

By the Committee on Real Property & Probate and  
Representative J. Miller

1                                   A bill to be entitled  
2           An act relating to real estate brokers and  
3           salespersons; amending s. 475.01, F.S.;  
4           eliminating the definition of the term "first  
5           contact"; amending s. 475.011, F.S.; providing  
6           a regulatory exemption for certain financial  
7           institutions in connection with certain  
8           transactions; amending s. 475.181, F.S.;  
9           referencing certification requirements of the  
10          Florida Real Estate Commission for licensure as  
11          a broker or salesperson; amending s. 475.25,  
12          F.S.; providing a ground for discipline  
13          relating to designation of salespersons as  
14          single agents for different customers in  
15          certain transactions; providing penalties;  
16          conforming cross references; amending s.  
17          475.272, F.S.; revising intent of the Brokerage  
18          Relationship Disclosure Act to eliminate  
19          required disclosure of nonrepresentation;  
20          amending ss. 475.274 and 475.2755, F.S.;  
21          conforming cross references; repealing s.  
22          475.276, F.S., relating to notice of  
23          nonrepresentation; amending s. 475.278, F.S.;  
24          requiring notice relating to disclosure of  
25          information prior to engaging in an authorized  
26          brokerage relationship; providing applicability  
27          or nonapplicability of brokerage relationship  
28          disclosure requirements to various real estate  
29          transactions; amending s. 475.2801, F.S.;  
30          removing a cross reference, to conform;  
31          amending ss. 475.482 and 475.483, F.S.;

1           revising eligibility requirements for recovery  
2           from the Real Estate Recovery Fund; amending s.  
3           475.5015, F.S.; removing a cross reference, to  
4           conform; providing an effective date.

5  
6   Be It Enacted by the Legislature of the State of Florida:

7  
8           Section 1. Subsection (1) of section 475.01, Florida  
9   Statutes, 1998 Supplement, is amended to read:

10           475.01 Definitions.--

11           (1) As used in this part:

12           (a) "Broker" means a person who, for another, and for  
13   a compensation or valuable consideration directly or  
14   indirectly paid or promised, expressly or impliedly, or with  
15   an intent to collect or receive a compensation or valuable  
16   consideration therefor, appraises, auctions, sells, exchanges,  
17   buys, rents, or offers, attempts or agrees to appraise,  
18   auction, or negotiate the sale, exchange, purchase, or rental  
19   of business enterprises or business opportunities or any real  
20   property or any interest in or concerning the same, including  
21   mineral rights or leases, or who advertises or holds out to  
22   the public by any oral or printed solicitation or  
23   representation that she or he is engaged in the business of  
24   appraising, auctioning, buying, selling, exchanging, leasing,  
25   or renting business enterprises or business opportunities or  
26   real property of others or interests therein, including  
27   mineral rights, or who takes any part in the procuring of  
28   sellers, purchasers, lessors, or lessees of business  
29   enterprises or business opportunities or the real property of  
30   another, or leases, or interest therein, including mineral  
31   rights, or who directs or assists in the procuring of

1 prospects or in the negotiation or closing of any transaction  
2 which does, or is calculated to, result in a sale, exchange,  
3 or leasing thereof, and who receives, expects, or is promised  
4 any compensation or valuable consideration, directly or  
5 indirectly therefor; and all persons who advertise rental  
6 property information or lists. A broker renders a  
7 professional service and is a professional within the meaning  
8 of s. 95.11(4)(a). Where the term "appraise" or "appraising"  
9 appears in the definition of the term "broker," it  
10 specifically excludes those appraisal services which must be  
11 performed only by a state-licensed or state-certified  
12 appraiser, and those appraisal services which may be performed  
13 by a registered assistant appraiser as defined in part II.  
14 The term "broker" also includes any person who is a general  
15 partner, officer, or director of a partnership or corporation  
16 which acts as a broker. The term "broker" also includes any  
17 person or entity who undertakes to list or sell one or more  
18 timeshare periods per year in one or more timeshare plans on  
19 behalf of any number of persons, except as provided in ss.  
20 475.011 and 721.20.

