transferring the owner's interest in the commercial real estate to a bona fide purchaser for value.

(b) A broker who fails to record a lien notice within the time period prescribed by this section may not enforce a lien for the claimed commission under this part, and a lien notice that is recorded outside of the time period prescribed by this section is void.

(2) Within 7 days after recording the lien notice, the broker shall deliver a copy of the lien notice to the owner obligated to pay the claimed commission.

(3) The broker's lien created by this part against the commercial real estate is perfected by such recording of the lien notice and takes priority under this part as of the date of the recording of the lien notice. The priority of the lien notice does not relate back to the date of the brokerage agreement.

(4) If the commission is to be paid in installments and any of those installments are due after the lease is executed, the lien notice is valid only to the extent that moneys remain unpaid by the owner to the broker.

(5) A recorded lien notice is effective under this part only with respect to leases made by the owner named in the lien notice, and the lien notice is ineffective with respect to any leases that are made by:

(a) A bona fide purchaser for value of the commercial real estate;

(b) A purchaser at any mortgage foreclosure sale of the commercial real estate; or

(c) Any successor owner acquiring the commercial real estate from a purchaser described in paragraph (a) or paragraph (b).

(6) Whenever a lien 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 lien notice in a manner that does not comply with this part, the broker shall, within 7 days following demand by the owner, record a written release of the lien notice in the public records of the county where the lien notice was recorded.

(7) If a broker records a lien notice pursuant to this section and the claimed commission is paid or the lien notice is otherwise discharged or satisfied pursuant to this part, the broker shall, within 7 days after the commission is paid or the lien notice is otherwise discharged or satisfied, record a written release of the lien notice in the public records of the county where the lien notice was recorded.

(8)(a) Except as provided in paragraph (b), a lien notice recorded by a broker under this part for a claimed commission expires 2 years after the date of recording, unless within that time the broker commences an action to foreclose the lien under s. 475.809 and records a notice of lis pendens in the public records of the county where the lien notice was recorded.

(b) To the extent that a lien notice recorded by a broker under this part claims an automatic renewal commission that is earned but not then payable, the lien notice expires 10 years after the date of recording, unless within that time the broker commences an action to foreclose the lien under s. 475.809 and records a notice of lis pendens in the public records of the county where the lien notice was recorded. If the owner remains obligated to pay a commission to the broker, the broker may extend the expiration date of a lien notice for an automatic renewal commission by recording an extension notice in the same public records within the last 6 months before such expiration date. An extension notice shall refer to the recording information of the original lien notice, shall state that the owner remains obligated to pay a commission to the broker, and shall include the same information and be executed in the same manner as required by s. 475.805(1) for the original lien notice. A timely recorded extension notice shall extend the expiration date of the original recorded lien notice by 10 additional years. Successive extension notices may be recorded for so long as the owner remains obligated to pay a commission to the broker. Within 10 days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

(c) The owner or the owner's agent or attorney may elect to shorten the time within which the broker shall commence an action to foreclose a lien under s. 475.809, or to enforce a claim against a transfer bond or other security under s. 475.811, by recording in the clerk's office a notice of contest in substantially the following form:

#### NOTICE OF CONTEST OF BROKER'S LIEN

To:           (Name and address of broker)          

You are notified that the undersigned contests the lien notice filed by you on     ,           (year)          , and recorded in Official Records Book     , Page     , of the public records of     County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This     day of     ,           (year)          .

Signed:           (Owner or Attorney)          

The lien of any broker upon whom such a notice of contest is served and who fails to institute a suit to enforce the lien within 60 days after service of such notice of contest shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the broker at the address shown in the lien notice or most recent amendment thereto and shall certify to such service on the face of the notice of contest and record the notice of contest. Service of the notice of contest by the clerk shall be deemed complete upon mailing.

(9) Neither the recording of a broker's lien notice or any extension thereof nor the recording of any lis pendens to foreclose a broker's lien thereunder shall constitute notice to any creditor or subsequent purchaser pursuant to s. 695.01 or chapter 712 of the existence of any lease described in the lien notice, extension notice, or lis pendens.

History.—s. 2, ch. 2005-275; s. 16, ch. 2006-210.

#### **475.809 Foreclosure of lien; civil action by owner; award of costs and attorney's fees.—**

(1) A broker may enforce a lien for a commission that is earned and payable under this part by a foreclosure suit in the same manner as if the lien notice were a mortgage recorded against the commercial real estate of the

owner obligated to pay the claimed commission. The foreclosure shall be commenced in the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the claimed commission, of the county where the lien notice was recorded. The foreclosure action shall be commenced before the lien notice expires or is extinguished under s. 475.807(8); otherwise, the lien notice shall become null and void and have no further force or effect.

(2) If a lien notice is recorded pursuant to s. 475.807 and the owner disputes the claimed commission, the owner may file a civil action seeking to discharge the lien in the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the claimed commission, of the county where the lien notice was recorded.

(3) In any action to foreclose a lien or to discharge a lien pursuant to this section, the prevailing party shall be awarded costs and reasonable attorney's fees.

History.—s. 2, ch. 2005-275.

#### **475.811 Transfer of lien to security.—**

(1)(a) Any lien claimed by a broker by recording a lien notice under this part may be transferred by any person having an interest in the commercial real estate upon which the lien is imposed from such commercial real estate to other security by either:

1. Depositing in the clerk's office a sum of money; or
2. Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state, either to be in an amount equal to the amount claimed in the lien notice, plus interest thereon at the legal rate for 3 years, plus \$1,000 or 25 percent of the amount demanded in the lien notice, whichever is greater, to apply on any attorney's fees and court costs that may be taxed in any proceeding to enforce said lien.

(b) Such deposit or bond shall be conditioned to pay any judgment or decree that may be rendered for the satisfaction of the lien for which such lien notice was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the commercial real estate to the security and shall mail a copy thereof by registered or certified mail to the broker named in the lien notice at the address stated therein. Upon filing the certificate of transfer, the commercial real estate shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. Subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner on account of the commission claimed in the lien notice. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to \$15. If the transaction involves the transfer of multiple liens, an additional charge of up to \$7.50 for each additional lien shall be charged. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the security or her or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) In any action pending under s. 475.809 to foreclose or discharge a lien, any party having an interest in such security or the commercial real estate from which the lien was transferred may at any time and any number of times file a motion for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the lien notice is insufficient to pay the fees of the broker's attorney and court costs incurred in the action to enforce the lien, the court shall increase the amount of the cash deposit or lien transfer bond.

(4) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 475.809 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer.

History.—s. 2, ch. 2005-275.

**475.813 Subordination of lien.—**

(1) Nothing contained in this part precludes a broker from agreeing to subordinate a lien claimed by the broker under this part in favor of the holder of any mortgage or other lien against the owner's interest in the commercial real estate that is subject to the broker's lien.

(2) With or without the consent of the broker, the owner may subordinate a lien claimed by the broker for an automatic renewal commission in favor of the holder of a subsequent mortgage encumbering the owner's interest in the commercial real estate. The subordination instrument described in this subsection shall be made in writing and shall be recorded by the owner in the public records of the same county where the broker's lien notice was recorded.

(3) A broker's lien notice recorded against commercial real estate under this part is subordinate to any mortgage that has at any time secured any purchase money indebtedness, provided that the mortgage is made by the owner of the commercial real estate in favor of a person unrelated to the owner. This subordination provision affects only the relative priority of the broker's lien notice and the mortgage with respect to each other, and this provision does not affect their relative priority with respect to any other mortgage, lien, encumbrance, or other matter affecting the title to the commercial real estate.

*History.*—s. 2, ch. 2005-275.



## Following RESPA Rules



Share

### Dos and Don'ts For Real Estate Brokers and Agents

#### 1. Entities Subject to RESPA

Services that occur at or prior to the purchase of a home are typically considered settlement services. These services include title insurance, mortgage loans, appraisals, abstracts, and home inspections. Services that occur after closing generally are not considered settlement services.

- **RESPA covers, among others:**
- Real Estate Brokers and Agents
- Mortgage Bankers and Mortgage Brokers
- Title Companies and Title Agents
- Home Warranty Companies
- Hazard Insurance Agents
- Appraisers
- Flood and Tax Service Providers
- Home and Pest Inspectors



- **RESPA, however, does not apply to:**
- Moving Companies
- Gardeners
- Painters
- Decorating Companies
- Home Improvement Contractors

## 2. RESPA Prohibitions

- RESPA prohibits a real estate broker or agent from receiving a “thing of value” for referring business to a settlement service provider, or SSP, such as a mortgage banker, mortgage broker, title company, or title agent.
- RESPA also prohibits SSPs from splitting fees received for settlement services, unless the fee is for a service actually performed.

## 3. Exceptions to RESPA's Prohibitions

Not all referral arrangements fall under RESPA’s referral restriction. In fact, RESPA and its regulation feature a number of exceptions. Three examples are:

- **Promotional and Educational Activities**

- Settlement service providers, such as mortgage bankers, mortgage brokers, title insurance companies, and title agents, can provide normal promotional and educational activities under RESPA.
- These activities must not defray the expenses that the real estate broker/agent otherwise would have had to pay.
- The activity cannot be in exchange for or tied in any way to referrals.

- **Payments in Return for Goods Provided or Services Performed**

- A real estate broker or agent must provide goods, facilities, and services that are actual, necessary, and distinct from what they already provide.
- The amount paid to a real estate broker or agent must be commensurate with the value of those goods and services. If the payment exceeds market value, the excess will be considered a kickback and violates RESPA.
- The payments should not be “transactionally based.” A payment for services rendered is transactionally based if the amount of the payment is determined by whether the real estate broker/agent’s services resulted in a successful transaction. Payments may not be tied to the success of the real estate broker/agent’s efforts, but must be a flat fee that represents fair market value.

- **Affiliated Business Arrangements**
  - Real estate brokers and agents are permitted to own an interest in a settlement service company, such as a mortgage brokerage or title company, so long as the real estate broker/agent:
    - Discloses its relationship with the joint venture company when it refers a customer to the mortgage broker or title company;
    - Does not require the customer to use the joint venture mortgage broker or title company as a condition for the sale or purchase of a home; and
    - Does not receive any payments from the joint venture company other than a return on its ownership interest in the company. These payments cannot vary based on the volume of referrals to the joint venture company.
  - The joint venture mortgage broker or title company must be a bona fide, stand-alone business with sufficient capital, employees, and separate office space, and must perform core services associated with that industry.
4. Examples of Permissible Activities and Payments

#### 4. Examples of Permissible Activities and Payments

- A title agent provides a food tray for an open house, posts a sign in a prominent location indicating that the event was sponsored by the title agent, and distributes brochures about its services.
- A mortgage lender sponsors an educational lunch for real estate agents where employees of the lender are invited to speak. If, however, the mortgage lender subsidizes the costs of continuing legal education credits, this activity may be seen as defraying costs the agent would otherwise incur, and may be characterized as an unallowable referral fee.
- A title company hosts an event that various individuals, including real estate agents, will attend and posts a sign identifying the title company's contribution to the event in a prominent location for all attending to see and distributes brochures regarding the title company's services.
- A hazard insurance company provides notepads, pens, or other office materials reflecting the hazard insurance company's name.
- A mortgage brokerage sponsors the hole-in-one contest at a golf tournament and prominently displays a sign reflecting the brokerage's name and involvement in the tournament.
- A real estate agent and mortgage broker jointly advertise their services in a real estate magazine, provided that each individual pays a share of the costs in proportion with his or her prominence in the advertisement.

- A lender pays a real estate agent fair market value to rent a desk, copy machine, and phone line in the real estate agent's office for a loan officer to prequalify applicants.
- A title agent pays for dinner for a real estate agent during which business is discussed, provided that such dinners are not a regular or expected occurrence.

