

By the Committee on Regulated Industries; and Senator Posey

315-2312-03

1 A bill to be entitled
2 An act relating to regulation of real estate
3 professionals; amending s. 475.001, F.S.;
4 conforming terminology; amending s. 475.01,
5 F.S.; redesignating "broker-salespersons" as
6 "broker associates" and "salespersons" as
7 "sales associates"; expanding the definition of
8 "transaction broker"; amending s. 475.011,
9 F.S.; conforming terminology; amending ss.
10 475.02 and 475.04, F.S.; conforming
11 terminology; creating s. 475.161, F.S.;
12 providing for licensing of broker associates
13 and sales associates; amending s. 475.17, F.S.;
14 revising qualifications for practice;
15 authorizing additional subjects for
16 postlicensure education; restricting approval
17 of distance learning courses to instances of
18 hardship; conforming terminology; amending s.
19 475.175, F.S.; revising requirements to take
20 the license examination; revising requirements
21 with respect to notice of completion of
22 educational requirements; amending s. 475.181,
23 F.S.; conforming terminology; amending s.
24 475.182, F.S.; providing guidelines for
25 approving specialty courses; conforming
26 terminology; amending s. 475.215, F.S.;
27 conforming terminology; amending s. 475.22,
28 F.S.; revising requirements with respect to
29 brokers' signs; amending s. 475.23, F.S.;
30 providing for notice of change of address;
31 conforming terminology; amending s. 475.25,

1 F.S.; revising duties of licensees with respect
2 to escrowed property; allowing a broker to
3 place personal or brokerage funds in property
4 management and sales escrow accounts; providing
5 for investment of escrow moneys; providing
6 penalties; providing a time limit on filing
7 complaints against a licensee; requiring notice
8 to employer of disciplinary action against a
9 licensee; providing for referral of criminal
10 violations to prosecuting authorities;
11 conforming terminology; amending s. 475.2755,
12 F.S.; conforming terminology; amending s.
13 475.278, F.S.; revising provisions relating to
14 authorized brokerage relationships; providing a
15 presumption of transaction brokerage; revising
16 disclosure requirements; amending s. 475.31,
17 F.S.; providing effect of revocation or
18 suspension of a broker's license; conforming
19 terminology; amending ss. 475.37 and 475.41,
20 F.S.; conforming terminology; amending s.
21 475.42, F.S.; providing an additional ground
22 for disciplinary action relating to false or
23 misleading information on real estate located
24 in the state; providing penalties; conforming
25 terminology; creating s. 475.423, F.S.;
26 specifying the transactions that are subject to
27 the requirements of the act; providing
28 definitions; requiring that certain disclosures
29 be made by the transferor or his or her agent
30 with respect to real property located within a
31 flood hazard area, an area with severe

1 constraints for development, an area having
2 sinkhole activity, a wellhead protection area,
3 a priority wetland zone, a habitat conservation
4 area, an airport influence area, an
5 environmental site, or a radon gas zone;
6 providing that the waiver of such requirements
7 is against public policy; providing certain
8 exceptions; specifying the form to be used as
9 the Property Identification Disclosure
10 Statement; providing requirements for
11 identifying information that accompanies the
12 disclosure statement; prohibiting the use of
13 the disclosure statement by certain entities
14 other than the transferor, the transferor's
15 agents, and the transferee; providing
16 requirements for delivery of the required
17 disclosure statement; providing a limitation
18 with respect to liability for errors,
19 inaccuracy, or omissions; requiring a third
20 party that provides information with respect to
21 the disclosure statement to maintain a
22 specified amount of insurance protection;
23 providing that certain subsequent inaccuracies
24 with respect to the information disclosed are
25 not a violation of the act; requiring that
26 disclosures be made in good faith; providing
27 that the act does not limit or abridge other
28 disclosures required by law; authorizing the
29 amendment of a disclosure; providing for
30 delivery of disclosures; providing requirements
31 for the licensee or broker acting as an agent

1 in a transaction subject to the act; amending
2 s. 475.43, F.S.; conforming terminology;
3 amending s. 475.451, F.S.; revising
4 prerequisites for renewal of an instructor
5 permit; removing an exemption from instructor
6 examination requirements; conforming
7 terminology; repealing s. 475.4511(4), F.S.,
8 relating to the prohibition against a school
9 advertising in conjunction with an affiliated
10 broker; amending ss. 475.453 and 475.455, F.S.;
11 conforming terminology; amending s. 475.482,
12 F.S.; increasing the maximum amount that may be
13 in the Real Estate Recovery Fund; conforming
14 terminology; amending s. 475.483, F.S.;
15 revising guidelines for payment of attorney's
16 fees with respect to recovery from the fund;
17 conforming terminology; amending ss. 475.484
18 and 475.5017, F.S.; increasing maximum amounts
19 payable from the fund; conforming terminology;
20 creating s. 475.505, F.S.; providing
21 requirements for temporary practice; amending
22 s. 475.612, F.S.; conforming terminology;
23 amending s. 689.25, F.S.; prescribing facts and
24 conditions the existence of which need not be
25 disclosed in a real estate transaction;
26 repealing s. 475.421, F.S., relating to
27 publication of false or misleading information
28 on real estate located in the state; repealing
29 s. 475.422, F.S., relating to disclosure of
30 termite and roof inspection reports; amending
31 ss. 83.49, 440.02, 443.036, 501.604, 687.14,

1 721.20, and 760.29, F.S.; conforming
2 terminology; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 475.001, Florida Statutes, is
7 amended to read:

8 475.001 Purpose.--The Legislature deems it necessary
9 in the interest of the public welfare to regulate real estate
10 brokers, sales associates ~~salespersons~~, and schools in this
11 state.

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

14 475.01 Definitions.--

15 (1) As used in this part:

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

1 sellers, purchasers, lessors, or lessees of business
2 enterprises or business opportunities or the real property of
3 another, or leases, or interest therein, including mineral
4 rights, or who directs or assists in the procuring of
5 prospects or in the negotiation or closing of any transaction
6 which does, or is calculated to, result in a sale, exchange,
7 or leasing thereof, and who receives, expects, or is promised
8 any compensation or valuable consideration, directly or
9 indirectly therefor; and all persons who advertise rental
10 property information or lists. A broker renders a professional
11 service and is a professional within the meaning of s.
12 95.11(4)(a). Where the term "appraise" or "appraising" appears
13 in the definition of the term "broker," it specifically
14 excludes those appraisal services which must be performed only
15 by a state-licensed or state-certified appraiser, and those
16 appraisal services which may be performed by a registered
17 assistant appraiser as defined in part II. The term "broker"
18 also includes any person who is a general partner, officer, or
19 director of a partnership or corporation which acts as a
20 broker. The term "broker" also includes any person or entity
21 who undertakes to list or sell one or more timeshare periods
22 per year in one or more timeshare plans on behalf of any
23 number of persons, except as provided in ss. 475.011 and
24 721.20.

25 (b) "Broker associate ~~Broker-salesperson~~" means a
26 person who is qualified to be issued a license as a broker but
27 who operates as a sales associate ~~salesperson~~ in the employ of
28 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) "Sales associate ~~Salesperson~~" means a person who
27 performs any act specified in the definition of "broker," but
28 who performs such act under the direction, control, or
29 management of another person. A salesperson renders a
30 professional service and is a professional within the meaning
31 of s. 95.11(4)(a).

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

4 (l) "Transaction broker" means a broker who provides
5 limited representation to a buyer, a seller, or both, in a
6 real estate transaction, but does not represent either in a
7 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 (m) "Voluntarily inactive status" means the licensure
17 status that results when a licensee has applied to the
18 department to be placed on inactive status and has paid the
19 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 sales associate ~~salesperson~~, include an independent
24 contractor relationship when such relationship is intended by
25 and established between a broker and a sales associate
26 ~~salesperson~~. The existence of such relationship shall not
27 relieve either the broker or the sales 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 associate ~~broker-salesperson~~, or sales

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

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

27 (6) Any person, partnership, corporation, or other
28 legal entity which, for another and for compensation or other
29 valuable consideration, sells, offers to sell, advertises for
30 sale, buys, offers to buy, or negotiates the sale or purchase
31 of radio, television, or cable enterprises licensed and

1 regulated by the Federal Communications Commission pursuant to
2 the Communications Act of 1934. However, if the sale or
3 purchase of the radio, television, or cable enterprise
4 involves the sale or lease of land, buildings, fixtures, and
5 all other improvements to the land, a broker or sales
6 associate ~~salesperson~~ licensed under this chapter shall be
7 retained for the portion of the transaction which includes the
8 land, buildings, fixtures, and all other improvements to the
9 land. ~~or~~

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

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

21 (b) An exchange company, as that term is defined by s.
22 721.05(14), but only to the extent that the exchange company
23 is engaged in exchange program activities as described in and
24 is in compliance with s. 721.18.

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

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

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

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

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

1 involving the rental or lease of an apartment unit. It is a
2 violation of s. 475.25(1)(h) and punishable under s. 475.42
3 for a property management firm or any owner of an apartment
4 complex to pay a finder's fee or a referral fee to an
5 unlicensed person unless expressly authorized by this
6 subsection.

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

9 475.02 Florida Real Estate Commission.--

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

23 Section 5. Section 475.04, Florida Statutes, is
24 amended to read:

25 475.04 Duty of commission to educate members of
26 profession.--

27 (1) The commission shall foster the education of
28 brokers, broker associates ~~broker-salespersons~~, sales
29 associates ~~salespersons~~, and instructors concerning the
30 ethical, legal, and business principles which should govern
31 their conduct.

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

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

16 Section 6. Section 475.161, Florida Statutes, is
17 created to read:

18 475.161 Licensing of broker associates and sales
19 associates.--The commission shall license a broker associate
20 or sales associate as an individual or, upon the licensee
21 providing the commission with authorization from the
22 Department of State, as a professional corporation or limited
23 liability company. A license shall be issued in the licensee s
24 legal name only and, when appropriate, shall include the
25 entity designation. This section shall not operate to permit a
26 broker associate or sales associate to register or be licensed
27 as a general partner, member, officer, or director of a
28 brokerage firm under s. 475.15.

29 Section 7. Section 475.17, Florida Statutes, is
30 amended to read:

31 475.17 Qualifications for practice.--

1 (1)(a) An applicant for licensure who is a natural
2 person must be at least 18 years of age; hold a high school
3 diploma or its equivalent; be honest, truthful, trustworthy,
4 and of good character; and have a good reputation for fair
5 dealing. An applicant for an active broker's license or a
6 sales associate's ~~salesperson's~~ license must be competent and
7 qualified to make real estate transactions and conduct
8 negotiations therefor with safety to investors and to those
9 with whom the applicant may undertake a relationship of trust
10 and confidence. If the applicant has been denied registration
11 or a license or has been disbarred, or the applicant's
12 registration or license to practice or conduct any regulated
13 profession, business, or vocation has been revoked or
14 suspended, by this or any other state, any nation, or any
15 possession or district of the United States, or any court or
16 lawful agency thereof, because of any conduct or practices
17 which would have warranted a like result under this chapter,
18 or if the applicant has been guilty of conduct or practices in
19 this state or elsewhere which would have been grounds for
20 revoking or suspending her or his license under this chapter
21 had the applicant then been registered, the applicant shall be
22 deemed not to be qualified unless, because of lapse of time
23 and subsequent good conduct and reputation, or other reason
24 deemed sufficient, it appears to the commission that the
25 interest of the public and investors will not likely be
26 endangered by the granting of registration. The commission may
27 adopt rules requiring an applicant for licensure to provide
28 written information to the commission regarding the
29 applicant's good character.

30 (b) An application may be disapproved if the applicant
31 has acted or attempted to act, or has held herself or himself

1 out as entitled to act, during the period of 1 year next prior
2 to the filing of the application, as a real estate broker or
3 sales associate ~~salesperson~~ in the state in violation of this
4 chapter. This paragraph may be deemed to bar any person from
5 licensure who has performed any of the acts or services
6 described in s. 475.01(3), unless exempt pursuant to s.
7 475.011, during a period of 1 year next preceding the filing
8 of the application, or during the pendency of the application,
9 and until a valid current license has been duly issued to the
10 person, regardless of whether the performance of the act or
11 service was done for compensation or valuable consideration.

12 (2)(a)1. In addition to other requirements under this
13 part, the commission may require the satisfactory completion
14 of one or more of the educational courses or equivalent
15 courses conducted, offered, sponsored, prescribed, or approved
16 pursuant to s. 475.04, taken at an accredited college,
17 university, or community college, at an area technical center,
18 or at a registered real estate school, as a condition
19 precedent for any person to become licensed or to renew her or
20 his license as a broker, broker associate ~~broker-salesperson~~,
21 or sales associate ~~salesperson~~. The course or courses required
22 for one to become initially licensed shall not exceed a total
23 of 63 classroom hours of 50 minutes each, inclusive of
24 examination, for a sales associate ~~salesperson~~ and 72
25 classroom hours of 50 minutes each, inclusive of examination,
26 for a broker. The satisfactory completion of an examination
27 administered by the accredited college, university, or
28 community college, by the area technical center, or by the
29 registered real estate school shall be the basis for
30 determining satisfactory completion of the course. However,

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1 notice of satisfactory completion shall not be issued if the
2 student has absences in excess of 8 classroom hours.

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

13 3. Such required course or courses must be made
14 available by correspondence or other suitable means to any
15 person who, by reason of hardship, as defined by rule, cannot
16 attend the place or places where the course or courses are
17 regularly conducted or does not have access to the distance
18 learning course or courses.

