

By Senator Posey

24-466A-03

1 A bill to be entitled
2 An act relating to regulation of real estate
3 professionals; amending s. 475.001, F.S.;
4 redesignating "salespersons" as "broker
5 associates"; amending s. 475.01, F.S.; defining
6 and redefining terms; amending s. 475.011,
7 F.S.; revising exemptions from regulation
8 requirements; amending s. 475.02, F.S.;
9 conforming terminology; amending s. 475.03,
10 F.S.; deleting authority of the Attorney
11 General with respect to retention of legal
12 counsel by the Florida Real Estate Commission;
13 amending s. 475.04, F.S.; conforming
14 terminology; providing powers of independent
15 certification organizations; amending s.
16 475.15, F.S.; revising requirements related to
17 registration and licensing of partnerships;
18 amending s. 475.17, F.S.; conforming
19 terminology; requiring that distance learning
20 courses be interactive; authorizing additional
21 subjects for postlicensure education; amending
22 s. 475.175, F.S.; revising requirements for
23 license examination applications; amending s.
24 475.181, F.S.; conforming terminology; amending
25 s. 475.182, F.S.; providing guidelines for
26 approving specialty courses; providing for
27 duration of initial licenses; amending s.
28 475.215, F.S.; conforming terminology; amending
29 s. 475.22, F.S.; revising requirements with
30 respect to brokers' signs; amending s. 475.23,
31 F.S.; providing for notice of change of

1 address; amending s. 475.25, F.S.; revising
2 duties of licensees with respect to escrowed
3 property; providing guidelines for real estate
4 transactions in cooperation between licensed
5 professionals and professionals licensed
6 out-of-state; allowing a broker to place
7 personal funds in his or her escrow account;
8 providing a time limit on filing complaints
9 against a licensee; providing for referral of
10 criminal violations to prosecuting authorities;
11 amending s. 475.2755, F.S.; conforming
12 terminology; amending s. 475.278, F.S.;
13 revising provisions relating to authorized
14 brokerage relationships; providing a
15 presumption of transaction brokerage; revising
16 disclosure requirements; amending s. 475.31,
17 F.S.; providing effect of revocation on
18 suspension of broker's license; amending s.
19 475.37, F.S.; conforming terminology; creating
20 s. 475.4005, F.S.; providing penalties for
21 unlicensed practice of real estate; providing
22 for cease and desist orders; authorizing rules;
23 amending s. 475.41, F.S.; conforming
24 terminology; amending s. 475.42, F.S.;
25 providing an additional ground for disciplinary
26 action; providing penalties; amending s.
27 475.43, F.S.; conforming terminology; amending
28 s. 475.451, F.S.; revising prerequisites for
29 renewal of an instructor permit; revising
30 period for which instructor permits may be
31 issued; repealing the prohibition against real

1 estate schools advertising a guarantee that
2 their pupils will pass licensure examinations;
3 amending s. 475.4511, F.S.; repealing
4 prohibitions against certain advertising;
5 amending ss. 475.453, 475.455, F.S.; conforming
6 terminology; amending s. 475.482, F.S.;
7 increasing the maximum amount that may be in
8 the Real Estate Recovery Fund; amending s.
9 475.483, F.S.; revising guidelines for payment
10 of attorney's fees with respect to recovery
11 from the fund; amending ss. 475.484, 475.5017,
12 F.S.; increasing maximum amounts payable from
13 the fund; amending s. 475.612, F.S.; conforming
14 terminology; amending s. 689.25, F.S.;
15 prescribing facts and conditions the existence
16 of which need not be disclosed in a real estate
17 transaction; repealing ss. 475.421, F.S.,
18 relating to publication of false or misleading
19 information, 475.422, F.S., relating to
20 disclosure, 475.452, F.S., relating to advance
21 fees; providing an effective date.

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23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 475.001, Florida Statutes, is
26 amended to read:

27 475.001 Purpose.--The Legislature deems it necessary
28 in the interest of the public welfare to regulate real estate
29 brokers, broker associates ~~salespersons~~, and schools in this
30 state.

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1 Section 2. Section 475.01, Florida Statutes, is
2 amended to read:

3 475.01 Definitions.--

4 (1) As used in this part:

5 (a) "Broker" means a person who, for another, and for
6 a compensation or valuable consideration directly or
7 indirectly paid or promised, expressly or impliedly, or with
8 an intent to collect or receive a compensation or valuable
9 consideration therefor, appraises, auctions, sells, exchanges,
10 buys, rents, or offers, attempts or agrees to appraise,
11 auction, or negotiate the sale, exchange, purchase, or rental
12 of business enterprises or business opportunities or any real
13 property or any interest in or concerning the same, including
14 mineral rights or leases, or who advertises or holds out to
15 the public by any oral or printed solicitation or
16 representation that she or he is engaged in the business of
17 appraising, auctioning, buying, selling, exchanging, leasing,
18 or renting business enterprises or business opportunities or
19 real property of others or interests therein, including
20 mineral rights, or who takes any part in the procuring of
21 sellers, purchasers, lessors, or lessees of business
22 enterprises or business opportunities or the real property of
23 another, or leases, or interest therein, including mineral
24 rights, or who directs or assists in the procuring of
25 prospects or in the negotiation or closing of any transaction
26 which does, or is calculated to, result in a sale, exchange,
27 or leasing thereof, and who receives, expects, or is promised
28 any compensation or valuable consideration, directly or
29 indirectly therefor; and all persons who advertise rental
30 property information or lists. A broker renders a
31 professional service and is a professional within the meaning

1 of s. 95.11(4)(a). Where the term "appraise" or "appraising"
2 appears in the definition of the term "broker," it
3 specifically excludes those appraisal services which must be
4 performed only by a state-licensed or state-certified
5 appraiser, and those appraisal services which may be performed
6 by a registered assistant appraiser as defined in part II. ~~The~~
7 ~~term "broker" also includes any person who is a general~~
8 ~~partner, officer, or director of a partnership or corporation~~
9 ~~which acts as a broker.~~The term "broker" also includes any
10 person who is qualified to be issued a license as a broker but
11 who operates as a broker associate in the employ of another
12 and any person or entity who undertakes to list or sell one or
13 more timeshare periods per year in one or more timeshare plans
14 on behalf of any number of persons, except as provided in ss.
15 475.011 and 721.20.

16 (b) "Broker associate" means a person who performs any
17 act specified in the definition of "broker" but who performs
18 such act under the employment of another person. A broker
19 associate renders a professional service and is a professional
20 within the meaning of s. 95.11(4)(a). This definition does not
21 limit a broker associate from registering as an officer or
22 director of a brokerage corporation or a general partner of a
23 brokerage partnership. A broker associate may also form or be
24 a member of a partnership, limited liability company, limited
25 liability partnership, or corporation with brokers and other
26 broker associates.~~"Broker-salesperson" means a person who is~~
27 ~~qualified to be issued a license as a broker but who operates~~
28 ~~as a salesperson in the employ of another.~~

29 (c) "Commission" means the Florida Real Estate
30 Commission.

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

5 (e) "Department" means the Department of Business and
6 Professional Regulation.

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

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

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

18 (i) "Real property" or "real estate" means any
19 interest or estate in land and any interest in business
20 enterprises or business opportunities, including any
21 assignment, leasehold, subleasehold, or mineral right;
22 however, the term does not include any cemetery lot or right
23 of burial in any cemetery; nor does the term include the
24 renting of a mobile home lot or recreational vehicle lot in a
25 mobile home park or travel park.

26 ~~(j) "Salesperson" means a person who performs any act~~
27 ~~specified in the definition of "broker," but who performs such~~
28 ~~act under the direction, control, or management of another~~
29 ~~person. A salesperson renders a professional service and is a~~
30 ~~professional within the meaning of s. 95.11(4)(a).~~

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1 (j)~~(k)~~ "Single agent" means a broker who represents,
2 as a fiduciary, either the buyer or seller but not both in the
3 same transaction.

4 (k)~~(l)~~ "Transaction broker" means a broker who
5 provides limited representation to a buyer, a seller, or both,
6 in a real estate transaction, but does not represent either in
7 a fiduciary capacity or as a single agent. In a transaction
8 broker relationship, a buyer or seller is not responsible for
9 the acts of a licensee. Additionally, the parties to a real
10 estate transaction are giving up their rights to the undivided
11 loyalty of a licensee. This aspect of limited representation
12 allows a licensee to facilitate a real estate transaction by
13 assisting both the buyer and the seller, but a licensee will
14 not work to represent one party to the detriment of the other
15 party when acting as a transaction broker to both parties.

16 (l)~~(m)~~ "Voluntarily inactive status" means the
17 licensure status that results when a licensee has applied to
18 the department to be placed on inactive status and has paid
19 the fee prescribed by rule.

20 (2) The terms "employ," "employment," "employer," and
21 "employee," when used in this chapter and in rules adopted
22 pursuant thereto to describe the relationship between a broker
23 and a broker associate ~~salesperson~~, include an independent
24 contractor relationship when such relationship is intended by
25 and established between a broker and a broker associate
26 ~~salesperson~~. The existence of such relationship shall not
27 relieve either the broker or the broker associate ~~salesperson~~
28 of her or his duties, obligations, or responsibilities under
29 this chapter.