## 5. Examples of Prohibited Activities and Payments





- A title company hosts a monthly dinner and reception for real estate agents.
- A mortgage broker pays for a lock-box without including any information identifying the mortgage broker on the lock-box.
- A mortgage lender provides lunch at an open house, but does not distribute brochures or display any marketing materials.
- A hazard insurance company hosts a “happy hour” and dinner outing for real estate agents.
- A home inspector pays for a real estate agent to go to dinner, but does not attend the dinner.
- A title company makes a lump-sum payment toward a function hosted by the real estate agent, but does not provide advertising materials or make a presentation at the function.
- A mortgage broker buys tickets to a sporting event for a real estate agent, or pays for the real estate agent to play a round of golf.
- A title company sponsors a “get away” in a tropical location, during which only an hour or two is dedicated to education and the remainder of the event is directed toward recreation.
- A mortgage lender only pays a real estate agent for taking the loan application and collecting credit documents if the activity results in a loan.

Before you undertake any activity with a SSP or accept any payments, goods, or services from a SSP, you should speak with an attorney familiar with RESPA and make sure the activity complies with state and local laws. Some of these laws prohibit activities that are otherwise permissible under RESPA.

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## CLAIMPREVENT® BLOG

# What Real Estate Brokers Need to Know About Anti-Competitive Behavior

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Real estate brokers have an ethical and legal responsibility to ensure your business complies with antitrust laws. Avoiding anti-competitive behavior, or anything that may be perceived as anti-competitive, will help you to avoid a lawsuit in the future. If you don't, you could face severe consequences. An antitrust lawsuit could see your reputation in tatters, and it could be the end of your business. Court costs are expensive and you could face hefty fines (and in some cases imprisonment).

In our latest blog post, we explore key aspects of United States antitrust laws that are designed to protect consumers. We'll also look at three of the main areas of anti-competitive behavior which have come up in previous real estate lawsuits. These are:

- Price-fixing
- Market allocation
- Inequitable access to or misuse of a Multiple Listing Service (MLS)

## Antitrust Laws in the US

Antitrust laws are designed to prevent monopolies and promote fair competition. They protect the interests of consumers, so they have a choice in the market, uninfluenced by anti-competitive behavior.

As a real estate broker, it is crucial that you familiarize yourself with the key aspects of the Federal antitrust laws: Sherman Antitrust Act; The Clayton Act; and Federal Trade Commission Act. Depending on where your business is operating, there may also be state antitrust laws that you need to comply with.

Here are three important aspects of the laws to be aware of as they relate to real estate.

### Price-Fixing

Price-fixing occurs if real estate brokers or licensees from competing companies conspire when it comes to pricing and commissions. An example of this is where there are multiple real estate brokerages in a small town that all agree to charge the same percentage commission. Or they might set a minimum price that all competitors agree to stay above, so prices remain artificially high in the area. Collaborating with your competition to fix prices not only limits consumer choice, it is a clear violation of antitrust laws as it promotes restraint of trade.

Recently, in October 2023, the judgment for a class action lawsuit based on alleged price-fixing against the National Association of REALTORS® and two Missouri brokerage firms was announced. The judge found them liable to pay nearly \$1.8 billion in damages for conspiring to keep their commissions high.

Media coverage surrounding the decision stated that appeals were expected to be lodged for this case. However, it is a good example of the significant consequences real estate brokers can be subjected to if a price-fixing claim is made against you.

What to do:

1. Establish your fees for services without discussing or even announcing those fees to your competitors.
2. Create a company policy for any commission splits, without discussing your policy with the competition.
3. When talking with clients, emphasize that your fees and policies are established by your brokerage. Be sure your licensees do not imply that “all real estate agents” do something, or local associations require something.

Note that price fixing refers to “any economic term” of a listing agreement — listing term as well as commission rate.

## Inequitable Access to or Misuse of a Multiple Listing Service (MLS)

There’s no doubt that an MLS is a valuable tool in real estate. It is a centralized system that helps brokers and licensees share property information, and it streamlines the buying and selling process. It also increases exposure for properties because they are seen by a larger network of real estate professionals, boosting the chances of a sale. Despite the benefits, inequitable access to or misuse of a MLS can result in legal ramifications because they undermine fair competition. This includes:

- Manipulating property data, which can lead to misinformation and unduly influence a seller or a buyer.
- Selectively excluding properties or clients in a discriminatory manner
- Implying that the MLS won’t accept the listing due to lower fees or other terms

- Implying other licensees won't show the house if the clients list with certain companies or licensees

To avoid an antitrust lawsuit, expensive fines, or even a suspension of your real estate license, you must promote equal access to MLS information for everyone in the marketplace. Inclusiveness, honesty, and transparency, are all positive characteristics that will go a long way to making your real estate business a trusted one in the marketplace.

## Market Allocation

Dividing markets or territories with your competitors is another example of an antitrust breach. You cannot simply make an arrangement with a competitor to not compete — this is unlawful whether you have a formal or informal agreement. That means you can't say to your competitor: "You take North of downtown, and I'll take the South" or "Don't sell in my market, and I won't sell in yours". There are extremely tough penalties for market allocation. You may even face criminal prosecution, which could lead to significant fines and imprisonment.

## Tips for Real Estate Brokers to Avoid an Anti-competitive Behavior Lawsuit

### **Familiarize yourself with the legislation**

When was the last time you read through the legislation or checked to see if anything had changed? It's essential real estate brokers are proactive and keep informed about antitrust laws both federally and in the state where you run your business.

Many real estate associations offer resources and guides that can help brokers and licensees to navigate anti-competitive behavior and ensure compliance. Even if you're not a member of an association, there are many resources published on the internet from real estate associations that may be of use.



## **Keep updated**

Been in the business for a while? Even if you feel you know the antitrust legislation well, continuing education is important. If you get the chance to attend workshops, seminars, or webinars on the topic, these can be a useful refresher. They are a great opportunity to broaden your knowledge and find out about any important updates.

## **Establish anti-trust compliance policies within your brokerage**

Develop internal policies that outline your brokerage's approach to compliance for antitrust laws and anti-competitive behavior. Your office needs a written antitrust compliance policy.

## **Educate your team**

Of course, policies are not useful at all unless they are communicated effectively to your team. Run regular education sessions for your team to ensure they are all aware of the relevant antitrust laws. They also need to understand the impact of anti-competitive behavior and the serious consequences of non-compliance.

Do not assume that long-time real estate licensees are up-to-date on the latest antitrust laws. Running through a simple refresher in a meeting by talking about problem phrases and practices can help avoid problems.

## **Seek advice from a qualified real estate attorney**

Navigating the antitrust legal landscape and anti-competitive behavior can be complex for brokers. If you do encounter issues within your brokerage that you think may constitute anti-competitive behavior, obtain legal advice. A qualified legal professional who specializes in real estate can provide you with trusted advice tailored to your specific needs. Even if you just have a small question about antitrust laws and compliance, seek professional legal advice to ensure you don't find yourself on the wrong side of the law.

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# Fair Housing Advertising Words and Phrases List

There are words and phrases that are entirely acceptable and some that are entirely unacceptable. Sometimes it will depend on how they are used. The general rule is to avoid references to any of the protected categories, or discouraging applicants who have physical or mental limitations. In addition to the federal protected categories, there also may be state and local protected categories that may apply to your property. These are our recommendations for best practices. These lists are not intended and should not be used in place of legal advice. For answers to specific questions, consult an attorney.

## ACCEPTABLE



Credit Check  
Required  
Den  
Equal Housing  
Opportunity  
Family Room  
First Time Buyer  
Fixer-Upper  
Great for Family  
In-Law Apartment  
Luxury Townhomes  
Nanny Room  
Near Mass Transit  
Near Golf Course  
(Neighborhood Name)  
Nice  
No Drinking  
No Drugs  
No Drug Users  
No Smoking  
Number of Bedrooms  
Nursery  
Nursing Home  
On Bus Route  
Private Entrance

Retirees \*  
Seniors \*  
Senior Citizens \*  
Senior Housing \*  
Grandma's House \*  
Golden Ages \*  
Sophisticated  
Student Housing  
Within Walking  
Distance of  
Master Suite  
Walk in Closet  
Gated Community  
Description of  
Amenities  
Quality  
Construction  
Quiet  
Reference Required  
(School District)  
(School Name)  
Security Provided  
Play Area  
Privacy  
Private Driveway  
View of \_\_\_\_\_

Senior Discount  
\_\_\_\_ Square Feet  
Starter Home  
Traditional Style  
Tranquil Setting  
Verifiable Income  
Board Approval  
Required  
Close to Downtown  
or Stadium  
Domestic Quarters  
Female or Male  
Roommate  
Handyman's Dream  
Screened for  
Income and Credit  
Membership  
Approval Required  
Near Country Club  
No College Students  
Prestigious  
Quality  
Neighborhood  
Quiet Neighborhood  
Private Setting  
With View





UNACCEPTABLE



Able-bodied  
Adult Living  
Active Adult Community  
Adults Only  
Agile  
Couples only  
Safe neighborhood  
Criminal Record Not  
Accepted  
Felons Need Not Apply  
Empty Nesters  
Ethnic References  
Exclusive Neighborhood  
Racial References  
Religious References  
Healthy Only  
No Gays or Lesbians  
Heterosexuals Only  
Mature Couple  
Mature Individual  
Mature Person(s)  
Must Be Employed

Reference to Nationality  
Near Church(es)  
Near Synagogue  
Near Temple  
Newlyweds  
No AIDS  
No Alcoholics  
Only Christians Need Apply  
No Children (unless HOPA\*)  
No Teenagers (unless HOPA\*)  
No Play Area  
No Unemployed  
Not for Handicapped  
Older Person  
Only One Child  
One Person  
Physically Fit  
Quiet Tenants Only  
Singles Only  
Single Person  
Stable

*\*HOPA Community - May be used when housing requirements meet the Fair Housing Act criteria for "housing of older persons."*

# Fair Housing

# 6

Real estate brokers are subject to a web of federal, state and local fair housing laws that are intended to eradicate discriminatory conduct in the sale or rental of dwellings and promote residential integration. The methods of enforcing these laws are varied and the penalties that can be exacted for a violation are severe. For most real estate firms, the practical effect of a finding of liability is a serious financial loss, coupled with public embarrassment and reputational loss. Noncompliance with fair housing laws is a risk that responsible real estate brokers simply cannot assume as a cost of doing business. Thus, to reduce risk, real estate brokers should consider offering comprehensive education and training of all sales associates and staff to ensure a thorough understanding of the obligations and prohibitions outlined in fair housing laws.

This chapter includes:



**Figures: 3**



**Checklists: 1**



**Case Summaries: 15**



**Training Module with 2 Exercises**

## Fair Housing Laws

### Federal Law



The body of federal law that is commonly called the fair housing laws consists of the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968 (Title VIII).

The 1866 Act provides that:

*All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, sell, hold, and convey real and personal property.*



In 1968, the United States Supreme Court held that the 1866 Act prohibits all forms of racial discrimination in real estate, whether committed by government or by private parties. See *Jones v. Mayer*, 392 U.S. 40988 S.Ct. 218620 L.Ed.2d 1189 (1968). Persons suing under the 1866 Act are entitled to recover actual and punitive damages, and their attorney fees and costs.

Title VIII is a comprehensive fair housing law that addresses not only racial discrimination, but also discrimination on the basis of other protected classes: race, color, religion, national origin, sex, handicap<sup>1</sup> and familial status. Title VIII prohibits five different types of discrimination:

- **To refuse to sell or rent, or to otherwise make unavailable, a dwelling because of a person's membership in a protected class**
- **Discrimination in the terms, conditions or privileges of a sale or rental of housing, or in the provision of services in connection with same**
- **Use of advertising that expresses a preference for or against certain persons because of their membership in a particular protected class**
- **Representations that a dwelling is not available for sale or rent, when in fact the dwelling is available**
- **Attempts to induce a person to sell or rent a dwelling by referring to the prospective entry of persons of a particular race, color, sex, religion, national origin, handicap or familial status**

In addition to prohibiting specific practices involving the sale or rental of dwellings, Title VIII also prohibits redlining, including discrimination in financing and insuring of housing, as well as discrimination in access to Boards of REALTORS®, Multiple Listing Services, or other services, organizations or facilities that relate to the business of selling or renting dwellings.