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

22 1. An active real estate sales associate's
23 ~~salesperson's~~ license for at least 12 months during the
24 preceding 5 years in the office of one or more real estate
25 brokers licensed in this state or any other state, territory,
26 or jurisdiction of the United States or in any foreign
27 national jurisdiction;

28 2. A current and valid real estate sales associate's
29 ~~salesperson's~~ license for at least 12 months during the
30 preceding 5 years in the employ of a governmental agency for a
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1 salary and performing the duties authorized in this part for
2 real estate licensees; or

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

7
8 This paragraph does not apply to a person employed as a real
9 estate investigator by the Division of Real Estate, provided
10 the person has been employed as a real estate investigator for
11 at least 24 months. The person must be currently employed as a
12 real estate investigator to sit for the real estate broker's
13 examination and have held a valid and current sales
14 associate's ~~salesperson's~~ license for at least 12 months.

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

22 (3)(a) The commission may prescribe a postlicensure
23 education requirement in order for a person to maintain a
24 valid sales associate's ~~salesperson's~~ license, which shall not
25 exceed 45 classroom hours of 50 minutes each, inclusive of
26 examination, prior to the first renewal following initial
27 licensure. If prescribed, this shall consist of one or more
28 commission-approved courses which total at least 45 classroom
29 hours on one or more subjects which include, but are not
30 limited to, property management, appraisal, real estate
31 finance, ~~or~~ the economics of real estate management,

1 marketing, technology, sales and listing of properties,
2 business office management, courses teaching practical real
3 estate application skills, development of business plans,
4 marketing of property, and time management. Required
5 postlicensure education courses must be provided by an
6 accredited college, university, or community college, by an
7 area technical center, by a registered real estate school, or
8 by a commission-approved sponsor.

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

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

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

30 (4)(a) The commission may prescribe a postlicensure
31 education requirement in order for a person to maintain a

1 valid broker's license, which shall not exceed 60 classroom
2 hours of 50 minutes each, inclusive of examination, prior to
3 the first renewal following initial licensure. If prescribed,
4 this shall consist of one or more commission-approved courses
5 which total at least 60 classroom hours on one or more
6 subjects which include, but are not limited to, advanced
7 appraisal, advanced property management, real estate
8 marketing, business law, advanced real estate investment
9 analyses, advanced legal aspects, general accounting, real
10 estate economics, syndications, commercial brokerage,
11 feasibility analyses, advanced real estate finance,
12 residential brokerage, advanced marketing, technology,
13 advanced business planning, time management, or real estate
14 brokerage office operations. Required postlicensure education
15 courses must be provided by an accredited college, university,
16 or community college, by an area technical center, by a
17 registered real estate school, or by a commission-approved
18 sponsor.

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

27 (c) The license of any broker who does not complete
28 the postlicensure education requirement prior to the first
29 renewal following initial licensure shall be considered null
30 and void. If the licensee wishes to operate as a sales
31 associate ~~salesperson~~, she or he may be issued a sales

1 associate's ~~salesperson's~~ license after providing proof that
2 she or he has satisfactorily completed the 14-hour continuing
3 education course within the 6 months following expiration of
4 her or his broker's license. To operate as a broker, the
5 licensee must requalify by satisfactorily completing the
6 broker's prelicensure course and passing the state examination
7 for licensure as a broker.

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

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

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

29 2. The commission shall provide for postlicensure
30 education courses to be made available by correspondence or
31 other suitable means to any person who, by reason of hardship,

1 as defined by rule, cannot attend the place or places where
2 courses are regularly conducted or does not have access to the
3 distance learning courses.

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

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

14 Section 8. Section 475.175, Florida Statutes, is
15 amended to read:

16 475.175 Examinations.--

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

19 (a) Submits to the department the appropriate
20 notarized or electronically authenticated application and fee,
21 ~~two photographs of herself or himself taken within the~~
22 ~~preceding year,~~ and a fingerprint card. The fingerprint card
23 shall be forwarded to the Division of Criminal Justice
24 Information Systems within the Department of Law Enforcement
25 for purposes of processing the fingerprint card to determine
26 if the applicant has a criminal history record. The
27 fingerprint card shall also be forwarded to the Federal Bureau
28 of Investigation for purposes of processing the fingerprint
29 card to determine if the applicant has a criminal history
30 record. The information obtained by the processing of the
31 fingerprint card by the Florida Department of Law Enforcement

1 and the Federal Bureau of Investigation shall be sent to the
2 department for the purpose of determining if the applicant is
3 statutorily qualified for examination. Effective July 1, 2006,
4 an applicant shall provide fingerprints in electronic format.

5 (b) Submits at the time of examination the certificate
6 specified in subsection (2), the examination admissions
7 authorization letter ~~card issued by the commission~~, and proof
8 of identification.

9 (2) Each accredited college, university, community
10 college, or registered real estate school shall notify the
11 commission of the names of all persons who have satisfactorily
12 completed the educational requirements provided for in s.
13 475.17(2), (3), and (4) in a manner prescribed by the
14 commission. Furthermore, each such educational institution
15 shall provide to each person satisfactorily completing the
16 educational requirements provided for in s. 475.17(2), (3),
17 and (4)a certificate as proof of such satisfactory
18 completion.

19 Section 9. Subsection (1) of section 475.181, Florida
20 Statutes, is amended to read:

21 475.181 Licensure.--

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

26 Section 10. Section 475.182, Florida Statutes, is
27 amended to read:

28 475.182 Renewal of license; continuing education.--

29 (1) The department shall renew a license upon receipt
30 of the renewal application and fee. The renewal application
31 for an active license as broker, broker associate

1 ~~broker-salesperson~~, or sales associate salesperson shall
2 include proof satisfactory to the commission that the licensee
3 has, since the issuance or renewal of her or his current
4 license, satisfactorily completed at least 14 classroom hours
5 of 50 minutes each of a continuing education course during
6 each biennium of a license period, as prescribed by the
7 commission. Approval or denial of a specialty course must be
8 based on the extent to which the course content focuses on
9 real estate issues relevant to the modern practice of real
10 estate by a real estate licensee, including technology used in
11 the real estate industry.The commission may accept as a
12 substitute for such continuing education course, on a
13 classroom-hour-for-classroom-hour basis, any satisfactorily
14 completed education course that the commission finds is
15 adequate to educate licensees within the intent of this
16 section, including an approved distance learning course.
17 However, the commission may not require, for the purpose of
18 satisfactorily completing an approved correspondence or
19 distance learning course, a written examination that is to be
20 taken at a centralized location and is to be monitored.

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

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

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

1 Section 11. Section 475.215, Florida Statutes, is
2 amended to read:

3 475.215 Multiple licenses.--

4 (1) A licensed broker may be issued upon request
5 additional licenses as a broker, but not as a sales associate
6 ~~salesperson~~ or as a broker associate ~~broker-salesperson~~,
7 whenever it is clearly shown that the requested additional
8 licenses are necessary to the conduct of real estate brokerage
9 business and that the additional licenses will not be used in
10 a manner likely to be prejudicial to any person, including a
11 licensee under this chapter.

12 (2) A sales associate ~~salesperson~~ or broker associate
13 ~~broker-salesperson~~ shall have no more than one registered
14 employer at any one time.

15 Section 12. Subsection (1) of section 475.22, Florida
16 Statutes, is amended to read:

17 475.22 Broker to maintain office and sign at entrance
18 of office; registered office outside state; broker required to
19 cooperate in investigation.--

20 (1) Each active broker shall maintain an office, which
21 shall consist of at least one enclosed room in a building of
22 stationary construction. Each active broker shall maintain a
23 sign on or about the entrance of her or his principal office
24 and each branch office, which sign may be easily observed and
25 read by any person about to enter such office ~~and shall be of~~
26 ~~such form and minimum dimensions as shall be prescribed by the~~
27 ~~commission.~~ Each sign must contain the name of the broker,
28 together with the trade name, if any. For a partnership or
29 corporation, the sign must contain the name of the firm or
30 corporation or trade name of the firm or corporation, together
31 with the name of at least one of the brokers. At a minimum,

1 the words "licensed real estate broker" or "lic. real estate
2 broker" must appear on the office entrance signs.

3 Section 13. Section 475.23, Florida Statutes, is
4 amended to read:

5 475.23 License to expire on change of address.--A
6 license shall cease to be in force whenever a broker changes
7 her or his business address, a real estate school operating
8 under a permit issued pursuant to s. 475.451 changes its
9 business address, or a sales associate ~~salesperson~~ working for
10 a broker or an instructor working for a real estate school
11 changes employer. The licensee shall notify the commission of
12 the change no later than 10 days after the change, on a form
13 provided by the commission. When a broker or a real estate
14 school changes business address, the brokerage firm or school
15 permitholder must file with the commission a notice of the
16 change of address, along with the names of any sales
17 associates or instructors who are no longer employed by the
18 brokerage or school. Such notification shall also fulfill the
19 change of address notification requirements for sales
20 associates who remain employed by the brokerage and
21 instructors who remain employed by the school.

22 Section 14. Subsection (1) of section 475.25, Florida
23 Statutes, is amended, and subsections (5), (6), and (7) are
24 added to that section, to read:

25 475.25 Discipline.--

26 (1) The commission may deny an application for
27 licensure, registration, or permit, or renewal thereof; may
28 place a licensee, registrant, or permittee on probation; may
29 suspend a license, registration, or permit for a period not
30 exceeding 10 years; may revoke a license, registration, or
31 permit; may impose an administrative fine not to exceed \$1,000

1 for each count or separate offense; and may issue a reprimand,
2 and any or all of the foregoing, if it finds that the
3 licensee, registrant, permittee, or applicant:

4 (a) Has violated any provision of s. 455.227(1) or s.
5 475.42. However, licensees under this part are exempt from the
6 provisions of s. 455.227(1)(i).

7 (b) Has been guilty of fraud, misrepresentation,
8 concealment, false promises, false pretenses, dishonest
9 dealing by trick, scheme, or device, culpable negligence, or
10 breach of trust in any business transaction in this state or
11 any other state, nation, or territory; has violated a duty
12 imposed upon her or him by law or by the terms of a listing
13 contract, written, oral, express, or implied, in a real estate
14 transaction; has aided, assisted, or conspired with any other
15 person engaged in any such misconduct and in furtherance
16 thereof; or has formed an intent, design, or scheme to engage
17 in any such misconduct and committed an overt act in
18 furtherance of such intent, design, or scheme. It is
19 immaterial to the guilt of the licensee that the victim or
20 intended victim of the misconduct has sustained no damage or
21 loss; that the damage or loss has been settled and paid after
22 discovery of the misconduct; or that such victim or intended
23 victim was a customer or a person in confidential relation
24 with the licensee or was an identified member of the general
25 public.

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

30 (d)1. Has failed to account or deliver to any person,
31 including a licensee under this chapter, at the time which has

1 | been agreed upon or is required by law or, in the absence of a
2 | fixed time, upon demand of the person entitled to such
3 | accounting and delivery, any personal property such as money,
4 | fund, deposit, check, draft, abstract of title, mortgage,
5 | conveyance, lease, or other document or thing of value,
6 | including a share of a real estate commission if a civil
7 | judgment relating to the practice of the licensee's profession
8 | has been obtained against the licensee and said judgment has
9 | not been satisfied in accordance with the terms of the
10 | judgment within a reasonable time, or any secret or illegal
11 | profit, or any divisible share or portion thereof, which has
12 | come into the licensee's hands and which is not the licensee's
13 | property or which the licensee is not in law or equity
14 | entitled to retain under the circumstances. However, if the
15 | licensee, in good faith, entertains doubt as to what person is
16 | entitled to the accounting and delivery of the escrowed
17 | property, or if conflicting demands have been made upon the
18 | licensee for the escrowed property, which property she or he
19 | still maintains in her or his escrow or trust account, the
20 | licensee shall promptly notify the commission of such doubts
21 | or conflicting demands and shall promptly:

22 | a. Request that the commission issue an escrow
23 | disbursement order determining who is entitled to the escrowed
24 | property;

25 | b. With the consent of all parties, submit the matter
26 | to arbitration;

27 | c. By interpleader or otherwise, seek adjudication of
28 | the matter by a court; or

29 | d. With the written consent of all parties, submit the
30 | matter to mediation. The department may conduct mediation or
31 | may contract with public or private entities for mediation

1 services. However, the mediation process must be successfully
2 completed within 90 days following the last demand or the
3 licensee shall promptly employ one of the other escape
4 procedures contained in this section. Payment for mediation
5 will be as agreed to in writing by the parties. The department
6 may adopt rules to implement this section.

7
8 If the licensee promptly employs one of the escape procedures
9 contained herein, ~~and if she or he~~ abides by the order or
10 judgment resulting therefrom, no administrative complaint may
11 be filed against the licensee for failure to account for,
12 deliver, or maintain the escrowed property. Under certain
13 circumstances, which the commission shall set forth by rule, a
14 licensee may disburse property from the licensee's escrow
15 account without notifying the commission or employing one of
16 the procedures listed in sub-subparagraphs a.-d. If the buyer
17 of a residential condominium unit delivers to a licensee
18 written notice of the buyer's intent to cancel the contract
19 for sale and purchase, as authorized by s. 718.503, or if the
20 buyer of real property in good faith fails to satisfy the
21 terms in the financing clause of a contract for sale and
22 purchase, the licensee may return the escrowed property to the
23 purchaser without notifying the commission or initiating any
24 of the procedures listed in sub-subparagraphs a.-d.