21 (b) "Broker-salesperson" means a person who is  
22 qualified to be issued a license as a broker but who operates  
23 as a salesperson in the employ of another.

24 (c) "Commission" means the Florida Real Estate  
25 Commission.

26 (d) "Customer" means a member of the public who is or  
27 may be a buyer or seller of real property and may or may not  
28 be represented by a real estate licensee in an authorized  
29 brokerage relationship.

30 (e) "Department" means the Department of Business and  
31 Professional Regulation.

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

7           ~~(g) "First contact" means at the commencement of the~~  
8 ~~initial meeting of or communication between a licensee and a~~  
9 ~~seller or buyer; however, the term does not include:~~

10           ~~1. A bona fide "open house" or model home showing that~~  
11 ~~does not involve eliciting confidential information; the~~  
12 ~~execution of a contractual offer or an agreement for~~  
13 ~~representation; or negotiations concerning price, terms, or~~  
14 ~~conditions of a potential sale;~~

15           ~~2. Unanticipated casual encounters between a licensee~~  
16 ~~and a seller or buyer that do not involve eliciting~~  
17 ~~confidential information; the execution of a contractual offer~~  
18 ~~or an agreement for representation; or negotiations concerning~~  
19 ~~price, terms, or conditions of a potential sale;~~

20           ~~3. Responding to general factual questions from a~~  
21 ~~prospective buyer or seller concerning properties that have~~  
22 ~~been advertised for sale; or~~

23           ~~4. Situations in which a licensee's communications~~  
24 ~~with a customer are limited to providing general factual~~  
25 ~~information, oral or written, about the qualifications,~~  
26 ~~background, and services of the licensee or the licensee's~~  
27 ~~brokerage firm.~~

28  
29 ~~In any of the situations described in subparagraphs 1.-4.,~~  
30 ~~"first contact" occurs when the communications between the~~  
31 ~~licensee and the prospective seller or buyer proceed in any~~

1 ~~way beyond the conditions or limitations described in~~  
2 ~~subparagraphs 1.-4.~~

3 (g)~~(h)~~ "Involuntarily inactive status" means the  
4 licensure status that results when a license is not renewed at  
5 the end of the license period prescribed by the department.

6 (h)~~(i)~~ "Principal" means the party with whom a real  
7 estate licensee has entered into a single agent relationship.

8 (i)~~(j)~~ "Real property" or "real estate" means any  
9 interest or estate in land and any interest in business  
10 enterprises or business opportunities, including any  
11 assignment, leasehold, subleasehold, or mineral right;  
12 however, the term does not include any cemetery lot or right  
13 of burial in any cemetery; nor does the term include the  
14 renting of a mobile home lot or recreational vehicle lot in a  
15 mobile home park or travel park.

16 (j)~~(k)~~ "Salesperson" means a person who performs any  
17 act specified in the definition of "broker," but who performs  
18 such act under the direction, control, or management of  
19 another person. A salesperson renders a professional service  
20 and is a professional within the meaning of s. 95.11(4)(a).

21 (k)~~(l)~~ "Single agent" means a broker who represents,  
22 as a fiduciary, either the buyer or seller but not both in the  
23 same transaction.

24 (l)~~(m)~~ "Transaction broker" means a broker who  
25 provides limited representation to a buyer, a seller, or both,  
26 in a real estate transaction, but does not represent either in  
27 a fiduciary capacity or as a single agent.

28 (m)~~(n)~~ "Voluntarily inactive status" means the  
29 licensure status that results when a licensee has applied to  
30 the department to be placed on inactive status and has paid  
31 the fee prescribed by rule.