30 (3) Wherever the word "operate" or "operating" as a
31 broker, ~~broker-salesperson~~, or broker associate ~~salesperson~~

1 appears in this chapter; in any order, rule, or regulation of
2 the commission; in any pleading, indictment, or information
3 under this chapter; in any court action or proceeding; or in
4 any order or judgment of a court, it shall be deemed to mean
5 the commission of one or more acts described in this chapter
6 as constituting or defining a broker, ~~broker-salesperson,~~ or
7 broker associate salesperson, not including, however, any of
8 the exceptions stated therein. A single such act is
9 sufficient to bring a person within the meaning of this
10 chapter, and each act, if prohibited herein, constitutes a
11 separate offense.

12 (4) A broker acting as a trustee of a trust created
13 under chapter 689 is subject to the provisions of this chapter
14 unless the trustee is a bank, state or federal association, or
15 trust company possessing trust powers as defined in s.
16 658.12(23).

17 Section 3. Section 475.011, Florida Statutes, is
18 amended to read:

19 475.011 Exemptions.--This part does not apply to:

20 (1) Any person acting as an attorney in fact for the
21 purpose of the execution of contracts or conveyances only; as
22 an attorney at law within the scope of her or his duties as
23 such; as a certified public accountant, as defined in chapter
24 473, within the scope of her or his duties as such; as the
25 personal representative, receiver, trustee, or master under,
26 or by virtue of, an appointment by will or by order of a court
27 of competent jurisdiction; or as trustee under a deed of
28 trust, or under a trust agreement, the ultimate purpose and
29 intent whereof is charitable, is philanthropic, or provides
30 for those having a natural right to the bounty of the donor or
31 trustor;

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

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

17 (4) Any salaried employee of an owner, or of a
18 registered broker for an owner, of an apartment community who
19 works in an onsite rental office of the apartment community in
20 a leasing capacity, provided the salaried employee works
21 without any other compensation in addition to the salary;

22 (5) Any person employed for a salary as a manager of a
23 condominium or cooperative apartment complex as a result of
24 any activities or duties which the person may have in relation
25 to the renting of individual units within such condominium or
26 cooperative apartment complex if rentals arranged by the
27 person are for periods no greater than 1 year, provided the
28 person works without any other compensation in addition to the
29 salary;

30 (6) Any person, partnership, corporation, or other
31 legal entity which, for another and for compensation or other

1 valuable consideration, sells, offers to sell, advertises for
2 sale, buys, offers to buy, or negotiates the sale or purchase
3 of radio, television, or cable enterprises licensed and
4 regulated by the Federal Communications Commission pursuant to
5 the Communications Act of 1934. However, if the sale or
6 purchase of the radio, television, or cable enterprise
7 involves the sale or lease of land, buildings, fixtures, and
8 all other improvements to the land, a broker or broker
9 associate ~~salesperson~~ licensed under this chapter shall be
10 retained for the portion of the transaction which includes the
11 land, buildings, fixtures, and all other improvements to the
12 land; ~~or~~

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

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

24 (b) An exchange company, as that term is defined by s.
25 721.05(14), but only to the extent that the exchange company
26 is engaged in exchange program activities as described in and
27 is in compliance with s. 721.18;~~;~~

28 (9) Any person registered, licensed, or certified by
29 the department under part II as an appraiser or assistant
30 appraiser performing appraisals in accordance with that part;~~;~~

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

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

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

23 (13) Any property management firm or any owner of an
24 apartment complex for the act of paying a finder's fee or
25 referral fee to an unlicensed person who is a tenant in such
26 apartment complex provided the value of the fee does not
27 exceed \$50 per transaction. Nothing in this subsection
28 authorizes an unlicensed person to advertise or otherwise
29 promote the person's services in procuring or assisting in
30 procuring prospective lessees or tenants of apartment units.
31 For purposes of this subsection, "finder's fee" or "referral

1 fee" means a fee paid, credit towards rent, or some other
2 thing of value provided to a person for introducing or
3 arranging an introduction between parties to a transaction
4 involving the rental or lease of an apartment unit. It is a
5 violation of s. 475.25(1)(h) and punishable under s. 475.42
6 for a property management firm or any owner of an apartment
7 complex to pay a finder's fee or a referral fee to an
8 unlicensed person unless expressly authorized by this
9 subsection.

10 Section 4. Subsection (1) of section 475.02, Florida
11 Statutes, is amended to read:

12 475.02 Florida Real Estate Commission.--

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

26 Section 5. Subsection (2) of section 475.03, Florida
27 Statutes, is amended to read:

28 475.03 Delegation of powers and duties; legal
29 services.--

30 (2) ~~Subject to the prior approval of the Attorney~~
31 ~~General,~~The commission may retain independent legal counsel

1 to provide legal advice to the commission on a specific
2 matter.

3 Section 6. Section 475.04, Florida Statutes, is
4 amended to read:

5 475.04 Duty of commission to educate members of
6 profession.--

7 (1) The commission shall foster the education of
8 brokers, broker associates ~~broker-salespersons, salespersons,~~
9 and instructors concerning the ethical, legal, and business
10 principles which should govern their conduct.

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

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

26 (4) The commission may authorize independent
27 certification organizations to certify or approve the delivery
28 mechanism of distance learning courses. Certification must
29 occur before the time a distance learning course is submitted
30 to the commission for content approval by an accredited
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1 college, university, community college, area technical center,
2 registered real estate school, or commission-approved sponsor.

3 Section 7. Section 475.15, Florida Statutes, is
4 amended to read:

5 475.15 Registration and licensing of general partners,
6 members, officers, and directors of a firm.--Each partnership,
7 limited liability partnership, limited liability company, or
8 corporation which acts as a broker shall register with the
9 commission and shall renew the licenses or registrations of
10 its members, officers, and directors for each license period.
11 However, if the ~~partnership is a limited partnership, only the~~
12 ~~general partners must be licensed brokers or brokerage~~
13 ~~corporations registered pursuant to this part. If the license~~
14 ~~or registration of at least one active broker member is not in~~
15 ~~force, the registration of a corporation, limited liability~~
16 ~~company, limited liability partnership, or partnership is~~
17 ~~canceled automatically during that period of time.~~

18 Section 8. Section 475.17, Florida Statutes, is
19 amended to read:

20 475.17 Qualifications for practice.--

21 (1)(a) An applicant for licensure who is a natural
22 person must be at least 18 years of age; hold a high school
23 diploma or its equivalent; be honest, truthful, trustworthy,
24 and of good character; and have a good reputation for fair
25 dealing. An applicant for an active broker's license or a
26 broker associate's ~~salesperson's~~ license must be competent and
27 qualified to make real estate transactions and conduct
28 negotiations therefor with safety to investors and to those
29 with whom the applicant may undertake a relationship of trust
30 and confidence. If the applicant has been denied registration
31 or a license or has been disbarred, or the applicant's

1 registration or license to practice or conduct any regulated
2 profession, business, or vocation has been revoked or
3 suspended, by this or any other state, any nation, or any
4 possession or district of the United States, or any court or
5 lawful agency thereof, because of any conduct or practices
6 which would have warranted a like result under this chapter,
7 or if the applicant has been guilty of conduct or practices in
8 this state or elsewhere which would have been grounds for
9 revoking or suspending her or his license under this chapter
10 had the applicant then been registered, the applicant shall be
11 deemed not to be qualified unless, because of lapse of time
12 and subsequent good conduct and reputation, or other reason
13 deemed sufficient, it appears to the commission that the
14 interest of the public and investors will not likely be
15 endangered by the granting of registration. The commission may
16 adopt rules requiring an applicant for licensure to provide
17 written information to the commission regarding the
18 applicant's good character.

19 (b) An application may be disapproved if the applicant
20 has acted or attempted to act, or has held herself or himself
21 out as entitled to act, during the period of 1 year next prior
22 to the filing of the application, as a real estate broker or
23 broker associate ~~salesperson~~ in the state in violation of this
24 chapter. This paragraph may be deemed to bar any person from
25 licensure who has performed any of the acts or services
26 described in s. 475.01(3), unless exempt pursuant to s.
27 475.011, during a period of 1 year next preceding the filing
28 of the application, or during the pendency of the application,
29 and until a valid current license has been duly issued to the
30 person, regardless of whether the performance of the act or
31 service was done for compensation or valuable consideration.

1 (2)(a)1. In addition to other requirements under this
2 part, the commission may require the satisfactory completion
3 of one or more of the educational courses or equivalent
4 courses conducted, offered, sponsored, prescribed, or approved
5 pursuant to s. 475.04, taken at an accredited college,
6 university, or community college, at an area technical center,
7 or at a registered real estate school, as a condition
8 precedent for any person to become licensed or to renew her or
9 his license as a broker, ~~broker-salesperson~~, or broker
10 associate salesperson. The course or courses required for one
11 to become initially licensed shall not exceed a total of 63
12 classroom hours of 50 minutes each, inclusive of examination,
13 for a broker associate salesperson and 72 classroom hours of
14 50 minutes each, inclusive of examination, for a broker. The
15 satisfactory completion of an examination administered by the
16 accredited college, university, or community college, by the
17 area technical center, or by the registered real estate school
18 shall be the basis for determining satisfactory completion of
19 the course. However, notice of satisfactory completion shall
20 not be issued if the student has absences in excess of 8
21 classroom hours.