25 2. Has failed to deposit money in an escrow account
26 when the licensee is the purchaser of real estate under a
27 contract where the contract requires the purchaser to place
28 deposit money in an escrow account to be applied to the
29 purchase price if the sale is consummated.

30
31

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

4 (f) Has been convicted or found guilty of, or entered
5 a plea of nolo contendere to, regardless of adjudication, a
6 crime in any jurisdiction which directly relates to the
7 activities of a licensed broker or sales associate
8 ~~salesperson~~, or involves moral turpitude or fraudulent or
9 dishonest dealing. The record of a conviction certified or
10 authenticated in such form as to be admissible in evidence
11 under the laws of the state shall be admissible as prima facie
12 evidence of such guilt.

13 (g) Has had a broker's or sales associate's
14 ~~salesperson's~~ license revoked, suspended, or otherwise acted
15 against, or has had an application for such licensure denied,
16 by the real estate licensing agency of another state,
17 territory, or country.

18 (h) Has shared a commission with, or paid a fee or
19 other compensation to, a person not properly licensed as a
20 broker, broker associate ~~broker-salesperson~~, or sales
21 associate ~~salesperson~~ under the laws of this state, for the
22 referral of real estate business, clients, prospects, or
23 customers, or for any one or more of the services set forth in
24 s. 475.01(1)(a). For the purposes of this section, it is
25 immaterial that the person to whom such payment or
26 compensation is given made the referral or performed the
27 service from within this state or elsewhere; however, a
28 licensed broker of this state may pay a referral fee or share
29 a real estate brokerage commission with a broker licensed or
30 registered under the laws of a foreign state so long as the
31 foreign broker does not violate any law of this state.

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

7 (j) Has rendered an opinion that the title to any
8 property sold is good or merchantable, except when correctly
9 based upon a current opinion of a licensed attorney at law, or
10 has failed to advise a prospective purchaser to consult her or
11 his attorney on the merchantability of the title or to obtain
12 title insurance.

13 (k) Has failed, if a broker, to immediately place,
14 upon receipt, any money, fund, deposit, check, or draft
15 entrusted to her or him by any person dealing with her or him
16 as a broker in escrow with a title company, banking
17 institution, credit union, or savings and loan association
18 located and doing business in this state, or to deposit such
19 funds in a trust or escrow account maintained by her or him
20 with some bank, credit union, or savings and loan association
21 located and doing business in this state, wherein the funds
22 shall be kept until disbursement thereof is properly
23 authorized; or has failed, if a sales associate ~~salesperson~~,
24 to immediately place with her or his registered employer any
25 money, fund, deposit, check, or draft entrusted to her or him
26 by any person dealing with her or him as agent of the
27 registered employer. The commission shall establish rules to
28 provide for records to be maintained by the broker and the
29 manner in which such deposits shall be made. A broker may
30 place and maintain up to \$5,000 of personal or brokerage funds
31 in the broker's property management escrow account and up to

1 \$1,000 of personal or brokerage funds in the broker's sales
2 escrow account. A broker shall be provided a reasonable amount
3 of time to correct escrow errors if there is no shortage of
4 funds and such errors pose no significant threat to
5 economically harm the public. It is the intent of the
6 Legislature that, in the event of legal proceedings concerning
7 a broker's escrow account, the disbursement of escrowed funds
8 not be delayed due to any dispute over the personal or
9 brokerage funds that may be present in the escrow account.
10 With the written consent of the parties, a broker may invest
11 escrow moneys in:
12 1. Bonds, notes, or other obligations of the United
13 States or those guaranteed by the United States or for which
14 the credit of the United States is pledged for the payment of
15 the principal and interest or dividends thereof.
16 2. State bonds pledging the full faith and credit of
17 the state and revenue bonds additionally secured by the full
18 faith and credit of the state.
19 3. Savings accounts in, or certificates of deposit of,
20 any bank, savings bank, or savings and loan association
21 incorporated under the laws of this state or organized under
22 the laws of the United States doing business and situated in
23 this state, the accounts of which are insured by the Federal
24 Government or an agency thereof.
25 4. Notes, bonds, and other obligations of agencies of
26 the United States.
27 5. Commercial paper of prime quality of the highest
28 letter and numerical rating as provided for by at least one
29 nationally recognized rating service.
30 6. Mortgage securities which represent participation
31 in or are collateralized by mortgage loans secured by real

1 property. Such securities must be issued by an agency of or
2 enterprise sponsored by the United States Government,
3 including, but not limited to, the Government National
4 Mortgage Association, the Federal National Mortgage
5 Association, and the Federal Home Loan Mortgage Corporation.

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

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

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

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

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

4 (q) Has violated any provision of s. 475.2755 or s.
5 475.278, including the duties owed under those sections.

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

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

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

1 comparative market analysis, broker price opinion, or opinion
2 of value of real estate be referred to as an appraisal, as
3 defined in s. 475.611.

4 (5) An administrative complaint against a broker or
5 broker associate must be filed within 5 years after the time
6 of the act giving rise to the complaint or within 5 years
7 after the time the act is discovered or should have been
8 discovered with the exercise of due diligence.

9 (6) The commission shall promptly notify the
10 licensee's broker or employer, as defined in this part, in
11 writing, any time the commission places a licensee on
12 probation, reprimands a licensee, suspends or revokes the
13 license of a licensee, imposes an administrative fine against
14 a licensee, or takes any other final disciplinary action
15 against a licensee.

16 (7) The commission shall promptly report to the proper
17 prosecuting authority any criminal violation of any statute
18 relating to the practice of a real estate profession regulated
19 by the commission.

20 Section 15. Section 475.2755, Florida Statutes, is
21 amended to read:

22 475.2755 Designated sales associate ~~salesperson~~.--

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

1 addition to disclosure requirements in s. 475.278(3)(b) and
2 (c), the buyer and seller as customers shall both sign
3 disclosures stating that their assets meet the threshold
4 described in this subsection and requesting that the broker
5 use the designated sales associate ~~salesperson~~ form of
6 representation. In lieu of the transition disclosure
7 requirement in s. 475.278(3)(c)2., the required disclosure
8 notice shall include the following:

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

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

28 Section 16. Section 475.278, Florida Statutes, is
29 amended to read:

30 475.278 Authorized brokerage relationships;
31 presumption of transaction brokerage;required disclosures.--

1 (1) BROKERAGE RELATIONSHIPS.--

2 (a) Authorized brokerage relationships.--A real estate
3 licensee in this state may enter into a brokerage relationship
4 as either a ~~single agent or as a~~ transaction broker or as a
5 single agent with potential buyers and sellers. A real estate
6 licensee may not operate as a disclosed or nondisclosed dual
7 agent. As used in this section, the term "dual agent" means a
8 broker who represents as a fiduciary both the prospective
9 buyer and the prospective seller in a real estate transaction.
10 ~~Once a brokerage relationship is established,~~This part does
11 not prevent a licensee from changing from one brokerage
12 relationship to the other as long as the buyer or the seller,
13 or both, gives consent as required by subparagraph (3)(c)2.
14 before the change and the appropriate disclosure of duties as
15 provided in this part is made to the buyer or seller. This
16 part does not require a customer to enter into a brokerage
17 relationship with any real estate licensee.

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

22 (2) TRANSACTION BROKER RELATIONSHIP.--

23 (a) Transaction broker-duties of limited
24 representation.--A transaction broker provides a limited form
25 of representation to a buyer, a seller, or both in a real
26 estate transaction but does not represent either in a
27 fiduciary capacity or as a single agent. The duties of the
28 real estate licensee in this limited form of representation
29 include the following:

- 30 1. Dealing honestly and fairly;
31 2. Accounting for all funds;

1 3. Using skill, care, and diligence in the
2 transaction;

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

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

9 6. Limited confidentiality, unless waived in writing
10 by a party. This limited confidentiality will prevent
11 disclosure that the seller will accept a price less than the
12 asking or listed price, that the buyer will pay a price
13 greater than the price submitted in a written offer, of the
14 motivation of any party for selling or buying property, that a
15 seller or buyer will agree to financing terms other than those
16 offered, or of any other information requested by a party to
17 remain confidential; and

18 7. Any additional duties that are mutually agreed to
19 with a party.

20 (b) Disclosure requirements.--Duties of a transaction
21 broker must be fully described and disclosed in writing to a
22 buyer or seller either as a separate and distinct disclosure
23 document or included as part of another document such as a
24 listing agreement or agreement for representation. The
25 disclosure must be made before, or at the time of, entering
26 into a listing agreement or an agreement for representation or
27 before the showing of property, whichever occurs first. When
28 incorporated into other documents, the required notice must be
29 of the same size type, or larger, as other provisions of the
30 document and must be conspicuous in its placement so as to
31 advise customers of the duties of limited representation,

1 except that the first sentence of the information identified
2 in paragraph (c) must be printed in uppercase and bold type.
3 This paragraph expires July 1, 2008.

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

7
8 IMPORTANT NOTICE

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

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

19
20 TRANSACTION BROKER NOTICE

21
22 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
23 TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE
24 AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

25
26 As a transaction broker, _____ (insert name of
27 Real Estate Firm and its Associates), provides to you a
28 limited form of representation that includes the following
29 duties:

- 30 1. Dealing honestly and fairly;
31 2. Accounting for all funds;

1 3. Using skill, care, and diligence in the
2 transaction;

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

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

9 6. Limited confidentiality, unless waived in writing
10 by a party. This limited confidentiality will prevent
11 disclosure that the seller will accept a price less than the
12 asking or listed price, that the buyer will pay a price
13 greater than the price submitted in a written offer, of the
14 motivation of any party for selling or buying property, that a
15 seller or buyer will agree to financing terms other than those
16 offered, or of any other information requested by a party to
17 remain confidential; and

18 7. Any additional duties that are entered into by this
19 or by separate written agreement.

20
21 Limited representation means that a buyer or seller is not
22 responsible for the acts of the licensee. Additionally,
23 parties are giving up their rights to the undivided loyalty of
24 the licensee. This aspect of limited representation allows a
25 licensee to facilitate a real estate transaction by assisting
26 both the buyer and the seller, but a licensee will not work to
27 represent one party to the detriment of the other party when
28 acting as a transaction broker to both parties.

29 _____ Date

Signature

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Signature

This paragraph expires July 1, 2008.

(3) SINGLE AGENT RELATIONSHIP.--

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

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

(b) Disclosure requirements.--

1. Single agent disclosure.--Duties of a single agent must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be

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

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

10
11 SINGLE AGENT NOTICE

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

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

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

1 _____ Date _____
2 Signature

3 2. Transition disclosure.--To gain the principal's
4 written consent to a change in relationship, a licensee must
5 use the following disclosure ~~The notice required under~~
6 ~~subparagraph (b)2. must include the following information in~~
7 ~~the following form as well as the information required in~~
8 ~~paragraph (2)(c):~~

9
10 CONSENT TO TRANSITION TO
11 TRANSACTION BROKER

12
13 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
14 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
15 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
16 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
17 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
18 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
19 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

20
21 As a transaction broker, _____ (insert name of
22 Real Estate Firm and its Associates), provides to you a
23 limited form of representation that includes the following
24 duties:

- 25 1. Dealing honestly and fairly;
26 2. Accounting for all funds;
27 3. Using skill, care, and diligence in the
28 transaction;
29 4. Disclosing all known facts that materially affect
30 the value of residential real property and are not readily
31 observable to the buyer;

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

4 6. Limited confidentiality, unless waived in writing
5 by a party. This limited confidentiality will prevent
6 disclosure that the seller will accept a price less than the
7 asking or listed price, that the buyer will pay a price
8 greater than the price submitted in a written offer, of the
9 motivation of any party for selling or buying property, that a
10 seller or buyer will agree to financing terms other than those
11 offered, or of any other information requested by a party to
12 remain confidential; and

13 7. Any additional duties that are entered into by this
14 or by separate written agreement.

15
16 Limited representation means that a buyer or seller is not
17 responsible for the acts of the licensee. Additionally,
18 parties are giving up their rights to the undivided loyalty of
19 the licensee. This aspect of limited representation allows a
20 licensee to facilitate a real estate transaction by assisting
21 both the buyer and the seller, but a licensee will not work to
22 represent one party to the detriment of the other party when
23 acting as a transaction broker to both parties.

24
25 _____I agree that my agent may assume the role and duties
26 of a transaction broker. [must be initialed or signed]

27
28 (4) NO BROKERAGE RELATIONSHIP.--

29 (a) No brokerage relationship-duties.--A real estate
30 licensee owes to a potential seller or buyer with whom the
31 licensee has no brokerage relationship the following duties:

1 advised not to disclose any information you want to be held in
2 confidence until you decide on representation.

3

4

NO BROKERAGE RELATIONSHIP NOTICE

5

6

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
7 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER
8 DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

9

10

11

As a real estate licensee who has no brokerage
relationship with you, _____(insert name of Real Estate
12 Entity and its Associates)_____ owe to you the following
13 duties:

14

15

1. Dealing honestly and fairly;

16

17

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

19

3. Accounting for all funds entrusted to the licensee.

20

21

... (Date) (Signature) ...

