

BertRodgers *Schools*



Real Estate 3-Hour Core Law Continuing Education Course

Edition 15

FREC (Florida Real Estate Commission) Course Approval #0015580

Required Continuing Education for Florida
Sales Associates, Brokers, and Broker Associates

NOTE:

The ✓ Comprehension questions are optional exercises intended to enhance your knowledge. You are not required to complete these exercises to obtain course credit.

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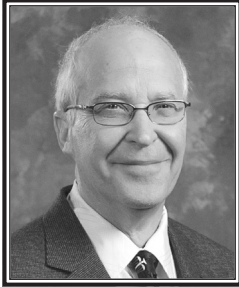
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Real Estate Core Law

Recent Law and Rule Changes

This module satisfies the 3 hours of Core Law required by the FREC.



by Randy Schwartz

Randy Schwartz has over 35 years' experience as an attorney in the real estate field. He was Bureau Chief for the Real Estate Bureau of the Orlando Office of the Florida Attorney General and also served as the General Counsel for the Florida Association of Realtors for over 20 years. Randy has spoken at local, state, and international conferences on all aspects of real estate regulation and brokerage law and served as an adjunct professor at UCF and FAMU Law Schools. For several years he was on the Executive Committee of the Real Property Section of the Florida Bar. Randy is the coauthor of the Florida Bar's book, 'Florida Real Property Sales Transactions.' He is currently in private practice in the Orlando area.

Glossary

Moral turpitude—conduct that is considered contrary to community standards of justice, honesty, or good character

Prima facie—a matter that appears to be self-evident upon initial observation; the evidence presented to support a legal claim

Funds—money in hand or available for the payment of a debt, claim, or expense

Promulgate—the formal act of announcing a statute or rule of court

Latent material defect—a defect that has a significant adverse impact on the value of a real property and is not observable by a visual inspection

PART I: REAL ESTATE LICENSE LAW—THE FLORIDA STATUTES

LEARNING OBJECTIVES

Upon completion of Part I, the student will be able to:

1. Review key definitions in Florida real estate license law.
2. Distinguish among the different forms of representation offered by a licensee.
3. Examine the real estate licensing requirements and exemptions for brokers, broker associates, and sales associates.
4. Discuss the renewal and continuing education requirements for licensees.
5. Consider the effect of relocating a brokerage office without notifying the DBPR.
6. Identify the safest, fastest, and least expensive method to resolve an escrow dispute.

INTRODUCTION

Chapter 475, Part I, F.S., is the relevant section of law dealing with real estate matters such as: licensees, real estate business entities, and real estate schools. The following are some of the most important sections of the law that real estate licensees should be familiar with.

DEFINITIONS

Broker:

a licensed person who, for another, and for compensation, or with the intent to receive compensation, acts as an agent for others in the performance of one or more services of real estate; this includes transactions involving business enterprises or opportunities. As set forth in Chapter 475, F.S., the term broker also includes:

- 1) any person who advertises rental property information or lists
- 2) any person who is a general partner of a brokerage partnership, or an officer or director of a brokerage corporation, and
- 3) any person or entity who lists, advertises for sale, promotes, or sells by any means whatsoever one or more time-share periods per year on behalf of others, except as otherwise provided by law

In simpler terms, just about anyone who performs services of real estate *for another, for*

compensation in Florida must have a Florida real estate license. There are a few exemptions which are covered in this section.

This definition does not mean if you receive a commission, you automatically need a license. The license requirement is determined more by your actions than how you are paid. Each situation must be independently reviewed.

Broker Associate:

a person who has earned a broker's license but chooses to be licensed as a broker associate and operate as a sales associate registered with a broker.

Reminder: Broker associates and sales associates cannot hold multiple licenses.

Sales Associate:

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. Chapter 61J2-6, of the *Florida Administrative Code* further states that a sales associate or broker associate may only be employed by one broker or by one owner-developer.

Even though the definition refers to "employment" of a sales associate or broker associate by a broker or owner-developer, most brokers enter into independent contractor agreements with their sales associates and broker associates.

When the terms *employ*, *employment*, *employer*, and *employee*, are used in Chapter 475, they describe the relationship between a broker and a sales associate or broker associate and include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate.

Fiduciary:

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
- accounting, and
- the duty to use skill, care, and diligence

In today's real estate practice, the vast majority of brokers operate as transaction brokers. Transaction brokers do *not* owe fiduciary duties. Only single agents owe full fiduciary duties to the parties they represent. This is why the term *agent* is not appropriate to use unless the broker, and thereby their associates, enter into a single agent relationship.

It is important to remember that *only brokers may enter into agency and non-agency relationships with buyers and sellers*. As noted in the definition of broker above, a broker performs services of real estate for another, for compensation. Sales associates and broker associates operate under their broker and cannot enter into agency relationships on their own and cannot be paid directly by customers or clients.

Principal:

the party with whom a real estate licensee has entered into a single agent relationship.

When a real estate broker represents a buyer or seller (or a lessor or lessee) in as a single agent and thereby a fiduciary capacity, the party represented is the broker's principal.

Customer:

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.

Single Agent:

a broker who represents only one buyer or seller (or lessee or lessor) per transaction, as a fiduciary, but not both in the same transaction.

In a single agent relationship, a broker is a fiduciary and owes these duties to their principal:

- Loyalty
- Confidentiality
- Obedience
- Full disclosure
- Accounting, and
- The duty to use skill, care, and diligence

The most important distinction between a single agent and a transaction broker is their representation of and loyalty to only one party. Single agents must keep *all* information confidential and work solely for the benefit of their principal, the buyer or seller.

Transaction Broker:

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 cannot work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

In Florida, all licensees are presumed to be transaction brokers unless another relationship is established in writing. This is the most prevalent form of brokerage relationship on our state. In a transaction broker relationship the broker (and their sales associates and broker associates) owes these duties:

- Dealing honestly and fairly
- Accounting for all funds
- Using skill, care, and diligence in the transaction
- Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer
- Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing

- 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
- Any additional duties that are mutually agreed to with a party

Did you notice the line in the definition of transaction broker that says the buyer or seller is not responsible for the actions of the broker? That language is there because a buyer or seller in a single agency relationship with a broker *is responsible for the actions of the broker* within the scope of the services performed. Interesting!

Designated Sales Associate:

in a commercial transaction in which both the buyer and seller are working with the same real estate licensee, the broker may allow different sales associates of the same firm to act as designated sales associates to represent the buyer and seller as single agent as long as the following conditions are met:

- The request must be made by the buyer *and* seller
- The transaction must involve only commercial real estate, and
- The buyer and seller each must have assets of \$1 million or more

Designated sales associates have the same duties of a single agent including disclosure requirements.

No Brokerage Relationship:

in a no brokerage relationship, even though a customer is not represented, the following duties are still owed by a real estate licensee:

- dealing honestly and fairly
- disclosing all known facts that materially affect the value of the residential real property that are not readily observable by the buyer, and
- accounting for all funds entrusted to the licensee

A licensee who has no brokerage relationship with a buyer or seller must fully describe and disclose the relationship in writing to the buyer or seller. The disclosure must be made before the showing of property.

Disclosure Requirements

Chapter 475, F.S. requires disclosure of agency and non-agency relationships. The disclosures apply *only* to residential transactions. Notice must be provided in writing using specific forms.



See §475.278 or go to <http://www.flsenate.gov/Laws/Statutes/2014/475.278> for full details.

Review

Single Agency: Fiduciary relationship with a buyer or seller who is the broker's principal.

Transaction Broker: Limited Representation and limited duties, not a fiduciary relationship.

No Brokerage Relationship: The customer is not represented by the broker but the broker must deal honestly, disclose known material facts, and account for all funds.



Did you know that in 2013 there were 327,439 licensees in Florida, including brokers, broker associates, and sales associates? A real estate license is not always required. Review the exemptions below.

LICENSE REQUIREMENT EXEMPTIONS

§475.011. The licensing requirements for Florida real estate brokers, broker associates, sales associates, and schools do *not* apply to 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 a certified public accountant, as defined in Chapter 473, within the scope of her or his duties; 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, where the ultimate purpose and intent is charitable or philanthropic.