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

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

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

10 1. An active real estate broker associate's
11 ~~salesperson's~~ license for at least 12 months during the
12 preceding 5 years in the office of one or more real estate
13 brokers licensed in this state or any other state, territory,
14 or jurisdiction of the United States or in any foreign
15 national jurisdiction;

16 2. A current and valid real estate broker associate's
17 ~~salesperson's~~ license for at least 12 months during the
18 preceding 5 years in the employ of a governmental agency for a
19 salary and performing the duties authorized in this part for
20 real estate licensees; or

21 3. A current and valid real estate broker's license
22 for at least 12 months during the preceding 5 years in any
23 other state, territory, or jurisdiction of the United States
24 or in any foreign national jurisdiction.

25
26 This paragraph does not apply to a person employed as a real
27 estate investigator by the Division of Real Estate, provided
28 the person has been employed as a real estate investigator for
29 at least 24 months. The person must be currently employed as a
30 real estate investigator to sit for the real estate broker's
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1 examination and have held a valid and current broker
2 associate's ~~salesperson's~~ license for at least 12 months.

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

10 (3)(a) The commission may prescribe a postlicensure
11 education requirement in order for a person to maintain a
12 valid broker associate's ~~salesperson's~~ license, which shall
13 not exceed 45 classroom hours of 50 minutes each, inclusive of
14 examination, prior to the first renewal following initial
15 licensure. If prescribed, this shall consist of one or more
16 commission-approved courses which total at least 45 classroom
17 hours on one or more subjects which include, but are not
18 limited to, property management, appraisal, real estate
19 finance, ~~or~~ the economics of real estate management,
20 marketing, technology, sales and listing of properties,
21 business office management, courses teaching practical real
22 estate application skills, development of business plans,
23 marketing of property, and time management. Required
24 postlicensure education courses must be provided by an
25 accredited college, university, or community college, by an
26 area technical center, by a registered real estate school, or
27 by a commission-approved sponsor.

28 (b) Satisfactory completion of the postlicensure
29 education requirement is demonstrated by successfully meeting
30 all standards established for the commission-prescribed or
31 commission-approved institution or school. However, notice of

1 satisfactory completion shall not be issued if the student has
2 absences in excess of 10 percent of the required classroom
3 hours or has not satisfactorily completed a timed distance
4 learning course examination.

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

13 (d) A broker associate ~~salesperson~~ who is required to
14 complete any postlicensure education requirement must complete
15 any postlicensure education requirement and hold a current and
16 valid license in order to be eligible for licensure as a
17 broker.

18 (4)(a) The commission may prescribe a postlicensure
19 education requirement in order for a person to maintain a
20 valid broker's license, which shall not exceed 60 classroom
21 hours of 50 minutes each, inclusive of examination, prior to
22 the first renewal following initial licensure. If prescribed,
23 this shall consist of one or more commission-approved courses
24 which total at least 60 classroom hours on one or more
25 subjects which include, but are not limited to, advanced
26 appraisal, advanced property management, real estate
27 marketing, business law, advanced real estate investment
28 analyses, advanced legal aspects, general accounting, real
29 estate economics, syndications, commercial brokerage,
30 feasibility analyses, advanced real estate finance,
31 residential brokerage, advanced marketing, technology,

1 advanced business planning, time management, or real estate
2 brokerage office operations. Required postlicensure education
3 courses must be provided by an accredited college, university,
4 or community college, by an area technical center, by a
5 registered real estate school, or by a commission-approved
6 sponsor.

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

15 (c) The license of any broker who does not complete
16 the postlicensure education requirement prior to the first
17 renewal following initial licensure shall be considered null
18 and void. If the licensee wishes to operate as a broker
19 associate ~~salesperson~~, she or he may be issued a broker
20 associate's ~~salesperson's~~ license after providing proof that
21 she or he has satisfactorily completed the 14-hour continuing
22 education course within the 6 months following expiration of
23 her or his broker's license. To operate as a broker, the
24 licensee must requalify by satisfactorily completing the
25 broker's prelicensure course and passing the state examination
26 for licensure as a broker.

27 (5)(a) The commission may allow an additional 6-month
28 period after the first renewal following initial licensure for
29 completing the postlicensure education courses for broker
30 associates ~~salespersons~~ and brokers who cannot, due to
31

1 individual physical hardship, as defined by rule, complete the
2 courses within the required time.

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

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

18 2. The commission shall provide for postlicensure
19 education courses to be made available by correspondence or
20 other suitable means to any person who, by reason of hardship,
21 as defined by rule, cannot attend the place or places where
22 courses are regularly conducted or does not have access to the
23 distance learning courses.

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

29 Section 9. Section 475.175, Florida Statutes, is
30 amended to read:

31 475.175 Examinations.--

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

3 (a) Submits to the department the appropriate
4 notarized or electronically authenticated application and fee,
5 ~~two photographs of herself or himself taken within the~~
6 ~~preceding year,~~ and a fingerprint card. The fingerprint card
7 shall be forwarded to the Division of Criminal Justice
8 Information Systems within the Department of Law Enforcement
9 for purposes of processing the fingerprint card to determine
10 if the applicant has a criminal history record. The
11 fingerprint card shall also be forwarded to the Federal Bureau
12 of Investigation for purposes of processing the fingerprint
13 card to determine if the applicant has a criminal history
14 record. The information obtained by the processing of the
15 fingerprint card by the Florida Department of Law Enforcement
16 and the Federal Bureau of Investigation shall be sent to the
17 department for the purpose of determining if the applicant is
18 statutorily qualified for examination.

19 (b) Submits at the time of examination the certificate
20 specified in subsection (2), the examination admissions
21 authorization letter ~~card issued by the commission,~~ and proof
22 of identification.

23 (2) Each accredited college, university, community
24 college, or registered real estate school shall notify the
25 commission of the names of all persons who have satisfactorily
26 completed the educational requirements provided for in s.
27 475.17(2) and (3) in a manner prescribed by the commission.
28 Furthermore, each such educational institution shall provide
29 to each person satisfactorily completing the educational
30 requirements provided for in s. 475.17(2) and (3)a
31 certificate as proof of such satisfactory completion.

1 Section 10. Subsection (1) of section 475.181, Florida
2 Statutes, is amended to read:

3 475.181 Licensure.--

4 (1) The department shall license any applicant whom
5 the commission certifies, pursuant to subsection (2), to be
6 qualified to practice as a broker or broker associate
7 ~~salesperson~~.

8 Section 11. Section 475.182, Florida Statutes, is
9 amended to read:

10 475.182 Renewal of license; continuing education.--

11 (1) The department shall renew a license upon receipt
12 of the renewal application and fee. The renewal application
13 for an active license as broker, ~~broker-salesperson~~, or broker
14 associate ~~salesperson~~ shall include proof satisfactory to the
15 commission that the licensee has, since the issuance or
16 renewal of her or his current license, satisfactorily
17 completed at least 14 classroom hours of 50 minutes each of a
18 continuing education course during each biennium of a license
19 period, as prescribed by the commission. Approval or denial of
20 a specialty course must be based on the extent to which the
21 course content focuses on real estate issues relevant to the
22 modern practice of real estate by a real estate licensee,
23 including technology used in the real estate industry.The
24 commission may accept as a substitute for such continuing
25 education course, on a classroom-hour-for-classroom-hour
26 basis, any satisfactorily completed education course that the
27 commission finds is adequate to educate licensees within the
28 intent of this section, including an approved distance
29 learning course. However, the commission may not require, for
30 the purpose of satisfactorily completing an approved
31 correspondence or distance learning course, a written

1 examination that is to be taken at a centralized location and
2 is to be monitored.

3 (2) The initial license of a broker or broker
4 associate shall be issued for a period of not less than 18
5 months or longer than 24 months from its effective date, and
6 it shall expire no later than 24 months after its effective
7 date.

8 (3)~~(2)~~ The department shall adopt rules establishing a
9 procedure for the renewal of licenses ~~at least~~ every 4 years.

10 (4)~~(3)~~ Any license that ~~which~~ is not renewed at the
11 end of the license period prescribed by the department shall
12 automatically revert to involuntarily inactive status. Such
13 license may subsequently be renewed only if the licensee meets
14 the other qualifications specified in s. 475.183.

15 (5)~~(4)~~ Sixty days before ~~prior to~~ the end of the
16 license period and automatic reversion of a license to
17 inactive status, the department shall mail a notice of renewal
18 and possible reversion to the last known address of the
19 licensee.

20 Section 12. Section 475.215, Florida Statutes, is
21 amended to read:

22 475.215 Multiple licenses.--

23 (1) A licensed broker may be issued upon request
24 additional licenses as a broker, but not as a broker associate
25 ~~salesperson or as a broker-salesperson~~, whenever it is clearly
26 shown that the requested additional licenses are necessary to
27 the conduct of real estate brokerage business and that the
28 additional licenses will not be used in a manner likely to be
29 prejudicial to any person, including a licensee under this
30 chapter.

31

1 (2) A broker associate may ~~salesperson or~~
2 ~~broker-salesperson~~ shall have no more than one registered
3 employer at any one time.

4 Section 13. Subsection (1) of section 475.22, Florida
5 Statutes, is amended to read:

6 475.22 Broker to maintain office and sign at entrance
7 of office; registered office outside state; broker required to
8 cooperate in investigation.--

9 (1) Each active broker shall maintain an office, which
10 shall consist of at least one enclosed room in a building of
11 stationary construction. Each active broker shall maintain a
12 sign on or about the entrance of her or his principal office
13 and each branch office, which sign may be easily observed and
14 read by any person about to enter such office ~~and shall be of~~
15 ~~such form and minimum dimensions as shall be prescribed by the~~
16 ~~commission.~~ Each sign must contain the name of the broker,
17 together with the trade name, if any. For a partnership or
18 corporation, the sign must contain the name of the firm or
19 corporation or trade name of the firm or corporation, together
20 with the name of at least one of the brokers. At a minimum,
21 the words "licensed real estate broker" or "lic. real estate
22 broker" must appear on the office entrance signs.