22

(5) APPLICABILITY.--

23

24

(a) Residential sales.--The real estate licensee
disclosure requirements of this section apply to all
25 residential sales. As used in this subsection, the term
26 "residential sale" means the sale of improved residential
27 property of four units or fewer, the sale of unimproved
28 residential property intended for use of four units or fewer,
29 or the sale of agricultural property of 10 acres or fewer.

30

(b) Disclosure limitations.--

31

1 1. The real estate disclosure requirements of this
2 section do not apply when a licensee knows that the potential
3 seller or buyer is represented by a single agent or a
4 transaction broker; or when an owner is selling new
5 residential units built by the owner and the circumstances or
6 setting should reasonably inform the potential buyer that the
7 owner's employee or single agent is acting on behalf of the
8 owner, whether because of the location of the sales office or
9 because of office signage or placards or identification badges
10 worn by the owner's employee or single agent.

11 2. The real estate licensee disclosure requirements of
12 this section do not apply to: nonresidential transactions; the
13 rental or leasing of real property, unless an option to
14 purchase all or a portion of the property improved with four
15 or fewer residential units is given; a bona fide "open house"
16 or model home showing that does not involve eliciting
17 confidential information, the execution of a contractual offer
18 or an agreement for representation, or negotiations concerning
19 price, terms, or conditions of a potential sale; unanticipated
20 casual conversations between a licensee and a seller or buyer
21 which do not involve eliciting confidential information, the
22 execution of a contractual offer or agreement for
23 representation, or negotiations concerning price, terms, or
24 conditions of a potential sale; responding to general factual
25 questions from a potential buyer or seller concerning
26 properties that have been advertised for sale; situations in
27 which a licensee's communications with a potential buyer or
28 seller are limited to providing general factual information,
29 oral or written, about the qualifications, background, and
30 services of the licensee or the licensee's brokerage firm;
31 auctions; appraisals; and dispositions of any interest in

1 business enterprises or business opportunities, except for
2 property with four or fewer residential units.

3 Section 17. Subsection (1) of section 475.31, Florida
4 Statutes, is amended to read:

5 475.31 Final orders.--

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

13 Section 18. Section 475.37, Florida Statutes, is
14 amended to read:

15 475.37 Effect of reversal of order of court or
16 commission.--If the order of the court or commission denying a
17 license or taking any disciplinary action against a licensee
18 is finally reversed and set aside, the defendant shall be
19 restored to her or his rights and privileges as a broker or
20 sales associate ~~salesperson~~ as of the date of filing the
21 mandate or a copy thereof with the commission. The matters and
22 things alleged in the information shall not thereafter be
23 reexamined in any other proceeding concerning the licensure of
24 the defendant. If the inquiry concerned was in reference to an
25 application for licensure, the application shall stand
26 approved, and such application shall be remanded for further
27 proceedings according to law.

28 Section 19. Section 475.41, Florida Statutes, is
29 amended to read:

30 475.41 Contracts of unlicensed person for commissions
31 invalid.--No contract for a commission or compensation for any

1 act or service enumerated in s. 475.01(3) is valid unless the
2 broker or sales associate ~~salesperson~~ has complied with this
3 chapter in regard to issuance and renewal of the license at
4 the time the act or service was performed.

5 Section 20. Subsection (1) of section 475.42, Florida
6 Statutes, is amended to read:

7 475.42 Violations and penalties.--

8 (1) VIOLATIONS.--

9 (a) A ~~No~~ person may not ~~shall~~ operate as a broker or
10 sales associate ~~salesperson~~ without being the holder of a
11 valid and current active license therefor. Any person who
12 violates this paragraph commits a felony of the third degree,
13 punishable as provided in s. 775.082 or s. 775.083, or, if a
14 corporation, as provided in s. 775.083.

15 (b) A ~~No~~ person licensed as a sales associate may not
16 ~~salesperson shall~~ operate as a broker or operate as a sales
17 associate ~~salesperson~~ for any person not registered as her or
18 his employer.

19 (c) A ~~No~~ broker may not ~~shall~~ employ, or continue in
20 employment, any person as a sales associate ~~salesperson~~ who is
21 not the holder of a valid and current license as sales
22 associate ~~salesperson~~; but a license as sales associate
23 ~~salesperson~~ may be issued to a person licensed as an active
24 broker, upon request and surrender of the license as broker,
25 without a fee in addition to that paid for the issuance of the
26 broker's active license.

27 (d) A sales associate may not ~~No salesperson shall~~
28 collect any money in connection with any real estate brokerage
29 transaction, whether as a commission, deposit, payment,
30 rental, or otherwise, except in the name of the employer and
31 with the express consent of the employer; and no real estate

1 sales associate ~~salesperson~~, whether the holder of a valid and
2 current license or not, shall commence or maintain any action
3 for a commission or compensation in connection with a real
4 estate brokerage transaction against any person except a
5 person registered as her or his employer at the time the sales
6 associate ~~salesperson~~ performed the act or rendered the
7 service for which the commission or compensation is due.

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

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

12 (g) A ~~No~~ person may not ~~shall~~ make any false affidavit
13 or affirmation intended for use as evidence by or before the
14 commission or a member thereof, or by any of its authorized
15 representatives, nor may ~~shall~~ any person give false testimony
16 under oath or affirmation to or before the commission or any
17 member thereof in any proceeding authorized by this chapter.

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

31

1 (i) A ~~No~~ person may not ~~shall~~ obstruct or hinder in
2 any manner the enforcement of this chapter or the performance
3 of any lawful duty by any person acting under the authority of
4 this chapter or interfere with, intimidate, or offer any bribe
5 to any member of the commission or any of its employees or any
6 person who is, or is expected to be, a witness in any
7 investigation or proceeding relating to a violation of this
8 chapter.

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

26 (k) A ~~No~~ person may not ~~shall~~ operate as a broker
27 under a trade name without causing the trade name to be noted
28 in the records of the commission and placed on the person's
29 license, or so operate as a member of a partnership or as a
30 corporation or as an officer or manager thereof, unless such
31

1 partnership or corporation is the holder of a valid current
2 registration.

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

5 (m) A ~~No~~ person may not ~~shall~~ undertake to list or
6 sell one or more timeshare periods per year in one or more
7 timeshare plans on behalf of any number of persons without
8 first being the holder of a valid and current license as a
9 broker or sales associate ~~salesperson~~ pursuant to this
10 chapter, except as provided in s. 475.011 and chapter 721.

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

26 (o) A person may not disseminate or cause to be
27 disseminated by any means any false or misleading information
28 for the purpose of offering for sale, or for the purpose of
29 causing or inducing any other person to purchase, lease, or
30 rent, real estate located in the state or for the purpose of

31

1 causing or inducing any other person to acquire an interest in
2 the title to real estate located in the state.

3 Section 21. Section 475.423, Florida Statutes, is
4 created to read:

5 475.423 Property identification disclosure
6 statement.--

7 (1)(a) Except as provided in subsection (2), this
8 section applies to any transfer by sale, exchange, or
9 installment land sale contract of residential, undeveloped, or
10 commercial land, wherein one party agrees to convey title to
11 real property to another party upon the satisfaction of
12 specified conditions set forth in the contract and which does
13 not require conveyance of title within 1 year after the date
14 of formation of the contract, lease with an option to
15 purchase, any other option to purchase, ground lease coupled
16 with improvements of any real property described in paragraph
17 (c), or residential stock cooperative, improved with or
18 consisting of not less than one or more than four dwelling
19 units.

20 (b) The transferor or his or her agent is required by
21 one or more of the following to disclose the property's
22 location within an applicable zone:

23 1. A person who is either acting as an agent for a
24 transferor of real property that is located within a special
25 flood hazard area, which is any type Zone "A" or "V" as
26 designated by the Federal Emergency Management Agency, or the
27 transferor, if he or she is acting without an agent, shall
28 disclose to any prospective transferee the fact that the
29 property is located within a special flood hazard area if:

30
31

1 a. The transferor, or the transferor's agent, has
2 actual knowledge that the property is within a special flood
3 hazard area; or

4 b. Other readily available and officially adopted
5 governmental information exists regarding the flood zone.

6 2. A person who is acting as an agent for a transferor
7 of real property that is located on soils with very severe
8 constraints for development, or the transferor, if he or she
9 is acting without an agent, shall disclose to any prospective
10 transferee the fact that the property is located on soils with
11 very severe constraints for development pursuant to maps
12 issued by the United States Department of Agriculture or other
13 readily available and officially adopted governmental maps and
14 information if:

15 a. The transferor, or the transferor's agent, has
16 actual knowledge that the property is on soils with very
17 severe constraints for development; or

18 b. Other readily available and officially adopted
19 governmental information exists regarding the soils with very
20 severe constraints for development.

21 3. A person who is acting as an agent for a transferor
22 of real property that is located in an area impacted by
23 sinkhole activity, or the transferor if he or she is acting
24 without an agent, shall disclose to any prospective transferee
25 the fact that the property is located in an area impacted by
26 sinkhole activity pursuant to readily available and officially
27 adopted governmental maps and information if:

28 a. The transferor, or the transferor's agent, has
29 actual knowledge that the property is in an area impacted by
30 sinkhole activity; or

31

1 b. Other readily available and officially adopted
2 governmental information exists regarding sinkhole activity.

3 4. A person who is acting as an agent for a transferor
4 of real property that is located within one quarter of a mile
5 of a wellhead protection area, or the transferor if he or she
6 is acting without an agent, shall disclose to any prospective
7 transferee the fact that the property is located within one
8 quarter of a mile of a wellhead protection area according to
9 maps issued by the Department of Environmental Protection or a
10 water management district or other readily available and
11 officially adopted governmental maps and information if:

12 a. The transferor, or the transferor's agent, has
13 actual knowledge that the property is located within one
14 quarter of a mile of a wellhead protection area; or

15 b. Other readily available and officially adopted
16 governmental information exists regarding a wellhead
17 protection area.

18 5. A person who is acting as an agent for a transferor
19 of real property that is located in a priority wetland zone,
20 or the transferor if he or she is acting without an agent,
21 shall disclose to any prospective transferee the fact that the
22 property is located in a priority wetland zone pursuant to
23 maps issued by the Fish and Wildlife Conservation Commission
24 or other readily available and officially adopted governmental
25 maps and information if:

26 a. The transferor, or the transferor's agent, has
27 actual knowledge that the property is located in a priority
28 wetland zone; or

29 b. Other readily available and officially adopted
30 governmental information regarding a priority wetland zone.

31

1 6. A person who is acting as an agent for a transferor
2 of real property that is located in a strategic habitat
3 conservation area, or the transferor if he or she is acting
4 without an agent, shall disclose to any prospective transferee
5 the fact that the property is located in a strategic habitat
6 conservation area pursuant to maps issued by the Fish and
7 Wildlife Conservation Commission or other readily available
8 and officially adopted governmental maps and information if:

9 a. The transferor, or the transferor's agent, has
10 actual knowledge that the property is located in a strategic
11 habitat conservation area; or

12 b. Other readily available and officially adopted
13 governmental information exists regarding a strategic habitat
14 conservation area.

15 7. A person who is acting as an agent for a transferor
16 of real property that is located within 2 statute miles of an
17 airport influence area or a landing facility approved by the
18 Federal Aviation Administration, or the transferor if he or
19 she is acting without an agent, shall disclose to any
20 prospective transferee the fact that the property is located
21 within 2 statute miles of an airport influence area or a
22 landing facility approved by the Federal Aviation
23 Administration, the Department of Transportation, Division of
24 Aeronautics, and local land use commission if:

25 a. The transferor, or the transferor's agent, has
26 actual knowledge that the property is located within 2 statute
27 miles of an airport influence area or a landing facility
28 approved by the Federal Aviation Administration; or

29 b. Other readily available and officially adopted
30 governmental information exists regarding an airport influence
31

1 area or a landing facility approved by the Federal Aviation
2 Administration.

3 8. A person who is acting as an agent for a transferor
4 of real property that is located within a quarter of a mile of
5 an environmental site, limited to filed governmental reports,
6 or the transferor if he or she is acting without an agent,
7 shall disclose to any prospective transferee the fact that the
8 property is located within a quarter of a mile of an
9 environmental site, including leaking underground storage
10 tanks, solid waste landfills, incinerators or transfer
11 stations, national priority list sites, or CERCLIS sites under
12 review by the United States Environmental Protection Agency
13 if:

14 a. The transferor, or the transferor's agent, has
15 actual knowledge that the property is located within a quarter
16 of a mile of an environmental site; or

17 b. Other readily available and officially adopted
18 governmental information exists regarding environmental
19 hazards sites.

20 9. A person who is acting as an agent for a transferor
21 of real property that is located within a mapped radon gas
22 potential zone pursuant to maps issued by the United States
23 Environmental Protection Agency or other readily available and
24 officially adopted governmental maps and information shall
25 disclose to any prospective transferee the fact that the
26 property is located within a mapped radon gas potential zone
27 if:

28 a. The transferor, or the transferor's agent, has
29 actual knowledge that the property is located in a mapped
30 radon gas potential zone; or

31

1 b. Other readily available and officially adopted
2 governmental information exists regarding radon gas.

3 (c) Any waiver of the requirements of this section is
4 void as against public policy.

5 (2)(a) This section does not apply to the following
6 transfers:

7 1. Transfers pursuant to court order, including, but
8 not limited to, transfers ordered by a probate court in
9 administration of an estate, transfers pursuant to a writ of
10 execution, transfers by any foreclosure sale, transfers by a
11 trustee in bankruptcy, transfers by eminent domain, and
12 transfers resulting from a decree for specific performance.