Many Florida attorneys are under the mistaken belief that they are totally exempt from license law. The exemption does not allow attorneys to take listings or get paid to find buyers.

- Individual, corporation, partnership, trust, joint venture, or other entity which sells, exchanges, or leases its own real property. This exemption is not available if 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.

Just because an employee is paid on a commission basis they are not automatically excluded from this exemption. For example, the office manager's job is to have everyone come to work on time. The office manager can receive a bonus for this. No license activity was performed therefore no license is required.

- 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.
- 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 one year.*
- 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, F.S.

The *property* must be registered under Chapter 509, not the person.

- 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. Unlicensed persons are not authorized by this law to advertise or promote this service.



Generally, individuals representing themselves or salaried employees performing duties within the scope of their employment and where a commission is not paid are exempt from Chapter 475, F.S.

REGISTRATION AND LICENSING

General Partners, Members, Officers, and Directors of a Firm

§475.15. Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker must register with the Commission and must 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.

A sales associate *cannot* be an officer or director of a brokerage corporation but a sales associate *can* own all the stock or shares of the corporation.



COMPREHENSION

1. Secretary Olivia mailed the license renewals to the DBPR for all three general partners of Bamboo Realty one week before the deadline. Unfortunately, the envelope was damaged and they were delayed in the mail. The status of all three broker licenses became involuntarily inactive for five days until they were successfully renewed online. What was the status of the partnership's registration during those five days?

Broker Associates and Sales Associates

§475.161. The Commission must license a broker associate or sales associate as an individual or—if the licensee provides the Commission with authorization from the Department of State—as a professional corporation, limited liability company, or professional limited liability company. A license will be issued in the licensee’s legal name only and, when appropriate, must include the entity designation. This section does not allow a broker associate or sales associate to register or be licensed as a general partner, member, manager, officer, or director of a brokerage firm.

Post-license Education

§475.17. The first time a license is renewed, post-license education is required: 45 hours for sales associates and 60 hours for broker associates and brokers. If the post-license education is not completed by the initial renewal deadline, the license becomes null and void. To obtain a new sales associate license, the individual must meet the pre-license requirements again. Brokers and broker associates can revert to a sales associate license if they satisfactorily complete the 14-hr continuing education course within six months after the license expiration. To operate as a broker, the licensee must repeat the broker pre-license requirements.



Post-License Education Requirements Before First License Renewal - §475.17

| | |
|-------------------------------|----------|
| Sales associates | 45 hours |
| Brokers and Broker associates | 60 hours |

LICENSE RENEWAL: CONTINUING EDUCATION

§475.182. After the first license renewal sales associates, broker associates, and brokers are required to complete 14 hours of Commission-approved continuing education during each two-year license period. The education may be completed online, by correspondence, or in a classroom. Licensees must certify that they have completed the required continuing education during the license period. A license is renewed when the department receives the renewal application and fee.

The required education may be completed any time during the two-year license period *but* the DBPR only accepts renewal applications and fees 90 days prior to the expiration of the license.

Licensees may choose active or inactive license status. If you are performing services of real estate, your license must be active. Sales associates and broker associates must have their license registered with a broker to be active. Changing your license status is fairly simple.



Go online to **www.myfloridalicense.com**, print DBPR Form RE 11, and follow the directions on the form.



Voluntarily Inactive

Toni experienced some life changing events and needed to leave the real estate profession for a few years. To have the option to return to her career at a later date, she completed the forms as required by the DBPR to change the status of her license from current active to current inactive. According to the Florida Statutes, Toni’s license will become voluntarily inactive once the status change forms are processed by the DBPR.

Involuntarily Inactive License

§475.183. Any license that is not renewed at the end of the license period prescribed by the department will automatically revert to *involuntarily inactive status*. Under current Commission rule, a license may remain involuntarily inactive for up to 24 months. Remember, if you are performing services of real estate, your license must be active and sales associates and broker associates must have their license registered with a broker to be active.

Licensees may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing at least 14 hours of approved continuing education and paying late renewal fees. If the license has been involuntarily inactive for more than 12 months but fewer than 24 months, they must complete a Commission-approved 28-hour education course. A renewal fee plus any late fees must be paid to the DBPR for each renewal period in which the license was involuntarily inactive.

Any license that has been involuntary inactive for more than two years will automatically expire. After that, the license becomes **null and void**. For example, Sales Associate Ali did not renew her license in September of 2014 and again in September 2016. On October 1, 2016, her license status became null and void.

✓ COMPREHENSION

- If your license expires on March 31 and you do not complete the renewal requirements on time, what is the status of your license on April 1?

MULTIPLE LICENSES

§475.215. A licensed broker may be issued additional licenses as a broker whenever it is clearly shown that the requested additional licenses are necessary to the conduct of real estate brokerage business (e.g., one for a main corporation and one for a referral corporation). Sales associates and broker associates may *not* be issued additional licenses because they cannot have more than one registered employer at any one time.

At the current time, multiple broker licenses are routinely granted. The FREC has discussed limiting the number, but such limitations would probably require legislative action.

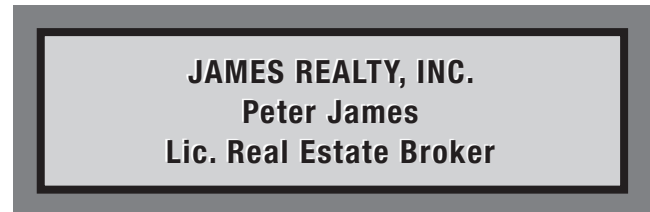
BROKER OFFICE AND SIGN REQUIREMENTS

§475.22. Each active broker must maintain an office consisting of at least one enclosed room in a building of stationary construction. Each active broker must maintain a sign on or about the entrance of her or his principal office and each branch office. The sign must be easily observed and read by any person about to enter the office. Each sign must contain the name of the broker and the broker's 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, and 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. See Figure 1.1.

Brokers who do not want to pay the extra expense of having an outside office may use a room in their

house as an office. This is permissible as long as the proper signage outside the entrance to the room is not a violation of local zoning laws.

Figure 1.1:
Requirements of a Corporation Office Sign



If a broker's registered office is located outside the State of Florida, prior to registering this office or branch office, the broker must agree in writing to cooperate with any investigation initiated in accordance with this chapter or commission rules. Cooperation includes promptly supplying documents requested by authorized representatives of the department and personally appearing at any designated office of the department or other location in the state or elsewhere as reasonably requested by the department. Failure to comply with a request to provide documents or appear as requested is a violation of the license law.

CHANGE OF BUSINESS ADDRESS

It is not uncommon to move your office space as well as your home in today's mobile economy. It is a big job! Remember to update your address with the DBPR within 10 days.

§475.23. Until a new address has been reported to the DBPR, a license will expire and cease to be in force when:

- a broker changes her or his business address
- a sales associate working for a broker or an instructor working for a real estate school changes employer, or
- a real estate school operating under a permit changes its business address

Licensees must 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 the business address, the brokerage firm or school permit holder 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 will 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.

Anytime a licensee changes their address, make and keep a computer record of when, who, and how the change of address was submitted to the DBPR. Remember the burden could be on the licensee to establish you did it properly.



Counting Days

Days are usually counted as calendar days unless the law, rule, or agreement contains language that states otherwise. Some organizations recognize when a time period ends on a day other than a business day and will allow the last day of the time period to be the next business day. To avoid unwanted consequences, address the issue at the beginning of the time period or when the agreement is written.

BRANCH OFFICE FEES

§475.24. Whenever any licensee desires to conduct business at some other location, either in the same or a different municipality or county than where she or he is licensed, the additional 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 additional office. Any office is considered 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 the office is owned or operated by that same broker.



DISCIPLINE

Section 475.25 is probably the most important section of the license law not only because violating this section could result in loss of your license; it also establishes how you are to conduct your business.

