

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 registered
7 securities dealers and financial institutions
8 in connection with certain transactions;
9 amending s. 475.181, F.S.; referencing
10 certification requirements of the Florida Real
11 Estate Commission for licensure as a broker or
12 salesperson; amending s. 475.25, F.S.;
13 providing a ground for discipline relating to
14 designation of salespersons as single agents
15 for different customers in certain
16 transactions; providing penalties; conforming
17 cross references; amending s. 475.272, F.S.;
18 revising intent of the Brokerage Relationship
19 Disclosure Act to eliminate required disclosure
20 of nonrepresentation; amending ss. 475.274 and
21 475.2755, F.S.; conforming cross references;
22 repealing s. 475.276, F.S., relating to notice
23 of nonrepresentation; amending s. 475.278,
24 F.S.; requiring notice relating to disclosure
25 of information prior to engaging in an
26 authorized brokerage relationship; providing
27 applicability or nonapplicability of brokerage
28 relationship disclosure requirements to various
29 real estate transactions; amending s. 475.2801,
30 F.S.; 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 dealer registered under the Securities and
5 Exchange Act of 1934, as amended, or any federally insured
6 depository institution and any parent, subsidiary, or
7 affiliate thereof, in connection with the sale, exchange,
8 purchase, or rental of a business enterprise to or by a person
9 who is an accredited investor as defined by 15 U.S.C. s. 77b,
10 the Securities Act of 1933, or any regulation adopted
11 thereunder. This exemption applies whether stock or assets of
12 the business enterprise are purchased or sold. The exemption
13 does not apply to a sale, exchange, purchase, or rental of
14 land, buildings, fixtures or other improvements to the land
15 which is not made in connection with the sale, exchange,
16 purchase, or rental of a business enterprise. Any reference to
17 rental in this subsection includes a lease transaction.

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

20 475.181 Licensure.--

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

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

31

1 Section 4. Paragraph (q) of subsection (1) of section
2 475.25, Florida Statutes, 1998 Supplement, is amended to read:

3 475.25 Discipline.--

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

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

15 Section 5. Section 475.272, Florida Statutes, 1998
16 Supplement, is amended to read:

17 475.272 Purpose.--In order to eliminate confusion and
18 provide for a better understanding on the part of customers in
19 real estate transactions, the Legislature finds that the
20 intent of the Brokerage Relationship Disclosure Act is to
21 provide that:

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

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

1 ~~(2)(3)~~ Disclosure requirements for real estate
2 licensees relating to ~~nonrepresentation~~ and authorized forms
3 of brokerage representation are established;

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

6 ~~(4)(5)~~ Transaction brokers provide a limited form of
7 nonfiduciary representation to a buyer, a seller, or both in a
8 real estate transaction.

9 Section 6. Section 475.274, Florida Statutes, 1998
10 Supplement, is amended to read:

11 475.274 Scope of coverage.--The authorized brokerage
12 relationships described in ss. 475.2755 and 475.278 apply in
13 all brokerage activities as defined in s. 475.01(1)(a). The
14 disclosure requirements of s. ss. 475.276 and 475.278 apply
15 only to residential sales as defined in s. 475.278(5)(a)
16 ~~475.276~~.

17 Section 7. Section 475.2755, Florida Statutes, 1998
18 Supplement, is amended to read:

19 475.2755 Designated salesperson.--

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

1 subsection and requesting that the broker use the designated
2 salesperson form of representation. In lieu of the transition
3 disclosure requirement in s. 475.278(3)(c)2., the required
4 disclosure notice shall include the following:

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

20
21 (2) For purposes of this section, the term "buyer"
22 means a transferee or lessee in a real property transaction,
23 and the term "seller" means the transferor or lessor in a real
24 property transaction.

25 Section 8. Section 475.276, Florida Statutes, 1998
26 Supplement, is repealed.

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

30 475.278 Authorized brokerage relationships; required
31 disclosures.--

1 (2) TRANSACTION BROKER RELATIONSHIP.--

2 (a) Transaction broker - duties of limited
3 representation.--A transaction broker provides a limited form
4 of representation to a buyer, a seller, or both in a real
5 estate transaction but does not represent either in a
6 fiduciary capacity or as a single agent. The duties of the
7 real estate licensee in this limited form of representation
8 include the following:

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

30 (b) Disclosure requirements.--Duties of a transaction
31 broker must be fully described and disclosed in writing to a

1 buyer or seller either as a separate and distinct disclosure
2 document or included as part of another document such as a
3 listing agreement or agreement for representation. The
4 disclosure must be made before, or at the time of, entering
5 into a listing agreement or an agreement for representation or
6 before the showing of property, whichever occurs first. When
7 incorporated into other documents, the required notice must be
8 of the same size type, or larger, as other provisions of the
9 document and must be conspicuous in its placement so as to
10 advise customers of the duties of limited representation,
11 except that the first sentence of the information identified
12 in paragraph (c) must be printed in uppercase and bold type.
13 (c) Contents of disclosure.--The required notice given
14 under paragraph (b) must include the following information in
15 the following form:

16
17 IMPORTANT NOTICE

18
19 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS
20 NOTICE TO ALL POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

21
22 You should not assume that any real estate broker or
23 salesperson represents you unless you agree to engage a real
24 estate licensee in an authorized brokerage relationship,
25 either as a single agent or as a transaction broker. You are
26 advised not to disclose any information you want to be held in
27 confidence until you make a decision on representation.