1           Section 2. Subsection (12) is added to section  
2 475.011, Florida Statutes, 1998 Supplement, to read:  
3           475.011 Exemptions.--This part does not apply to:  
4           (12) Any federally insured depository institution, and  
5 any parent, subsidiary, or affiliate thereof, in connection  
6 with the purchase or sale of a business enterprise, whether a  
7 purchase or sale of stock or assets of the business  
8 enterprise. This exemption shall not apply to the purchase or  
9 sale of land, buildings, fixtures, or other improvements to  
10 the land which is not in connection with the purchase or sale  
11 of a business enterprise. For purposes of this exemption, any  
12 reference to purchase or sale shall be deemed to include a  
13 lease transaction.

14           Section 3. Subsection (1) of section 475.181, Florida  
15 Statutes, 1998 Supplement, is amended to read:

16           475.181 Licensure.--

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

20           (2) The commission shall certify for licensure any  
21 applicant who satisfies the requirements of ss. 475.17,  
22 475.175, and 475.180. The commission may refuse to certify any  
23 applicant who has violated any of the provisions of s. 475.42  
24 or who is subject to discipline under s. 475.25. The  
25 application shall expire 1 year from the date received if the  
26 applicant fails to take the appropriate examination.

27           Section 4. Paragraph (q) of subsection (1) of section  
28 475.25, Florida Statutes, 1998 Supplement, is amended to read:

29           475.25 Discipline.--

30           (1) The commission may deny an application for  
31 licensure, registration, or permit, or renewal thereof; may

1 place a licensee, registrant, or permittee on probation; may  
2 suspend a license, registration, or permit for a period not  
3 exceeding 10 years; may revoke a license, registration, or  
4 permit; may impose an administrative fine not to exceed \$1,000  
5 for each count or separate offense; and may issue a reprimand,  
6 and any or all of the foregoing, if it finds that the  
7 licensee, registrant, permittee, or applicant:

8 (q) Has violated any provision of s. 475.2755 ~~475.276~~  
9 or s. 475.278, including the duties owed under those sections.

10 Section 5. Section 475.272, Florida Statutes, 1998  
11 Supplement, is amended to read:

12 475.272 Purpose.--In order to eliminate confusion and  
13 provide for a better understanding on the part of customers in  
14 real estate transactions, the Legislature finds that the  
15 intent of the Brokerage Relationship Disclosure Act is to  
16 provide that:

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

20 ~~(2) Real estate licensees be required to disclose to~~  
21 ~~customers upon first contact in residential real estate~~  
22 ~~transactions that they are not and will not be represented by~~  
23 ~~a licensee in a real estate transaction unless they engage a~~  
24 ~~real estate licensee in an authorized form of representation,~~  
25 ~~either as a single agent or as a transaction broker;~~

26 (2)~~(3)~~ Disclosure requirements for real estate  
27 licensees relating to ~~nonrepresentation~~ and authorized forms  
28 of brokerage representation are established;

29 (3)~~(4)~~ Single agents may represent either a buyer or a  
30 seller, but not both, in a real estate transaction; and

31

1           ~~(4)~~<sup>(5)</sup> Transaction brokers provide a limited form of  
2 nonfiduciary representation to a buyer, a seller, or both in a  
3 real estate transaction.

4           Section 6. Section 475.274, Florida Statutes, 1998  
5 Supplement, is amended to read:

6           475.274 Scope of coverage.--The authorized brokerage  
7 relationships described in ss. 475.2755 and 475.278 apply in  
8 all brokerage activities as defined in s. 475.01(1)(a). The  
9 disclosure requirements of s. ss. 475.276 and 475.278 apply  
10 only to residential sales as defined in s. 475.278(5)(a)  
11 ~~475.276~~.