Further, a housing provider may be found to have violated Title VIII through what is known as disparate impact liability. Under disparate impact liability, no intent to discriminate is required. Instead, the housing provider may be in violation of Title VIII where a facially-neutral policy or practice has a disparate impact on one of Title VIII's seven protected classes if the policy or practice is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider or the interest could be served by another practice that has a less discriminatory effect.

### Enforcement

The federal government has broad authority to enforce Title VIII. In 1988, Congress amended Title VIII to add handicapped persons and families with children as protected classes, and also to dramatically strengthen the enforcement procedures under Title VIII. A person who believes he or she is a victim of a discriminatory housing practice may bring an action directly in federal court and recover actual and punitive damages, as well as reasonable attorney fees and costs. Also, the United States Attorney General may bring an action where a pattern or practice of discrimination has occurred, as opposed to a single isolated act. The Attorney General may secure injunctive relief

<sup>1</sup> While discrimination against "the disabled" is prohibited by other civil rights laws, the FHA uses the term "handicapped." The two words handicap and disability are used interchangeably throughout this chapter.

and damages for victims of discrimination, together with civil penalties of \$55,000 for a first offense, and \$110,000 for any subsequent offense.

In addition to suing directly in federal court, an aggrieved person — that is, a person who believes he or she has been a victim of discrimination — may file a complaint with the Department of Housing and Urban Development (HUD). In addition to aggrieved persons, fair housing agencies may file complaints if they can show that they devoted significant resources to identify and act against discriminatory practices and did so to the detriment of their other efforts on behalf of equal access to housing. HUD will investigate the complaint to determine whether or not there is reasonable cause to believe that a violation has occurred, and HUD will attempt to resolve the complaint through conciliation. If reasonable cause is found, HUD will issue a charge against the respondent. The respondent, the aggrieved person, and HUD have 20 days to determine whether to resolve the charge before a HUD administrative law judge (ALJ) or before a federal district judge. The matter will be removed to a federal district court if any one of the parties with the right to remove the matter so elects. If no election is made, and the case proceeds before a HUD ALJ, an attorney from HUD will represent the aggrieved party before the HUD ALJ. If the case is removed to a federal district court, then an attorney from the Department of Justice will prosecute the case.

*In addition to suing directly in federal court, an aggrieved person may file a complaint with the Department of Housing and Urban Development (HUD).*

Both ALJs and federal courts may award the aggrieved person actual damages and issue injunctions to prevent any further discriminatory practices. An aggrieved person may recover attorney's fees as well, in either forum. If the respondent is found to have committed a discriminatory housing practice, a HUD ALJ may also assess civil penalties, if necessary, to vindicate the public interest. These penalties are limited to \$11,000 if there are no prior offenses, \$27,500 if there is one prior offense within five years, and \$55,000 if there are two prior offenses within seven years. But if the prior offenses were committed by the same individual, rather than the same firm, then additional penalties may be imposed without regard to the time limitations. ALJs may also assess multiple civil penalties in cases where multiple violations have occurred. For instance, if a landlord advertises that a property is not available to families with children, the ALJ could assess one penalty against the landlord; if the landlord also unlawfully refuses to rent to a family with children that inquires about the property, the ALJ could assess a second penalty against the landlord.

If the case proceeds to federal court, the judge does not have authority to impose civil penalties, but may impose actual and punitive damages in favor of an aggrieved person shown to have been injured by a discriminatory housing practice; injunctive relief; as well as reasonable attorney's fees and costs to the prevailing party, other than the United States.

## State and Local Fair Housing Laws

Title VIII expressly recognizes that state and local governments may also enact fair housing statutes and ordinances. Title VIII authorizes the Secretary of HUD to review state and local ordinances and certify those that are substantially equivalent to Title VIII. If a state or local statute is deemed by HUD to be substantially equivalent to Title VIII, then HUD will refer all complaints it receives from that jurisdiction to the state or local agency for processing. HUD regulations make clear that substantially equivalent state or local statutes may include those that provide broader protection than Title VIII.

Thus, in addition to the seven protected classes under Title VIII, state or local ordinances may include a prohibition against discrimination for additional classes, such as:

- **Age**
- **Source of income**
- **Marital status**
- **Sexual orientation**
- **Occupation**
- **Gender identity**

## Conduct Prohibited by the Fair Housing Laws

### Refusals to Sell or Rent

Any refusal to sell or rent a dwelling because of race, color, sex, religion, national origin, handicap or familial status violates Title VIII. A refusal to sell can, for example, include applying more stringent qualification criteria for minority prospects than for nonminority prospects or a flat out refusal to sell to a person because of their national origin. Title VIII only applies to discrimination in the sale or rental of dwellings. The 1866 Act applies to the sale or rental of any type of real estate, but only applies to discrimination based upon race.

### Steering

Steering is conduct designed to influence a person's housing choice based upon race, religion, sex, color, national origin, handicap or familial status. The classic example of racial steering is a real estate agent directing minority prospects to integrated or all-minority neighborhoods, and white prospects to all-white neighborhoods. Evidence of steering is often gathered through the use of testers. Lawsuits challenging steering are often brought by the testers themselves or the fair housing organizations that employ them.

### Blockbusting

Blockbusting, also known as panic peddling, refers to the suggestion, during an effort to solicit a listing, that the seller should sell or otherwise dispose of the property because persons of a particular race, religion, sex, national origin, color, handicap or familial status are moving into the neighborhood. Title VIII specifically prohibits blockbusting. Real estate professionals should exercise great caution when engaging in listing solicitations in neighborhoods known to be experiencing racial transition.

## Advertising

While HUD regulations do not require that all advertising of residential real estate for sale, rent or financing include an equal housing opportunity logo, statement or slogan, HUD may view their inclusion as evidence of compliance with the Fair Housing Act's (FHA) prohibitions against discriminatory advertising. HUD regulations do require the prominent display of HUD's fair housing posters, which are available online and from HUD area offices, in the following locations:

- **At brokerage offices and any other places of business where covered dwellings are offered for sale or rent; and**
- **At dwellings under new construction, beginning with the commencement of construction and maintained throughout construction and until such dwellings are sold or rented.**

*As a rule of thumb, ads should focus on property descriptions, rather than descriptions of potential buyers or tenants.*

Title VIII prohibits the use of advertising that indicates a preference for or against prospective buyers or tenants of a particular race, religion, sex, color, national origin, handicap or familial status. As a rule of thumb, ads should focus on property descriptions, rather than descriptions of potential buyers or tenants. Stating that a property is near a jogging trail (focusing on location) is more acceptable than saying that it's great for joggers (focusing on potential buyer or tenant). Also keep in mind that violations of the Fair Housing Act can occur even when there is no overt discriminatory reference or intent. The determinative consideration is whether a reasonable reader would find the reference discriminatory.

Acknowledging whether or not an advertisement is discriminatory is not always clear, a 1995 Fair Housing and Equal Opportunity Memo was published in order to set forth helpful guidelines that are still applicable today. The following are some of the guidelines regarding acceptable and unacceptable advertising phrases from that 1995 Memo.

The entire 1995 Fair Housing and Equal Opportunity Memo is available at:  
[www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf](http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf)

## Advertising Guidelines for Acceptable/Unacceptable Phrases

### RACE, COLOR AND NATIONAL ORIGIN

- **Unacceptable:** Wording that describes the housing, the current or potential residents, and neighbors or neighborhood in racial or ethnic terms (e.g., white family homes, no Irish)
- **Acceptable:** Racially and ethnically neutral terms (e.g., master bedroom, rare find, desirable neighborhood)

### RELIGION

- **Unacceptable:** Ads with blatant phrases (e.g., no Jews, Christian home)
- **Unacceptable:** Ads that use the legal name of an entity containing a religious reference (e.g., Roselawn Catholic Home), or a religious symbol such as a cross, unless there is a disclaimer indicating that the property does not unlawfully discriminate
- **Acceptable:** Secular terms such as Merry Christmas, Happy Easter, or images of Santa Claus, an Easter Bunny, or a St. Valentine's Day graphic

### SEX

- **Unacceptable:** Ads that indicate a gender preference (e.g., males/females only apply), except where a shared living arrangement applies to the property
- **Acceptable:** Commonly used physical descriptions of housing units which are not preferential or limiting terms (e.g., mother-in-law's suite, bachelor apartment)

### HANDICAP

- **Unacceptable:** Ads that disallow handicap accessories (e.g., no wheelchairs)
- **Acceptable:** Phrases which describe a property's features, services, facilities, or neighborhood (e.g., great view, fourth-floor walk-up, walk-in closets, jogging trails, walking distance to bus stop)

### FAMILIAL STATUS

- **Unacceptable:** Ads that limit the number or ages of children allowed or express a preference for adults, couples or singles (see Older Persons' Exemption later in this section)
- **Acceptable:** Descriptions of properties, their services and facilities (or lack thereof), or their neighborhood (e.g., two-bedroom, cozy family room, no bicycles allowed, quiet streets)

## Ad Placement

Using advertising media solely in selective publications targeted at members of a particular protected class can also lead to discriminatory results and may violate the Fair Housing Act. For example, problems may arise when an advertisement is placed in particular geographic or zoned edition of major metropolitan newspapers or in smaller newspapers that reach a particular segment of the community. Use consistent language about the properties and communities when advertising in several small newspapers that reach different audiences. These principles apply regardless of whether the advertisement is placed in a print or online publication.

## Use of Models

Caution should be exercised when using human models in real estate advertising. Courts around the country have held that the use of racially exclusive human models to advertise dwellings may violate Title VIII, and a claim can be successful even when there was no intent to discriminate. HUD regulations state that, if human models are used, the models should reasonably represent the majority and minority populations in the relevant metropolitan area, as well as both sexes and families with children. The ads should indicate that housing is open to all without regard for any protected characteristic.

*Using advertising media solely in selective publications targeted at members of a particular protected class can also lead to discriminatory results and may violate the Fair Housing Act.*



## Target Marketing

Brokers often struggle with how to create an effective marketing plan that focuses on one or more parts of the population without running afoul of the Fair Housing Act. Target marketing is a popular technique used by real estate professionals to drive business, but it can lead brokers astray if they're not careful.

When planning a marketing strategy, brokers should avoid basing their marketing decisions on prospective clients' membership (or nonmembership) in any of the classes protected by the federal Fair Housing Act or by their state or local fair housing laws. For example, brokers should not focus on only Hispanic buyers, to the exclusion of African Americans or Asians or Caucasians. Nor should brokers market their services only to Christians, to the exclusion of non-Christians, or advertise in publications designed to reach seniors, to the exclusion of families with children.

The rule not to market on the basis of membership in a protected class applies even if the protected class is one that the real estate professional belongs to. There is, however, nothing wrong with a broker marketing his or her brokerage as having agents with certain language skills that would be of interest to people of a certain national origin. The broker just needs to be sure that the client's decision to work with his or her brokerage comes from the clients themselves. Brokers should not assign a particular sales associate to represent all members of a group he or she is a member of.

In general, brokers will usually be on safe ground if they niche market in accordance with the rule for composing ads for properties: focus on the property's characteristics, not those of the prospective buyer or tenant. For instance, a niche marketing plan that is based on any of the following property types is perfectly lawful and can be quite effective:

- **Luxury communities**
- **Fixer-uppers**
- **Condominiums**
- **Single-family homes**
- **Resort housing**
- **Properties in foreclosure**
- **Homes on the historic register**

*Real estate professionals may market directly to first-time home buyers and clients who are relocating.*

An exception to these general rules about focusing on the property characteristics is that, real estate professionals may market directly to first-time home buyers and clients who are relocating. A brokerage may also focus on seniors by developing expertise on issues that are of interest to seniors (for example, retirement planning and reverse mortgages). Brokers should be sure, however, to make their knowledge and services available to anyone who has an interest in them, regardless of age, familial status or any other protected characteristic. Brokers should never refuse or forget to show families with children properties that are not qualified senior housing just because many seniors live there.

## Handicapped Discrimination

In 1988, Congress amended Title VIII to include handicapped persons and families with children as protected classes. These amendments took effect on March 12, 1989.