13 2. Transfers to a mortgagee by a mortgagor or
14 successor in interest who is in default, transfers to a
15 beneficiary of a deed of trust by a trustor or successor in
16 interest who is in default, transfers by any foreclosure sale
17 after default, transfers by any foreclosure sale after default
18 in an obligation secured by a mortgage, transfers by a sale
19 under a power of sale or any foreclosure sale under a decree
20 of foreclosure after default in an obligation secured by a
21 deed of trust or secured by any other instrument containing a
22 power of sale, or transfers by a mortgagee or a beneficiary
23 under a deed of trust who has acquired the real property at a
24 sale conducted pursuant to a power of sale under a mortgage or
25 deed of trust or a sale pursuant to a decree of foreclosure or
26 has acquired the real property by a deed in lieu of
27 foreclosure.

28 3. Transfers by a fiduciary in the course of the
29 administration of a decedent's estate, guardianship,
30 conservatorship, or trust.

31

1 4. Transfers from one coowner to one or more other
2 coowners.

3 5. Transfers made to a spouse, or to a person or
4 persons in the lineal line of consanguinity of one or more of
5 the transferors.

6 6. Transfers between spouses resulting from a judgment
7 of dissolution of marriage or of legal separation of the
8 parties or from a property settlement agreement incidental to
9 that judgment.

10 7. Transfers or exchanges to or from any governmental
11 entity.

12 8. Transfers by sale, resale, exchange, or installment
13 land sales contract of any manufactured mobile home, mobile
14 home park, or residential manufactured building.

15 (b) Transfers not subject to this section may be
16 subject to other disclosure requirements. In transfers that
17 are not subject to this section, agents may make required
18 disclosures in a separate writing.

19 (3)(a) The disclosures required by this section are
20 set forth in, and shall be made on a copy of, the following
21 Property Identification Disclosure Statement:

22
23 PROPERTY IDENTIFICATION DISCLOSURE STATEMENT

24
25 This statement applies to the following property:
26 _____
27

28 The transferor and his or her agent(s) disclose the following
29 information with the knowledge that even though this is not a
30 warranty, prospective transferees may rely on this information
31

1 in deciding whether and on what terms to purchase the subject
2 property.

3
4 Transferor hereby authorizes any agent(s) representing any
5 principal(s) in this action to provide a copy of this
6 statement to any person or entity in connection with any
7 actual or anticipated sale of the property.

8
9 The following are representations made by the transferor and
10 his or her agent(s) based on their knowledge and official maps
11 and information prepared by the state and federal governments.
12 This information is a disclosure and is not intended to be
13 part of any contract between the transferee and transferor.

14
15 THIS REAL PROPERTY LIES WITHIN THE FOLLOWING AREA(S):

16
17 (1) A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or
18 "V") designated by the Federal Emergency Management Agency.

19 Yes _____ No _____ Do not know and information not
20 available _____ Pending _____

21
22 (2) ON SOILS WITH VERY SEVERE CONSTRAINTS FOR
23 DEVELOPMENT, pursuant to maps issued by the United States
24 Department of Agriculture or other readily available and
25 officially adopted governmental maps and information.

26 Yes _____ No _____ Do not know and information not
27 available _____ Pending _____

28
29 (3) AN AREA IMPACTED BY SINKHOLE ACTIVITY pursuant to
30 readily available and officially adopted governmental maps and
31 information.

1 Yes _____ No _____ Do not know and information not
2 available _____ Pending _____
3
4 (4) WITHIN ONE QUARTER OF A MILE OF A WELLHEAD
5 PROTECTION AREA pursuant to maps issued by the Department of
6 Environmental Protection and Water Management Districts or
7 other readily available and officially adopted governmental
8 maps and information.
9 Yes _____ No _____ Do not know and information not available
10 _____ Pending _____
11
12 (5) A PRIORITY WETLAND ZONE pursuant to maps issued by
13 the Fish and Wildlife Conservation Commission or other readily
14 available and officially adopted governmental maps and
15 information.
16 Yes _____ No _____ Do not know and information not
17 available _____ Pending _____
18
19 (6) A STRATEGIC HABITAT CONSERVATION AREA pursuant to
20 maps issued by the Fish and Wildlife Conservation Commission
21 or other readily available and officially adopted governmental
22 maps and information.
23 Yes _____ No _____ Do not know and information not
24 available _____ Pending _____
25
26 (7) WITHIN A QUARTER MILE OF AN AIRPORT INFLUENCE AREA
27 approved by the Federal Aviation Administration, or other
28 readily available and officially adopted governmental maps and
29 information.
30 Yes _____ No _____ Do not know and information not
31 available _____ Pending _____

1
2 (8) WITHIN A QUARTER OF A MILE OF AN ENVIRONMENTAL
3 HAZARD SITE including Leaking Underground Storage Tanks, Solid
4 Waste Landfills, Incinerators or Transfer Stations, National
5 Priority List Sites, and/or CERCLIS Sites under review by the
6 United States Environmental Protection Agency.
7 Yes _____ No _____ Do not know and information not
8 available _____ Pending _____
9
10 (9) WITHIN A MAPPED RADON GAS POTENTIAL ZONE pursuant
11 to maps issued by the United States Environmental Protection
12 Agency or other readily available and officially adopted
13 governmental maps and information.
14 Yes _____ No _____ Do not know and information not
15 available _____ Pending _____
16
17 THESE ZONES MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL
18 PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER
19 A DISASTER.
20
21 THE MAPS AND INFORMATION ON WHICH THESE DISCLOSURES ARE BASED
22 ARE ESTIMATES WHERE THE APPLICABLE ZONES AND PROTECTED LANDS
23 EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A
24 PROPERTY WILL BE AFFECTED BY A NATURAL OR ENVIRONMENTAL
25 DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN
26 PROFESSIONAL ADVICE REGARDING THESE AND OTHER HAZARDS AND
27 PROTECTION ZONES THAT MAY AFFECT THE PROPERTY.
28
29 Transferor represents that the information herein is true and
30 correct to the best of the transferor's knowledge as of the
31 date signed by the transferor.

1
2 Signature of Transferor _____ Date _____

3
4 Signature of Transferor _____ Date _____

5
6 Agent represents that the information herein is true and
7 correct to the best of the agent's knowledge as of the date
8 signed by the agent.

9
10 Signature of Transferor's Agent _____
11 Date _____

12
13 Signature of Transferor's Agent _____
14 Date _____

15
16 Transferee represents that he or she has read and understands
17 this document.

18
19 Signature of Transferee _____ Date _____
20

21 Signature of Transferee _____ Date _____

22 (b) If a map or accompanying information is not of
23 sufficient accuracy or scale that a reasonable person can
24 determine if the subject real property is included in an
25 applicable area, the transferor or transferor's agent shall
26 mark "Yes" on the Property Identification Disclosure
27 Statement. The transferor or transferor's agent may mark "No"
28 on the Property Identification Disclosure Statement if he or
29 she attaches a report prepared pursuant to paragraph (5)(c)
30 which verifies that the property is not in the applicable
31 zone. This paragraph does not limit or abridge any existing

1 duty of the transferor or the transferor's agents to exercise
2 reasonable care in making a determination under this
3 subsection.

4 (c) If the Federal Emergency Management Agency has
5 issued a Letter of Map Revision confirming that a property is
6 no longer within a special flood hazard area, the transferor
7 or transferor's agent may mark "No" on the Property
8 Identification Disclosure Statement, even if the map has not
9 yet been updated.

10 (d) If the Federal Emergency Management Agency has
11 issued a Letter of Map Revision confirming that a property is
12 within a special flood hazard area and the location of the
13 letter has been posted then the transferor or transferor's
14 agent shall mark "Yes" on the Property Identification
15 Disclosure Statement, even if the map has not yet been
16 updated.

17 (f) The disclosure required by this section is a
18 disclosure only between the transferor, the transferor's
19 agents, and the transferee, and may not be used by any other
20 party, including, but not limited to, insurance companies,
21 lenders, or governmental agencies, for any purpose.

22 (g) In any transaction in which a transferor has
23 accepted, prior to the effective date of this section, an
24 offer to purchase, the transferor, or his or her agent, shall
25 be deemed to have complied with the requirement of paragraph

26 (a) if the transferor or agent delivers to the prospective
27 transferee a statement that includes substantially the same
28 information and warning as the Property Identification
29 Disclosure Statement.

30
31

1 (4)(a) The transferor of any real property subject to
2 this section shall deliver to the prospective transferee the
3 written statement required by this section, as follows:

4 1. In the case of a sale, as soon as practicable
5 before transfer of title.

6 2. In the case of transfer by a real property sales
7 contract or by a lease together with an option to purchase, or
8 a ground lease coupled with improvements, as soon as
9 practicable before execution of the contract. For the purpose
10 of this subparagraph, "execution" means the making or
11 acceptance of an offer.

12 (b) The transferor shall indicate compliance with this
13 section either on the receipt for deposit, the real property
14 sales contract, the lease, any addendum attached thereto, or
15 on a separate document.

16 (c) If any disclosure, or any material amendment of
17 any disclosure, required to be made pursuant to this section
18 is delivered after the execution of an offer to purchase, the
19 transferee shall have 3 days after delivery in person or 5
20 days after delivery by deposit in the mail to terminate his or
21 her offer by delivery of a written notice of termination to
22 the transferor or the transferor's agent.

23 (5)(a) Neither the transferor nor any listing or
24 selling agent shall be liable for any error, inaccuracy, or
25 omission of any information delivered pursuant to this section
26 if the error, inaccuracy, or omission was not within the
27 personal knowledge of the transferor or the listing or selling
28 agent, and was based on information timely provided by public
29 agencies or by other persons providing information as
30 specified in paragraph (c) which is required to be disclosed
31

1 pursuant to this section, and ordinary care was exercised in
2 obtaining and transmitting the information.

3 (b) The delivery of any information required to be
4 disclosed by this section to a prospective transferee by a
5 third party providing information required to be disclosed
6 pursuant to this section shall be deemed to comply with the
7 requirements of this section and shall relieve the transferor
8 or any listing or selling agent of any further duty under this
9 section with respect to that item of information.

10 (c) The delivery of a report or opinion prepared by a
11 licensed engineer, land surveyor, or expert in locating the
12 applicable zones on readily available official governmental
13 maps and information concerning matters within the scope of
14 the professional's license or expertise is sufficient
15 compliance for application of the exemption provided by
16 paragraph (a) if the information is provided to the
17 prospective transferee pursuant to a request therefore,
18 whether written or oral. In responding to that request, an
19 expert may indicate, in writing, an understanding that the
20 information provided will be used in fulfilling the
21 requirements of subsection (3) and, if so, shall indicate the
22 required disclosures, or parts thereof, to which the
23 information being furnished is applicable. If that statement
24 is furnished, the expert is not responsible for any items of
25 information, or parts thereof, other than those expressly set
26 forth in the statement.

27 (d) A third party providing the information on behalf
28 of the transferor and the transferor's agent fulfilling the
29 requirements of subsection (3) to be disclosed by this section
30 shall maintain a minimum of \$20 million of insurance
31

1 protection to protect the transferor and the agents for any
2 errors or omissions made by the third party.

3 (6)(a) After a transferor and his or her agent comply
4 with subsection (3), they are relieved of further duty under
5 this section with respect to those items of information. The
6 transferor and his or her agent are not required to provide
7 notice to the transferee if the information provided
8 subsequently becomes inaccurate as a result of any
9 governmental action, map revision, changed information, or
10 other act or occurrence, unless the transferor or agent has
11 actual knowledge that the information has become inaccurate.

12 (b) If information disclosed in accordance with this
13 section is subsequently rendered inaccurate as a result of any
14 governmental action, map revision, changed information, or
15 other act or occurrence subsequent to the delivery of the
16 required disclosures, the inaccuracy resulting therefrom does
17 not constitute a violation of this section.

18 (7) Each disclosure required by this section and each
19 act that may be performed in making the disclosure shall be
20 made in good faith. For purposes of this section, "good faith"
21 means honesty in fact in the conduct of the transaction.

22 (8) The specification of items for disclosure in this
23 section does not limit or abridge any obligation for
24 disclosure created by any other provision of law or that may
25 exist in order to avoid fraud, misrepresentation, or deceit in
26 the transfer transaction. The Legislature does not intend to
27 affect the existing obligations of the parties to a real
28 estate contract, or their agents, or to disclose any fact
29 materially affecting the value and desirability of the
30 property, including, but not limited to, the physical

31

1 condition of the property and previously received reports of
2 physical inspection.

3 (9) Any disclosure made pursuant to this section may
4 be amended in writing by the transferor or his or her agent,
5 but the amendment shall be subject to subsection (4).

6 (10) Delivery of disclosures required by this section
7 shall be by personal delivery to the transferee or by mail to
8 the prospective transferee. For the purposes of this section,
9 delivery to the spouse of a transferee shall be deemed
10 delivery to the transferee, unless provided otherwise by
11 contract.

12 (11) Any person or entity, other than a real estate
13 licensee licensed in this state and acting in the capacity of
14 an escrow agent for the transfer of real property subject to
15 this section, shall not be deemed the agent of the transferor
16 or transferee for purposes of the disclosure requirements of
17 this section unless the person or entity is empowered to so
18 act by an express written agreement to that effect. The extent
19 of that agency shall be governed by the written agreement.