The Commission has broad powers that include:

- Denying an application for licensure, registration, or permit, or renewal thereof
- Placing a licensee, registrant, or permittee on probation
- Suspending a license, registration, or permit for a period not exceeding 10 years
- Revoking a license, registration, or permit
- Imposing an administrative fine not to exceed \$5,000 for each count or separate offense
- Issuing a reprimand

The Commission may choose any or all of the above actions if it finds that the licensee, registrant, permittee, or applicant 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.
- 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.



COMPREHENSION

3. A licensee was found guilty of misrepresentation and breach of trust. His fine was \$10,000. Why was the fine more than \$5,000?

The FREC may impose any of the disciplinary actions above if it finds that the licensee, registrant, permittee, or applicant 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, funds, 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 by 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 must promptly notify the commission of such doubts or conflicting demands and will promptly:

- request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property
- submit the matter to arbitration with the consent of all parties
- seek adjudication of the matter in court by interpleader or otherwise
- submit the matter to mediation with the written consent of all parties

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 must 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.



In **mediation**, a professionally trained neutral third party facilitates a discussion between the buyer and seller. The mediator does not have the ability to render a decision. If the buyer and seller reach a mutually agreeable solution it is not binding unless they sign a written mediation settlement agreement.

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 must 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 above. For example, 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 section 718.503, F.S., 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 above.



Escrow Dispute Options

If, in good faith, the licensee is unsure of who should receive a disbursement, the licensee must promptly notify the commission and request either:

- an escrow disbursement order—the commission decides who receives the escrow
- arbitration—a neutral third party decides the outcome
- adjudication in court—litigation
- mediation—the buyer and seller work with a neutral third party to reach a mutually agreeable solution.

The commission may impose punishment if it finds that the licensee, registrant, permittee, or applicant:

- has failed to deposit money in an escrow account when the licensee is the purchaser of real estate under a contract that requires the deposit money to be placed in an escrow account and to be applied to the purchase price if the sale closes.
- 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 will be admissible as prima facie evidence of such guilt.
- 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.
- 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 section 475.01(1)(a), F.S. 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 (i.e., a state or government that is not Florida), so long as the foreign broker does not violate any law of this state.
- is temporarily incapacitated from acting safely and capably as a broker or sales associate for 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 will be only for the period of such incapacity.
- 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 must be kept until disbursement thereof is properly authorized; or has failed, if a sales associate, to immediately place with their registered employer any money, fund, deposit, check, or draft entrusted to them by any person dealing with her or him as agent of the registered employer. The commission must establish rules to provide for records to be maintained by the broker and the manner in which such deposits will 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 will 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.



Brokers Maximum Personal Funding Allowance

| <u>Escrow Account</u> | <u>Amount</u> |
|-----------------------|---------------|
| Property Management | \$ 5,000 |
| Sales | \$ 1,000 |

Table 1.1: The Administrative Complaint Process

- Step 1 Complaint is filed
- Step 2 Notification sent to licensee
- Step 3 Investigation
- Step 4 Report to prosecutor
- Step 5 Prosecutor recommendation to Probable Cause Panel:
 - a. dismiss, or
 - b. administrative complaint
- Step 6 If disputed, a hearing occurs
- Step 7 Administrative Law Judge – recommended order
- Step 8 Final Order – FREC minus the probable cause panel members

- is confined in any county jail, post adjudication; 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.
- 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.
- 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 cannot contain a provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.
- 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.

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

BROKERAGE RELATIONSHIP: AGENCY OR TRANSACTIONAL

§475.255. 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.

THE BROKERAGE RELATIONSHIP DISCLOSURE ACT (BRDA)

§475.2701. This legislation was enacted in 1997 to create the role of the transaction broker, allowing a licensee to provide limited representation to both parties in the same transaction. It is further explained in sections 475.272-.2801, F.S.

The Purpose of BRDA

§475.272. In order to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions, the Legislature determined 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.

Required Relationship and Transaction Disclosures

§475.278. There are *four types* of authorized brokerage relationships a real estate licensee may have with a buyer or seller:

- Transaction Broker—the most common form of representation
- Single Agent
- No Brokerage Relationship
- Designated Sales Associate

In Florida, it is presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established *in writing* with a customer. A licensee may change from one brokerage relationship to another as long as the buyer and seller, or both, gives consent as required by section 475.278(3)(c)2, F.S., prior to the change and the appropriate written disclosure of duties is made to the buyer and seller.



While the duties of authorized brokerage relationships apply in all brokerage activities, the disclosure requirements of BRDA apply only to residential sales.

Whenever a licensee is representing a buyer or seller in a capacity other than a transaction broker or if they are transitioning from one type of authorized relationship to another, disclosure must be provided 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. The disclosure must be made in writing and fully describe the duties of the specified type of brokerage relationship being entered into.

CONTRACTS BY AN UNLICENSED PERSON

§475.41. A contract for a commission or compensation for any act or service is not 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.***

For example: John had a valid sales associate license when he earned a commission from his last closing. Before his broker issued the commission check, John's license was revoked by FREC due to an unrelated matter. Can John's broker still pay him? Yes, because his license was valid at the time he performed the services. The key is license status *at the time of the service*, NOT the license status at the time of payment.

LICENSE VIOLATIONS AND PENALTIES

§475.42. Any person who violates any of the provisions below is guilty of a misdemeanor of the second degree unless the punishment is prescribed in this chapter.

- A person may not operate as a broker or sales associate without being the holder of a valid and current active license; therefore, any person who violates this paragraph commits a felony of the third degree, punishable as provided in sections 775.082 or 775.083, F.S., or, if a corporation, as provided in section 775.083.
- 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.
- 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, will 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.
- 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 will 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.
- 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.



COMPREHENSION

4. Which violation of real estate license law is a third degree felony?

ADVERTISING BY REAL ESTATE SCHOOLS

§475.4511. No person representing a real estate school offering and teaching real estate courses under this chapter will 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.

A school cannot use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a real estate school, or of its representative, must be based upon relevant facts and supported by evidence establishing their truth.

No representative of any school or institution coming within the provisions of this chapter will 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.

RENTAL INFORMATION

§475.453. Each broker or sales associate who furnishes a rental information list to a prospective tenant, for a fee, must provide the tenant with a contract or receipt. The contract or receipt must contain a provision for the repayment of 75% of the fee to the prospective tenant if he or she does not obtain a rental. If the rental information list provided by the broker or sales associate is not current or accurate in any material respect, the full fee must be repaid to the prospective tenant upon demand. A demand from the prospective tenant for the return of the fee, or any part thereof, must be made within 30 days following the day on which the real estate broker or sales associate has contracted to perform services. The contract or receipt must also conform to the guidelines adopted by the Commission. Violation of these provisions is a misdemeanor of the first degree. In addition to the penalty, the license of any broker or sales associate who participates in any rental information transaction which is in violation of the provisions of section 475.453(1), F.S., is subject to suspension or

revocation by the Commission. Figure 1.2 is an example of the notice required by F.A.C. 61J2-10.030.

NOTICE PURSUANT TO FLORIDA LAW:

If the rental information provided under this contract is not current or accurate in any material aspect, you may demand within 30 days of this contract date a return of your full fee paid. If you do not obtain a rental you are entitled to receive a return or 75% of the fee paid, if you make demand within 30 days of this contract date.

Figure 1.2: Rental Information Notice

If Diana paid \$50.00 for a rental information list and did not obtain a rental, she can receive a \$37.50 refund ($50 \times 75\% = 37.50$), if the refund is requested within 30 days.

BROKERAGE BUSINESS RECORDS

§475.5015. Each broker must keep and make available to the department books, accounts, and records that enable the department to determine whether the broker is in compliance with the provisions of this chapter. Each broker must preserve at least one legible copy of all books, accounts, and records pertaining to her or his real estate brokerage business *for at least five 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 five 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 two 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 five years as set above.

AUTHORITY TO INSPECT AND AUDIT

§475.5016. Duly authorized agents and employees of the Department 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, F.S., or any rule of either chapter is being violated.

Audit numbers are up! Be prepared. The length of any inspection depends on whether the brokerage company keeps an escrow account. To avoid the requirement to perform a monthly reconciliation many brokerages do not have an escrow account. Instead they choose to have earnest money held by an independent entity.