The definition of handicap includes both physical and mental handicaps. Specifically included, according to HUD regulations, are alcoholics and persons with the HIV virus, AIDS, and other communicable diseases. On the other hand, Title VIII specifically excludes from the definition of handicap persons who are current abusers of controlled substances. Nothing in the Fair Housing Act would require a dwelling to be made available to an individual who poses a direct threat to the health and safety of other individuals or whose tenancy would result in substantial damage to the property of others.

HUD regulations state that real estate brokers or agents may not inquire whether a person has a handicap, or the extent of any handicap, in evaluating a person's qualifications to buy or rent a dwelling. A broker or agent may, however, ask questions about a prospect's rental history or other relevant issues — so long as the same questions are asked of every prospect.

*HUD regulations state that real estate brokers or agents may not inquire whether a person has a handicap, or the extent of any handicap, in evaluating a person's qualifications to buy or rent a dwelling.*

Title VIII prohibits property owners from refusing to permit handicapped occupants of a dwelling to make reasonable modifications to a unit, at the tenant's expense, in order to allow the handicapped tenant to fully enjoy the premises. The property owner may, however, condition modifications to the interior of a unit on the tenant's agreement to restore the unit to its original condition when the handicapped person's occupancy ends. The property owner may also require that all modifications be done in a safe and workmanlike manner. Examples of reasonable modifications that must be permitted include:

- **Installation of grab bars around bath tubs and toilet seats**
- **Widening of a door to permit passage of a wheelchair**
- **Installation of a flashing light in lieu of a door bell**
- **Relocation of environmental controls**

In addition to requiring the tenant to agree to pay for the modification and the restoration of the unit, a property owner may, where appropriate, create an escrow account into which the tenant will pay a monthly amount necessary to cover the cost of restoring the interior modifications made by the tenant. While permissible, such escrow accounts should be used only where the modifications are unusual and the expense of restoration is significant. HUD has made clear that it will carefully review the necessity of any escrow account that is the subject of a discriminatory housing practice allegation.

Title VIII also requires property owners, as well as homeowner associations where property is owned, to make reasonable accommodations in any rules or regulations governing the housing development that are necessary to permit the tenant or owner to fully enjoy the premises. In addition, homeowner associations must allow owners to make reasonable modifications to their units to fully enjoy the premises. Examples of reasonable accommodations that must be permitted include:

- **The allowance of a seeing eye dog, notwithstanding a no-pet rule**
- **Assignment of a parking space to a handicapped tenant near the tenant's building entrance, notwithstanding a first-come, first-served policy governing tenant parking**
- **Waiver of a rule banning vans in a building parking lot when a van is necessary to a handicapped person's transportation**

## New Construction

Title VIII further provides that all covered multifamily dwellings, must meet certain basic accessibility and adaptability requirements. A covered multifamily dwelling includes all units in a building of four or more dwelling units if the building has an elevator, and ground-floor dwelling units in a building of four or more dwelling units without an elevator.

HUD regulations also define "first occupancy" to mean the building's first use for any purpose. Design and construction requirements do not apply to nonresidential buildings that are rehabilitated for residential use and are first used for residential purposes after March 13, 1991. Simply put, the first occupancy requirements limit the applicability of the design and construction requirements only to new construction.

The design and construction requirements that covered multifamily dwellings must meet include:

- **Public and common use areas that are readily accessible to and usable by handicapped persons**
- **Doors that are sufficiently wide to allow passage by a wheelchair**

- **The inclusion of the following features of adaptable design:**

- an accessible route into and through the unit
- reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where provided
- usable kitchens and bathrooms, such that an individual in a wheelchair can maneuver about the space
- light switches, electrical outlets, thermostats and other environmental controls in accessible locations

HUD's regulations further state that design and construction requirements do not apply to townhouses or other cluster arrangements without elevators, where four or more single-family homes share common walls, and each individual dwelling has two or more stories. In short, HUD has defined a ground-floor unit to mean units where the entire unit is on a ground floor.

## Families with Children

Title VIII forbids property owners or agents from refusing to sell or rent a dwelling to an otherwise qualified prospect simply because the prospect has children under the age of 18 in the household. Familial status protection encompasses a parent or guardian who has legal custody, as well as those in the process of acquiring legal custody, of children under the age of 18, and pregnant women.

While Title VIII prohibits discrimination based upon familial status, the statute does not preempt reasonable state or local regulation limiting the number of persons who may occupy a particular dwelling. HUD regulations further provide that when state or local law does not include occupancy limitations, property owners may adopt their own limitations, provided that such limitations do not operate unreasonably to limit or exclude families with children. HUD has stated that an "occupancy policy of two persons in a bedroom, as a general rule, is reasonable" under the Fair Housing Act. (It has also stated that additional occupants might be reasonable if there are additional rooms, like a den or a study.)

HUD regulations further assert that property owners may not establish dual-purpose facilities where certain sections of a housing complex are reserved for adults only and other sections for families with children. Such policies would be analyzed under the same standard as if the segregation were on the basis of race.

On the other hand, HUD regulations state that Title VIII is not intended to limit the ability of property owners to develop and implement reasonable rules relating to the use of facilities associated with dwellings, such as weight rooms, swimming pools or saunas, as long as the rules are based upon legitimate health or safety considerations and are not unduly restrictive. Courts examine whether such rules are discriminatory in the "terms, conditions, and privileges" available to families with children.

## Older Persons' Exemption

Notwithstanding Title VIII's prohibition on discrimination against families with children, Title VIII specifically authorizes the exclusion of children from qualified housing for older persons. Qualified housing for older persons includes any housing provided pursuant to a state or federal program designed to accommodate the needs of senior citizens, as well as two other types of housing:

- **Housing intended for, and exclusively occupied by, persons 62 years of age or older**
- **Housing intended for residents age 55 and older, where 80 percent of the units are occupied by at least one person 55 years of age or older per unit, a statement is published by the housing provider that it adheres to policies and procedures that demonstrate the intent to provide for senior housing, and the facility or community complies with HUD's regulatory requirements for age verification of residents**

*Title VIII specifically authorizes the exclusion of children from qualified housing for older persons.*

To satisfy the age-55-or-over exemption, a property manager must carefully monitor the ages of the occupants in the units to ensure that at all times no less than 80 percent of the units are occupied by at least one person 55 years of age or older. Additionally, the owner must publish and adhere to policies and procedures that demonstrate an intent to provide housing to persons 55 years of age or older. Such policies and procedures include advertising used to market the development, lease provisions, and the development's rules and regulations. Real estate professionals should rely only on the written assertions of owners or managers, that the licensees have seen for themselves, that a property is exempt based on the ages of the residents, and on the existence and enforcement of such policies and procedures.

Prior regulations also mandated that the development provide significant facilities and services specifically designed to meet physical or social needs of persons over 55 years of age. Even though it's no longer required by the FHA, some state laws still require properties to provide significant facilities and services in order to qualify for the 55-or-older exemption.

It is important to note that, while the housing for older persons' exemptions does exempt a housing provider from the prohibition against familial status discrimination, the exemptions do not exempt a housing provider from discrimination based on any other protected characteristic.

## Compliance Program

An effective fair housing compliance program consists of four basic components:

- **The firm's policy and public commitment to fair housing**
- **Agent education and training in methods that ensure compliance with the fair housing laws**
- **Regular and systematic documentation of the firm's practice of providing equal opportunity and service**
- **Identification and correction of failures in compliance**

### The Firm's Policy and Public Commitment

All REALTORS® and REALTOR-ASSOCIATES® are bound by the REALTOR® Code of Ethics, which prohibits REALTORS® from denying equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity. The Code, however, does not represent the firm's personal commitment to fair housing. The firm's personal commitment to fair housing, as expressed through a compliance program as outlined in this section, is important for two reasons:

1. There is no obligation for a plaintiff, a tester, or a fair housing agency to give advance warning before it files a complaint. Adoption of a compliance program only after a complaint has been filed will be viewed as self-serving and not reflective of a true commitment.
2. Everyone is presumed to know the legal obligations of fair housing. Thus, simply acknowledging awareness of one's legal duty will not defeat a pattern of practice case, or even a claim for punitive damages. The conduct necessary to overcome such claims must be outward, overt and resolute programs designed affirmatively to ensure compliance with the law. The fact that a company has not yet experienced any fair housing complaints is not a valid reason to avoid public commitment to fair housing compliance.

Over the years, HUD and NAR have developed various mechanisms to demonstrate their commitment to fair housing. The first was the Voluntary Affirmative Marketing Agreement (VAMA) between HUD and NAR, which laid out a number of specific requirements relating to fair housing practices and was replaced in 1996 by the Fair Housing Partnership Agreement (Partnership Agreement). The Partnership Agreement provided for the development of a REALTOR® Fair Housing Declaration (see Figure 6-1) that REALTORS® may use to promote fair housing to the public and within their firms. While the Partnership Agreement is no longer in effect, the Declaration is still relevant and may be used as an important tool to raise awareness and commitment to fair housing.



Figure 6-1 REALTOR® Fair Housing Declaration

## REALTOR® Fair Housing Declaration

### I agree to:

Provide equal professional service without regard to the race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity of any prospective client, or customer, or of the residents of any community.

Keep informed about fair housing law and practices, improving my clients' and customers' opportunities and my business.

Develop advertising that indicates that everyone is welcome and no one is excluded, expanding my clients' and customers' opportunities to see, buy or lease property.

Inform my clients and customers about their rights and responsibilities under the fair housing laws by providing brochures and other information.

Document my efforts to provide professional service, which will assist me in becoming a more responsive and successful REALTOR®.

Refuse to tolerate noncompliance.

Learn about those who are different from me, and celebrate those differences.

Take a positive approach to fair housing practices and aspire to follow the spirit as well as the letter of the law.

Develop and implement fair housing practices for my firm to carry out the spirit of this declaration.



The implementation of a firm's public commitment begins by creating a written policy. A sample of a company fair housing policy, as well as other helpful information and materials, including the Equal Services Checklist (see checklist on next page), can be found in NAR's Fair Housing Handbook, available at [www.store.realtor](http://www.store.realtor). Once a brokerage policy is in place, it's critical that the broker make sure that all agents and associates are familiar with and have committed to that policy. The appointment of a "Fair Housing Officer" in a firm can be helpful in this regard, by making someone responsible for the following:

- **Keeping current on developments in fair housing law**
- **Providing fair housing training**
- **Answering fair housing questions**
- **Tracking your company's compliance with fair housing law**

# EQUAL SERVICES CHECKLIST



☐ **Develop policies or procedures concerning treatment of prospects and clients during their initial contact with your firm.**

For example:

- ☐ Hospitality (greeting, refreshments, etc.)
- ☐ Explaining the services offered by your firm relative to their needs
- ☐ Obtaining initial prospect information (name, address, phone number)
- ☐ Assignment to agents
- ☐ Explaining your commitment to fair housing laws
- ☐ Keeping records of these contacts
- ☐ Follow-up

☐ **Obtain objective information regarding the prospect's or customer's needs and wants.**

For example:

- ☐ Identify objective needs, such as price, size, features, and location.
- ☐ Respond to subjective requests in such a way to elicit objective criteria.
- ☐ Determine whether the customer knows what they are financially qualified to buy.

☐ **Let the customer set the limits in the housing search.**

- ☐ Provide prospective buyers and renters with complete and accurate information on the availability of housing, alternative methods of financing, and other facts affecting the choice of location (such as schools, employment or transportation).
- ☐ Allow the prospect to make the choices:
  1. Features in a house or apartment
  2. Price
  3. Financing options
  4. Communities or areas

☐ **Offer a variety of choices:**

- ☐ In financing options
- ☐ In location
- ☐ In types/styles of houses

☐ **Require good recordkeeping for all prospects and inquiries:**

- ☐ Housing requested
- ☐ Housing options and alternatives offered
- ☐ Service provided

☐ **Establish a method of monitoring contacts and evaluating service being provided.**



## Agent Education and Training

A commitment to fair housing compliance that is not coupled with agent education and training is, at best, a commitment in name only. Remember that a brokerage firm could be held liable for the discriminatory acts of its agents, whether or not the firm has committed to fair housing compliance.