20 (12)(a) If more than one licensed real estate broker
21 is acting as an agent in a transaction subject to this
22 section, the broker who has obtained the offer made by the
23 transferee shall, except as otherwise provided in this
24 section, deliver the disclosure required by this section to
25 the transferee, unless the transferor has given other written
26 instructions for delivery.

27 (b) If a licensed real estate broker responsible for
28 delivering the disclosure under this section cannot obtain the
29 disclosure document required and does not have written
30 assurance from the transferee that the disclosure has been
31 received, the broker shall advise the transferee in writing of

1 his or her rights to the disclosure. A licensed real estate
2 broker responsible for delivering disclosures under this
3 section shall maintain a record of the action taken to effect
4 compliance of the transaction.

5 (13) A transfer subject to this section may not be
6 invalidated solely because of the failure of any person to
7 comply with any provision of this section. However, any person
8 who willfully or negligently violates or fails to perform any
9 duty prescribed by any provision of this section shall be
10 liable in the amount of actual damages suffered by a
11 transferee.

12 (14)(a) As used in this section, the term "listing
13 agent" means an individual who has obtained a listing of
14 property of the kind in respect of which he or she is
15 authorized by law to act as an agent for compensation.

16 (b) As used in this section, the term "selling agent"
17 means an individual who acts in cooperation with a listing
18 agent and who sells, or finds and obtains a buyer for, the
19 property.

20 Section 22. Section 475.43, Florida Statutes, is
21 amended to read:

22 475.43 Presumptions.--In all criminal cases, contempt
23 cases, and other cases filed pursuant to this chapter, if a
24 party has sold, leased, or let real estate, the title to which
25 was not in the party when it was offered for sale, lease, or
26 letting, or such party has maintained an office bearing signs
27 that real estate is for sale, lease, or rental thereat, or has
28 advertised real estate for sale, lease, or rental, generally,
29 or describing property, the title to which was not in such
30 party at the time, it shall be a presumption that such party
31 was acting or attempting to act as a real estate broker, and

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

14 Section 23. Section 475.451, Florida Statutes, is
15 amended to read:

16 475.451 Schools teaching real estate practice.--

17 (1) Each person, school, or institution, except
18 approved and accredited colleges, universities, community
19 colleges, and area technical centers in this state, which
20 offers or conducts any course of study in real estate
21 practice, teaches any course prescribed by the commission as a
22 condition precedent to licensure or renewal of licensure as a
23 broker or sales associate ~~salesperson~~, or teaches any course
24 designed or represented to enable or assist applicants for
25 licensure as brokers or sales associates ~~salespersons~~ to pass
26 examinations for such licensure shall, before commencing or
27 continuing further to offer or conduct such course or courses,
28 obtain a permit from the department and abide by the
29 regulations imposed upon such person, school, or institution
30 by this chapter and rules of the commission adopted pursuant
31 to this chapter. The exemption for colleges, universities,

1 community colleges, and area technical centers is limited to
2 transferable college credit courses offered by such
3 institutions.

4 (2) An applicant for a permit to operate a proprietary
5 real estate school, to be a chief administrator of a
6 proprietary real estate school or a state institution, or to
7 be an instructor for a proprietary real estate school or a
8 state institution must meet the qualifications for practice
9 set forth in s. 475.17(1) and the following minimal
10 requirements:

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

19 (b) "Chief administrative person" means the individual
20 who is responsible for the administration of the overall
21 policies and practices of the institution or proprietary real
22 estate school. A chief administrative person must also meet
23 the requirements of a school instructor if actively engaged in
24 teaching.

25 (c) "School instructor" means an individual who
26 instructs persons in the classroom in noncredit college
27 courses in a college, university, or community college or
28 courses in an area technical center or proprietary real estate
29 school.

30 1. Before commencing to provide such instruction, the
31 applicant must certify the applicant's competency and obtain

1 an instructor permit by meeting one of the following
2 requirements:

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

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

10 c. Pass an instructor's examination approved by the
11 commission.

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

15 3. The department shall renew an instructor permit
16 upon receipt of a renewal application and fee. The renewal
17 application shall include proof that the permitholder has,
18 since the issuance or renewal of the current permit,
19 successfully completed a minimum of 7 ~~15~~ classroom hours of
20 instruction in real estate subjects or instructional
21 techniques, as prescribed by the commission. The commission
22 shall adopt rules providing for the renewal of instructor
23 permits at least every 2 years. Any permit which is not
24 renewed at the end of the permit period established by the
25 department shall automatically revert to involuntarily
26 inactive status.

27
28 The department may require an applicant to submit names of
29 persons having knowledge concerning the applicant and the
30 enterprise; may propound interrogatories to such persons and
31 to the applicant concerning the character of the applicant,

1 including the taking of fingerprints for processing through
2 the Federal Bureau of Investigation; and shall make such
3 investigation of the applicant or the school or institution as
4 it may deem necessary to the granting of the permit. If an
5 objection is filed, it shall be considered in the same manner
6 as objections or administrative complaints against other
7 applicants for licensure by the department.

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

18 (4) Any person who violates this section commits a
19 misdemeanor of the second degree, punishable as provided in s.
20 775.082 or s. 775.083.

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

25 (6) Any course prescribed by the commission as a
26 condition precedent to any person's becoming initially
27 licensed as a sales associate ~~salesperson~~ may be taught in any
28 real estate school through the use of a video tape of
29 instruction by a currently permitted instructor from any such
30 school or may be taught by distance learning pursuant to s.
31 475.17(2). The commission may require that any such video

1 | tape course have a single session of live instruction by a
2 | currently permitted instructor from any such school; however,
3 | this requirement shall not exceed 3 classroom hours. All
4 | other prescribed courses, except the continuing education
5 | course required by s. 475.182, shall be taught by a currently
6 | permitted school instructor personally in attendance at such
7 | course or by distance learning pursuant to s. 475.17. The
8 | continuing education course required by s. 475.182 may be
9 | taught by distance learning pursuant to s. 475.17 or by an
10 | equivalent correspondence course; however, any such
11 | correspondence course shall be required to have a final
12 | examination, prepared and administered by the school issuing
13 | the correspondence course. The continuing education
14 | requirements provided in this section or provided in any other
15 | section in this chapter do not apply with respect to any
16 | attorney who is otherwise qualified under the provisions of
17 | this chapter.

18 | ~~(7) Any person holding a school instructor permit on~~
19 | ~~October 1, 1983, is exempt from the instructor examination~~
20 | ~~requirements of paragraph (2)(c) as long as the person~~
21 | ~~continuously holds such a permit and complies with all other~~
22 | ~~requirements of this chapter.~~

23 | (7)(8) A permitholder under this section may be issued
24 | additional permits whenever it is clearly shown that the
25 | requested additional permits are necessary to the conduct of
26 | the business of a real estate school and that the additional
27 | permits will not be used in a manner likely to be prejudicial
28 | to any person, including a licensee or a permitholder under
29 | this chapter.

30 | Section 24. Subsection (4) of section 475.4511,
31 | Florida Statutes, is repealed.

1 Section 25. Section 475.453, Florida Statutes, is
2 amended to read:

3 475.453 Rental information; contract or receipt;
4 refund; penalty.--

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

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

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

31

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

7 Section 26. Section 475.455, Florida Statutes, is
8 amended to read:

9 475.455 Exchange of disciplinary information.--The
10 commission shall inform the Division of Florida Land Sales,
11 Condominiums, and Mobile Homes of the Department of Business
12 and Professional Regulation of any disciplinary action the
13 commission has taken against any of its licensees. The
14 division shall inform the commission of any disciplinary
15 action the division has taken against any broker or sales
16 associate ~~salesperson~~ registered with the division.

17 Section 27. Section 475.482, Florida Statutes, is
18 amended to read:

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

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

30
31

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

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

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

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

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

29 (3) A fee of \$3.50 per year shall be added to the
30 license fee for both new licenses and renewals of licenses for
31 brokers, and a fee of \$1.50 per year shall be added for new

1 licenses and renewals of licenses for sales associates
2 ~~salespersons~~. This fee shall be in addition to the regular
3 license fee and shall be deposited in or transferred to the
4 Real Estate Recovery Fund. If the fund at any time exceeds \$1
5 ~~million~~~~\$750,000~~, collection of special fees for this fund
6 shall be discontinued at the end of the licensing renewal
7 cycle. Such special fees shall not be reimposed unless the
8 fund is reduced below \$500,000 by disbursement made in
9 accordance with this chapter.

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

13 Section 28. Paragraph (a) of subsection (1) and
14 subsections (2) and (3) of section 475.483, Florida Statutes,
15 are amended to read:

16 475.483 Conditions for recovery; eligibility.--

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

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

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

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

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

10 (b) Such person is a licensed broker or sales
11 associate salesperson who acted as a single agent or
12 transaction broker in the transaction that is the subject of
13 the claim;

14 (c) Such person's claim is based upon a real estate
15 transaction in which the licensed broker or sales associate
16 salesperson was the owner of or controlled the property
17 involved in the transaction; in which the licensee was dealing
18 for the licensee's own account; or in which the licensee was
19 not acting as a broker or sales associate salesperson;

20 (d) Such person's claim is based upon a real estate
21 transaction in which the broker or sales associate salesperson
22 did not hold a valid, current, and active license at the time
23 of the real estate transaction; or

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

27 (3) ~~The commission may pay attorney's fees and court~~
28 ~~costs~~ If the claim is of the type described in s. 475.482(2),
29 the commission shall pay the defendant's reasonable attorney's
30 fees and court costs and, if the plaintiff prevails in court,
31 the plaintiff's reasonable attorney's fees and court costs.

1 Section 29. Subsections (1), (3), (4), (5), and (7) of
2 section 475.484, Florida Statutes, are amended to read:

3 475.484 Payment from the fund.--

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

8 (a) Under s. 475.482(1), in an amount equal to the
9 unsatisfied portion of such person's judgment or \$50,000
10 ~~\$25,000~~, whichever is less, but only to the extent and amount
11 reflected in the judgment as being actual or compensatory
12 damages. Except as provided in s. 475.483, treble damages,
13 court costs, attorney's fees, and interest shall not be
14 recovered from the fund.

15 (b) Under s. 475.482(2), in an amount equal to the
16 judgment against the broker or sales associate ~~salesperson~~ or
17 \$50,000~~\$25,000~~, whichever is less.

18 (3) Payments for claims arising out of the same
19 transaction shall be limited, in the aggregate, to \$50,000
20 ~~\$25,000~~, regardless of the number of claimants or parcels of
21 real estate involved in the transaction.

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

25 (5) If at any time the moneys in the Real Estate
26 Recovery Fund are insufficient to satisfy any valid claim or
27 portion thereof, the commission shall satisfy such unpaid
28 claim or portion thereof as soon as a sufficient amount of
29 money has been deposited in or transferred to the fund. When
30 there is more than one unsatisfied claim outstanding, such
31 claims shall be paid in the order in which the claims were

1 approved by the commission. However, if the total claims
2 approved at any one commission meeting exceed the aggregate
3 amount established in subsection (4) against any one broker or
4 sales associate ~~salesperson~~, the claims approved on that day
5 shall be prorated.

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

21 Section 30. Subsection (2) of section 475.5017,
22 Florida Statutes, is amended to read:

23 475.5017 Injunctive relief; powers.--

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

30 Section 31. Section 475.505, Florida Statutes, is
31 created to read:

1 475.505 Temporary practice.--
2 (1) The commission shall recognize, on a temporary
3 basis, the license of a real estate broker issued by another
4 state, provided:
5 (a) The real estate broker's business is of a
6 temporary nature and limited to commercial real estate
7 transactions. For purposes of this section, "commercial real
8 estate" means any parcel of real estate in this state other
9 than real estate containing one to four residential units.
10 "Commercial real estate" does not include single-family
11 residential units such as condominiums, townhouses,
12 manufactured homes, or homes in a subdivision when sold,
13 leased, or otherwise conveyed on a unit-by-unit basis, even
14 when those units are a part of a larger building or parcel of
15 real estate containing more than four residential units.
16 (b) The real estate broker registers with the
17 commission.
18 (c) The person requesting recognition of a license as
19 a real estate broker issued by another state is a nonresident
20 of Florida.
21 (2) In order to register with the commission, the real
22 estate broker must:
23 (a) Pay any required fee as established by rule.
24 (b) Provide, or cause the state where the applicant
25 may be licensed or certified to furnish, proof of licensure or
26 certification along with the copies of the records of any
27 disciplinary actions taken against the applicant's license or
28 certification in that or other jurisdictions.
29 (c) Agree in writing to cooperate with any
30 investigation initiated under this part by promptly supplying
31 such documents that any authorized representative of the

1 department may request. If the department sends a notice by
2 certified mail to the last known address of a nonresident real
3 estate broker to produce documents or to appear in conjunction
4 with an investigation and the nonresident real estate broker
5 fails to comply with that request, the commission may impose
6 on that nonresident real estate broker any disciplinary action
7 or penalty authorized under this part.

8 (d) Agree to enter a written agreement with a
9 cooperating real estate broker licensed in this state before
10 performing any act in this state which constitutes
11 professional real estate activity. The written agreement shall
12 provide:

13 1. The terms of cooperation and compensation.

14 2. That the services set forth in s. 475.01(1)(a), if
15 conducted in this state, will be under the supervision and
16 control of the cooperating real estate broker licensed in this
17 state.

18 3. That civil actions may be commenced against the
19 real estate broker, the cooperating real estate broker
20 licensed in this state, or both in any court of competent
21 jurisdiction in any county of this state in which a claim
22 arises.