12           Section 7. Section 475.2755, Florida Statutes, 1998  
13 Supplement, is amended to read:

14           475.2755 Designated salesperson.--

15           (1) For purposes of this part, in any real estate  
16 transaction other than a residential sale as defined in s.  
17 475.278(5)(a)~~475.276~~, and where the buyer and seller have  
18 assets of \$1 million or more, the broker at the request of the  
19 customers may designate salespersons to act as single agents  
20 for different customers in the same transaction. Such  
21 designated salespersons shall have the duties of a single  
22 agent as outlined in s. 475.278(3), including disclosure  
23 requirements in s. 475.278(3)(b) and (c). In addition to  
24 disclosure requirements in s. 475.278(3)(b) and (c), the buyer  
25 and seller as customers shall both sign disclosures stating  
26 that their assets meet the threshold described in this  
27 subsection and requesting that the broker use the designated  
28 salesperson form of representation. In lieu of the transition  
29 disclosure requirement in s. 475.278(3)(c)2., the required  
30 disclosure notice shall include the following:



1 FLORIDA LAW PROHIBITS A DESIGNATED SALESPERSON FROM  
2 DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE  
3 BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE  
4 INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALESPERSON IS  
5 REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED  
6 SALESPERSON TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR  
7 REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED  
8 SALESPERSON TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS  
9 SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A  
10 CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR  
11 THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION.  
12 FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS  
13 INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH INFORMATION TO  
14 THE DETRIMENT OF THE OTHER PARTY.

15

16 (2) For purposes of this section, the term "buyer"  
17 means a transferee or lessee in a real property transaction,  
18 and the term "seller" means the transferor or lessor in a real  
19 property transaction.

20 Section 8. Section 475.276, Florida Statutes, 1998  
21 Supplement, is repealed.

22 Section 9. Subsections (2) and (3) of section 475.278,  
23 Florida Statutes, 1998 Supplement, are amended, and subsection  
24 (5) is added to said section, to read:

25 475.278 Authorized brokerage relationships; required  
26 disclosures.--

27 (2) TRANSACTION BROKER RELATIONSHIP.--

28 (a) Transaction broker - duties of limited  
29 representation.--A transaction broker provides a limited form  
30 of representation to a buyer, a seller, or both in a real  
31 estate transaction but does not represent either in a

1 fiduciary capacity or as a single agent. The duties of the  
2 real estate licensee in this limited form of representation  
3 include the following:

- 4 1. Dealing honestly and fairly;
- 5 2. Accounting for all funds;
- 6 3. Using skill, care, and diligence in the  
7 transaction;
- 8 4. Disclosing all known facts that materially affect  
9 the value of residential real property and are not readily  
10 observable to the buyer;
- 11 5. Presenting all offers and counteroffers in a timely  
12 manner, unless a party has previously directed the licensee  
13 otherwise in writing;
- 14 6. Limited confidentiality, unless waived in writing  
15 by a party. This limited confidentiality will prevent  
16 disclosure that the seller will accept a price less than the  
17 asking or listed price, that the buyer will pay a price  
18 greater than the price submitted in a written offer, of the  
19 motivation of any party for selling or buying property, that a  
20 seller or buyer will agree to financing terms other than those  
21 offered, or of any other information requested by a party to  
22 remain confidential; and
- 23 7. Any additional duties that are mutually agreed to  
24 with a party.

25 (b) Disclosure requirements.--Duties of a transaction  
26 broker must be fully described and disclosed in writing to a  
27 buyer or seller either as a separate and distinct disclosure  
28 document or included as part of another document such as a  
29 listing agreement or agreement for representation. The  
30 disclosure must be made before, or at the time of, entering  
31 into a listing agreement or an agreement for representation.