23 Section 14. Section 475.23, Florida Statutes, is
24 amended to read:

25 475.23 License to expire on change of address.--A
26 license shall cease to be in force whenever a broker changes
27 her or his business address, a real estate school operating
28 under a permit issued pursuant to s. 475.451 changes its
29 business address, or a broker associate ~~salesperson~~ working
30 for a broker or an instructor working for a real estate school
31 changes employer. The licensee shall notify the commission of

1 the change no later than 10 days after the change, on a form
2 provided by the commission. When a broker or a real estate
3 school changes business address, the brokerage firm or school
4 permitholder must file a notice of the change of address with
5 the commission, and such notice also fulfills the
6 change-of-address notification for brokers and broker
7 associates employed by the brokerage and instructors employed
8 by the school.

9 Section 15. Subsection (1) of section 475.25, Florida
10 Statutes, is amended, and subsections (5), (6), and (7) are
11 added to that section, to read:

12 475.25 Discipline.--

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

22 (a) Has violated any provision of s. 455.227(1) or s.
23 475.42. However, licensees under this part are exempt from the
24 provisions of s. 455.227(1)(i).

25 (b) Has been guilty of fraud, misrepresentation,
26 concealment, false promises, false pretenses, dishonest
27 dealing by trick, scheme, or device, culpable negligence, or
28 breach of trust in any business transaction in this state or
29 any other state, nation, or territory; has violated a duty
30 imposed upon her or him by law or by the terms of a listing
31 contract, written, oral, express, or implied, in a real estate

1 transaction; has aided, assisted, or conspired with any other
2 person engaged in any such misconduct and in furtherance
3 thereof; or has formed an intent, design, or scheme to engage
4 in any such misconduct and committed an overt act in
5 furtherance of such intent, design, or scheme. It is
6 immaterial to the guilt of the licensee that the victim or
7 intended victim of the misconduct has sustained no damage or
8 loss; that the damage or loss has been settled and paid after
9 discovery of the misconduct; or that such victim or intended
10 victim was a customer or a person in confidential relation
11 with the licensee or was an identified member of the general
12 public.

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

17 (d)1. Has failed to account or deliver to any person,
18 including a licensee under this chapter, at the time which has
19 been agreed upon or is required by law or, in the absence of a
20 fixed time, upon demand of the person entitled to such
21 accounting and delivery, any personal property such as money,
22 fund, deposit, check, draft, abstract of title, mortgage,
23 conveyance, lease, or other document or thing of value,
24 including a share of a real estate commission if a civil
25 judgment relating to the practice of the licensee's profession
26 has been obtained against the licensee and said judgment has
27 not been satisfied in accordance with the terms of the
28 judgment within a reasonable time, or any secret or illegal
29 profit, or any divisible share or portion thereof, which has
30 come into the licensee's hands and which is not the licensee's
31 property or which the licensee is not in law or equity

1 entitled to retain under the circumstances. However, if the
2 licensee, ~~in good faith,~~ entertains doubt as to what person is
3 entitled to the accounting and delivery of the escrowed
4 property, ~~or if conflicting demands have been made upon the~~
5 ~~licensee for the escrowed property, which property she or he~~
6 ~~still maintains in her or his escrow or trust account,~~ the
7 licensee shall either promptly notify the commission of such
8 doubts or ~~conflicting demands and shall~~ promptly:

9 a. Request that the commission issue an escrow
10 disbursement order determining who is entitled to the escrowed
11 property;

12 b. With the consent of all parties, submit the matter
13 to arbitration;

14 c. By interpleader or otherwise, seek adjudication of
15 the matter by a court; or

16 d. With the written consent of all parties, submit the
17 matter to mediation. The department may conduct mediation or
18 may contract with public or private entities for mediation
19 services. However, the mediation process must be successfully
20 completed within 90 days following the last demand or the
21 licensee shall promptly employ one of the other escape
22 procedures contained in this section. Payment for mediation
23 will be as agreed to in writing by the parties. The department
24 may adopt rules to implement this section.

25
26 In the alternative, a licensee may promptly disburse property
27 from the licensee's escrow account without notifying the
28 commission or employing one of the procedures listed in
29 sub-subparagraphs a.-d., and an administrative complaint may
30 not be filed against a licensee solely because the licensee
31 did so. However, a licensee may be civilly liable for

1 improperly disbursing escrowed property.~~If the licensee~~
2 ~~promptly employs one of the escape procedures contained~~
3 ~~herein, and if she or he abides by the order or judgment~~
4 ~~resulting therefrom, no administrative complaint may be filed~~
5 ~~against the licensee for failure to account for, deliver, or~~
6 ~~maintain the escrowed property. If the buyer of a residential~~
7 ~~condominium unit delivers to a licensee written notice of the~~
8 ~~buyer's intent to cancel the contract for sale and purchase,~~
9 ~~as authorized by s. 718.503, or if the buyer of real property~~
10 ~~in good faith fails to satisfy the terms in the financing~~
11 ~~clause of a contract for sale and purchase, the licensee may~~
12 ~~return the escrowed property to the purchaser without~~
13 ~~notifying the commission or initiating any of the procedures~~
14 ~~listed in sub-subparagraphs a.-d.~~

15 2. Has failed to deposit money in an escrow account
16 when the licensee is the purchaser of real estate under a
17 contract where the contract requires the purchaser to place
18 deposit money in an escrow account to be applied to the
19 purchase price if the sale is consummated.

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

23 (f) Has been convicted or found guilty of, or entered
24 a plea of nolo contendere to, regardless of adjudication, a
25 crime in any jurisdiction which directly relates to the
26 activities of a licensed broker or broker associate
27 ~~salesperson~~, or involves moral turpitude or fraudulent or
28 dishonest dealing. The record of a conviction certified or
29 authenticated in such form as to be admissible in evidence
30 under the laws of the state shall be admissible as prima facie
31 evidence of such guilt.

1 (g) Has had a broker's or broker associate's
2 ~~salesperson's~~ license revoked, suspended, or otherwise acted
3 against, or has had an application for such licensure denied,
4 by the real estate licensing agency of another state,
5 territory, or country.

6 (h) Has shared a commission with, or paid a fee or
7 other compensation to, a person not properly licensed as a
8 ~~broker, broker-salesperson,~~ or broker associate salesperson
9 under the laws of this state, for the referral of real estate
10 business, clients, prospects, or customers, or for any one or
11 more of the services set forth in s. 475.01(1)(a). For the
12 purposes of this section, it is immaterial that the person to
13 whom such payment or compensation is given made the referral
14 or performed the service from within this state or elsewhere;
15 however, a licensed broker of this state may pay a referral
16 fee or share a real estate brokerage commission with a broker
17 licensed or registered under the laws of a foreign state so
18 long as the foreign broker does not violate any law of this
19 state. However, when a broker has compensated a broker
20 associate or a legal entity formed and controlled by a broker
21 associate, that broker associate may compensate persons
22 associated with the broker associate or legal entity. Nothing
23 in this paragraph or s. 475.71 is intended to prevent a real
24 estate broker licensed in this state from sharing a commission
25 on a cooperative real estate transaction, other than a
26 residential sale as defined in s. 475.278(5)(a), with a person
27 who holds an active real estate license in another state or
28 country, provided that:

29 1. Before the out-of-state real estate licensee
30 performs any act in this state which constitutes professional
31 real estate activity, the licensee and the cooperating real

1 estate broker licensed in this state shall enter a written
2 agreement that states the terms of cooperation and
3 compensation, that the services set forth in s. 475.01(1)(a),
4 if conducted in this state, will be under the supervision and
5 control of the cooperating broker licensed in this state, that
6 the out-of-state licensee will comply with all applicable laws
7 of this state, and that civil actions may be commenced against
8 the out-of-state real estate licensee, the cooperating real
9 estate broker licensed in this state, or both in any court of
10 competent jurisdiction in any county of this state in which a
11 claim arises;

12 2. The cooperating real estate broker licensed in this
13 state or a Florida-licensed real estate broker engaged by the
14 cooperating broker accompanies the out-of-state real estate
15 licensee and the potential buyer or potential lessee during
16 any initial property showing; and

17 3. All subsequent property showings and all
18 negotiations regarding the cooperative real estate transaction
19 are conducted under the supervision, control, and express
20 permission of the cooperating real estate broker licensed in
21 this state or a Florida-licensed real estate broker engaged by
22 the cooperating broker.

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

29 (j) Has rendered an opinion that the title to any
30 property sold is good or merchantable, except when correctly
31 based upon a current opinion of a licensed attorney at law, or

1 has failed to advise a prospective purchaser to consult her or
2 his attorney on the merchantability of the title or to obtain
3 title insurance.