23 4. That the cooperating real estate broker licensed in
24 this state shall accompany the real estate broker and the
25 potential buyer or potential lessee during any initial
26 property showing.

27 5. That all subsequent property showings and all
28 negotiations regarding the cooperative real estate transaction
29 are conducted under the supervision, control, and express
30 permission of the cooperating real estate broker licensed in
31 this state.

1 6. That any escrow or trust funds obtained by the real
2 estate broker in any transaction involving any real property
3 in Florida shall be held in the escrow account of the
4 cooperating real estate broker licensed in this state unless
5 otherwise agreed in writing by the party or parties having any
6 interest in said escrow or trust funds.

7 (e) Sign a notarized statement that the applicant has
8 read this part and all applicable rules and agrees to comply
9 with the laws of Florida in the performance of all real estate
10 activities.

11 (3) For purposes of this section, a "real estate
12 broker licensed in another state" means the licensed broker
13 and other brokers or salespersons licensed under such broker.
14 However, the temporary recognition will extend to other
15 brokers and salespersons licensed under such broker, provided
16 they follow all of the foregoing requirements for registration
17 and the broker provides the commission a notarized statement
18 certifying that the brokers or salespersons will perform the
19 services of real estate under the real estate broker' s
20 direction, control, or management and in accordance with the
21 agreement with the cooperating real estate broker licensed in
22 this state.

23 Section 32. Subsections (2) and (3) of section
24 475.612, Florida Statutes, are amended to read:

25 475.612 Certification, licensure, or registration
26 required.--

27 (2) This section does not preclude a broker, sales
28 associate ~~salesperson~~, or broker associate ~~broker-salesperson~~
29 who is not a certified or licensed real estate appraiser or
30 registered assistant real estate appraiser from appraising
31 real estate for compensation. Such persons may continue to

1 provide appraisals and appraisal services for compensation so
2 long as they do not represent themselves as certified,
3 licensed, or registered under this part.

4 (3) This section does not apply to a real estate
5 broker or sales associate ~~salesperson~~ who, in the ordinary
6 course of business, performs a comparative market analysis,
7 gives a broker price opinion, or gives an opinion of the value
8 of real estate. However, in no event may this comparative
9 market analysis, broker price opinion, or opinion of value of
10 real estate be referred to or construed as an appraisal.

11 Section 33. Section 689.25, Florida Statutes, is
12 amended to read:

13 689.25 Failure to disclose homicide, suicide, deaths,
14 or diagnosis of HIV or AIDS infection in an occupant of real
15 property.--

16 (1)(a) The fact that an occupant of real property is
17 infected or has been infected with human immunodeficiency
18 virus or diagnosed with acquired immune deficiency syndrome is
19 not a material fact that must be disclosed in a real estate
20 transaction.

21 (b) The fact that a property was, or was at any time
22 suspected to have been, the site of a homicide, suicide, or
23 death is not a material fact that must be disclosed in a real
24 estate transaction.

25 (2) A ~~No~~ cause of action shall not arise ~~arises~~
26 against an owner of real property, or his or her agent, an ~~or~~
27 ~~against any~~ agent of a transferee of real property, or a
28 person licensed under chapter 475 for the failure to disclose
29 to the transferee that the property was or was suspected to
30 have been the site of a homicide, suicide, or death or that an
31 occupant of that property was infected with human

1 immunodeficiency virus or diagnosed with acquired immune
2 deficiency syndrome.

3 Section 34. Sections 475.421 and 475.422, Florida
4 Statutes, are repealed.

5 Section 35. Paragraph (d) of subsection (3) of section
6 83.49, Florida Statutes, is amended to read:

7 83.49 Deposit money or advance rent; duty of landlord
8 and tenant.--

9 (3)

10 (d) Compliance with this section by an individual or
11 business entity authorized to conduct business in this state,
12 including Florida-licensed real estate brokers and sales
13 associates ~~salespersons~~, shall constitute compliance with all
14 other relevant Florida Statutes pertaining to security
15 deposits held pursuant to a rental agreement or other
16 landlord-tenant relationship. Enforcement personnel shall look
17 solely to this section to determine compliance. This section
18 prevails over any conflicting provisions in chapter 475 and in
19 other sections of the Florida Statutes, and shall operate to
20 permit licensed real estate brokers to disburse security
21 deposits and deposit money without having to comply with the
22 notice and settlement procedures contained in s. 475.25(1)(d).

23 Section 36. Paragraph (d) of subsection (15) of
24 section 440.02, Florida Statutes, is amended to read:

25 440.02 Definitions.--When used in this chapter, unless
26 the context clearly requires otherwise, the following terms
27 shall have the following meanings:

28 (15)

29 (d) "Employee" does not include:

30 1. An independent contractor, if:

31

1 a. The independent contractor maintains a separate
2 business with his or her own work facility, truck, equipment,
3 materials, or similar accommodations;

4 b. The independent contractor holds or has applied for
5 a federal employer identification number, unless the
6 independent contractor is a sole proprietor who is not
7 required to obtain a federal employer identification number
8 under state or federal requirements;

9 c. The independent contractor performs or agrees to
10 perform specific services or work for specific amounts of
11 money and controls the means of performing the services or
12 work;

13 d. The independent contractor incurs the principal
14 expenses related to the service or work that he or she
15 performs or agrees to perform;

16 e. The independent contractor is responsible for the
17 satisfactory completion of work or services that he or she
18 performs or agrees to perform and is or could be held liable
19 for a failure to complete the work or services;

20 f. The independent contractor receives compensation
21 for work or services performed for a commission or on a
22 per-job or competitive-bid basis and not on any other basis;

23 g. The independent contractor may realize a profit or
24 suffer a loss in connection with performing work or services;

25 h. The independent contractor has continuing or
26 recurring business liabilities or obligations; and

27 i. The success or failure of the independent
28 contractor' s business depends on the relationship of business
29 receipts to expenditures.

30
31

1 However, the determination as to whether an individual
2 included in the Standard Industrial Classification Manual of
3 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
4 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,
5 2448, or 2449, or a newspaper delivery person, is an
6 independent contractor is governed not by the criteria in this
7 paragraph but by common-law principles, giving due
8 consideration to the business activity of the individual.
9 Notwithstanding the provisions of this paragraph or any other
10 provision of this chapter, with respect to any commercial
11 building project estimated to be valued at \$250,000 or
12 greater, a person who is actively engaged in the construction
13 industry is not an independent contractor and is either an
14 employer or an employee who may not be exempt from the
15 coverage requirements of this chapter.

16 2. A real estate licensee ~~salesperson or agent~~, if
17 that person agrees, in writing, to perform for remuneration
18 solely by way of commission.

19 3. Bands, orchestras, and musical and theatrical
20 performers, including disk jockeys, performing in licensed
21 premises as defined in chapter 562, if a written contract
22 evidencing an independent contractor relationship is entered
23 into before the commencement of such entertainment.

24 4. An owner-operator of a motor vehicle who transports
25 property under a written contract with a motor carrier which
26 evidences a relationship by which the owner-operator assumes
27 the responsibility of an employer for the performance of the
28 contract, if the owner-operator is required to furnish the
29 necessary motor vehicle equipment and all costs incidental to
30 the performance of the contract, including, but not limited
31 to, fuel, taxes, licenses, repairs, and hired help; and the

1 owner-operator is paid a commission for transportation service
2 and is not paid by the hour or on some other time-measured
3 basis.

4 5. A person whose employment is both casual and not in
5 the course of the trade, business, profession, or occupation
6 of the employer.

7 6. A volunteer, except a volunteer worker for the
8 state or a county, municipality, or other governmental entity.
9 A person who does not receive monetary remuneration for
10 services is presumed to be a volunteer unless there is
11 substantial evidence that a valuable consideration was
12 intended by both employer and employee. For purposes of this
13 chapter, the term "volunteer" includes, but is not limited to:

14 a. Persons who serve in private nonprofit agencies and
15 who receive no compensation other than expenses in an amount
16 less than or equivalent to the standard mileage and per diem
17 expenses provided to salaried employees in the same agency or,
18 if such agency does not have salaried employees who receive
19 mileage and per diem, then such volunteers who receive no
20 compensation other than expenses in an amount less than or
21 equivalent to the customary mileage and per diem paid to
22 salaried workers in the community as determined by the
23 department; and

24 b. Volunteers participating in federal programs
25 established under Pub. L. No. 93-113.

26 7. Any officer of a corporation who elects to be
27 exempt from this chapter.

28 8. A sole proprietor or officer of a corporation who
29 actively engages in the construction industry, and a partner
30 in a partnership that is actively engaged in the construction
31 industry, who elects to be exempt from the provisions of this

1 chapter. Such sole proprietor, officer, or partner is not an
2 employee for any reason until the notice of revocation of
3 election filed pursuant to s. 440.05 is effective.

4 9. An exercise rider who does not work for a single
5 horse farm or breeder, and who is compensated for riding on a
6 case-by-case basis, provided a written contract is entered
7 into prior to the commencement of such activity which
8 evidences that an employee/employer relationship does not
9 exist.

10 10. A taxicab, limousine, or other passenger
11 vehicle-for-hire driver who operates said vehicles pursuant to
12 a written agreement with a company which provides any
13 dispatch, marketing, insurance, communications, or other
14 services under which the driver and any fees or charges paid
15 by the driver to the company for such services are not
16 conditioned upon, or expressed as a proportion of, fare
17 revenues.

18 11. A person who performs services as a sports
19 official for an entity sponsoring an interscholastic sports
20 event or for a public entity or private, nonprofit
21 organization that sponsors an amateur sports event. For
22 purposes of this subparagraph, such a person is an independent
23 contractor. For purposes of this subparagraph, the term
24 "sports official" means any person who is a neutral
25 participant in a sports event, including, but not limited to,
26 umpires, referees, judges, linespersons, scorekeepers, or
27 timekeepers. This subparagraph does not apply to any person
28 employed by a district school board who serves as a sports
29 official as required by the employing school board or who
30 serves as a sports official as part of his or her
31 responsibilities during normal school hours.

1 Section 37. Paragraph (n) of subsection (21) of
2 section 443.036, Florida Statutes, is amended to read:

3 443.036 Definitions.--As used in this chapter, unless
4 the context clearly requires otherwise:

5 (21) EMPLOYMENT.--"Employment," subject to the other
6 provisions of this chapter, means any service performed by an
7 employee for the person employing him or her.

8 (n) Exclusions generally.--The term "employment" does
9 not include:

10 1. Domestic service in a private home, local college
11 club, or local chapter of a college fraternity or sorority,
12 except as provided in paragraph (g).

13 2. Service performed on or in connection with a vessel
14 or aircraft not an American vessel or American aircraft, if
15 the employee is employed on and in connection with such vessel
16 or aircraft when outside the United States.

17 3. Service performed by an individual in, or as an
18 officer or member of the crew of a vessel while it is engaged
19 in, the catching, taking, harvesting, cultivating, or farming
20 of any kind of fish, shellfish, crustacea, sponges, seaweeds,
21 or other aquatic forms of animal and vegetable life, including
22 service performed by any such individual as an ordinary
23 incident to any such activity, except:

24 a. Service performed in connection with the catching
25 or taking of salmon or halibut for commercial purposes.

26 b. Service performed on, or in connection with, a
27 vessel of more than 10 net tons, determined in the manner
28 provided for determining the register tonnage of merchant
29 vessels under the laws of the United States.

30 4. Service performed by an individual in the employ of
31 his or her son, daughter, or spouse, including step

1 relationships, and service performed by a child, or stepchild,
2 under the age of 21 in the employ of his or her father or
3 mother, or stepfather or stepmother.

4 5. Service performed in the employ of the United
5 States Government or of an instrumentality of the United
6 States which is:

7 a. Wholly or partially owned by the United States.

8 b. Exempt from the tax imposed by s. 3301 of the
9 Internal Revenue Code by virtue of any provision of federal
10 law which specifically refers to such section, or the
11 corresponding section of prior law, in granting such
12 exemption; except that to the extent that the Congress shall
13 permit states to require any instrumentalities of the United
14 States to make payments into an unemployment fund under a
15 state unemployment compensation law, all of the provisions of
16 this law shall be applicable to such instrumentalities, and to
17 services performed for such instrumentalities, in the same
18 manner, to the same extent, and on the same terms as to all
19 other employers, employing units, individuals, and services.
20 If this state is not certified for any year by the Secretary
21 of Labor under s. 3304 of the federal Internal Revenue Code,
22 the payments required of such instrumentalities with respect
23 to such year shall be refunded by the division from the fund
24 in the same manner and within the same period as is provided
25 in s. 443.141(6) with respect to contributions erroneously
26 collected.

27 6. Service performed in the employ of a state, or any
28 political subdivision thereof, or any instrumentality of any
29 one or more of the foregoing which is wholly owned by one or
30 more states or political subdivisions, except as provided in
31 paragraph (b), and any service performed in the employ of any

1 instrumentality of one or more states or political
2 subdivisions, to the extent that the instrumentality is, with
3 respect to such service, immune under the Constitution of the
4 United States from the tax imposed by s. 3301 of the Internal
5 Revenue Code.

6 7. Service performed in the employ of a corporation,
7 community chest, fund, or foundation, organized and operated
8 exclusively for religious, charitable, scientific, testing for
9 public safety, literary, or educational purposes, or for the
10 prevention of cruelty to children or animals, no part of the
11 net earnings of which inures to the benefit of any private
12 shareholder or individual, no substantial part of the
13 activities of which is carrying on propaganda or otherwise
14 attempting to influence legislation, and which does not
15 participate in, or intervene in (including the publishing or
16 distributing of statements), any political campaign on behalf
17 of any candidate for public office, except as provided in
18 paragraph (c).