1 When incorporated into other documents, the required notice  
2 must be of the same size type, or larger, as other provisions  
3 of the document and must be conspicuous in its placement so as  
4 to advise customers of the duties of limited representation,  
5 except that the first sentence of the information identified  
6 in paragraph (c) must be printed in uppercase and bold type.  
7 (c) Contents of disclosure.--The required notice given  
8 under paragraph (b) must include the following information in  
9 the following form:

10  
11 IMPORTANT NOTICE

12  
13 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS  
14 NOTICE TO ALL POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

15  
16 You should not assume that any real estate broker or  
17 salesperson represents you unless you agree to engage a real  
18 estate licensee in an authorized brokerage relationship,  
19 either as a single agent or as a transaction broker. You are  
20 advised not to disclose any information you want to be held in  
21 confidence until you make a decision on representation.

22  
23 TRANSACTION BROKER NOTICE

24  
25 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS  
26 TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE  
27 AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

28  
29 As a transaction broker, ..... (insert name of Real  
30 Estate Firm and its Associates), provides to you a limited  
31 form of representation that includes the following duties:

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

22  
23 Limited representation means that a buyer or seller is not  
24 responsible for the acts of the licensee. Additionally,  
25 parties are giving up their rights to the undivided loyalty of  
26 the licensee. This aspect of limited representation allows a  
27 licensee to facilitate a real estate transaction by assisting  
28 both the buyer and the seller, but a licensee will not work to  
29 represent one party to the detriment of the other party when  
30 acting as a transaction broker to both parties.

31

1 .....  
2 Date Signature  
3  
4 .....  
5 Signature  
6  
7 (3) SINGLE AGENT RELATIONSHIP.--  
8 (a) Single agent - duties.--The duties of a real  
9 estate licensee owed to a buyer or seller who engages the real  
10 estate licensee as a single agent include the following:  
11 1. Dealing honestly and fairly;  
12 2. Loyalty;  
13 3. Confidentiality;  
14 4. Obedience;  
15 5. Full disclosure;  
16 6. Accounting for all funds;  
17 7. Skill, care, and diligence in the transaction;  
18 8. Presenting all offers and counteroffers in a timely  
19 manner, unless a party has previously directed the licensee  
20 otherwise in writing; and  
21 9. Disclosing all known facts that materially affect  
22 the value of residential real property and are not readily  
23 observable.  
24 (b) Disclosure requirements.--  
25 1. Single agent disclosure.--Duties of a single agent  
26 must be fully described and disclosed in writing to a buyer or  
27 seller either as a separate and distinct disclosure document  
28 or included as part of another document such as a listing  
29 agreement or other agreement for representation. The  
30 disclosure must be made before, or at the time of, entering  
31 into a listing agreement or an agreement for representation.

1 When incorporated into other documents, the required notice  
2 must be of the same size type, or larger, as other provisions  
3 of the document and must be conspicuous in its placement so as  
4 to advise customers of the duties of a single agent, except  
5 that the first sentence of the information identified in  
6 paragraph (c) must be printed in uppercase and bold type.

7           2. Transition to transaction broker disclosure.--A  
8 single agent relationship may be changed to a transaction  
9 broker relationship at any time during the relationship  
10 between an agent and principal, provided the agent gives the  
11 disclosure required under paragraph (2)(b) and the principal  
12 gives to the agent consent as required under subparagraph  
13 (c)2. before a change in relationship. This disclosure must be  
14 in writing to the principal either as a separate and distinct  
15 document or included as part of other documents such as a  
16 listing agreement or other agreements for representation. When  
17 incorporated into other documents, the required notice must be  
18 of the same size type, or larger, as other provisions of the  
19 document and must be conspicuous in its placement so as to  
20 advise customers of the duties of limited representation,  
21 except that the first sentence of the information identified  
22 in subparagraph (c)2. must be printed in uppercase and bold  
23 type.

24           (c) Contents of disclosure.--

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

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29  
30  
31

IMPORTANT NOTICE

1 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS  
2 NOTICE TO ALL POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

3  
4 You should not assume that any real estate broker or  
5 salesperson represents you unless you agree to engage a real  
6 estate licensee in an authorized brokerage relationship,  
7 either as a single agent or as a transaction broker. You are  
8 advised not to disclose any information you want to be held in  
9 confidence until you make a decision on representation.