4 (k) Has failed, if a broker, to immediately place,
5 upon receipt, any money, fund, deposit, check, or draft
6 entrusted to her or him by any person dealing with her or him
7 as a broker in an escrow account with a title company, banking
8 institution, credit union, or savings and loan association
9 located and doing business in this state in a manner
10 consistent with the broker's fiduciary obligations and
11 requirements of timely disbursement, or to deposit such funds
12 in a trust or escrow account maintained by her or him with
13 some bank, credit union, or savings and loan association
14 located and doing business in this state, wherein the funds
15 shall be kept and, with the written consent of the parties to
16 a transaction, invested in a manner not inconsistent with s.
17 18.10(2) until disbursement thereof is properly authorized; or
18 has failed, if a broker associate salesperson, to immediately
19 place with her or his registered employer any money, fund,
20 deposit, check, or draft entrusted to her or him by any person
21 dealing with her or him as agent of the registered employer.
22 The commission shall establish rules to provide for records to
23 be maintained by the broker and the manner in which such
24 deposits shall be made. A broker may place and maintain up to
25 \$5,000 of personal or brokerage funds in the broker's escrow
26 account and shall be provided a reasonable amount of time to
27 correct escrow errors if there is no shortage of funds and
28 such errors pose no significant threat to economically harm
29 the public. It is the intent of the Legislature that, in the
30 event of legal proceedings concerning a broker's escrow
31 account, the disbursement of escrowed funds not be delayed due

1 to any dispute over the personal or brokerage funds that may
2 be present in the escrow account.

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

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

13 (n) Is confined in any county jail, postadjudication;
14 is confined in any state or federal prison or mental
15 institution; is under home confinement ordered in lieu of
16 institutional confinement; or, through mental disease or
17 deterioration, can no longer safely be entrusted to
18 competently deal with the public.

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

27 (p) Has failed to inform the commission in writing
28 within 30 days after pleading guilty or nolo contendere to, or
29 being convicted or found guilty of, any felony.

30 (q) Has violated any provision of s. 475.2755 or s.
31 475.278, including the duties owed under those sections.

1 (r) Has failed in any written listing agreement to
2 include a definite expiration date, description of the
3 property, price and terms, fee or commission, and a proper
4 signature of the principal(s); and has failed to give the
5 principal(s) a legible, signed, true and correct copy of the
6 listing agreement within 24 hours of obtaining the written
7 listing agreement. The written listing agreement shall
8 contain no provision requiring the person signing the listing
9 to notify the broker of the intention to cancel the listing
10 after such definite expiration date.

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

17 (t) Has violated any standard for the development or
18 communication of a real estate appraisal or other provision of
19 the Uniform Standards of Professional Appraisal Practice, as
20 defined in s. 475.611, as approved and adopted by the
21 Appraisal Standards Board of the Appraisal Foundation, as
22 defined in s. 475.611. This paragraph does not apply to a real
23 estate broker or broker associate ~~salesperson~~ who, in the
24 ordinary course of business, performs a comparative market
25 analysis, gives a broker price opinion, or gives an opinion of
26 value of real estate. However, in no event may this
27 comparative market analysis, broker price opinion, or opinion
28 of value of real estate be referred to as an appraisal, as
29 defined in s. 475.611.

30 (5) An administrative complaint against a broker or
31 broker associate must be filed within 4 years after the time

1 of the act giving rise to the complaint or within 2 years
2 after the time the act is discovered or should have been
3 discovered with the exercise of due diligence. In no event may
4 a complaint be filed more than 6 years after the date of the
5 act giving rise to the complaint.

6 (6) The commission shall promptly notify the
7 licensee's employer, in writing, any time the commission
8 places a licensee on probation, reprimands a licensee,
9 suspends or revokes the license of a licensee, imposes an
10 administrative fine against a licensee, or takes any other
11 final disciplinary action against a licensee.

12 (7) The commission shall promptly report to the proper
13 prosecuting authority for prosecution any criminal violation
14 of any statute relating to the practice of a real estate
15 profession regulated by the commission.

16 Section 16. Section 475.2755, Florida Statutes, is
17 amended to read:

18 475.2755 Designated broker associate ~~salesperson~~.--

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

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

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

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 17. Section 475.278, Florida Statutes, is
26 amended to read:

27 (Substantial rewording of section. See
28 s. 475.278, F.S., for present text.)
29 475.278 Authorized brokerage relationships.--
30 (1) TRANSACTION BROKER RELATIONSHIP.--

31

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

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

11 1. Dealing honestly and fairly;

12 2. Accounting for all funds;

13 3. Using skill, care, and diligence in the
14 transaction;

15 4. Disclosing all known facts that materially affect
16 the value of residential real property and are not readily
17 observable to the buyer;

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

21 6. Limited confidentiality, unless waived in writing
22 by a party. This limited confidentiality will prevent
23 disclosure that the seller will accept a price less than the
24 asking or listed price, that the buyer will pay a price
25 greater than the price submitted in a written offer, of the
26 motivation of any party for selling or buying property, that a
27 seller or buyer will agree to financing terms other than those
28 offered, or of any other information requested by a party to
29 remain confidential; and

30 7. Any additional duties that are mutually agreed to
31 with a party.

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(2) SINGLE AGENT RELATIONSHIP.--

(a) Single agent duties.--The duties a licensee owes to a buyer or seller who engages the licensee as a single agent include the following:

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

(b) Disclosure requirements.--Licensees who seek to enter into a single agent relationship with a potential buyer or potential seller must give the potential buyer or potential seller the disclosure contained in paragraph (c), either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required disclosure must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of

1 the duties of a single agent, except that the first sentence
2 of the disclosure contained in paragraph (c) must be printed
3 in uppercase and bold type.

4 (c) Contents of disclosure.--The disclosure required
5 under paragraph (b) must include the following information in
6 the following form:

7
8 SINGLE AGENT NOTICE

9
10 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
11 SINGLE AGENTS DISCLOSE THEIR DUTIES TO BUYERS AND SELLERS.

12
13 As a single agent, (insert name of Real
14 Estate Entity and its Associate) owe to you the following
15 duties:

- 16 1. Dealing honestly and fairly;
- 17 2. Loyalty;
- 18 3. Confidentiality;
- 19 4. Obedience;
- 20 5. Full disclosure;
- 21 6. Accounting for all funds;
- 22 7. Skill, care, and diligence in the transaction;
- 23 8. Presenting all offers and counteroffers in a timely

24 manner, unless a party has previously directed the licensee
25 otherwise in writing; and

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

29
30
31 Date Signature

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Signature

(d) Dual agency prohibited.--A licensee may enter into a brokerage relationship as a single agent with potential buyers and sellers, but may not operate as a disclosed or undisclosed dual agent. As used in this section, the term "dual agent" means a broker who represents as a fiduciary both the prospective buyer and the prospective seller in a real estate transaction.

(3) TRANSITION TO TRANSACTION BROKER.--

(a) From single agent relationship.--A single agent relationship may be changed to a transaction broker relationship at any time during the relationship between an agent and principal, provided the agent gives the disclosure contained in paragraph (b) to the principal and the principal gives written consent to the agent before a change in relationship. This disclosure must be given to the principal in writing, either as a separate and distinct document or included as part of other documents such as a listing agreement or other agreements for representation. When incorporated into other documents, the required disclosure must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the disclosure must be printed in uppercase bold type.

(b) Contents of disclosure.--The disclosure required under paragraph (a) must include the following information in the following form:

1 offered, or of any other information requested by a party to
2 remain confidential; and

3 7. Any additional duties that are entered into by this
4 or by separate written agreement.

5
6 Limited representation means that a buyer or seller is not
7 responsible for the acts of the licensee. Additionally,
8 parties are giving up their rights to the undivided loyalty of
9 the licensee. This aspect of limited representation allows a
10 licensee to facilitate a real estate transaction by assisting
11 both the buyer and the seller, but a licensee will not work to
12 represent one party to the detriment of the other party when
13 acting as a transaction broker to both parties.

14
15 I agree that the licensee named above may assume the role and
16 duties of a transaction broker.

17
18
19 Date
20 Signature

21
22 Signature

23 (4) NO BROKERAGE RELATIONSHIP.--
24 (a) Brokerage relationship not required.--This part
25 does not require a customer to enter into a brokerage
26 relationship with any licensee.

27 (b) No brokerage relationship duties.--A licensee owes
28 to a potential seller or potential buyer with whom the
29 licensee has no brokerage relationship the following duties:

30 1. Dealing honestly and fairly;

31

1 2. Disclosing all known facts that materially affect
2 the value of the residential real property which are not
3 readily observable to the buyer; and

4 3. Accounting for all funds entrusted to the licensee.

5 (c) Disclosure requirements.--A licensee who has no
6 brokerage relationship with a potential buyer or potential
7 seller must give the potential buyer or potential seller the
8 disclosure contained in paragraph (d). The disclosure must be
9 given in writing prior to the showing of property. When
10 incorporated into other documents, the required disclosure
11 must be of the same size type, or larger, as other provisions
12 of the document and must be conspicuous in its placement so as
13 to advise customers of the duties of a licensee that has no
14 brokerage relationship with a buyer or seller, except that the
15 first sentence of the information identified in paragraph (d)
16 must be printed in uppercase bold type.