Keeping this in mind, it is the broker's responsibility — and in the broker's best interest — to make sure agents know that:

- **Stereotyping and prejudice have no place in the marketing of real estate**
- **Nondiscriminatory qualification criteria must be applied uniformly**
- **Judgments about whether a prospect will fit in a neighborhood because of the prospect's race, color, religion, sex, national origin, handicap, familial status, sexual orientation or gender identity cannot be a basis for showing or failing to show a particular listing**
- **All prospects must be treated courteously and professionally**
- **All prospects must be given equivalent service and assistance during any showings, and in completing rental applications or offer forms**
- **Failure to adhere to these policies will be grounds for dismissal**
- **Prospective agents who will not commit to these policies will not be hired**

Even the most thorough fair housing training program will fail if the corporate culture does not place a high value on it. This means that the company's officers, or the principal of the firm, must take the program seriously. If management does not take the program seriously, neither will the agents. A company must make noncompliance with fair housing obligations strictly taboo, not merely a calculated risk of doing business.

Lastly, companies should endeavor to educate individual sellers and buyers since they may be the single greatest source of pressure on a broker to discriminate or steer. Sellers must understand that the firm will not accept a listing on those conditions, and a clause to this effect should be included in the listing contract. As to how to handle questions from prospective buyers regarding the ethnic or racial make-up of a community, a smart response would be to direct buyers to other sources of such information.

## Documentation of the Firm's Fair Housing Compliance Policy

When confronted with an allegation of a discriminatory housing practice, especially one grounded upon the use of testers, a real estate broker or agent, or their legal counsel, is likely to be presented with detailed written records in which the complainants have identified the specific conduct of the agent that has led to the charge. At a minimum, the complainants will have their own vivid recollection of the events that occurred.

The real estate broker or agent, on the other hand, may only have a hazy memory of the prospect as one of hundreds encountered in the last month or year. The broker or agent may have no written records with which to refresh this recollection or establish that the prospect was in fact afforded equal professional service, unless required to keep them by their brokerage's policies.

For this reason, it is imperative that brokers instruct their agents to keep records of the name, address, phone number and the perceived race and national origin of each prospect, as well as their stated requirements for housing and the price they can afford. To the extent that prospects are willing to see several properties that satisfy their criteria, the agent should record the address of the properties offered to the prospects, whether they were shown, and when they were shown. The form that may be used for this purpose is the Equal Service Report. (See Figures 6-2 and 6-3.)

Properly used, the Equal Service Report, or its equivalent, may provide a strong defense against a charge of steering or disparate treatment. In addition to the Equal Service Report, agents should be instructed to keep records of qualifying information and of when an offer was received. If any standard practices were not followed, or if additional qualifying information was required, the agent should record the reasons why deviations from regular

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office policies occurred. These records should be kept for at least two years, and in many instances, longer in accordance with state law.

Brokers should also consider developing or purchasing a brochure that can be given to all prospective buyers and tenants. The brochure should inform the prospect of laws requiring equal opportunity in housing and the firm's commitment to those policies. A brochure developed by NAR for this purpose is *What Everyone Should Know About Equal Opportunity in Housing*. You can obtain copies of this brochure by going to [www.store.realtor](http://www.store.realtor).



Brokers should also develop and encourage agents to use a follow-up survey to send to all prospective buyers and tenants who, after two weeks, cease to be in active contact with the firm. The survey should ask the prospect to provide certain data concerning how they were served by the firm. When returned, the data from the survey may provide an early warning of any potential complaints. The survey should also provide a critique of an agent's performance in terms of affording equal service. Finally, the survey may alert the firm to reasons why a prospect found alternative housing, and permit the firm to adjust its own marketing strategies as appropriate.

### Identifying and Correcting Failures in Performance

Identifying and correcting failures of performance by agents may be the most difficult component of a fair housing compliance program for a broker to implement, but it is arguably the most important. While a second chance is available in almost every other walk of life, it is not available as a means to avoid legal liability, especially under the fair housing laws.

Brokers must be alert to subtle indications that agents are insensitive to their fair housing responsibilities. Agents who use racial slurs or make excessive use of racial, ethnic or sexual humor, will very likely carry these attitudes into their business affairs. When brokers observe this type of behavior, they should address it immediately by putting the agent on notice that this behavior must change or, if warranted, terminating the agent.

Brokers should also take care to regularly review and modify their procedures to respond to changes in the law and new fair housing issues.

To help avoid legal liability, be alert to indications that agents are insensitive to fair housing responsibilities.



Figure 6-2 Equal Service Report

## Instructions

The NATIONAL ASSOCIATION OF REALTORS® is committed to the provision of equal housing opportunities. The Prospect Equal Service Report is designated to incorporate basic prospect information; needs and wants; properties shown; and a record of service provided. This report will help you keep uniform records for all prospects. The form is not a checklist of service to be provided; the level and type of service you provide will be determined by your firm and should be consistent. The report will, however, document your consistency and provide two fair housing tools:

1. It provides you with evidence of your firm's compliance with the law, which may be an invaluable defense in the event you become involved in a housing discrimination complaint.
2. It allows you and your agents to monitor and review compliance with your fair housing policy and make corrections before you get involved in a discrimination complaint.

You should complete or update the report during or following each contact with the prospect. The report is composed of the following components:

- **Prospect Information**

(Space is provided for two adults in a household.)

*Recording race or national origin* — Recording the perceived race or national origin of a prospect is invaluable in your efforts to document equal professional service and to monitor your firm's compliance with the law and your equal opportunity policy.

- **Prospect Needs and Wants**

(Note: the "Prospect Equal Service Report — Rentals" form is recommended for rental prospects.)

*Housing for older persons* — If you receive a request for housing for older persons, record whether a member of the household is over age 55.

- **Service Provided** — Complete the questions financially qualifying the prospect, attaching qualification forms, if any. Then list your contact dates with the prospect.

- **Property Shown** — Complete the three sections on the back of the report. Use space provided to indicate prospect's comments, clarifying the prospect's needs and wants.

**Part 1** — Record the prospect's initial requests for specific properties and whether these were shown.

**Part 2** — List any properties or areas offered for general consideration, such as a computer printout for a specific community.

**Part 3** — List properties offered or shown by address. Space is provided to indicate who selected the property shown.

- **Disposition** — Indicate that the prospect bought property or that no further service was provided. List additional materials, such as community profiles or the Home Guide, that you provided the prospect.

Figure 6-2 Equal Service Report, continued

Date:	Sales Associate:	Office:
<b>PROSPECT INFORMATION</b>		
Name:	Name:	
Address:	Address:	
Home phone:	Home phone:	
Work phone:	Work phone:	
<input type="checkbox"/> Owns now <input type="checkbox"/> Rents now <input type="checkbox"/> Must sell to purchase <input type="checkbox"/> Owns now <input type="checkbox"/> Rents now <input type="checkbox"/> Must sell to purchase		
Race/national origin:*		Race/national origin:*
<i>*For affirmative marketing purposes. Information on the perceived race or national origin of the prospect is sought to assist in monitoring the firm's commitment to equal professional service. Article 10 of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics states in part: REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity.</i>		
Prospect came to us as a result of:		
<input type="checkbox"/> Walk in <input type="checkbox"/> Past customer <input type="checkbox"/> Sign <input type="checkbox"/> www.NAR.REALTOR <input type="checkbox"/> Other website:		
Referral (source):	<input type="checkbox"/> Ad (source): <input type="checkbox"/> Other:	<input type="checkbox"/> Phone solicitation <input type="checkbox"/> Mail solicitation
<b>PROSPECT NEEDS AND WANTS</b>		
Prospect wishes to: <input type="checkbox"/> Purchase <input type="checkbox"/> Rent <input type="checkbox"/> Possession Date:		
Prospect's price range preference:	Purchase price range:	Rental: (use rental form)
Prospect requested locations:		
Type of home:	# of bedrooms:	# of baths:
<input type="checkbox"/> Dining Room <input type="checkbox"/> Family Room <input type="checkbox"/> Fireplace <input type="checkbox"/> Garage   Other features:		
Does prospect desire information regarding housing for older persons? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If so, is any member of prospect's household over 55? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>SERVICE PROVIDED</b>		
Was prospect asked questions regarding his/her finances? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, indicate information obtained.		
Income:	Down payment:	Other (specify):
Was prospect offered information on financing options? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Indicate any rate information provided.		
<input type="checkbox"/> Conventional/fixed rate:	<input type="checkbox"/> Adjustable rate:	<input type="checkbox"/> FHA/VA: <input type="checkbox"/> Other (specify):
Did you financially qualify the prospect? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable		
If yes, attach worksheets.		If yes, qualified purchase price:
Did you refer the prospect elsewhere for financial qualification? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable		
If yes, to whom:		If yes, qualified purchase price:

Continued on the next page.

Figure 6-2 Equal Service Report, continued

Contact Dates and Comments \_\_\_\_\_

\_\_\_\_\_

PART 1

Did the prospect initially request information on or ask to view any specific property(s)? ☐ Yes ☐ No  
(Requests made prior to assistance being provided to the prospect.)

If yes, list address for each request. Include street address, unit # and community. Use additional sheets if necessary.

\_\_\_\_\_

\_\_\_\_\_

Price: \_\_\_\_\_ Was property shown? \_\_\_\_\_

If shown, buyer's comments indicating preferences. \_\_\_\_\_

\_\_\_\_\_

If not shown, why not? \_\_\_\_\_

Was any written information provided? ☐ Yes ☐ No

PART 2

Were additional properties or areas offered to the prospect for general consideration? ☐ Yes ☐ No

List areas of properties. \_\_\_\_\_

\_\_\_\_\_

PART 3

List properties shown or offered for consideration, including those selected by prospect. Include street address, unit # and community. Use additional sheets if necessary. In the first column, indicate who selected the property: P = Prospect, A = Real estate agent

Property A \_\_\_\_\_

Property B \_\_\_\_\_

Property C \_\_\_\_\_

Property D \_\_\_\_\_

Property	P/A	Price	Was property shown?	If shown, buyer's comments indicating preferences. If not shown, why not?	Was written information on property provided?
A					
B					
C					
C					

DISPOSITION

List materials (such as *What Everyone Should Know About Equal Opportunity in Housing*) provided:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Figure 6-3 Equal Service Report — Rentals

## Instructions

The NATIONAL ASSOCIATION OF REALTORS® is committed to the provision of equal housing opportunities. The Prospect Equal Service Report is designed to incorporate basic prospect information; needs and wants; properties shown; and a record of service provided. This report will help you keep uniform records for all prospects. The form is not a checklist of service to be provided; the level and type of service you provide will be determined by your firm and should be consistent. The report will, however, document your consistency and provide two fair housing tools:

1. It provides you with evidence of your firm's compliance with the law, which may be an invaluable defense in the event you become involved in a housing discrimination complaint.
2. It allows you and your agents to monitor and review compliance with your fair housing policy and make corrections before you get involved in a discrimination complaint.

You should complete or update the report during or following each contact with the prospect. The report is composed of the following components:

- **Prospect Information**

(Space is provided for two adults in a household.)

*Recording race or national origin* — Recording the perceived race or national origin of a prospect is invaluable in your efforts to document equal professional service and to monitor your firm's compliance with the law and your equal opportunity policy.

*Housing for older persons* — If you receive a request for housing for older persons, record whether a member of the household is over age 55.

- **Service Provided/Property Shown**

Indicate prospect's comments clarifying needs and wants.

*Application* — Record if and when you gave the prospect an application and indicate for which unit. Record if and when the prospect returned the application. Keep the application on file with this report.

*Application requirements* — Record what applicant requirements were told to the prospect. Indicate any dollar amounts for application fees, credit check fee and deposit. Indicate whether fees were refundable.

- **Disposition** — Indicate that the prospect rented a unit or that no further service was provided. List any additional materials you provided the prospect, such as community profiles or brochures.