FLORIDA REAL ESTATE COMMISSION (FREC)

§475.02. The Commission consists of seven members 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 five years preceding appointment; one member must be a licensed broker or a licensed sales associate who has held an active license for the two 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.

In 2010, the Department determined that a licensed real estate broker or sales associate who holds an active real estate school permit, chief administrator permit, school instructor permit, or any combination of such permits issued by the DBPR may serve on the Florida Real Estate Commission (FREC). Members are appointed to four-year terms and may serve no more than two consecutive terms.

PART II: FLORIDA REAL ESTATE COMMISSION RULES

LEARNING OBJECTIVES

Upon completion of Part II, the student will be able to:

1. Explain the changes in a brokerage partnership when the general partner withdraws.
2. State the real estate licensing restrictions for officers and directors of a Florida real estate brokerage corporation.
3. Discuss the factors that determine if a location qualifies as a branch office which must be registered with the FREC.
4. Review the Commission's requirements for advertising by real estate firms.
5. Recall the five forms of disciplinary actions imposed by the FREC.

INTRODUCTION

The Florida Statute section 475.05 authorizes the Real Estate Commission to adopt rules pursuant to Chapter 120, Laws of Florida. Below is a review of the Commission rules most relevant to your daily practice of real estate. The complete list of FREC's rules can be found in Chapter 61J2 of the *Florida Administrative Code* (F.A.C.) online at



<https://www.flrules.org/gateway/Division.asp?DivID=283>.

CHAPTER 61J2-4; PARTNERSHIPS

Real estate brokerage partnerships must be registered with the Florida Real Estate Commission. The partnership must contain at least one licensed or registered active real estate broker. In addition, each partner that deals with the public must hold a valid real estate broker license. Under general partnership law, when a general partner dies or withdraws, the partnership is *automatically dissolved* and a new partnership must be created. However, for FREC purposes, *if the business is continued by two or more persons, one of whom is an active real estate broker,*

the partnership will be able to continue. In this scenario, it is only necessary to cancel, issue, or reissue registration or licenses reflecting the change in the organization.

CHAPTER 61J2-5; CORPORATIONS

Corporations must have a legal existence with the State of Florida before being registered with the FREC. A registration will *not* be granted or renewed for any corporation

- if it appears that the individual(s) having control of the corporation has been denied, revoked, or suspended and not reinstated, or
- if a person having control of the corporation has been convicted of a felony in any court and has not had civil rights restored for at least five years, or
- if an injunction has been entered against the individual for operating as a real estate licensee without a license

When applying this rule, a person is deemed to be in control of a corporation when the person or their spouse, children, or member of the household owns or controls, directly or indirectly, more than 40% of the voting stock.

All officers and directors of a corporation must be registered with the FREC. An officer or director can be either a real estate broker or member of the general public. However, a real estate sales associate or a broker associate may not be a director or officer of a real estate corporation. Even though a real estate sales associate or broker associate cannot hold the titles of either director or officer, they are allowed to own 100% of the stock of the corporation.

If a corporation only has one active broker and that broker dies, resigns, or is otherwise removed from their position, the corporation has only 14 calendar days to appoint a new broker. During this 14-day period, no new brokerage business may be performed.



COMPREHENSION

5. Who is prohibited from being an officer or director of a real estate corporation?

CHAPTER 61J2-10; BUSINESS OPERATIONS

Brokerage Offices

A real estate brokerage must have an office. This office may be located in a residential location as long as it is not in violation of local zoning ordinances and must still have a sign on or about the entrance of the office—not necessarily on the front door of the house. A broker may also have a branch office, which is required to be registered with the FREC.

While there is no clear cut definition of what constitutes a branch office, a mere temporary shelter, on a subdivision being sold by the broker, for the protection of sales associates and customers and at which transactions are not closed and sales associates are not permanently assigned, is not deemed to be a branch office. The permanence, use, and character of activities customarily conducted at the office or shelter will determine whether it must be registered.



Gifts and Kickbacks

An issue that frequently arises is whether a real estate licensee can give a gift to a member of the general public. Whether this is permissible depends on the reason the gift is being given. For example:

- if a real estate licensee refers a buyer to a moving company and in return receives compensation, this kickback or rebate, is permissible *if* the buyer has been told all the details of this arrangement ahead of time.
- A real estate licensee can share part of their commission with a party of the transaction if full disclosure is made to all interested parties.
- A real estate licensee is *never* allowed to compensate a nonlicensee for the referral of real estate brokerage business.

Advertising

Advertising by real estate firms must be designed so that a reasonable person knows they are dealing with a real estate licensee. It must always include the registered name of the brokerage firm. If a licensee's name appears in the advertisement, the name must be the same as licensed with the Commission. Informally, the FREC has allowed nicknames to appear in advertisements as long as they are not considered to be misleading. When advertising on a

site on the Internet, the brokerage firm name must be placed adjacent to or immediately above or below the *point of contact information*. **Point of contact information** refers to any means by which to contact the brokerage firm or individual licensee including all mailing addresses, physical street addresses, email addresses, telephone numbers, and facsimile telephone numbers.

In regard to nicknames, the use of Tom instead of Thomas would be acceptable. Remember, the allowance is not official and cannot be misleading, so a prudent person would refrain from using nicknames such as Skippy or Fair Fiona.

Trade Names

The FREC will *not* issue a license containing a trade name that is the same as the real or trade name of another licensee. Further, no individual partnership or corporation may be registered under more than one trade name.



COMPREHENSION

6. When are nicknames allowed to be used in advertising?
-

CHAPTER 61J2-14; FUNDS ENTRUSTED TO BROKERS - DEPOSITS AND ESCROWS

Once the parties have entered into a sales contract, usually the buyer puts down a deposit toward the purchase of real property. If the deposit is to be held in escrow by an attorney or a title company, the sales contract must contain their name, address, and telephone number.

Be aware of the timeline:

- *Within 10 days of the due date* for every deposit specified in the sales contract, the buyer's broker must request in writing that the attorney or title company verify that the deposit was received (unless the seller or the seller's agent selected the attorney or title company to hold the deposit).
- *Ten days after the written request was made*, the buyer's broker must provide the seller's broker with a copy of the written verification or written notice

that no verification was received.

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

The FREC allows a broker to place a limited amount of the broker's personal money in the real estate brokerage escrow account. The amount is \$1,000 in the sales escrow account, and \$5,000 in the property management escrow account.

Note: *A broker is not required to maintain an escrow account; however, if a broker does maintain an escrow account, the brokerage must prepare a monthly reconciliation statement.* The statement must then be reviewed, signed, and dated by the broker. This is the primary reason many brokerage firms do not keep escrow accounts.

The role of escrow agent may be one of the most important roles that a real estate broker undertakes. Not only is the broker entrusted with the monies of another, but the broker is required to timely deposit the funds in an appropriate institution, maintain the funds until properly instructed as to how and to whom to disburse, and perform the regular recon-

Table 1.2: Monthly Escrow Reconciliation Statement Required Information

- Date the reconciliation was undertaken
- Date used to reconcile the balances
- Name of the bank(s)
- Name(s) of the account(s)
- Account number(s)
- Account balance(s) and date(s)
- Deposits in transit
- Outstanding check identified by date and check number
- Itemized list of the broker's trust liability

Include any other items necessary to reconcile the bank account balance(s) with the balance per the broker's checkbook(s) and other trust account books and records disclosing the date of receipt and the source of the funds.

ciliation of the escrow account to ensure the proper accounting of the funds being maintained.

If a broker holding funds in their escrow account receives **conflicting demands** from the parties or if the broker has **good faith doubts** as to who is entitled to the escrow funds, the broker must follow Chapter 61J2-10.032, F.A.C., which states:

- Within 15 business days of receiving the last party's demand or of having good faith doubts, the broker must report **in writing** the dispute or doubts to the FREC.
- Within 30 business days of the last demand or of having good faith doubts, the broker must institute a settlement procedure and notify FREC of that action.

Many brokerages feel that the best recourse in this situation is to request an escrow disbursement order from FREC. It can be a safe, quick and inexpensive way to have the matter decided.