17 (d) Contents of disclosure.--The disclosure required
18 under paragraph (c) must include the following information in
19 the following form:

20
21 NO BROKERAGE RELATIONSHIP NOTICE

22
23 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
24 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OF BUYER
25 DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

26
27 As a real estate licensee who has no brokerage relationship
28 with you, (insert name of Real Estate Entity
29 and its Associate) owe to you the following duties:

30 1. Dealing honestly and fairly;

1 rental or leasing of real property, unless an option to
2 purchase all or a portion of the property improved with four
3 or fewer residential units is given; a bona fide "open house"
4 or model home showing that does not involve eliciting
5 confidential information, the execution of a contractual offer
6 or an agreement for representation, or negotiations concerning
7 price, terms, or conditions of a potential sale; unanticipated
8 casual conversations between a licensee and a seller or buyer
9 which do not involve eliciting confidential information, the
10 execution of a contractual offer or agreement for
11 representation, or negotiations concerning price, terms, or
12 conditions of a potential sale; responding to general factual
13 questions from a potential buyer or seller concerning
14 properties that have been advertised for sale; situations in
15 which a licensee's communications with a potential buyer or
16 seller are limited to providing general factual information,
17 oral or written, about the qualifications, background, and
18 services of the licensee or the licensee's brokerage firm;
19 auctions; appraisals; and dispositions of any interest in
20 business enterprises or business opportunities, except for
21 property with four or fewer residential units.

22 Section 18. Subsection (1) of section 475.31, Florida
23 Statutes, is amended to read:

24 475.31 Final orders.--

25 (1) An order revoking or suspending the license of a
26 broker shall automatically cause ~~cancel~~ the licenses of all
27 broker associates ~~salespersons~~ registered with the broker,
28 and, if a partnership or corporation, of all members,
29 officers, and directors thereof to become involuntarily
30 inactive, while the license of the broker is inoperative or
31 until new employment or connection is secured.

1 Section 19. Section 475.37, Florida Statutes, is
2 amended to read:

3 475.37 Effect of reversal of order of court or
4 commission.--If the order of the court or commission denying a
5 license or taking any disciplinary action against a licensee
6 is finally reversed and set aside, the defendant shall be
7 restored to her or his rights and privileges as a broker or
8 broker associate ~~salesperson~~ as of the date of filing the
9 mandate or a copy thereof with the commission. The matters and
10 things alleged in the information shall not thereafter be
11 reexamined in any other proceeding concerning the licensure of
12 the defendant. If the inquiry concerned was in reference to an
13 application for licensure, the application shall stand
14 approved, and such application shall be remanded for further
15 proceedings according to law.

16 Section 20. Section 475.4005, Florida Statutes, is
17 created to read:

18 475.4005 Unlicensed practice of profession regulated
19 in this chapter; cease and desist notice; civil penalty;
20 enforcement; citations; allocation of moneys.--

21 (1) When the commission has probable cause to believe
22 that any person not licensed by the department has violated
23 any provision of this chapter or any statute that relates to
24 the practice of a profession regulated under this chapter or
25 any rule adopted pursuant thereto, the commission may issue
26 and deliver to such person a notice to cease and desist from
27 such violation. In addition, the commission may issue and
28 deliver a notice to cease and desist to any person who aids
29 and abets such unlicensed practice by employing such
30 unlicensed persons. The issuance of a notice to cease and
31 desist shall not constitute agency action for which a hearing

1 under ss. 120.569 and 120.57 may be sought. For the purpose of
2 enforcing a cease and desist order, the commission may file a
3 proceeding in the name of the state seeking issuance of an
4 injunction or a writ of mandamus against any person who
5 violates any provision of such order. In addition to the
6 foregoing remedies, the commission may impose an
7 administrative penalty not to exceed \$5,000 per incident
8 pursuant to the provisions of chapter 120 or may issue a
9 citation pursuant to subsection (3). If the commission is
10 required to seek enforcement of the order for a penalty
11 pursuant to s. 120.569, it is entitled to collect its
12 attorney's fees and costs, together with any cost of
13 collection.

14 (2) In addition to or in lieu of any remedy provided
15 in subsection (1), the department may seek the imposition of a
16 civil penalty through the circuit court for any violation for
17 which the commission may issue a notice to cease and desist
18 under subsection (1). The civil penalty shall be no less than
19 \$500 and no more than \$5,000 for each offense. The court may
20 also award to the prevailing party court costs and reasonable
21 attorney's fees and, if the commission prevails, may also
22 award reasonable costs of investigation.

23 (3)(a) Notwithstanding s. 455.225, the commission
24 shall adopt rules to permit the issuance of citations for
25 unlicensed practice of a profession regulated under this
26 chapter. The citation shall be issued to the subject and shall
27 contain the subject's name and any other information the
28 department determines to be necessary to identify the subject,
29 a brief factual statement, the sections of law allegedly
30 violated, and the penalty imposed. The citation must clearly
31 state that the subject may choose, in lieu of accepting the

1 citation, to follow the procedure under s. 455.225. If the
2 subject disputes the matter in the citation, the procedures
3 set forth in s. 455.225 must be followed. However, if the
4 subject does not dispute the matter in the citation with the
5 commission within 30 days after the citation is served, the
6 citation shall become a final order of the commission. The
7 penalty shall be a fine of not less than \$500 or more than
8 \$5,000 or other conditions as established by rule.

9 (b) Each day that the unlicensed practice continues
10 after issuance of a citation constitutes a separate violation.

11 (c) The commission may recover the costs of
12 investigation, in addition to any penalty provided according
13 to commission rule as part of the penalty levied pursuant to
14 the citation.

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

18 (4) All fines, fees, and costs collected through the
19 procedures set forth in this section shall be allocated to the
20 Real Estate Recovery Fund.

21 (5) The commission shall employ attorneys and
22 investigators to investigate and prosecute unlicensed activity
23 in real estate transactions.

24 Section 21. Section 475.41, Florida Statutes, is
25 amended to read:

26 475.41 Contracts of unlicensed person for commissions
27 invalid.--No contract for a commission or compensation for any
28 act or service enumerated in s. 475.01(3) is valid unless the
29 broker or broker associate ~~salesperson~~ has complied with this
30 chapter in regard to issuance and renewal of the license at
31 the time the act or service was performed.

1 Section 22. Subsection (1) of section 475.42, Florida
2 Statutes, is amended to read:

3 475.42 Violations and penalties.--

4 (1) VIOLATIONS.--

5 (a) A ~~No~~ person may not ~~shall~~ operate as a broker or
6 broker associate salesperson without being the holder of a
7 valid and current active license therefor.

8 (b) A ~~No~~ person licensed as a broker associate may not
9 ~~salesperson shall~~ operate as a broker or operate as a broker
10 associate salesperson for any person not registered as her or
11 his employer.

12 (c) A ~~No~~ broker may not ~~shall~~ employ, or continue in
13 employment, any person as a broker or broker associate
14 ~~salesperson~~ who is not the holder of a valid and current
15 license as broker or broker associate, respectively
16 ~~salesperson; but a license as salesperson may be issued to a~~
17 ~~person licensed as an active broker, upon request and~~
18 ~~surrender of the license as broker, without a fee in addition~~
19 ~~to that paid for the issuance of the broker's active license.~~

20 (d) A broker associate may not ~~No salesperson shall~~
21 collect any money in connection with any real estate brokerage
22 transaction, whether as a commission, deposit, payment,
23 rental, or otherwise, except in the name of the employer and
24 with the express consent of the employer; and no real estate
25 broker associate salesperson, whether the holder of a valid
26 and current license or not, shall commence or maintain any
27 action for a commission or compensation in connection with a
28 real estate brokerage transaction against any person except a
29 person registered as her or his employer at the time the
30 broker associate salesperson performed the act or rendered the
31 service for which the commission or compensation is due.

1 (e) A ~~No~~ person may not ~~shall~~ violate any lawful order
2 or rule of the commission which is binding upon her or him.

3 (f) A ~~No~~ person may not ~~shall~~ commit any conduct or
4 practice set forth in s. 475.25(1)(b), (c), (d), or (h).

5 (g) A ~~No~~ person may not ~~shall~~ make any false affidavit
6 or affirmation intended for use as evidence by or before the
7 commission or a member thereof, or by any of its authorized
8 representatives, nor may ~~shall~~ any person give false testimony
9 under oath or affirmation to or before the commission or any
10 member thereof in any proceeding authorized by this chapter.

11 (h) A ~~No~~ person may not ~~shall~~ fail or refuse to appear
12 at the time and place designated in a subpoena issued with
13 respect to a violation of this chapter, unless because of
14 facts that are sufficient to excuse appearance in response to
15 a subpoena from the circuit court; nor may ~~shall~~ a person who
16 is present before the commission or a member thereof or one of
17 its authorized representatives acting under authority of this
18 chapter refuse to be sworn or to affirm or fail or refuse to
19 answer fully any question propounded by the commission, the
20 member, or such representative, or by any person by the
21 authority of such officer or appointee; nor may ~~shall~~ any
22 person, so being present, conduct herself or himself in a
23 disorderly, disrespectful, or contumacious manner.

24 (i) A ~~No~~ person may not ~~shall~~ obstruct or hinder in
25 any manner the enforcement of this chapter or the performance
26 of any lawful duty by any person acting under the authority of
27 this chapter or interfere with, intimidate, or offer any bribe
28 to any member of the commission or any of its employees or any
29 person who is, or is expected to be, a witness in any
30 investigation or proceeding relating to a violation of this
31 chapter.

1 (j) A ~~No~~ broker or broker associate may not
2 ~~salesperson shall~~ place, or cause to be placed, upon the
3 public records of any county, any contract, assignment, deed,
4 will, mortgage, affidavit, or other writing which purports to
5 affect the title of, or encumber, any real property if the
6 same is known to her or him to be false, void, or not
7 authorized to be placed of record, or not executed in the form
8 entitling it to be recorded, or the execution or recording
9 whereof has not been authorized by the owner of the property,
10 maliciously or for the purpose of collecting a commission, or
11 to coerce the payment of money to the broker or broker
12 associate ~~salesperson~~ or other person, or for any unlawful
13 purpose. However, nothing in this paragraph shall be
14 construed to prohibit a broker or a broker associate
15 ~~salesperson~~ from recording a judgment rendered by a court of
16 this state or to prohibit a broker from placing a lien on a
17 property where expressly permitted by contractual agreement.