*Continued on the next page.*



Figure 6-3 Equal Service Report — Rentals, continued

Date:	Agent:	Office:			
<b>PROSPECT INFORMATION</b>					
Name:	Name:				
Address:	Address:				
Home phone:	Home phone:				
Work phone:	Work phone:				
Race/national origin:*	Race/national origin:*				
<i>*For affirmative marketing purposes. Information on the perceived race or national origin of the prospect is sought to assist in monitoring the firm's commitment to equal professional service. Article 10 of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics states in part: REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, familial status, handicap, national origin, sexual orientation or gender identity.</i>					
Prospect came to us as a result of:					
<input type="checkbox"/> Ad (source):	<input type="checkbox"/> For Rent Sign	<input type="checkbox"/> Website:			
<input type="checkbox"/> Referral (source):	<input type="checkbox"/> Other:				
Prospect is: <input type="checkbox"/> Current Tenant <input type="checkbox"/> Previous Tenant					
<b>PROSPECT NEEDS AND WANTS</b>					
Prospect preferences: _____		Possession date: _____			
Rent range: _____		Size and type of unit: _____ # bedrooms: _____			
Other features: _____					
Does prospect desire information regarding housing for older persons? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If so, is any member of prospect's household over 55? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Prospect requested locations: _____					
<b>SERVICE PROVIDED</b>					
Did the prospect initially request information on or ask to view any specific property(ies)? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If yes, list address for each request. Include street address, unit # and community.					
Property A					
Property B					
Property C					
Property D					
Property	Rent	Deposit	Was unit shown?	If shown, prospect's comments and preferences. If not shown, why not?	Application offered?
A					
B					
C					
C					
Did you offer to put the prospect on a waiting list for any property requested? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If so, indicate which properties: _____					
Were other properties offered to the prospect? <input type="checkbox"/> Yes <input type="checkbox"/> No					

Figure 6-3 Equal Service Report — Rentals, continued

[illegible]



## CASE SUMMARIES

### Broker Liability for Discrimination by Agents

In **Meyer v. Holley**, 537 U.S. 280, 123 S. Ct. 824 (U.S. 2003) — the Supreme Court of the United States ruled that traditional principles of law applied when determining direct and vicarious liability under the FHA. Reversing the appellate court decision, the Supreme Court found there to be no public policy or other reason why the FHA would impose personal liability on a corporate officer, here the broker of a brokerage company, for the acts of an agent.

### Questions from and Discriminatory Conduct of Clients

In **Coldwell Banker Real Estate Corp. v. DeGraft-Hanson**, Nos. A03A2032 & A03A2033, 266 Ga. App. 23 (Ga. Ct. App. Mar. 3, 2004), the court ruled that a brokerage is not liable for the discriminatory actions of the seller when the brokerage was not acting in violation of the fair housing laws. When the listing broker brought prospective buyers to the property who were African American, the seller refused entry to the property because of their race and thereafter asked that the listing should state that the property should not be shown to “blacks.” The listing broker told the seller that was illegal and ended its relationship with the seller shortly thereafter. The prospective buyers brought a lawsuit against the listing broker for violating the fair housing laws because of the seller’s actions, but the courts dismissed the lawsuit because there was no evidence that the listing broker had played any role in the seller’s discriminatory conduct.

In **Hannah v. Sibcy Cline REALTORS®**, 769 N.E.2d 876, 147 Ohio App. 3d 198 (Ohio Ct. App. 2001), an Ohio court ruled that a real estate professional does not have a duty to provide information about the racial composition of a neighborhood, even if the client requests the information. Following their purchase of a home, buyers claimed that their salesperson breached her fiduciary duty when she refused to provide demographic information about the town where their home was located. The salesperson told the buyers that the FHA prevented her from sharing this information. The appellate court affirmed the lower court’s ruling in favor of the salesperson.

### Disparate Impact Liability

In **Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.**, No. 13-1371, 135 S.Ct. 2507 (2015), the Supreme Court of the United States ruled that a disparate impact theory could be used to prove liability in cases brought under the FHA. A Texas municipality was accused of disproportionately distributing low-income tax credits to predominately black inner-city areas, resulting in a disparate impact on minorities in violation of the FHA. Disparate-impact claims challenge practices of housing providers that have a disproportionately adverse effect on minorities without having to demonstrate that there was intentional discrimination. The Supreme Court stated that a disparate-impact liability theory could be used in FHA cases, but limited its scope in order to ensure that housing providers could still maintain a policy that serves a legitimate business interest. After a plaintiff establishes a prima facie case showing of disparate impact, the burden shifts to the defendant to prove the challenged practice is necessary to achieve one or more substantial, legitimate, non-discriminatory interests. The burden then shifts back to the plaintiff to show the existence of another practice with a less discriminatory effect that would still serve the defendant’s legitimate business interest. In addition, central to this burden-shifting framework is the requirement that a plaintiff be able to show a causal connection between a specific policy or policies of a defendant and the disparate impact.

## Pattern of Discriminatory Practice

In **United States v. Garden Homes Mgmt., Corp.**, 156 F. Supp.2d 413 (D.N.J. 2001), a court determined that a pattern of discriminatory conduct could serve as the basis for FHA liability based on the licensee's conduct. Three apartment complexes under common ownership were investigated by the U.S. Department of Justice and a New Jersey fair housing organization for possible FHA violations. In each of three tests, the white and black testers were treated differently by the leasing agent. The government filed a lawsuit alleging FHA violations, naming the housing complexes and one of its owners individually. The court found that more than one instance of discriminatory conduct could constitute a pattern, and that FHA liability was nondelegable and so an owner could be liable for FHA violations of its rental agent, but the owner can avoid liability if the owner can show that they were not involved in anti-discriminatory conduct. Therefore, the allegations moved to the jury for resolution.

## Standing to Sue

In **NAACP v. City of Kyle**, No. A-05-CA-979 LY, 2006 WL 1751767 (W.D. Tex. June 16, 2006), a Texas federal court ruled that a home builder's trade association had standing to bring a lawsuit over a city's ordinance that allegedly violated the FHA. The city ordinance required that all new homes have certain features such as a garage. These changes caused the entry level price for new homes increase to \$138,000, up from \$100,000. The trade association alleged that the proposed changes would have disproportional adverse effect on minorities because it increased the price of entry level housing. The city filed a motion to dismiss the lawsuit, claiming the association lacked standing to bring a lawsuit against the city for violations of the FHA. The court ruled that the association had standing to sue because: (i) an association has standing if the association's members would be able to bring the lawsuit on their own; (ii) the interests the association seeks to protect are related to the association's purpose; and (iii) neither the claim nor the resolution of the lawsuit involves the actual participation of an association member.

In **Lane v. Cole**, 88 F. Supp.2d 402 (E.D. Pa. 2000), the court allowed a property guest's lawsuit for violations of the FHA to proceed to trial. Following her rental, a tenant invited to her apartment a friend and her two children, who were black. When the other tenants and the landlord learned the tenant had black visitors, they engaged in threatening behavior to both the tenant and the guests. The tenant and guests brought a lawsuit for violations of the FHA against the landlord. The landlord moved to dismiss the allegations brought by the guests, claiming they lacked standing to bring FHA allegations because they were not the party renting the property. The court ruled that the FHA allows an "aggrieved person," or person who has suffered some type of injury, to bring a lawsuit for FHA violations so long as the discriminatory harm suffered is unique and identifiable. Since the guests had suffered harm from the landlord's discriminatory housing practice of conditioning leasing on the exclusion of black guests, the guests had stated a valid claim under the FHA.

## National Origin Discrimination

In **Housing Rights Ctr. v. Donald Sterling Corp.**, 274 F. Supp. 2d 1129 (C.D. Cal. 2003), a court ruled that a property owner violated the FHA by favoring tenants with a particular national origin over other applicants. A housing group alleged that the landlord violated the FHA because he improperly used national origin as a consideration, as he sought Korean tenants for his apartments. The court found that using "Korean" in building names impermissibly signaled a preference for a certain group, while inquiring about a tenant's national origin could serve no other purpose except a discriminatory one. Therefore, the court entered a preliminary injunction barring landlord from using the word "Korean" in its building names and from inquiring about the national origin of his tenants.

## Familial Status Discrimination

In **United States of America v. Westwater Commons Corp.**, 02 Civ. 5241 (WCC), Consent Decree (S.D.N.Y. filed Nov. 25, 2002), a New York federal court approved a consent decree between the federal government and a co-op building for the co-op's alleged violations of the FHA by denying purchaser's application because she had children living with her who were under 18 years old. The purchaser and her 14-year old were interviewed by the co-op board after her offer to purchase a unit in the building was accepted. The purchaser's unit was above a co-op board of director's unit, and the evidence showed that the only reason her application was rejected was because the board member did not want children living above her unit. The purchaser filed a complaint with HUD, and HUD issued a "Charge of Discrimination" against the co-op board. The purchaser then filed a lawsuit alleging familial status discrimination. The parties agreed to settle the case, and to the entry of a Consent Decree, wherein the co-op was enjoined from any further violations of the Fair Housing Act's prohibition on familial discrimination, and the co-op agreed to pay the purchaser a sum of \$102,500.

## Handicap Discrimination Against Disabled Individuals

In **United States of America v. Space Hunters, Inc.**, No. 00 Civ. 1781 (RCC), 2004 WL 2674608 (S.D.N.Y. Nov. 23, 2004), the court upheld a jury verdict in favor of a deaf individual who was discriminated against when a tenant referral company refused to accept calls from relay operator services. The U.S. Department of Justice filed a lawsuit against the tenant referral company after HUD issued a Charge of Discrimination against the company on behalf of the prospective tenant. The appellate court upheld the jury's finding that refusing to communicate through a relay service constituted intentional discrimination against an individual with a disability.

In **Giebeler v. M&B Assoc.**, 343 F.3d 1143 (9th Cir. 2003), the court ruled that a tenant's request to have a co-signer on his lease because his disability prevented him from qualifying financially for the apartment was a reasonable accommodation request that the landlord should not have rejected. An individual with AIDS wanted to rent an apartment but he was unable to meet the income requirements because his illness limited his ability to work. The tenant requested that the landlord make an accommodation for his illness by allowing his mother to act as a co-signer on the lease. When the landlord refused, the tenant filed a lawsuit for violations of the FHA. A federal appellate court ruled that the FHA required the landlord to make accommodations in evaluating the financial means of disabled individuals, when such means are directly impacted by the disability. The court found in favor of the tenant because his request was reasonable since he was not seeking to pay the landlord any less money in rent and he was not seeking to alter the obligations of tenancy (i.e., the requirement to pay rent in a timely fashion).

In **Canady v. Prescott Canyon Estates Homeowners Assoc.**, 60 P.3d 231 (Ariz. Ct. App. 2002), the court ruled that senior living communities are not immune from the FHA prohibition on discrimination against individuals with disabilities. An elderly couple entered into an agreement to purchase a unit in a senior living community, and they planned to live with their severely disabled 26-year old son, but were denied because the community had a rule that no one under the age of 55 could live in the community. The parents and the seller then filed a complaint and eventually a lawsuit against the community, alleging disability discrimination. The trial court dismissed the lawsuit because there is an FHA exemption for qualified "housing for older persons," but the appellate court reversed and reinstated the case, finding that while there is an exemption from charges of discrimination based on familial status, nowhere in the FHA is there an exemption for handicap discrimination by a "housing for older persons" community.

In **Marks v. BLDG. Mgmt. Co.**, No. 99 CIV 5733 (THK), 2002 WL 764473 (S.D.N.Y. Apr. 26, 2002), the court ruled that a landlord does not have to make economic accommodations to individuals with disabilities. A tenant living in a rent-controlled apartment in New York City told the building management company that her AIDS diagnosis required her to live in warmer climates during the winter and that she would sublet her apartment during that time. The property manager prohibited subletting of apartments, and rejected the tenants request for accommodation to sublet the apartment. When she sublet the apartment, the landlord began eviction proceedings against the tenant. The court ruled that The court found in favor of the landlord because the tenant's accommodation request had nothing to do with her AIDS and instead was motivated by her economic situation and the FHA did not require the landlord to grant the tenant's accommodation request.

## Which Act Applies?

The following cases look at how to determine which of the federal statutes that prohibit discrimination against the disabled is applicable: the Fair Housing Act (FHA), the Americans with Disabilities Act (ADA) or the Rehabilitation Act (Rehab Act).

