

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Bilirakis offered the following:

Amendment (with title amendment)

Between line(s) 798 and 799, insert:

Section 21. Section 475.001, Florida Statutes, is amended to read:

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

Section 22. Section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.--

(1) As used in this part:

(a) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to

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28 collect or receive a compensation or valuable consideration
29 therefor, appraises, auctions, sells, exchanges, buys, rents, or
30 offers, attempts or agrees to appraise, auction, or negotiate
31 the sale, exchange, purchase, or rental of business enterprises
32 or business opportunities or any real property or any interest
33 in or concerning the same, including mineral rights or leases,
34 or who advertises or holds out to the public by any oral or
35 printed solicitation or representation that she or he is engaged
36 in the business of appraising, auctioning, buying, selling,
37 exchanging, leasing, or renting business enterprises or business
38 opportunities or real property of others or interests therein,
39 including mineral rights, or who takes any part in the procuring
40 of sellers, purchasers, lessors, or lessees of business
41 enterprises or business opportunities or the real property of
42 another, or leases, or interest therein, including mineral
43 rights, or who directs or assists in the procuring of prospects
44 or in the negotiation or closing of any transaction which does,
45 or is calculated to, result in a sale, exchange, or leasing
46 thereof, and who receives, expects, or is promised any
47 compensation or valuable consideration, directly or indirectly
48 therefor; and all persons who advertise rental property
49 information or lists. A broker renders a professional service
50 and is a professional within the meaning of s. 95.11(4)(a).
51 Where the term "appraise" or "appraising" appears in the
52 definition of the term "broker," it specifically excludes those
53 appraisal services which must be performed only by a state-
54 licensed or state-certified appraiser, and those appraisal
55 services which may be performed by a registered assistant
56 appraiser as defined in part II. The term "broker" also includes

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57 any person who is a general partner, officer, or director of a
58 partnership or corporation which acts as a broker. The term
59 "broker" also includes any person or entity who undertakes to
60 list or sell one or more timeshare periods per year in one or
61 more timeshare plans on behalf of any number of persons, except
62 as provided in ss. 475.011 and 721.20.

63 (b) "Broker associate ~~Broker-salesperson~~" means a person
64 who is qualified to be issued a license as a broker but who
65 operates as a sales associate ~~salesperson~~ in the employ of
66 another.

67 (c) "Commission" means the Florida Real Estate Commission.

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

72 (e) "Department" means the Department of Business and
73 Professional Regulation.

74 (f) "Fiduciary" means a broker in a relationship of trust
75 and confidence between that broker as agent and the seller or
76 buyer as principal. The duties of the broker as a fiduciary are
77 loyalty, confidentiality, obedience, full disclosure, and
78 accounting and the duty to use skill, care, and diligence.

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

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

84 (i) "Real property" or "real estate" means any interest or
85 estate in land and any interest in business enterprises or

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86 business opportunities, including any assignment, leasehold,
87 subleasehold, or mineral right; however, the term does not
88 include any cemetery lot or right of burial in any cemetery; nor
89 does the term include the renting of a mobile home lot or
90 recreational vehicle lot in a mobile home park or travel park.

91 (j) "Sales associate Salesperson" means a person who
92 performs any act specified in the definition of "broker," but
93 who performs such act under the direction, control, or
94 management of another person. A sales associate salesperson
95 renders a professional service and is a professional within the
96 meaning of s. 95.11(4)(a).

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

100 (l) "Transaction broker" means a broker who provides
101 limited representation to a buyer, a seller, or both, in a real
102 estate transaction, but does not represent either in a fiduciary
103 capacity or as a single agent. In a transaction broker
104 relationship, a buyer or seller is not responsible for the acts
105 of a licensee. Additionally, the parties to a real estate
106 transaction are giving up their rights to the undivided loyalty
107 of a licensee. This aspect of limited representation allows a
108 licensee to facilitate a real estate transaction by assisting
109 both the buyer and the seller, but a licensee shall not work to
110 represent one party to the detriment of the other party when
111 acting as a transaction broker to both parties.

112 (m) "Voluntarily inactive status" means the licensure
113 status that results when a licensee has applied to the

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114 department to be placed on inactive status and has paid the fee
115 prescribed by rule.

116 (2) The terms "employ," "employment," "employer," and
117 "employee," when used in this chapter and in rules adopted
118 pursuant thereto to describe the relationship between a broker
119 and a sales associate ~~salesperson~~, include an independent
120 contractor relationship when such relationship is intended by
121 and established between a broker and a sales associate
122 ~~salesperson~~. The existence of such relationship shall not
123 relieve either the broker or the sales associate ~~salesperson~~ of
124 her or his duties, obligations, or responsibilities under this
125 chapter.