18 (k) A ~~No~~ person may not ~~shall~~ operate as a broker
19 under a trade name without causing the trade name to be noted
20 in the records of the commission and placed on the person's
21 license, or so operate as a member of a partnership or as a
22 corporation or as an officer or manager thereof, unless such
23 partnership or corporation is the holder of a valid current
24 registration.

25 (l) A ~~No~~ person may not ~~shall~~ knowingly conceal any
26 information relating to violations of this chapter.

27 (m) A ~~No~~ person may not ~~shall~~ undertake to list or
28 sell one or more timeshare periods per year in one or more
29 timeshare plans on behalf of any number of persons without
30 first being the holder of a valid and current license as a
31

1 broker or broker associate ~~salesperson~~ pursuant to this
2 chapter, except as provided in s. 475.011 and chapter 721.

3 (n) A No broker or broker associate may not
4 ~~salesperson shall~~ enter into any listing or other agreement
5 regarding her or his services in connection with the resale of
6 a timeshare period unless the broker or broker associate
7 ~~salesperson~~ fully and fairly discloses all material aspects of
8 the agreement to the owner of the timeshare period and fully
9 complies with the provisions of s. 475.452. Further, a no
10 broker or broker associate may not use ~~salesperson shall~~
11 ~~utilize~~ any form of contract or purchase and sale agreement in
12 connection with the resale of a timeshare period unless the
13 contract or purchase and sale agreement fully and fairly
14 discloses all material aspects of the timeshare plan and the
15 rights and obligations of both buyer and seller. The
16 commission is authorized to adopt ~~promulgate~~ rules pursuant to
17 chapter 120 as necessary to implement, enforce, and interpret
18 this paragraph.

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

26 Section 23. Section 475.43, Florida Statutes, is
27 amended to read:

28 475.43 Presumptions.--In all criminal cases, contempt
29 cases, and other cases filed pursuant to this chapter, if a
30 party has sold, leased, or let real estate, the title to which
31 was not in the party when it was offered for sale, lease, or

1 letting, or such party has maintained an office bearing signs
2 that real estate is for sale, lease, or rental thereat, or has
3 advertised real estate for sale, lease, or rental, generally,
4 or describing property, the title to which was not in such
5 party at the time, it shall be a presumption that such party
6 was acting or attempting to act as a real estate broker, and
7 the burden of proof shall be upon him or her to show that he
8 or she was not acting or attempting to act as a broker or
9 broker associate ~~salesperson~~. All contracts, options, or
10 other devices not based upon a substantial consideration, or
11 that are otherwise employed to permit an unlicensed person to
12 sell, lease, or let real estate, the beneficial title to which
13 has not, in good faith, passed to such party for a substantial
14 consideration, are hereby declared void and ineffective in all
15 cases, suits, or proceedings had or taken under this chapter;
16 however, this section shall not apply to irrevocable gifts, to
17 unconditional contracts to purchase, or to options based upon
18 a substantial consideration actually paid and not subject to
19 any agreements to return or right of return reserved.

20 Section 24. Section 475.451, Florida Statutes, is
21 amended to read:

22 475.451 Schools teaching real estate practice.--

23 (1) Each person, school, or institution, except
24 approved and accredited colleges, universities, community
25 colleges, and area technical centers in this state, which
26 offers or conducts any course of study in real estate
27 practice, teaches any course prescribed by the commission as a
28 condition precedent to licensure or renewal of licensure as a
29 broker or broker associate ~~salesperson~~, or teaches any course
30 designed or represented to enable or assist applicants for
31 licensure as brokers or broker associates ~~salespersons~~ to pass

1 examinations for such licensure shall, before commencing or
2 continuing further to offer or conduct such course or courses,
3 obtain a permit from the department and abide by the
4 regulations imposed upon such person, school, or institution
5 by this chapter and rules of the commission adopted pursuant
6 to this chapter. The exemption for colleges, universities,
7 community colleges, and area technical centers is limited to
8 transferable college credit courses offered by such
9 institutions.

10 (2) An applicant for a permit to operate a proprietary
11 real estate school, to be a chief administrator of a
12 proprietary real estate school or a state institution, or to
13 be an instructor for a proprietary real estate school or a
14 state institution must meet the qualifications for practice
15 set forth in s. 475.17(1) and the following minimal
16 requirements:

17 (a) "School permitholder" means the individual who is
18 responsible for directing the overall operation of a
19 proprietary real estate school. A school permitholder must be
20 the holder of a license as a broker, either active or
21 voluntarily inactive, or must have passed an instructor's
22 examination approved by the commission. A school permitholder
23 must also meet the requirements of a school instructor if
24 actively engaged in teaching.

25 (b) "Chief administrative person" means the individual
26 who is responsible for the administration of the overall
27 policies and practices of the institution or proprietary real
28 estate school. A chief administrative person must also meet
29 the requirements of a school instructor if actively engaged in
30 teaching.

31

1 (c) "School instructor" means an individual who
2 instructs persons in the classroom in noncredit college
3 courses in a college, university, or community college or
4 courses in an area technical center or proprietary real estate
5 school.

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

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

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

17 c. Pass an instructor's examination approved by the
18 commission.

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

22 3. The department shall renew an instructor permit
23 upon receipt of a renewal application and fee. The renewal
24 application shall include proof that the permitholder has,
25 since the issuance or renewal of the current permit,
26 successfully completed a minimum of 4 ~~15~~ classroom hours of
27 instruction provided by the commission covering changes in the
28 law and case law for each biennium of a license period in real
29 ~~estate subjects or instructional techniques, as prescribed by~~
30 ~~the commission~~. The commission shall adopt rules providing for
31 the renewal of instructor permits at least every 4 ~~2~~ years.

1 Any permit which is not renewed at the end of the permit
2 period established by the department shall automatically
3 revert to involuntarily inactive status.

4
5 The department may require an applicant to submit names of
6 persons having knowledge concerning the applicant and the
7 enterprise; may propound interrogatories to such persons and
8 to the applicant concerning the character of the applicant,
9 including the taking of fingerprints for processing through
10 the Federal Bureau of Investigation; and shall make such
11 investigation of the applicant or the school or institution as
12 it may deem necessary to the granting of the permit. If an
13 objection is filed, it shall be considered in the same manner
14 as objections or administrative complaints against other
15 applicants for licensure by the department.

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

26 (4) Any person who violates this section commits a
27 misdemeanor of the second degree, punishable as provided in s.
28 775.082 or s. 775.083.

29 (5) The location of classes and frequency of class
30 meetings and the provision of interactive distance learning
31 courses shall be in the discretion of the school offering real

1 estate courses, so long as such courses conform to s.
2 475.17(2).

3 (6) Any course prescribed by the commission as a
4 condition precedent to any person's becoming initially
5 licensed as a broker associate ~~salesperson~~ may be taught in
6 any real estate school through the use of a video tape of
7 instruction by a currently permitted instructor from any such
8 school or may be taught by interactive distance learning
9 pursuant to s. 475.17(2). The commission may require that any
10 such video tape course have a single session of live
11 instruction by a currently permitted instructor from any such
12 school; however, this requirement shall not exceed 3 classroom
13 hours. All other prescribed courses, except the continuing
14 education course required by s. 475.182, shall be taught by a
15 currently permitted school instructor personally in attendance
16 at such course or by interactive distance learning pursuant to
17 s. 475.17. The continuing education course required by s.
18 475.182 may be taught by interactive distance learning
19 pursuant to s. 475.17 or by an equivalent correspondence
20 course; however, any such correspondence course shall be
21 required to have a final examination, prepared and
22 administered by the school issuing the correspondence course.
23 The continuing education requirements provided in this section
24 or provided in any other section in this chapter do not apply
25 with respect to any attorney who is otherwise qualified under
26 the provisions of this chapter.

27 ~~(7) Any person holding a school instructor permit on~~
28 ~~October 1, 1983, is exempt from the instructor examination~~
29 ~~requirements of paragraph (2)(c) as long as the person~~
30 ~~continuously holds such a permit and complies with all other~~
31 ~~requirements of this chapter.~~

1 (7)(8) A permitholder under this section may be
2 issued additional permits whenever it is clearly shown that
3 the requested additional permits are necessary to the conduct
4 of the business of a real estate school and that the
5 additional permits will not be used in a manner likely to be
6 prejudicial to any person, including a licensee or a
7 permitholder under this chapter.

8 Section 25. Subsections (3), (4), and (5) of section
9 475.4511, Florida Statutes, are repealed.

10 Section 26. Section 475.453, Florida Statutes, is
11 amended to read:

12 475.453 Rental information; contract or receipt;
13 refund; penalty.--

14 (1) Each broker or broker associate ~~salesperson~~ who
15 attempts to negotiate a rental, or who furnishes rental
16 information to a prospective tenant, for a fee paid by the
17 prospective tenant shall provide such prospective tenant with
18 a contract or receipt, which contract or receipt contains a
19 provision for the repayment of any amount over 25 percent of
20 the fee to the prospective tenant if the prospective tenant
21 does not obtain a rental. If the rental information provided
22 by the broker or broker associate ~~salesperson~~ to a prospective
23 tenant is not current or accurate in any material respect, the
24 full fee shall be repaid to the prospective tenant upon
25 demand. A demand from the prospective tenant for the return
26 of the fee, or any part thereof, shall be made within 30 days
27 following the day on which the real estate broker or broker
28 associate ~~salesperson~~ has contracted to perform services to
29 the prospective tenant. The contract or receipt shall also
30 conform to the guidelines adopted by the commission in order
31

1 to effect disclosure of material information regarding the
2 service to be provided to the prospective tenant.