In **Robinson v. Gorman**, 145 F. Supp. 2d 201 (D. Conn. 2001), a landlord refused to reasonably accommodate a tenant with a disability by permitting an aide to live with her. The court ruled that:

1. Tenant's claims could not be brought under state or federal fair housing laws because tenant's unit was in an owner-occupied building with only two units. Under the federal FHA, there is an exemption for owner-occupied buildings with no more than four units; under state fair housing laws, the exemption applied to owner-occupied buildings with no more than two units.
2. The ADA was not applicable because it only governs discrimination in "places of public accommodation," like a hotel or inn, not residential housing.

However, the court determined that tenant's claims could be heard under the Rehab Act. The Rehab Act provides that "no otherwise qualified individual with a disability ... shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving" federal funding. Since the landlord received federal rent payments for the premises, the court held that tenant's lawsuit should be allowed to proceed.

In **Hanks v. Tilley**, 15 Nat'l Disability L. Rep. §155 (M.D.N.C. 1999), a tenant who at times required a wheelchair, requested permission to install temporary ramps, a removable above-ground swimming pool and a portable whirlpool on the leased property, all at her own expense. When the landlord refused to allow such improvements, the tenant sued, claiming that the landlord's failure to allow her to make reasonable modifications to the property was unlawful under the ADA.

The trial court granted the landlord's motion to dismiss, holding that Title III of the ADA does not apply to residential housing, but only to "places of public accommodation" such as hotels, motels, convention centers, restaurants, schools and other facilities accessible to the public. The court addressed the possibility of the tenant having brought her claim under the FHA, instead of the ADA, but concluded that the tenant would not have been successful there either because of the exemption for landlords who do not own more than three single-family residences.





## Resources

### **NAR's Field Guide to Fair Housing**

[www.nar.realtor](http://www.nar.realtor), see “Library” section to access Field Guides

### **NAR's Field Guide to Complying with the Americans with Disabilities Act (ADA)**

[www.nar.realtor](http://www.nar.realtor), see “Library” section to access Field Guides

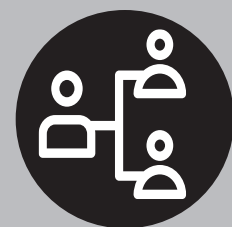
### **At Home with Diversity**

[www.nar.realtor/designations-and-certifications/at-home-with-diversity](http://www.nar.realtor/designations-and-certifications/at-home-with-diversity)

# Fair Housing

9

## Training Module



### Talking Points

- Real estate brokers are subject to federal, state and local fair housing laws. These laws are intended to eradicate discriminatory conduct in the sale or rental of dwellings.
- Serious financial loss plus public embarrassment and reputational loss are practical effects of a finding of liability for most real estate firms.
- Fair housing cases are sometimes excluded from errors and omissions insurance policies.
- The available risk reduction techniques available include comprehensive education and training of all sales associates, adoption of a strict fair housing compliance policy, and action to ensure that salespeople adhere to that policy.
- 3. Use of advertising that expresses a preference for or against persons of a particular race, color, religion, sex, national origin, handicap or familial status.
- 4. Representations that a dwelling is not available for sale or rent, when in fact the dwelling is available.
- 5. Attempts to induce a person to sell or rent a dwelling by referring to the prospective entry of persons of a particular race, color, sex, religion, national origin, handicap or familial status.
- Title VIII also prohibits redlining, including discrimination in financing and insuring of housing, as well as discrimination in access to REALTOR® boards and associations, MLSs, or other services, organizations, or facilities that relate to the business of selling or renting dwellings. Title VIII prohibits actions that have a disparate impact on persons of a protected class.

### Fair Housing Laws that Apply to Real Estate Brokers

#### Federal Law

Fair housing laws consist of:

- Civil Rights Act of 1866, 42 U.S.C. § 1982 (hereinafter the 1866 Act) — Prohibits all forms of racial discrimination in real estate, whether committed by government or by private parties. Persons suing under the 1866 Act are entitled to recover actual and punitive damages, and their attorney fees and costs.
- Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.* (hereinafter, Title VIII) — Addresses not only racial discrimination, but also discrimination on the basis of religion, color, national origin, sex, handicap and familial status. Five types of discrimination are prohibited:
  1. Refusal to sell or rent or to otherwise make unavailable a dwelling because of a person's protected characteristic.
  2. Discrimination in the terms, conditions or privileges of sale or rental of housing or in the provision of services in connection with the same.
  3. Use of advertising that expresses a preference for or against persons of a particular race, color, religion, sex, national origin, handicap or familial status.
  4. Representations that a dwelling is not available for sale or rent, when in fact the dwelling is available.
  5. Attempts to induce a person to sell or rent a dwelling by referring to the prospective entry of persons of a particular race, color, sex, religion, national origin, handicap or familial status.
- Title VIII also prohibits redlining, including discrimination in financing and insuring of housing, as well as discrimination in access to REALTOR® boards and associations, MLSs, or other services, organizations, or facilities that relate to the business of selling or renting dwellings. Title VIII prohibits actions that have a disparate impact on persons of a protected class.

#### Enforcement

- Congress amended Title VIII to add handicapped persons and families with children as protected classes.
- A person who believes he or she is a victim of discriminatory housing practices may bring action in federal court and recover actual and punitive damages, as well as reasonable attorney fees and costs.
- The United States Attorney General may bring an action where a pattern or practice of discrimination has occurred, as opposed to a single isolated act.
- In addition to suing directly in federal court, an aggrieved person may file a complaint with the Department of Housing and Urban Development (HUD).
- Fair housing agencies may file complaints if they can show that they devoted significant resources to identify and act against discriminatory practices and did so to the detriment of their other efforts on behalf of equal access to housing.

- Both HUD administrative law judges (ALJs) and federal courts may award the aggrieved person actual damages and issue injunctions to prevent any further discriminatory practices. An aggrieved person may recover attorneys' fees as well.
- If the respondent is found to have committed a discriminatory housing practice, an ALJ may also assess civil penalties.
- Additional civil penalties may be imposed in an amount based on whether the individual has been adjudged to have committed a discriminatory housing practice and when such discriminatory practice occurred.
- If the case proceeds in federal court, the judge does not have authority to impose civil penalties, but may impose punitive damages in favor of an aggrieved person shown to have been injured by a discriminatory housing practice.

#### *State and Local Fair Housing Laws*

- State and local statutes may include broader coverage than Title VIII.
- If a state or local law is deemed by HUD to be substantially equivalent to Title VIII, then HUD will refer all complaints from that jurisdiction to the state or local agency.
- State or local ordinances may include coverage for discrimination based upon additional classes, such as:
  - Age
  - Source of income
  - Marital status
  - Sexual preference
  - Occupation

### **Conduct Prohibited by the Fair Housing Laws**

#### *Refusals to Sell or Rent*

- **Violation of Title VIII** — Any refusal to sell or rent a dwelling because of race, color, sex, religion, national origin, handicap or familial status. This can include applying more stringent qualification criteria for minority than non-minority prospects.
- **Violation of 1866 Act** — Refusal to sell or rent any type of real estate because of race.

#### *Steering*

- Conduct designed to influence a person's housing choice based upon race, religion, sex, color, national origin, handicap or familial status.
- Evidence of steering is often gathered through the use of testers.
- Testers can bring lawsuits challenging steering themselves or through the fair housing organizations that employ them.

#### *Blockbusting*

- Also known as panic peddling.
- Blockbusting refers to the suggestion, during an effort to solicit a listing, that the seller should sell or otherwise dispose of a property because persons of a particular race, religion, sex, national origin, color, handicap or familial status are moving into the neighborhood.
- Blockbusting is specifically prohibited by Title VIII.

### **Advertising**

- HUD regulations do not require that advertising of residential real estate for sale or for rent, or for financing, include an equal housing opportunity logo, statement, or slogan as a means of advising homebuyers and sellers of their fair housing rights. However, HUD may view their inclusion as evidence of compliance with the Fair Housing Act's prohibitions against discriminatory advertising.
- HUD regulations do require prominent display (for example, businesses, individual, and new construction dwellings for sale or rent) of HUD's fair housing posters, which are available from HUD area offices and contain a fair housing slogan and logo.
- Title VIII prohibits use of advertising that indicates a preference for or against prospective buyers or tenants of a particular race, religion, sex, color, national origin, handicap or familial status.
- Ads should focus on property descriptions, and not on the potential buyer.

### Advertising Guidelines for Acceptable/ Unacceptable Phrases

#### Race, Color and National Origin

- **Unacceptable:** Words describing the housing, current or potential residents and neighbors, or neighborhood in racial or ethnic terms (for instance, white family homes, no Irish).
- **Acceptable:** Racially neutral terms (including master bedroom, rare find, desirable neighborhood).

#### Religion

- **Unacceptable:** Ads with blatant phrases (such as no Jews, Christian home). Ads that use the legal name of an entity containing a religious reference (for instance, Roselawn Catholic Home) or a religious symbol (like a cross) unless there is a disclaimer indicating that the property does not unlawfully discriminate.
- **Acceptable:** Secular terms (like Merry Christmas, Happy Easter) or images (such as Santa Claus, Easter Bunny, St. Valentine's Day graphics).

#### Sex

- **Unacceptable:** Ads that indicate a gender preference (such as male/females only apply) except where there are shared living arrangements.
- **Acceptable:** Commonly used physical descriptions of housing units that are not preferential or limiting terms (for instance, mother-in-law's suite, bachelor apartment).

#### Handicap

- **Unacceptable:** Ads that disallow handicap accessories (for instance, no wheelchairs).
- **Acceptable:** Phrases that describe a property's features, services, facilities, or neighborhood (including great view, fourth-floor walk-up, walk-in closets, close to parks, close to public transportation).

#### Familial Status

- **Unacceptable:** Ads that limit the number or ages of children allowed or express a preference for adults, couples or singles.
- **Acceptable:** Descriptions of properties, their services, facilities (or lack thereof), their neighborhood (for instance, two-bedroom, cozy family room, no bicycles allowed, quiet streets).

### Ad Placement

- **Do not** use advertising media in selective publications.
- **Do** use consistent language about the properties and communities when advertising in several small newspapers that reach different audiences.

### Use of Models

- When using human models in advertising, make special efforts to use models from various protected classes and who are representative of the community.

### Target Marketing

- Brokers should be sure not to base their company's marketing decisions on prospective clients' membership (or non-membership) in any of the classes protected by the Fair Housing Act or by their state or local fair housing laws.
- It is acceptable for a broker to market their company as having licensees with certain language skills that would be of interest to people of a certain national origin.
- Brokers should not assign a particular sales associate to represent all members of a group that he or she is a member of; the decision to work with a brokerage and/or a sales associate should come from the clients themselves.
- It is appropriate to create niche marketing on the basis of a property's characteristics. The following list includes some examples:
  - Luxury communities
  - Fixer-uppers
  - Condominiums
  - Single-family homes
  - Resort housing
  - Properties in foreclosure
  - Homes on the historic register
- Real estate professionals may market directly to first-time home buyers and clients who are relocating.
- Brokerages can focus on senior citizens by developing expertise on issues that are of interest to seniors (for example, retirement planning, and reverse mortgages). However, this knowledge must also be made available to anyone who expresses interest, regardless of age and familial status.
- Never refuse or forget to show families with children properties that are not qualified as senior housing just because many seniors live there.

### *Handicapped Discrimination*

- Title VIII was amended in 1988 to include handicapped persons and families with children as protected classes.
- Definition of handicap includes the following:
  - Physical handicaps
  - Mental handicaps
  - Alcoholics
  - Persons with the HIV virus, AIDS
- Definition of handicap excludes:
  - Current abusers of controlled substances
  - Persons presenting a current threat to the health, safety or property of others
- Real estate brokers or agents may not inquire whether a person has a handicap, or the extent of any handicap, in evaluating a person's qualifications to buy or rent a dwelling.
- If the same questions are asked of every person, a broker or agent may ask questions about a prospect's rental history or other relevant information.
- Title VIII prohibits property owners from refusing to permit handicapped occupants of a dwelling to make reasonable modifications to a unit, at the tenant's expense, to allow the handicapped tenant to enjoy the premises fully.
- The property owner may condition modifications to the interior of a unit on the tenant's agreement to restore the unit to its original condition when the handicapped person's occupancy ends. The property owner may require all modifications be done in a safe and workmanlike manner.
- Examples of reasonable modifications that must be permitted include the following:
  - Installation of grab bars around bathtubs and toilet seats
  - Widening of a door to permit passage of a wheelchair
  - Installation of a flashing light in lieu of a doorbell
  - Relocation of environmental controls
- A property owner may, where appropriate, create an escrow account into which the tenant will pay a monthly amount to cover the cost of restoring the interior modifications made by the tenant. This type of escrow account should be used only when the modifications are unusual and the cost of restoration is significant.