10  
11 SINGLE AGENT NOTICE

12  
13 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS  
14 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

15  
16 As a single agent, ..... (insert name of  
17 Real Estate Entity and its Associates) owe to you the  
18 following duties:

- 19 1. Dealing honestly and fairly;  
20 2. Loyalty;  
21 3. Confidentiality;  
22 4. Obedience;  
23 5. Full disclosure;  
24 6. Accounting for all funds;  
25 7. Skill, care, and diligence in the transaction;  
26 8. Presenting all offers and counteroffers in a timely  
27 manner, unless a party has previously directed the licensee  
28 otherwise in writing; and  
29 9. Disclosing all known facts that materially affect  
30 the value of residential real property and are not readily  
31 observable.

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.....  
Date Signature

2. Transition disclosure.--The notice required under subparagraph (b)2. must include the following information in the following form as well as the information required in paragraph (2)(c):

CONSENT TO TRANSITION TO  
TRANSACTION BROKER

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

.....I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

(5) APPLICABILITY.--

(a) Residential sales.--The real estate licensee disclosure requirements of this section apply to all residential sales. As used in this subsection, the term "residential sale" means the sale of improved residential property of four units or fewer, the sale of unimproved



1 residential property intended for use of four units or fewer,  
2 or the sale of agricultural property of 10 acres or fewer.  
3 (b) Disclosure limitations.--The real estate licensee  
4 disclosure requirements of this section do not apply to:  
5 nonresidential transactions; the rental or leasing of real  
6 property, unless an option to purchase all or a portion of the  
7 property improved with four or fewer residential units is  
8 given; auctions; appraisals; and dispositions of any interest  
9 in business enterprises or business opportunities, except for  
10 property with four or fewer residential units.

11 Section 10. Section 475.2801, Florida Statutes, 1998  
12 Supplement, is amended to read:

13 475.2801 Rules.--The commission may adopt rules  
14 establishing disciplinary guidelines, notices of  
15 noncompliance, and citations for violations of ss. 475.2755,  
16 ~~475.276,~~ and 475.278.

17 Section 11. Subsection (1) of section 475.482, Florida  
18 Statutes, 1998 Supplement, is amended to read:

19 475.482 Real Estate Recovery Fund.--There is created  
20 the Florida Real Estate Recovery Fund as a separate account in  
21 the Professional Regulation Trust Fund.

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

30  
31

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

4 (b) Was neither the seller, buyer, landlord, or tenant  
5 in the transaction nor an officer or a director of a  
6 corporation, ~~or~~ a member of a partnership, a member of a  
7 limited liability company, or a partner of a limited liability  
8 partnership which was the seller, buyer, landlord, or tenant  
9 in the transaction; and

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

12  
13 provided the act was a violation proscribed in s. 475.25 or s.  
14 475.42.

15 Section 12. Subsections (1) and (2) of section  
16 475.483, Florida Statutes, are amended to read:

17 475.483 Conditions for recovery; eligibility.--

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

20 (a) Such person has received a final judgment in a  
21 court of competent civil jurisdiction in this state against an  
22 individual broker or salesperson in any action wherein the  
23 cause of action was based on a real estate brokerage  
24 transaction. If such person is unable to secure a final  
25 judgment against a licensee due to the death of the licensee,  
26 the commission may waive the requirement for a final judgment.  
27 The filing of a bankruptcy petition by a broker or salesperson  
28 does not relieve a claimant from the obligation to obtain a  
29 final judgment against the licensee. In this instance, the  
30 claimant must seek to have assets involving the real estate  
31 transaction that gave rise to the claim removed from the

1 bankruptcy proceedings so that the matter might be heard in a  
2 court of competent civil jurisdiction in this state. If, after  
3 due diligence, the claimant is precluded by action of the  
4 bankruptcy court from securing a final judgment against the  
5 licensee, the commission may waive the requirement for a final  
6 judgment.