28
29 TRANSACTION BROKER NOTICE
30
31

1 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
2 TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE
3 AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

4
5 As a transaction broker, (insert name of Real
6 Estate Firm and its Associates), provides to you a limited
7 form of representation that includes the following duties:

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

29
30 Limited representation means that a buyer or seller is not
31 responsible for the acts of the licensee. Additionally,

1 parties are giving up their rights to the undivided loyalty of
2 the licensee. This aspect of limited representation allows a
3 licensee to facilitate a real estate transaction by assisting
4 both the buyer and the seller, but a licensee will not work to
5 represent one party to the detriment of the other party when
6 acting as a transaction broker to both parties.

7
8
9 Date Signature
10
11
12 Signature
13

14 (3) SINGLE AGENT RELATIONSHIP.--

15 (a) Single agent - duties.--The duties of a real
16 estate licensee owed to a buyer or seller who engages the real
17 estate licensee as a single agent include the following:

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

31 (b) Disclosure requirements.--

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

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

1 (c) Contents of disclosure.--

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

5

6

IMPORTANT NOTICE

7

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

10

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

17

18

SINGLE AGENT NOTICE

19

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

22

23 As a single agent, (insert name of
24 Real Estate Entity and its Associates) owe to you the
25 following duties:

26

1. Dealing honestly and fairly;

27

2. Loyalty;

28

3. Confidentiality;

29

4. Obedience;

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5. Full disclosure;

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6. Accounting for all funds;

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- 7. Skill, care, and diligence in the transaction;
- 8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
- 9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

.....
Date	Signature

2. Transition disclosure.--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]

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 (5) APPLICABILITY.--

2 (a) Residential sales.--The real estate licensee
3 disclosure requirements of this section apply to all
4 residential sales. As used in this subsection, the term
5 "residential sale" means the sale of improved residential
6 property of four units or fewer, the sale of unimproved
7 residential property intended for use of four units or fewer,
8 or the sale of agricultural property of 10 acres or fewer.

9 (b) Disclosure limitations.--The real estate licensee
10 disclosure requirements of this section do not apply to:
11 nonresidential transactions; the rental or leasing of real
12 property, unless an option to purchase all or a portion of the
13 property improved with four or fewer residential units is
14 given; auctions; appraisals; and dispositions of any interest
15 in business enterprises or business opportunities, except for
16 property with four or fewer residential units.

17 Section 10. Section 475.2801, Florida Statutes, 1998
18 Supplement, is amended to read:

19 475.2801 Rules.--The commission may adopt rules
20 establishing disciplinary guidelines, notices of
21 noncompliance, and citations for violations of ss. 475.2755,
22 ~~475.276~~, and 475.278.

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

25 475.482 Real Estate Recovery Fund.--There is created
26 the Florida Real Estate Recovery Fund as a separate account in
27 the Professional Regulation Trust Fund.

28 (1) The Florida Real Estate Recovery Fund shall be
29 disbursed as provided in s. 475.484, on order of the
30 commission, as reimbursement to any person, partnership, or
31 corporation adjudged by a court of competent civil

1 jurisdiction in this state to have suffered monetary damages
2 by reason of any act committed, as a part of any real estate
3 brokerage transaction involving real property in this state,
4 by any broker or salesperson who:

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

8 (b) Was neither the seller, buyer, landlord, or tenant
9 in the transaction nor an officer or a director of a
10 corporation, or a member of a partnership, a member of a
11 limited liability company, or a partner of a limited liability
12 partnership which was the seller, buyer, landlord, or tenant
13 in the transaction; and

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

16
17 provided the act was a violation proscribed in s. 475.25 or s.
18 475.42.

19 Section 12. Subsections (1) and (2) of section
20 475.483, Florida Statutes, are amended to read:

21 475.483 Conditions for recovery; eligibility.--

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

24 (a) Such person has received a final judgment in a
25 court of competent civil jurisdiction in this state against an
26 individual broker or salesperson in any action wherein the
27 cause of action was based on a real estate brokerage
28 transaction. If such person is unable to secure a final
29 judgment against a licensee due to the death of the licensee,
30 the commission may waive the requirement for a final judgment.
31 The filing of a bankruptcy petition by a broker or salesperson

1 does not relieve a claimant from the obligation to obtain a
2 final judgment against the licensee. In this instance, the
3 claimant must seek to have assets involving the real estate
4 transaction that gave rise to the claim removed from the
5 bankruptcy proceedings so that the matter might be heard in a
6 court of competent civil jurisdiction in this state. If, after
7 due diligence, the claimant is precluded by action of the
8 bankruptcy court from securing a final judgment against the
9 licensee, the commission may waive the requirement for a final
10 judgment.

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

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

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

29 2. If such person is unable to comply with
30 subparagraph 1. for a valid reason to be determined by the
31 commission, such person has made all reasonable searches and

1 inquiries to ascertain whether the judgment debtor is
2 possessed of real or personal property or other assets subject
3 to being sold or applied in satisfaction of the judgment and
4 by her or his search the person has discovered no property or
5 assets or she or he has discovered property and assets and has
6 taken all necessary action and proceedings for the application
7 thereof to the judgment but the amount thereby realized was
8 insufficient to satisfy the judgment.

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

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

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

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

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

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

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

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

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

8 Section 13. Section 475.5015, Florida Statutes, 1998
9 Supplement, is amended to read:

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

3 Section 14. This act shall take effect October 1,
4 1999.

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