CHAPTER 61J2-24; DISCIPLINARY MATTERS

This chapter contains the disciplinary guidelines that the FREC follows when licensees are guilty of violating Chapter 455 or Chapter 475. These guidelines give the FREC wide discretion in imposing penalties and provide for a range of penalties, including differentiation between first time violations and second and subsequent violations. The order of penalties, ranging from lowest to highest, is: reprimand, fine, probation, suspension, and revocation or denial.

The FREC may choose to impose any of the following disciplinary sanctions:

- **Notice of Noncompliance:** A violation is considered a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. The notice of non-compliance shall only be issued for an initial offense of a listed minor violation.
- **Citations:** A citation will be issued for violations that are not a substantial threat to the health, safety, and general welfare of the public.
- **Mediation:** the process whereby a mediator

appointed by the DBPR acts to encourage and facilitate resolution of a legally sufficient complaint. It is an informal process with the objective of assisting the complainant and subject of the complaint to reach a mutually acceptable resolution.

- **Revocation:** revocation of a license is permanent except for a few specific violations.
- **Probation:** Unless otherwise stated in the final order a term of probation shall be ninety days, beginning thirty days after the filing of the final order.



Of all the violations that go before the FREC, improper handling of escrow funds is considered the most serious. When the public has entrusted their money to a broker and the broker mishandles the funds or fails to properly reconcile the account, the FREC does not hesitate to take the appropriate and sometimes harsh action to not only discipline the broker, but to send the message to the licensee community that escrow violations will not be treated lightly.

CHAPTER 61J2-26; NONRESIDENT LICENSURE

An individual does not have to be either a Florida resident or a United States citizen to qualify for a Florida real estate license. Applicants are expected to be knowledgeable in Florida law, statutes, and administrative rules. They must meet education, experience, and examination requirements comparable to the requirements for Florida resident applicants as prescribed in sections 475.17(2), (6), and 475.175, F.S.

Prior to May 4, 2012, Florida nonresident licensees were required to sign an Irrevocable Consent Form that would allow legal actions against the licensee to commence in any county in the State of Florida where the plaintiff resided. When the governor approved House Bill 693 during the 2012 legislative session, the Irrevocable Consent Form requirement was eliminated.

PART III: STATE AND FEDERAL LAWS AFFECTING REAL ESTATE

LEARNING OBJECTIVES

Upon completion of Part III, the student will be able to:

1. Describe the purpose for the energy-efficiency rating, radon gas, Residential Swimming Pool Safety Act, and property tax disclosures.
2. Explain when the lead-based paint, homeowners' associations, condominiums, and property condition disclosures are required.
3. Give examples of material facts that must be disclosed to the seller.
4. Recognize special laws that apply to contracts for military personnel.
5. Explain the proper handling and disposition of deposit money or advance rent as required in the Florida Landlord Tenant Act.

INTRODUCTION

In this section we review state and federal laws such as Community Development Districts, the Residential Swimming Pool Safety Act, contracts with military personnel, and landlord tenant regulations. Various disclosure requirements are addressed including radon gas, lead-based paint, property tax, homeowners' associations, condominiums, property conditions, and energy-efficiency.

COMMUNITY DEVELOPMENT DISTRICT (CDD)

A Community Development District, commonly known as a CDD, is a local special-purpose government authorized under the Uniform Community Development Act of 1980 by Chapter 190 of the *Florida Statutes* and is an alternative method for managing and financing infrastructure required to support community development.

CDDs are legal entities and possess several powers such as: the right to enter into contracts; the right to own both real and personal property; adoption of by-laws, rules, regulations, and orders; the right to sue and be sued; to obtain funds by borrowing; to issue bonds; and to levy assessments.

Legal overview of a CDD

- A CDD provides a mechanism to finance, construct, and maintain community or subdivision infrastructure improvements. Infrastructure includes water

and sewer collection systems, roads, sidewalks, drainage and storm water systems, parks, boardwalks, community areas, landscaping, and wetlands mitigation.

- A CDD is organized as a special-purpose unit of local government and operates as an independent taxing district.
- Because a CDD is an independent special district, the governing body establishes their own budget and operates independently of the local governmental entity within the scope of specific and very limited powers.
- A CDD does not have police powers and cannot regulate land use or issue development orders; those powers reside with the local general-purpose government (city or county).
- The primary function of a CDD is to issue tax-exempt bonds to construct infrastructure such as roads, water and sewer lines, recreational facilities, etc.
- CDDs are designed to pay for themselves. Theoretically, the cost of growth is allocated proportionately by levying special assessments on the lands which receive the benefit of the improvements.
- Under ideal circumstances, the CDD provides a more efficient method of paying the operation and maintenance expense of infrastructure and related services. However, there are inherent risks, especially during the recent economic downturn. If a CDD goes into foreclosure or only sells a small per-

centage of lots, owners could find themselves paying disproportionately high fees.

- CDDs replace HOAs, but have board powers. As is true for all communities, the professionalism of the board members directly contributes to or detracts from the operation and harmony of the neighborhood.

Required Disclosure Language

Subsequent to the establishment of a district under Chapter 190, F.S., each contract for the initial sale of a parcel of real property and each contract for the initial sale of a residential unit within the district must include, immediately prior to the space reserved in the contract for the signature of the purchaser, the following disclosure statement in boldfaced and conspicuous type which is larger than the type in the remaining text of the contract:

**COMMUNITY DEVELOPMENT DISTRICT
DISCLOSURE- F.S. section 190.048**

THE (Name of District) COMMUNITY DEVELOPMENT DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW.

ENERGY-EFFICIENCY RATING

A prospective buyer of a building must be provided with a copy of an information brochure notifying the buyer of the option for an energy-efficiency rating on the building. The brochure must be given at the time of or prior to the buyer's execution of the contract for sale and purchase pursuant to section 553.996, F.S. The Department of Community Affairs provides free copies of this brochure.

RADON GAS

A radon disclosure must be provided at the time of, or prior to, the execution of the sale or purchase of any building as well as prior to the execution of a rental agreement for any building. This disclosure is not required for residential transient occupancy provided the occupancy is for 45 days or less in duration.

RADON GAS

Radon is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department (Chapter 404.056(5), F.S.).

LEAD-BASED PAINT DISCLOSURE

Many houses and apartments built before 1978 have paint that contains lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly.

Federal law requires that individuals receive certain information before renting or buying pre-1978 housing:

- Landlords must disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure form about lead-based paint.
- Sellers must disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure form about lead-based paint. Buyers have up to 10 days to check for lead hazards.

Housing excluded from the disclosure requirement:

- housing built after 1977 (Congress chose not to cover post-1977 housing because the Consumer Product Safety Commission (CPSC) banned the use of lead-based paint for residential use in 1978)
- zero-bedroom units, such as efficiencies, lofts, and dormitories

- leases for less than 100 days, such as vacation houses or short-term rentals
- housing for the elderly (unless children live there)
- housing for the handicapped (unless children live there)
- rental housing that has been inspected by a certified inspector and found to be free of lead-based paint
- foreclosure sales

PROPERTY TAX DISCLOSURE

A prospective purchaser of residential property must be given the following disclosure summary at or before the execution of the contract regardless of the age of the dwelling. Pursuant to section 689.261, F.S., it must either be included in the contract or must be provided by the seller.

PROPERTY TAX DISCLOSURE SUMMARY

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

HOMEOWNERS' ASSOCIATION DISCLOSURE

A purchaser who is buying in a community that mandates membership in a homeowners' association (HOA) must be given a disclosure of said requirement prior to the execution of the contract for sale and purchase. This disclosure must be provided by either the developer or the seller. If the required disclosure is not given to the buyer prior to the execution of the contract, the buyer has the option to void the contract in writing within three days after receipt of the disclosure summary or prior to closing, whichever occurs first. The buyer's right may not be waived by the

buyer but terminates at closing. The exact language of the disclosure can be found in Chapter 720, F.S.



COMPREHENSION

7. Is an HOA disclosure required prior to contract execution for *all* residential property sales within a HOA community?