19 8. Service with respect to which unemployment
20 compensation is payable under an unemployment compensation
21 system established by an Act of Congress.

22 9.a. Service performed in any calendar quarter in the
23 employ of any organization exempt from income tax under s.
24 501(a) of the Internal Revenue Code, other than an
25 organization described in s. 401(a), or under s. 521, if the
26 remuneration for such service is less than \$50.

27 b. Service performed in the employ of a school,
28 college, or university, if such service is performed by a
29 student who is enrolled and is regularly attending classes at
30 such school, college, or university.

31

1 10. Service performed in the employ of a foreign
2 government, including service as a consular or other officer
3 or employee of a nondiplomatic representative.

4 11. Service performed in the employ of an
5 instrumentality wholly owned by a foreign government:

6 a. If the service is of a character similar to that
7 performed in foreign countries by employees of the United
8 States Government or of an instrumentality thereof; and

9 b. The Secretary of State shall certify to the
10 Secretary of the Treasury that the foreign government, with
11 respect to whose instrumentality exemption is claimed, grants
12 an equivalent exemption with respect to similar service
13 performed in the foreign country by employees of the United
14 States Government and of instrumentalities thereof.

15 12. Service performed as a student nurse in the employ
16 of a hospital or a nurses' training school by an individual
17 who is enrolled and is regularly attending classes in a
18 nurses' training school chartered or approved pursuant to a
19 state law; service performed as an intern in the employ of a
20 hospital by an individual who has completed a 4-year course in
21 a medical school chartered or approved pursuant to state law;
22 and service performed by a patient of a hospital for such
23 hospital.

24 13. Service performed by an individual for a person as
25 an insurance agent or as an insurance solicitor, if all such
26 service performed by such individual for such person is
27 performed for remuneration solely by way of commission, except
28 for such services performed in accordance with 26 U.S.C.S. s.
29 3306(c)(7) and (8). For purposes of this subsection, those
30 benefits excluded from the definition of wages pursuant to
31

1 subparagraphs (40)(b)2.-6., inclusive, shall not be considered
2 remuneration.

3 14. Service performed by an individual for a person as
4 a real estate licensee ~~salesperson or agent~~, if all such
5 service performed by such individual for such person is
6 performed for remuneration solely by way of commission.

7 15. Service performed by an individual under the age
8 of 18 in the delivery or distribution of newspapers or
9 shopping news, not including delivery or distribution to any
10 point for subsequent delivery or distribution.

11 16. Service covered by an arrangement between the
12 division and the agency charged with the administration of any
13 other state or federal unemployment compensation law pursuant
14 to which all services performed by an individual for an
15 employing unit during the period covered by such employing
16 unit's duly approved election are deemed to be performed
17 entirely within such agency's state or under such federal law.

18 17. Service performed by an individual who is enrolled
19 at a nonprofit or public educational institution which
20 normally maintains a regular faculty and curriculum and
21 normally has a regularly organized body of students in
22 attendance at the place where its educational activities are
23 carried on as a student in a full-time program, taken for
24 credit at such institution, which combines academic
25 instruction with work experience, if such service is an
26 integral part of such program, and such institution has so
27 certified to the employer, except that this subparagraph does
28 not apply to service performed in a program established for or
29 on behalf of an employer or group of employers.

30 18. Service performed by an individual for a person as
31 a barber, if all such service performed by such individual for

1 such person is performed for remuneration solely by way of
2 commission.

3 19. Casual labor not in the course of the employer's
4 trade or business.

5 20. Service performed by a speech therapist,
6 occupational therapist, or physical therapist who is
7 nonsalaried and working pursuant to a written contract with a
8 home health agency as defined in s. 400.462.

9 21. Service performed by a direct seller. For purposes
10 of this subparagraph, the term "direct seller" means a person:

11 a.(I) Who is engaged in the trade or business of
12 selling or soliciting the sale of consumer products to buyers
13 on a buy-sell basis or a deposit-commission basis, or on any
14 similar basis, for resale in the home or in any other place
15 that is not a permanent retail establishment; or

16 (II) Who is engaged in the trade or business of
17 selling or soliciting the sale of consumer products in the
18 home or in any other place that is not a permanent retail
19 establishment;

20 b. Substantially all of whose remuneration for
21 services described in sub-subparagraph a., whether or not paid
22 in cash, is directly related to sales or other output, rather
23 than to the number of hours worked; and

24 c. Who performs such services pursuant to a written
25 contract with the person for whom the services are performed,
26 which contract provides that the person will not be treated as
27 an employee with respect to such services for federal tax
28 purposes.

29 22. Service performed by a nonresident alien
30 individual for the period he or she is temporarily present in
31 the United States as a nonimmigrant under subparagraph (F) or

1 subparagraph (J) of s. 101(a)(15) of the Immigration and
2 Nationality Act, and which is performed to carry out the
3 purpose specified in subparagraph (F) or subparagraph (J), as
4 the case may be.

5 23. Service performed by an individual for
6 remuneration for a private, for-profit delivery or messenger
7 service, if the individual:

8 a. Is free to accept or reject jobs from the delivery
9 or messenger service and the delivery or messenger service has
10 no control over when the individual works;

11 b. Is remunerated for each delivery, or the
12 remuneration is based on factors that relate to the work
13 performed, including receipt of a percentage of any rate
14 schedule;

15 c. Pays all expenses and the opportunity for profit or
16 loss rests solely with the individual;

17 d. Is responsible for operating costs, including fuel,
18 repairs, supplies, and motor vehicle insurance;

19 e. Determines the method of performing the service,
20 including selection of routes and order of deliveries;

21 f. Is responsible for the completion of a specific job
22 and is liable for any failure to complete that job;

23 g. Enters into a contract with the delivery or
24 messenger service which specifies the relationship of the
25 individual to the delivery or messenger service to be that of
26 an independent contractor and not that of an employee; and

27 h. Provides the vehicle used to perform the service.

28 24. Service performed in agricultural labor by an
29 individual who is an alien admitted to the United States to
30 perform service in agricultural labor pursuant to ss.

31

1 101(a)(15)(H) and 214(c) of the Immigration and Nationality
2 Act.

3 25. Service performed by a person who is an inmate of
4 a penal institution.

5 Section 38. Subsection (25) of section 501.604,
6 Florida Statutes, is amended to read:

7 501.604 Exemptions.--The provisions of this part,
8 except ss. 501.608 and 501.616(6) and (7), do not apply to:

9 (25) A person ~~who is a licensed real estate~~
10 ~~salesperson or broker~~ pursuant to chapter 475 and who is
11 soliciting within the scope of the chapter.

12 Section 39. Subsection (4) of section 687.14, Florida
13 Statutes, is amended to read:

14 687.14 Definitions.--As used in this act, unless the
15 context otherwise requires:

16 (4) "Loan broker" means any person, except any bank or
17 savings and loan association, trust company, building and loan
18 association, credit union, consumer finance company, retail
19 installment sales company, securities broker-dealer, real
20 estate broker or sales associate ~~salesperson~~, attorney,
21 federal Housing Administration or United States Department of
22 Veterans Affairs approved lender, credit card company,
23 installment loan licensee, mortgage broker or lender, or
24 insurance company, provided that the person excepted is
25 licensed by and subject to regulation or supervision of any
26 agency of the United States or this state and is acting within
27 the scope of the license; and also excepting subsidiaries of
28 licensed or chartered consumer finance companies, banks, or
29 savings and loan associations; who:

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1 (a) For or in expectation of consideration arranges or
2 attempts to arrange or offers to fund a loan of money, a
3 credit card, or a line of credit;

4 (b) For or in expectation of consideration assists or
5 advises a borrower in obtaining or attempting to obtain a loan
6 of money, a credit card, a line of credit, or related
7 guarantee, enhancement, or collateral of any kind or nature;

8 (c) Acts for or on behalf of a loan broker for the
9 purpose of soliciting borrowers; or

10 (d) Holds herself or himself out as a loan broker.

11 Section 40. Subsections (1) and (6) of section 721.20,
12 Florida Statutes, are amended to read:

13 721.20 Licensing requirements; suspension or
14 revocation of license; exceptions to applicability; collection
15 of advance fees for listings unlawful.--

16 (1) Any seller of a timeshare plan must be a licensed
17 real estate ~~salesperson, broker, broker associate, or sales~~
18 associate broker-salesperson as defined in s. 475.01, except
19 as provided in s. 475.011.

20 (6) Notwithstanding the provisions of s. 475.452, it
21 is unlawful for any real estate broker, broker associate
22 ~~salesperson, or sales associate broker-salesperson~~ to collect
23 any advance fee for the listing of any timeshare estate or
24 timeshare license.

25 Section 41. Paragraph (a) of subsection (1) of section
26 760.29, Florida Statutes, is amended to read:

27 760.29 Exemptions.--

28 (1)(a) Nothing in ss. 760.23 and 760.25 applies to:

29 1. Any single-family house sold or rented by its
30 owner, provided such private individual owner does not own
31 more than three single-family houses at any one time. In the

1 case of the sale of a single-family house by a private
2 individual owner who does not reside in such house at the time
3 of the sale or who was not the most recent resident of the
4 house prior to the sale, the exemption granted by this
5 paragraph applies only with respect to one sale within any
6 24-month period. In addition, the bona fide private individual
7 owner shall not own any interest in, nor shall there be owned
8 or reserved on his or her behalf, under any express or
9 voluntary agreement, title to, or any right to all or a
10 portion of the proceeds from the sale or rental of, more than
11 three single-family houses at any one time. The sale or rental
12 of any single-family house shall be excepted from the
13 application of ss. 760.20-760.37 only if the house is sold or
14 rented:

15 a. Without the use in any manner of the sales or
16 rental facilities or the sales or rental services of any real
17 estate licensee ~~broker, agent, or salesperson~~ or such
18 facilities or services of any person in the business of
19 selling or renting dwellings, or of any employee or agent of
20 any such licensee ~~broker, agent, salesperson, or person~~; and

21 b. Without the publication, posting, or mailing, after
22 notice, of any advertisement or written notice in violation of
23 s. 760.23(3).

24

25 Nothing in this provision prohibits the use of attorneys,
26 escrow agents, abstractors, title companies, and other such
27 professional assistance as is necessary to perfect or transfer
28 the title.

29 2. Rooms or units in dwellings containing living
30 quarters occupied or intended to be occupied by no more than
31 four families living independently of each other, if the owner

1 actually maintains and occupies one of such living quarters as
2 his or her residence.

3 Section 42. This act shall take effect July 1, 2003.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1266

4 The committee substitute redefines the terms "broker
5 salesperson" and "salesperson" with the terms "broker
6 associate" and "sales associate." It reinstates the Attorney
7 General's authority to approve the independent legal counsel
8 retained by the commission that was abolished by the bill. It
9 deletes the provision in the bill that authorizes the
10 commission to certify or approve the delivery mechanism for
11 distance learning courses. It reinstates the requirement
12 eliminated by the bill that if a partnership is a limited
13 partnership, only the general partners must be licensed
14 brokers or brokerage corporations registered under part I of
15 ch. 475, F.S. It deletes the provision in the bill that would
16 have added the requirement that the initial license of a
17 broker or broker associate shall be issued for a period of not
18 less than 18 months and not more than 24 months. It
19 reinstates the current provision regarding the frequency of
20 rulemaking by the Department of Business and Professional
21 Regulation (department) for the renewal of licenses. It
22 requires a real estate school to file with the commission the
23 names of any sales associates or instructors who are no longer
24 employed by the brokerage or school. It provides for the
25 investment of escrow monies by brokers. It deletes the
26 provisions in the bill that would have narrowed the
27 circumstances in which a real estate licensee must follow one
28 of the procedures set forth in s. 475.25(1)(d), F.S., to
29 resolve a conflict involving escrowed property. It maintains
30 the commission's authority to establish rules regarding the
31 manner in which deposits in escrow accounts are to be made.
It deletes the provisions in the bill that provided guidelines
for real estate transactions in cooperation between licensees
and professional's licensed out-of-state. It permits a broker
to maintain up to \$1000 of personal or brokerage funds in the
broker's sales escrow account. It amends s. 475.278, F.S., to
create a presumption of a transaction brokerage. It provides
that disclosures in s. 475.278(2)(b), F.S., for a transaction
brokerage relationship expire on July 1, 2008. It provides a
new disclosure form for the transaction brokerage
relationship. It provides procedures for changing a single
agent relationship into a transaction brokerage relationship.
It deletes s. 475.4005, F.S., from the bill, which would have
transferred the responsibility for enforcing the prohibition
against unlicensed activity from the department to the
commission. It amends s. 475.42, F.S., to make the violations
in paragraph (1) a felony of the third degree. It decreases
from 15 to 7 the minimum number of classroom hours of
instruction needed to renew an instructor permit. It
reinstates the prohibition deleted by the bill that a person,
school, or institution cannot guarantee that its pupils will
pass any examination required for licensure. It repeals s.
475.4511(4), F.S. It does not repeal s. 475.452, F.S., which
was repealed by the bill. It creates s. 475.423, F.S., which
requires that certain disclosures be made for any transfer by
sale, exchange, or installment land sale contract of
residential, undeveloped, or commercial land.