7 (b) At the time the action was commenced, such person  
8 gave notice thereof to the commission by certified mail;  
9 except that, if no notice has been given to the commission,  
10 the claim can still be honored if, in the opinion of the  
11 commission, the claim is otherwise valid.

12 (c) A claim for recovery is made within 2 years from  
13 the time of the act giving rise to the claim or within 2 years  
14 from the time the act is discovered or should have been  
15 discovered with the exercise of due diligence. In no event may  
16 a claim for recovery be made more than 4 years after the date  
17 of the act giving rise to the claim.

18 (d)1. Such person has caused to be issued a writ of  
19 execution upon such judgment, and the person has executed an  
20 affidavit showing that no personal or real property of the  
21 judgment debtor liable to be levied upon in satisfaction of  
22 the judgment can be found or that the amount realized on the  
23 sale of the judgment debtor's property pursuant to such  
24 execution was insufficient to satisfy the judgment; or

25 2. If such person is unable to comply with  
26 subparagraph 1. for a valid reason to be determined by the  
27 commission, such person has made all reasonable searches and  
28 inquiries to ascertain whether the judgment debtor is  
29 possessed of real or personal property or other assets subject  
30 to being sold or applied in satisfaction of the judgment and  
31 by her or his search the person has discovered no property or

1 assets or she or he has discovered property and assets and has  
2 taken all necessary action and proceedings for the application  
3 thereof to the judgment but the amount thereby realized was  
4 insufficient to satisfy the judgment.

5 (e) Any amounts recovered by such person from the  
6 judgment debtor, or from any other source, have been applied  
7 to the damages awarded by the court.

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

10 (g) Such person has executed an affidavit showing that  
11 the final judgment is not on appeal or, if it was the subject  
12 of an appeal, that the appellate proceedings have concluded  
13 and the outcome of the appeal.

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

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

18 (b) Such person is a licensed broker or salesperson  
19 who acted as a single the agent or transaction broker in the  
20 transaction that is the subject of the claim;

21 (c) Such person's claim is based upon a real estate  
22 transaction in which the licensed broker or salesperson was  
23 the owner of or controlled the property involved in the  
24 transaction; in which the licensee was dealing for the  
25 licensee's own account; or in which the licensee was not  
26 acting as a broker or salesperson;

27 (d) Such person's claim is based upon a real estate  
28 transaction in which the broker or salesperson did not hold a  
29 valid, current, and active license at the time of the real  
30 estate transaction; or

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

4           Section 13. Section 475.5015, Florida Statutes, 1998  
5 Supplement, is amended to read:

6           475.5015 Brokerage business records.--Each broker  
7 shall keep and make available to the department such books,  
8 accounts, and records as will enable the department to  
9 determine whether such broker is in compliance with the  
10 provisions of this chapter. Each broker shall preserve at  
11 least one legible copy of all books, accounts, and records  
12 pertaining to her or his real estate brokerage business for at  
13 least 5 years from the date of receipt of any money, fund,  
14 deposit, check, or draft entrusted to the broker or, in the  
15 event no funds are entrusted to the broker, for at least 5  
16 years from the date of execution by any party of any listing  
17 agreement, offer to purchase, rental property management  
18 agreement, rental or lease agreement, or any other written or  
19 verbal agreement which engages the services of the broker. If  
20 any brokerage record has been the subject of or has served as  
21 evidence for litigation, relevant books, accounts, and records  
22 must be retained for at least 2 years after the conclusion of  
23 the civil action or the conclusion of any appellate  
24 proceeding, whichever is later, but in no case less than a  
25 total of 5 years as set above. Disclosure documents required  
26 under ss. 475.2755, ~~475.276~~, and 475.278 shall be retained by  
27 the real estate licensee in all transactions that result in a  
28 written contract to purchase and sell real property.

29           Section 14. This act shall take effect October 1,  
30 1999.

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