CONDOMINIUM DISCLOSURE

Chapter 718, F.S., requires a developer and a non-developer unit owner disclosure prior to the sale of a condominium. While the language of these disclosures vary between a developer and nondeveloper, both require that the disclosure be given prior to the execution of the sales contract. The language of both forms is contained in section 718.503, F.S. If a real estate licensee provides to, or otherwise obtains for, a prospective purchaser the documents described in this subsection, the licensee is not liable for any error or inaccuracy contained in the documents.

DISCLOSURE OF MATERIAL FACTS



If a bucket has been placed in the attic to collect rainwater from a leaking roof, it must be disclosed that the roof is leaking. However, if the bucket is placed in the middle of the living room and the buyer can see the rain water going into the bucket from the ceiling, neither the seller nor licensee needs to disclose what is in clear view.

Florida law requires real estate licensees to disclose material facts affecting the value of residential property which are not readily observable to the buyer. The information is considered material to the extent that if the information had been disclosed, the sales contract would not have been signed or the terms may have been negotiated differently.

Physical material facts that affect the value of residen-

tial property can generally be measured monetarily. The court can determine the amount of damages due to a leaky roof or termite infestation, compare it with the purchase price and cost to repair the damages, and then decide whether the value was materially affected.

Property Condition—Johnson v. Davis

The landmark case in the area of disclosures is the case of *Johnson v. Davis*, 480 So.2d 625 (Florida 1985). Prior to this case, the rule was caveat emptor, buyer beware, which is still the rule in commercial real estate contracts. In *Johnson v. Davis*, the Supreme Court of Florida held that:

...where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer. This duty is equally applicable to all forms of real property, new and used.

The Court next held in *Rayner v. Wise* that the doctrine in *Johnson* also applied to real estate professionals. This meant that the seller or licensed real estate professional must disclose material facts that affect the value of the property which are not readily observable and are not known to the buyer. This duty to disclose can also be found in Chapter 475, F.S. The case law does not mandate the manner in which disclosure must take place, whether written, oral, or any specific form.



A Seller's Disclosure is a common form used by many real estate professionals to comply with the property condition disclosure requirement. Whether written or oral, disclosure:

- is required in all residential real property transactions
- is not required in commercial transactions
- must disclose material facts that affect value not readily observable to the buyer

While disclosing a leaking roof is not a hard determination to make, other situations can be more difficult to determine if they are considered an unknown

material defect. What if a halfway house is going in across the street? What if the halfway house is going in five houses down? What if it is public record that the property is zoned for this type of occupancy? At this time, these questions have not been addressed by legal decisions.

Some might argue that you cannot go wrong with disclosing, but what if the seller tells you not to and you owe the seller a fiduciary duty as a single agent? In other words, it is not always clear what the legal obligation is in these situations. NAR® addressed this issue in 2001 in the Standards of Practice 1-9. Currently, the 2014 REALTOR® Code of Ethics states, "Information concerning latent material defects is not considered confidential information." Remember, if the seller asks you not to tell or in any situation, you always have the option to seek legal counsel.



COMPREHENSION

8. If a seller represented by a transaction broker reveals that their home experienced flood damage several years ago but they covered it up with new carpeting, is the broker required to disclose this information to potential buyers?
-

Sinkholes

When there is a nonobservable sinkhole on the property, it is clear that it should be disclosed. Less clear is whether there is a duty to disclose a *repaired* sinkhole on the property. Correlate this with the situation of a repaired roof leak. It would be uncommon to disclose that in the past the roof leaked, when there is no leak now.

Although the law is unclear about a repaired sinkhole, Florida law does provide direction when an insurance claim is processed for a sinkhole repair. Section 627.7073, F.S., requires the professionally prepared sinkhole report and certification to be filed with the clerk of the court:

- when an insurer has paid a claim
- as a precondition to accepting payment for a loss
- upon completed foundation repairs or building stabilization

**Table 1.3: Disclosure Guide**

Property disclosures should be provided prior to contract execution under the following conditions:*

| <u>Type</u> | <u>Application</u> |
|--------------------------|--|
| CDD | prior to initial sale of real property or a residential unit in a CDD |
| Energy-Efficiency Rating | the buyer of a building must be given an information brochure |
| Radon Gas | any building, except for residential transient rentals less than 45 days |
| Lead-based Paint | most residential housing built before 1978, see exceptions list |
| Property Tax | all residential properties |
| HOA | when membership is mandatory |
| Condominium Association | all condominium units in residential transactions |
| Sinkholes | when a claim has been made and paid by an insurer |
| Property Condition | all residential property when material facts not readily observable affect the value |

*refer to the *Florida Statutes* for more specifics on each disclosure.

This language implies that verified sinkholes should be disclosed regardless of when they occurred.



Disclosure of a sinkhole claim. Section 627.7073(2)(c), F.S. (2005), states: The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the closing, that a claim has been paid and whether or not the full amount of the proceeds was used to repair the sinkhole damage.

Stigmatized Property

Fortunately, some areas of the law have made it clear what one should disclose and what one should not. Section 689.25, F.S., states that if the property was a site of a homicide, suicide, or death it is not a material fact which must be disclosed. Other situations are not as clear. Further, according to Florida law, HIV and AIDS status are not material facts that must be disclosed in a real estate transaction. No cause of action arises against a real estate licensee or owner for failure to disclose that the occupant of the property is infected with HIV/AIDS.

What if a seller believes their house is haunted? Is the listing agent or seller required to disclose this belief to prospective buyers? The law is silent on haunting. Your best course of action is to consult your broker and/or legal counsel.

RESIDENTIAL SWIMMING POOL SAFETY ACT

The Residential Swimming Pool Safety Act, Chapter 515, F.S., went into effect in the year 2000. It requires certain safety features to be installed on newly constructed homes with swimming pools to prevent drowning of a young child or medically frail elderly person.

To pass the final inspection and receive a certificate of completion, a residential swimming pool must meet **one** of the following safety features:

- The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirement.
- There must be an approved safety pool cover.
- All doors and windows with direct access from the home to the pool must be equipped with an approved exit alarm system with minimum sound pressure ratings.
- All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with the release mechanism at least 54 inches above the floor.

The failure to equip a new residential home and pool with at least one of the above safety features is a second-degree misdemeanor. No penalty will be imposed if the person, within 45 days after arrest or issuance of a summons or a notice to appear, has

equipped the pool with at least one safety feature as listed above and has attended a drowning prevention education program. However, the requirement of attending a drowning prevention education program is waived if such program is not offered within 45 days after issuance of the citation.

§515.33, *F.S.*, Information required to be furnished to buyers—A licensed pool contractor, on entering into an agreement with a buyer to build a residential swimming pool, or a licensed home builder or developer, on entering into an agreement with a buyer to build a house that includes a residential swimming pool, must give the buyer a document containing the requirements of this chapter and a copy of the publication produced by the department under section 515.31 that provides information on drowning prevention and the responsibilities of pool ownership.

CONTRACTS WITH MILITARY PERSONNEL

An active member of the United States Armed Forces, the United States Reserve Forces, or the Florida National Guard, collectively known as **servicemember**, may terminate a contract to purchase real property, prior to closing, by providing to the seller or mortgagor on the property a written notice of termination under the following circumstances:

- servicemember is required, by permanent change of station orders, to move 35 miles or more from the location of the property
- servicemember is released from active duty and the property is more than 35 miles from the member's home of record
- servicemember receives orders to move into government quarters, or the member becomes eligible to live in government quarters, or
- servicemember receives temporary duty orders to move more than 35 miles from the location of the property and the temporary duty orders exceed 90 days

The notice to the seller or mortgagor canceling the contract must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer. Upon termination of the contract, the member is entitled to a full refund of the deposit within seven days.

The law may not be waived or modified by agreement of the parties under any circumstances. §689.27, *F.S.*, (2003).



COMPREHENSION

9. When military personnel are required to move more than 35 miles from the location of the property during active duty, what proof is required to terminate a real estate purchase contract?