- Title VIII also requires property owners and homeowner associations to make reasonable accommodations in any rules or regulations governing housing developments that are necessary to permit the tenant to enjoy the premises fully.
- Examples of reasonable accommodations that must be permitted include the following:
  - The allowance of a seeing eye dog, notwithstanding a no-pet rule
  - Assignment of a parking space to a handicapped tenant near the tenant's building entrance, notwithstanding a first-come, first-serve policy governing tenant parking
  - Waiver of a rule banning vans in a building parking lot when a van is necessary to a handicapped person's transportation

### *New Construction*

**Covered Multifamily Dwelling** — A building of four or more dwelling units if the building has an elevator.

**Ground Floor Dwelling** — A building of four or more dwelling units without an elevator.

**"First Occupancy"** — The building's first use for any purpose.

The design and construction requirements that covered multifamily dwellings must meet include the following:

- Public and common use areas readily accessible to and usable by handicapped persons
- Doors that are sufficiently wide to allow passage by a wheelchair
- The inclusion of the following features of adaptable design:
  - An accessible route into and through the unit
  - Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where provided
  - Usable kitchens and bathrooms, such that an individual in a wheelchair can maneuver about the space
  - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
- These requirements do not apply to townhouse or other cluster arrangements without elevators where four or more single-family homes share common walls

### *Families with Children*

- Title VIII forbids property owners or agents from refusing to sell or rent a dwelling to an otherwise qualified prospect because the prospect has children under the age of 18 in the household.
- Familial status protection encompasses a parent or guardian who has legal custody of children under the age of 18, as well as pregnant women.
- HUD regulations provide that when state or local law does not include occupancy limitations, property owners may adopt their own limitations, provided that such limitations do not operate unreasonably to limit or exclude families with children.
- HUD regulations also state that property owners may not establish dual-purpose facilities where certain sections of a housing complex are reserved for adults only and other sections for families with children.
- Title VIII not intended to limit the ability of property owners to develop and implement reasonable rules relating to the use of facilities associated with dwellings, such as weight rooms, swimming pools, or saunas, as long as they are based upon legitimate health or safety considerations and are not unduly restrictive.

### *Older Persons' Exemption*

- Title VIII specifically authorizes the exclusion of children from housing for older persons.
- Housing for older persons includes any housing provided pursuant to a state or federal program designed to accommodate the needs of senior citizens. The older person exemption also includes the following types of housing:
  - Occupied solely by persons 62 years of age or older
  - Where 80 percent of the units are occupied by at least one person 55 years of age or older per unit, and for whom the development is intended and marketed as housing for persons 55 or older
- Property owners must do the following:
  - Carefully monitor the ages of the occupants in the units to ensure that, at all times, no less than 80 percent of units are occupied by at least one person who is 55 years of age or older
  - Publish and adhere to policies and procedures (for instance, advertising used to market the development, lease provisions, and the development's rules and regulations) that

demonstrate an intent to provide housing to persons 55 years of age or older

- Real estate professionals should rely only on the written assertions of owners or managers, that the licensees have seen for themselves, that a property is exempt based on the ages of the residents and on the existence and enforcement of such policies and procedures.
- Prior regulations mandate that the development provide significant facilities and services specifically designed to meet physical or social needs of persons over 55 years of age. Congress removed the facilities and services language from the regulations in 1995.
- Some state laws still require properties to provide significant facilities and services to qualify for the 55-or-older exemption.

### **Program for Compliance**

Effective program of compliance consists of the following components:

- A firm's policy and public commitment to fair housing
- Agent education and training in methods that ensure compliance with the fair housing laws
- Regular and systematic documentation of the firm's practice of affording equal opportunity and service
- Identification and correction of failures in performance

### *The Firm's Policy and Public Commitment*

- All REALTORS® and REALTOR-ASSOCIATES® are bound by the REALTOR® Code of Ethics, which requires REALTORS® to provide equal professional services to all persons. The Code, however, does not represent a firm's personal commitment to fair housing.
- A firm's personal commitment to fair housing is important for two reasons:
  1. There is no obligation for a plaintiff, a tester, or a fair housing agency to give advance warning before it files a complaint. Adoption of a compliance program only after a complaint has been filed will be properly viewed as self-serving and not reflective of a true commitment.



2. Everyone is presumed to know the legal obligations of fair housing. Thus, simply acknowledging awareness of one's legal duty will not defeat a pattern of practice case, or even a claim for punitive damages. The conduct necessary to overcome such claims must be outward, overt and resolute programs designed affirmatively to ensure compliance with the law. The fact that a company has not yet experienced any fair housing complaints is not a valid reason to avoid public commitment to fair housing compliance.
- The implementation of a firm's public commitment begins by creating a written policy. Then a firm must make sure that all agents and associates are familiar with and have committed to that policy.
  - Appoint a Fair Housing Officer for the firm who is responsible for the following items:
    - Keeping current on developments in fair housing law
    - Providing fair housing training
    - Answering fair housing questions
    - Tracking the company's compliance with fair housing law

#### *Agent Education and Training*

- The legal doctrine of respondeat superior (which makes an employer responsible for the conduct of its employees) may render a company liable for discriminatory acts committed by its agents regardless of whether the company has committed itself to fair housing compliance.
- Make sure agents know the following:
  - Stereotyping and prejudice have no place in the marketing of real estate.
  - Nondiscriminatory qualification criteria must be applied uniformly.
  - Subjective judgments about whether a prospect will fit in a neighborhood cannot be a basis for showing or failing to show a particular listing.
  - Judgments about whether a prospect will fit in a neighborhood because of the prospect's race, color, religion, sex, national origin, handicap or familial status cannot be a basis for showing or failing to show a particular listing.
  - All prospects must be treated courteously and professionally.
  - All prospects must be given equivalent service and assistance during any showings and in completing rental applications or offer forms.

- Failure to adhere to these policies will be grounds for dismissal.
- Prospective agents who will not commit to these policies will not be hired.

#### *Documentation of the Firm's Fair Housing Compliance Policy*

- When confronted by allegations of discriminatory housing practice, remember the following:
  - Complainants will most likely provide detailed written records identifying the specific conduct of the broker or agent that led to the charges. Brokers or agents, however, may be likely to have a hazy memory and may not have written records to refresh his or her memory.
- Brokers must instruct agents to keep records of the names, addresses, phone numbers, and the perceived race of prospects, as well as their stated requirements for housing and the price they can afford. The agent should record the address of the properties offered to the prospects, whether they were shown, and when they were shown.
- If properly used, the Equal Service Report, or its equivalent, should provide a strong defense against a charge of steering or disparate treatment.
- Agents should also be instructed to keep records of qualifying information and when an offer was received. If any standard practices were not followed, or if additional qualifying information was required, the agent should record the reasons why deviations from regular office policies occurred.
- Brokers should keep records for at least two years.
- Brokers should develop a brochure informing prospective buyers and tenants of laws requiring equal opportunity in housing and the firm's commitment to those policies. NAR's brochure, *What Everyone Should Know About Equal Opportunity in Housing* is a good example.
- Brokers should develop, and encourage agents to use, a follow-up survey to send to all prospective buyers and tenants who, after two weeks, cease to be in active contact with the firm. The survey should ask the prospect to provide certain data concerning how he or she was served by the firm.
  - The data from the returned surveys should provide an early warning of any potential complaints.
  - The data should also provide critiques of agents' performances in terms of affording equal service.

- Survey results should alert the firm to reasons why a prospect found alternative housing, and permit the firm to adjust its own marketing strategies as appropriate.

### *Identifying and Correcting Failures in Performance*

- Brokers must be alert to subtle indications that agents are insensitive to their fair housing responsibilities.
  - Agents who use racial slurs, or make excessive use of racial, ethnic or sexual humor will very likely carry these attitudes into their business affairs.
  - Short cuts, such as qualifying prospects on a hit or miss basis may also indicate an agent's insensitivity to his or her responsibilities.

- When brokers observe this type of behavior, they should address it immediately.
- Agents who engage in this conduct should be counseled, put on notice that this behavior must change, and, if necessary, asked to leave the firm.
- Brokers should regularly review and modify their procedures to respond to changes in the law and new fair housing issues.

## Situational Questions and Answers

### Situation

- Jane Jones, who has a hearing disability, is a tenant of ABC Properties, which has a *strict* no-pets policy.
- Jane has asked to be exempted from this policy so that she can utilize an assistance dog in her apartment.
- This dog would help Jane by alerting her when the doorbell and phone ring. (Jane has a device that allows her to utilize the phone once she knows it has rung.)
- The property manager of ABC Properties, Jack Smith, has refused Jane's request, noting that an exception to the no pets policy would only be made in the case of a seeing-eye dog.

### Question

**Has Jack done anything wrong in refusing Jane's request?**

### Answer

- Jack violated the Fair Housing Act by refusing to provide a *reasonable accommodation* to a tenant with a handicap.
- Permitting Jane to keep an "assistance dog" in her unit would have imposed *no undue financial or administrative burden and would not have undermined the basic purpose* of the no-pets policy.
- Jack's failure to provide this reasonable accommodation *subjects the owner of ABC Properties to liability* under the Fair Housing Act.

### Situation

- Irving Patel contacts Bob Broker for help in finding a home to purchase.
- Bob perceives Irving as being of East Indian descent.
- Bob takes Irving and his family to five or six homes, all of which are located in areas with high concentrations of East Indian residents.
- When Irving asks why Bob has only shown him homes in these areas, Irving replies: "I thought these were the neighborhoods you would feel most comfortable in!"

### Question

**Has Bob done anything wrong by making this assumption?**

### Answer

- Bob's assumption, which is based on his perception of Irving's national origin, unlawfully limits the Patels' housing choice.
- Bob failed to ask Irving to specify which neighborhoods he was interested in.
- Bob has violated the Fair Housing Act by steering.

# UNLICENSED ASSISTANTS



UPDATED ON JULY 11, 2022

## Tasks an Unlicensed Real Estate Assistant Can Legally Perform

The latest from FREC on what help a Realtor can get from an employee or helper who doesn't possess a real estate license.

The Florida Real Estate Commission (<http://beta.floridarealtors.org/law-ethics/library/frec>) lists the following activities may be performed by a Realtor's unlicensed employee or assistant:

1. Answer the phone and forward calls.
2. Submit listings and changes to any multiple listing service.
3. Follow up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress.
4. Assemble documents for closing.
5. Secure documents (public information) from courthouse, utility district, etc.
6. Have keys made for company listings.
7. Write ads for approval of licensee and supervision broker, and place advertising (newspaper ads, etc.); prepare flyers and promotional information for approval by licensee and supervising broker.

8. Receive, record and deposit earnest money, security deposits, and advance rents.
  9. Type contract forms for approval by licensee and supervising broker.
  10. Monitor licenses and personnel files.
  11. Compute commission checks.
  12. Place signs on property.
  13. Order items of repair as directed by the licensee.
  14. Prepare flyers and promotional information for approval by licensee and supervising broker.
  15. Act as a courier service to deliver documents.
  16. Place routine telephone calls on late rent payments.
  17. Schedule appointments for licensee to show listed property.
  18. Be at an open house for: a) security purposes b) hand out materials (brochures).
  19. Answer questions concerning a listing from which the answer must be obtained from licensed employer-approved printed information and is objective in nature (not subjective comments).
  20. Gather information for a CMA.
  21. Gather information for an appraisal.
  22. Hand out objective, written information on a listing or rental. The broker shall foster the education.
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