3 (2) The commission may adopt a guideline for the form
4 of the contract or receipt required to be provided by brokers
5 or broker associates ~~salespersons~~ pursuant to the provisions
6 of subsection (1).

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

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

16 Section 27. Section 475.455, Florida Statutes, is
17 amended to read:

18 475.455 Exchange of disciplinary information.--The
19 commission shall inform the Division of Florida Land Sales,
20 Condominiums, and Mobile Homes of the Department of Business
21 and Professional Regulation of any disciplinary action the
22 commission has taken against any of its licensees. The
23 division shall inform the commission of any disciplinary
24 action the division has taken against any broker or broker
25 associate ~~salesperson~~ registered with the division.

26 Section 28. Section 475.482, Florida Statutes, is
27 amended to read:

28 475.482 Real Estate Recovery Fund.--There is created
29 the Florida Real Estate Recovery Fund as a separate account in
30 the Professional Regulation Trust Fund.

31

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

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

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

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

20
21 provided the act was a violation proscribed in s. 475.25 or s.
22 475.42.

23 (2) The Real Estate Recovery Fund shall also be
24 disbursed as provided in s. 475.484, on order of the
25 commission, as reimbursement to any broker or broker associate
26 ~~salesperson~~ who is required by a court of competent civil
27 jurisdiction to pay monetary damages due to a distribution of
28 escrow moneys which is made in compliance with an escrow
29 disbursement order issued by the commission. However, in no
30 case shall the fund be disbursed when the broker or broker
31 associate ~~salesperson~~ fails to notify the commission and to

1 diligently defend an action wherein the broker or broker
2 associate ~~salesperson~~ may be required by a court of competent
3 civil jurisdiction to pay monetary damages due to a
4 distribution of escrow moneys which is made in compliance with
5 an escrow disbursement order issued by the commission.

6 (3) A fee of \$3.50 per year shall be added to the
7 license fee for both new licenses and renewals of licenses for
8 brokers, and a fee of \$1.50 per year shall be added for new
9 licenses and renewals of licenses for broker associates
10 ~~salespersons~~. This fee shall be in addition to the regular
11 license fee and shall be deposited in or transferred to the
12 Real Estate Recovery Fund. If the fund at any time exceeds \$1
13 ~~million~~~~\$750,000~~, collection of special fees for this fund
14 shall be discontinued at the end of the licensing renewal
15 cycle. Such special fees shall not be reimposed unless the
16 fund is reduced below \$500,000 by disbursement made in
17 accordance with this chapter.

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

21 Section 29. Paragraph (a) of subsection (1) and
22 subsections (2) and (3) of section 475.483, Florida Statutes,
23 are amended to read:

24 475.483 Conditions for recovery; eligibility.--

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

27 (a) Such person has received a final judgment in a
28 court of competent civil jurisdiction in this state against an
29 individual broker or broker associate ~~salesperson~~ in any
30 action wherein the cause of action was based on a real estate
31 brokerage transaction. If such person is unable to secure a

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

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 broker
19 associate ~~salesperson~~ who acted as a single agent or
20 transaction broker in the transaction that is the subject of
21 the claim;

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

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

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

4 (3) ~~The commission may pay attorney's fees and court~~
5 ~~costs~~ If the claim is of the type described in s. 475.482(2),
6 the commission shall pay the defendant's attorney's fees and
7 court costs and, if the plaintiff prevails in court, the
8 plaintiff's attorney's fees and court costs.

9 Section 30. Subsections (1), (3), (4), (5), and (7) of
10 section 475.484, Florida Statutes, are amended to read:

11 475.484 Payment from the fund.--

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

16 (a) Under s. 475.482(1), in an amount equal to the
17 unsatisfied portion of such person's judgment or \$50,000
18 ~~\$25,000~~, whichever is less, but only to the extent and amount
19 reflected in the judgment as being actual or compensatory
20 damages. Except as provided in s. 475.483, treble damages,
21 court costs, attorney's fees, and interest shall not be
22 recovered from the fund.

23 (b) Under s. 475.482(2), in an amount equal to the
24 judgment against the broker or broker associate ~~salesperson~~ or
25 \$50,000~~\$25,000~~, whichever is less.

26 (3) Payments for claims arising out of the same
27 transaction shall be limited, in the aggregate, to \$50,000
28 ~~\$25,000~~, regardless of the number of claimants or parcels of
29 real estate involved in the transaction.

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1 (4) Payments for claims based upon judgments against
2 any one broker or broker associate ~~salesperson~~ may not exceed,
3 in the aggregate, \$150,000~~\$75,000~~.

4 (5) If at any time the moneys in the Real Estate
5 Recovery Fund are insufficient to satisfy any valid claim or
6 portion thereof, the commission shall satisfy such unpaid
7 claim or portion thereof as soon as a sufficient amount of
8 money has been deposited in or transferred to the fund. When
9 there is more than one unsatisfied claim outstanding, such
10 claims shall be paid in the order in which the claims were
11 approved by the commission. However, if the total claims
12 approved at any one commission meeting exceed the aggregate
13 amount established in subsection (4) against any one broker or
14 broker associate ~~salesperson~~, the claims approved on that day
15 shall be prorated.

16 (7) Upon the payment of any amount from the Real
17 Estate Recovery Fund in settlement of a claim in satisfaction
18 of a judgment against a broker or broker associate ~~salesperson~~
19 as described in s. 475.482(1), the license of such broker or
20 broker associate ~~salesperson~~ shall be automatically suspended
21 upon the date of payment from the fund. The license of such
22 broker or broker associate ~~salesperson~~ may not be reinstated
23 until the licensee has repaid in full, plus interest, the
24 amount paid from the fund. No further administrative action is
25 necessary. A discharge of bankruptcy does not relieve a
26 licensee from the penalties and disabilities provided in this
27 section, except to the extent that this subsection conflicts
28 with 11 U.S.C. s. 525, in which case the commission may order
29 the license not to be suspended or otherwise discriminated
30 against.

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1 Section 31. Subsection (2) of section 475.5017,
2 Florida Statutes, is amended to read:

3 475.5017 Injunctive relief; powers.--

4 (2) All expenses of the receiver shall be paid out of
5 the assets of the brokerage firm upon application to and
6 approval by the court. If the assets are not sufficient to pay
7 all the expenses of the receiver, the court may order
8 disbursement from the Real Estate Recovery Fund, which may not
9 exceed \$100,000~~\$75,000~~ per receivership.

10 Section 32. Subsections (2) and (3) of section
11 475.612, Florida Statutes, are amended to read:

12 475.612 Certification, licensure, or registration
13 required.--

14 (2) This section does not preclude a broker,
15 ~~salesperson, or~~ broker associate ~~broker-salesperson~~ who is not
16 a certified or licensed real estate appraiser or registered
17 assistant real estate appraiser from appraising real estate
18 for compensation. Such persons may continue to provide
19 appraisals and appraisal services for compensation so long as
20 they do not represent themselves as certified, licensed, or
21 registered under this part.

22 (3) This section does not apply to a real estate
23 broker or broker associate ~~salesperson~~ who, in the ordinary
24 course of business, performs a comparative market analysis,
25 gives a broker price opinion, or gives an opinion of the value
26 of real estate. However, in no event may this comparative
27 market analysis, broker price opinion, or opinion of value of
28 real estate be referred to or construed as an appraisal.

29 Section 33. Section 689.25, Florida Statutes, is
30 amended to read:

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1 689.25 Failure to disclose homicide, other felony,
2 suicide, deaths, or diagnosis of HIV or AIDS infection in an
3 occupant of real property.--

4 (1)(a) The fact that an occupant of real property is
5 infected or has been infected with human immunodeficiency
6 virus or diagnosed with acquired immune deficiency syndrome is
7 not a material fact that must be disclosed in a real estate
8 transaction.

9 (b) The fact that a property was, or was at any time
10 suspected to have been, the site of a homicide or other
11 felony, suicide, or death is not a material fact that must be
12 disclosed in a real estate transaction.

13 (2) A ~~No~~ cause of action shall not arise ~~arises~~
14 against an owner of real property, ~~or~~ his or her agent, an ~~or~~
15 ~~against any~~ agent of a transferee of real property, or a
16 person licensed under chapter 475 for the failure to disclose
17 to the transferee that the property was or was suspected to
18 have been the site of a homicide or other felony, suicide, or
19 death or that an occupant of that property was infected with
20 human immunodeficiency virus or diagnosed with acquired immune
21 deficiency syndrome.

22 Section 34. Sections 475.421, 475.422, and 475.452,
23 Florida Statutes, are repealed.

24 Section 35. This act shall take effect July 1, 2003.

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27 SENATE SUMMARY

28 Revises a variety of provisions relating to the practice
29 of professions dealing with real estate, including
30 terminology, licensure requirements, uses of the Real
31 Estate Recovery Fund, advertising, real estate schools,
powers and duties of the Florida Real Estate Commission,
and powers and duties of brokers with respect to their
professional activities. (See bill for details.)