LANDLORD-TENANT REGULATIONS

In July of 2013 several changes were made in Chapter 83, Part II. The most current laws can be seen by going to the 2013 Florida Statutes at: www.flsenate.gov/Laws/Statutes. The Landlord-Tenant Act Chapter 83, *F.S.*, is divided into three sections:

- Part I: Nonresidential Tenancies
- Part II: Residential Tenancies
- Part III: Self-service storage space

Residential Tenancies

For the purposes of this section, the discussion concerning landlord-tenant regulations will focus solely on the regulations in residential tenancies. Part II of the Landlord-Tenant Act applies to the rental of dwelling units. It does *not* apply to the following:

- residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services
- transient occupancy in a hotel, condominium, motel, rooming house, or similar public lodging, or transient occupancy in a mobile home park
- occupancy by a holder of a proprietary lease in a cooperative apartment
- occupancy by an owner of a condominium unit
- occupancy under a contract of sale of a dwelling unit or the property of which it is a part



The old law excluded occupancies under a contract for sale of a dwelling unit or the property of which it is a part. The new law narrows the situations of occupancy under a contract for sale of a dwelling unit or property that are excluded. Now

the Act does *not* apply to a contract for sale of a dwelling unit in which the buyer has paid at least 12 months' rent, or in which the buyer has paid at least one months' rent and a deposit of at least 5% of the purchase price of the property.

Disposition of Deposit Money or Advanced Rent

§83.49, F.S. This is one of the more important sections of the Landlord-Tenant Act. When a landlord or his/her agent receives deposit money or advance rent, they must hold the money in one of three manners:

- Hold the total amount of such money in a separate noninterest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord cannot commingle such moneys with any other funds of the landlord.
- Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant will receive and collect interest in an amount of at least 75% of the annualized average interest rate payable on such account or interest at the rate of 5% per year, simple interest, whichever the landlord elects. The landlord cannot commingle such moneys with any other funds of the landlord.
- Post a surety bond with the clerk of the circuit court in the county in which the dwelling unit is located in the amount of the security holdings or \$50,000, whichever is less.

NEW The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

- Be given in person or by mail to the tenant
- State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law
- State whether the tenant is entitled to interest on the deposit
- Contain the following disclosure:

ADVANCE RENT AND SECURITY DEPOSIT DISCLOSURE

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord will have 15 days to return the security deposit together with interest if otherwise required, or the landlord will have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice must contain a statement in substantially the following form:

NOTICE OF CLAIM

This is a notice of my intention to impose a claim for damages in the amount of \$_____ upon your security deposit, due to_____. It is sent to you as required by Chapter 83.49(3), F.S. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address).

FYI

Unless the lease states otherwise, section 83.49(5), F.S., does allow the landlord some breathing room when a tenant vacates the premises prior to the expiration of the lease term and fails to give the landlord at least seven days' advance written notice to vacate. Failure of the tenant to give such notice shall relieve the landlord of the notice requirement of section 83.49(3)(a), but shall not waive any claim the tenant may have to any part of the security deposit.

As referred to in section 475.25(1)(d), *F.S.*, when facing conflicting demands on money in escrow, a real estate broker is required to notify the Florida Real Estate Commission. However, section 83.49 prevails over conflicting provisions in Chapter 475 and permits licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in section 475.25(1)(d).

In most landlord/tenant disputes the burden is on the landlord to keep careful documentation. A meticulous paper trail will help keep potential conflicts to a minimum.

NEW

Landlord's Obligation to Maintain Premises

§83.51. The law provides that the landlord must provide screens installed at the commencement of the tenancy (without qualification as to whether such item is covered in a lease agreement) and repair the screens once annually during the tenancy.

NEW

Restoration of Possession to Landlord

§83.62. In an action for possession, after entry of judgment in favor of the landlord, the clerk must issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. The new law clarifies that Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

NEW

Retaliatory Conduct

§83.64. Under the old law, it is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith.

The new law provides for two additional instances of retaliatory conduct:

- where the tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association, and
- where the tenant has exercised his or her rights under local, state, or federal fair housing laws

Termination of Rental Agreement by a Servicemember

Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the

landlord's receipt of the notice if any of the following criteria are met:

- the servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises
- the servicemember is prematurely or involuntarily discharged or released from active duty or state active duty
- the servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty
- after entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters
- the servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days
- the servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises

Prohibited Provisions in Rental Agreements

A provision in a rental agreement is void and unenforceable to the extent that it purports to waive or preclude the rights, remedies, or requirements set forth in Chapter 83, F.S.



COMPREHENSION

10. The tenant moved out of Landlord Kevin's unit on October 15. Shower tiles were damaged and need to be replaced. By what date must Kevin mail his Notice of Claim on the security deposit to the tenant?

11. Does the notice requirement change if the tenant vacated the premises prior to the expiration of the lease term and did not give at least seven days written notice of vacating?

EDITION 15 – CORE LAW REVIEW

You are *not* required to answer the progress test questions to complete the course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

1. In a mandatory homeowners' association the required disclosure must be provided by the:

- a. developer or seller.
- b. broker or sales associate.
- c. mortgage company.
- d. closing agent.

2. A fiduciary duty is owed by:

- a. a transaction broker.
- b. a single agent.
- c. all real estate licensees.
- d. all parties in a real estate transaction.

3. A broker who owns a brokerage firm and a referral company may be issued upon request:

- a. dual licenses.
- b. blanket permits.
- c. multiple operations permits.
- d. multiple licenses.

4. A real estate license is required when acting as a/an:

- a. attorney in fact for the purpose of the execution of contracts.
- b. individual selling their own real property.
- c. salaried employee for an owner of an apartment community who works on site.
- d. leasing agent who is paid on a transactional basis.

5. Under the license law, it is presumed that all licensees are operating as:

- a. single agents.
- b. transaction brokers.
- c. broker associates.
- d. seller's agents.

 **EDITION 15
COMPREHENSION ANSWER KEY**

1. Secretary Olivia mailed the license renewals to the DBPR for all three general partners of Bamboo Realty one week before the deadline. Unfortunately, the envelope was damaged and they were delayed in the mail. The status of all three broker licenses became involuntarily inactive for five days until they were successfully renewed online. What was the status of the partnership's registration during those five days? **The partnership was canceled automatically during that period of time. The license or registration of at least one active broker member must be in force.**
2. If your license expires on March 31 and you do not complete the renewal requirements on time, what is the status of your license on April 1st? **If you miss the renewal deadline, your license status becomes involuntarily inactive the first day of the next license period.**
3. A licensee was found guilty of misrepresentation and breach of trust. His fine was \$10,000. Why was the fine more than \$5,000? **The commission can impose a fine up to \$5,000 per offense. Two separate offenses would amount to a \$10,000 fine.**
4. Which violation of real estate license law is a third degree felony? **A person who operates as a broker or sales associate without a valid or current license is committing a third degree felony.**
5. Who is prohibited from being an officer or director of a real estate corporation? **A sales associate or broker associate may not be an officer or director of a real estate corporation.**
6. When are nicknames allowed to be used in advertising? **The FREC permits nicknames to be used in advertising as long as they are not misleading; however, the licensee's last name must appear as it is licensed with the commission.**
7. Is an HOA disclosure required prior to contract execution for all residential property sales within a HOA community? **If the homeowners' association mandates membership, then the HOA disclosure is required prior to contract execution for all residential sales.**
8. If a seller represented by a transaction broker reveals that their home experienced flood damage several years ago but they covered it up with new carpeting, is the broker required to disclose this information to potential buyers? **Yes, the Brokerage Relationship Disclosure requires all licensees to disclose all known unobservable facts that materially affect a property's value.**
9. When military personnel are required to move more than 35 miles from the location of the property during active duty, what proof is required to terminate a real estate purchase contract? **In order to terminate a real estate purchase contract or rental agreement, the servicemember must provide either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.**

 **EDITION 15**
COMPREHENSION ANSWER KEY

10. The tenant moved out of Landlord Kevin's unit on October 15. Shower tiles were damaged and need to be replaced. By what date must Kevin mail his Notice of Claim on the security deposit? **To comply with the notice requirement Landlord Kevin must mail his notice by November 14, which is within 30 days of the tenant's departure.**

11. Does the notice requirement change if the tenant vacated the premises prior to the expiration of the lease term and did not give proper written notice of vacating? **If the tenant vacated the premises prior to the expiration of the lease term and did not give at least seven days written notice of vacating, the landlord does not have to follow the 30-day notice requirement. However, the tenant is still owed whatever is due from the balance of the security.**

~ NOTES ~



Final Examination Guidelines

1. According to *Florida Administrative Code*, 61J2-3.009,(1)(a), all active or inactive sales associates, broker associates, and brokers must complete a minimum of 14 hours of instruction during each license renewal period, excluding the first renewal period of their current license.
2. **Is this your first license renewal?** Sales associates, broker associates, and brokers must complete **post-license education** during their first license renewal period. Call our school for more information: 800-432-0320.
3. The Florida Real Estate Commission (FREC) has approved this final examination to satisfy the mandatory 3-hour Core Law update for sales associates, broker associates, and brokers. The FREC course approval #0015580 expires March 31, 2017.
4. FREC Rule 61J2-3.009 regulates the format of final examination questions. This rule states:
 - The 3-hour course examination consists of 10 multiple choice questions with four answer choices each. There is only one correct answer for each question.
 - The examination questions may not follow the order of the material.
 - A minimum of 7 questions must be at application level which means students must apply the knowledge they have acquired during the course to answer the questions correctly.
 - A passing score is 80% or higher. You must answer a minimum of 8 questions correctly to attain satisfactory course completion.
 - Students who have failed the final examination must complete a different examination from the one the student previously failed.

FYI

FREE re-exams are available if you do not pass the Final Examination on your first attempt.

If you need assistance while taking the Final Examination, contact our instructor during office hours at 941-378-2900 ext. 502 or email REInstructor@BertRodgers.com.

For general questions, please contact our Student Services Department at 941-378-2900.



Real Estate 3-Hour Core Law Final Examination CL6

- 1. Broker Associate Dave owes loyalty, confidentiality, and obedience to seller Smith. In this situation, Dave is:** (Review page 3)

 - a. a transaction broker.
 - b. a single agent.
 - c. a dual agent.
 - d. not in a brokerage relationship.

- 2. The broker for Sunshine Commercial Realty has allowed two sales associates from his firm to represent a buyer and seller in the same transaction as single agents. Both parties have over \$1 million in assets. This scenario best describes which brokerage relationship?** (Review page 4)

 - a. transaction broker
 - b. designated sales associate
 - c. no brokerage relationship
 - d. dual agency

- 3. Broker Julio changed his primary business address. He must notify the FREC within 10 days or his license will:** (Review page 7)

 - a. revert to sales associate status.
 - b. become voluntarily inactive.
 - c. be permanently suspended.
 - d. cease to be in force.

- 4. James obtained his sales associate license three years ago. He is preparing for his second license renewal. How many hours of continuing education is he required to complete?** (Review page 6)

 - a. 3
 - b. 10
 - c. 14
 - d. 15

- 5. Broker Karen helped buyer Briana find the perfect home. The sales contract requires a \$5,000 deposit which will be placed in escrow with an attorney. The attorney must provide written verification of receipt within:** (Review page 16)

 - a. one day.
 - b. three days.
 - c. five days.
 - d. ten days.

- 6. Miles just obtained his real estate broker's license and now wants to open his own brokerage firm. According to Florida real estate laws, Miles is required to:** (Review page 16)
- maintain a branch office.
 - prepare a monthly reconciliation statement for any escrow accounts.
 - include his home phone number in advertisements.
 - maintain a comment box near the entrance of his office.
- 7. Jeremy received his real estate license in the mail after passing the sales associate state licensing examination. He can perform services of real estate as soon as:** (Review page 6)
- he registers his license with a broker.
 - his license has been active for one year.
 - he obtains his real estate broker's license.
 - he becomes an officer of a real estate brokerage firm.
- 8. Michael is currently registered as the broker of record for his real estate brokerage firm. He also plans to be the broker of record for his new real estate referral company. Michael can be the broker of both of his companies if he:** (Review page 7)
- holds multiple licenses.
 - has a group license.
 - incorporates both entities in the state of Florida.
 - allows one of his sales associates to become a shareholder in one of the businesses.
- 9. Sales Associate Don has been offered employment by a competing real estate brokerage firm. Don really likes his current broker but wants to make more money. Don:** (Review page 7)
- cannot work for both brokerage firms at the same time.
 - must submit a request for a multiple license to work for both firms.
 - may work for both firms part time.
 - can submit an application to the FREC for a group license and work for both firms.
- 10. Broker Madison is in a single agency relationship with Buyer Ned. In accordance with Florida real estate license law and rules, Madison:** (Review page 3)
- can tell a seller that Ned is willing to pay more than the list price.
 - cannot tell anyone that Ned recently inherited \$5 million.
 - does not owe Ned any fiduciary duties.
 - may withhold information from Ned that materially affects the value of the property.



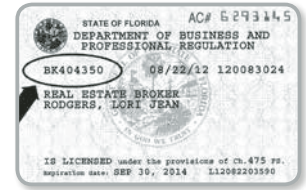


Registration Form Instructions: Mail, Fax, or Email Submission

STUDENT INFORMATION

Using black ink, print your license number, name, and contact information on the Registration Form. We use this information to report your education to the DBPR.

If you have more than one license number, use your primary number. If you don't know your license number, contact the DBPR at <http://www.myfloridalicense.com/dbpr> and click on: VERIFY A LICENSE. Your license number is seven digits or less (not the AC#).



ANSWER SHEET

After answering all 10 questions on the final examination, transfer your answers to the Answer Sheet. Use black ink and mark only one choice per question.

If you mark more than one answer or do not mark any answer on the Answer Sheet, you will not receive credit for that question. If you make a mistake on the answer sheet, place an X over the wrong answer; then, bubble in and circle the correct answer.



Example of a changed answer.

ORDER INFORMATION

Tuition

Course tuition of \$15, includes the following services*: exam grading, FREE re-exams, electronic reporting to the DBPR, and exam results by mail.

Want your results faster?

Mail, fax or email your Registration Form to us, choose **Next-Day Service*** and we will fax or email your Course Completion Report. To ensure timely processing, add our domain name @BertRodgers.com to your safe senders list.

*All services are reliant on students providing accurate and legible information.

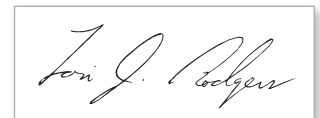
New for 2014!

Order *The Language of Florida Real Estate*, a convenient 72-page reference guide summarizing the major concepts and definitions in real estate, for only \$15.



Method of Payment

Include your check, money order, or credit card information. A signature is required with credit card payments.



Review the license renewal checklist on the back of the Registration Form.

SUBMIT YOUR FINAL EXAM

Send us your completed Registration Form:

Fax – 941-378-3883

Email – grading@BertRodgers.com

Mail – P.O. Box 4708, Sarasota, FL 34230.

STUDENT INFORMATION

Enter your primary SL or BK license number.

SALES ASSOCIATE SL

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ANSWER SHEET

EXAM CL6

FREC Course Approval #0015580 (Edition 15)
 Expires March 31, 2017.

Use black ink to fill in the correct answer choice.

Example:

(A) ● (C) (D)

- | | |
|--------------------|---------------------|
| 1. (A) (B) (C) (D) | 6. (A) (B) (C) (D) |
| 2. (A) (B) (C) (D) | 7. (A) (B) (C) (D) |
| 3. (A) (B) (C) (D) | 8. (A) (B) (C) (D) |
| 4. (A) (B) (C) (D) | 9. (A) (B) (C) (D) |
| 5. (A) (B) (C) (D) | 10. (A) (B) (C) (D) |

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Thank you for relying on Bert Rodgers Schools of Real Estate! Please help us serve you better by taking a few moments to share your thoughts on continuing education for real estate professionals in Florida. I look forward to your comments.

Sincerely,

Lori J. Rodgers, President

How did you complete your remaining 11 hours of continuing education? _____

What influenced your decision? price, location, topic, or other - please specify _____

Of those 11 hours, which subject area was most valuable to you as a real estate professional? _____

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