126 (3) Wherever the word "operate" or "operating" as a
127 broker, broker associate ~~broker-salesperson~~, or sales associate
128 ~~salesperson~~ appears in this chapter; in any order, rule, or
129 regulation of the commission; in any pleading, indictment, or
130 information under this chapter; in any court action or
131 proceeding; or in any order or judgment of a court, it shall be
132 deemed to mean the commission of one or more acts described in
133 this chapter as constituting or defining a broker, broker
134 associate ~~broker-salesperson~~, or sales associate ~~salesperson~~,
135 not including, however, any of the exceptions stated therein. A
136 single such act is sufficient to bring a person within the
137 meaning of this chapter, and each act, if prohibited herein,
138 constitutes a separate offense.

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

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143 Section 23. Section 475.011, Florida Statutes, is amended
144 to read:

145 475.011 Exemptions.--This part does not apply to:

146 (1) Any person acting as an attorney in fact for the
147 purpose of the execution of contracts or conveyances only; as an
148 attorney at law within the scope of her or his duties as such;
149 as a certified public accountant, as defined in chapter 473,
150 within the scope of her or his duties as such; as the personal
151 representative, receiver, trustee, or master under, or by virtue
152 of, an appointment by will or by order of a court of competent
153 jurisdiction; or as trustee under a deed of trust, or under a
154 trust agreement, the ultimate purpose and intent whereof is
155 charitable, is philanthropic, or provides for those having a
156 natural right to the bounty of the donor or trustor.†

157 (2) Any individual, corporation, partnership, trust, joint
158 venture, or other entity which sells, exchanges, or leases its
159 own real property; however, this exemption shall not be
160 available if and to the extent that an agent, employee, or
161 independent contractor paid a commission or other compensation
162 strictly on a transactional basis is employed to make sales,
163 exchanges, or leases to or with customers in the ordinary course
164 of an owner's business of selling, exchanging, or leasing real
165 property to the public.†

166 (3) Any employee of a public utility, a rural electric
167 cooperative, a railroad, or a state or local governmental agency
168 who acts within the scope of her or his employment, for which no
169 compensation in addition to the employee's salary is paid, to
170 buy, sell, appraise, exchange, rent, auction, or lease any real

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171 property or any interest in real property for the use of her or
172 his employer.†

173 (4) Any salaried employee of an owner, or of a registered
174 broker for an owner, of an apartment community who works in an
175 onsite rental office of the apartment community in a leasing
176 capacity.†

177 (5) Any person employed for a salary as a manager of a
178 condominium or cooperative apartment complex as a result of any
179 activities or duties which the person may have in relation to
180 the renting of individual units within such condominium or
181 cooperative apartment complex if rentals arranged by the person
182 are for periods no greater than 1 year.†

183 (6) Any person, partnership, corporation, or other legal
184 entity which, for another and for compensation or other valuable
185 consideration, sells, offers to sell, advertises for sale, buys,
186 offers to buy, or negotiates the sale or purchase of radio,
187 television, or cable enterprises licensed and regulated by the
188 Federal Communications Commission pursuant to the Communications
189 Act of 1934. However, if the sale or purchase of the radio,
190 television, or cable enterprise involves the sale or lease of
191 land, buildings, fixtures, and all other improvements to the
192 land, a broker or sales associate ~~salesperson~~ licensed under
193 this chapter shall be retained for the portion of the
194 transaction which includes the land, buildings, fixtures, and
195 all other improvements to the land.†~~or~~

196 (7) Any full-time graduate student who is enrolled in a
197 commission-approved degree program in appraising at a college or
198 university in this state, if the student is acting under the
199 direct supervision of a licensed broker or a licensed or

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200 certified appraiser and is engaged only in appraisal activities
201 related to the approved degree program. Any appraisal report by
202 the student must be issued in the name of the supervising
203 individual.

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

207 (b) An exchange company, as that term is defined by s.
208 721.05(14), but only to the extent that the exchange company is
209 engaged in exchange program activities as described in and is in
210 compliance with s. 721.18.

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

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

217 (11) Any person, partnership, corporation, or other legal
218 entity which, for another and for compensation or other valuable
219 consideration, rents or advertises for rent, for transient
220 occupancy, any public lodging establishment licensed under
221 chapter 509.

222 (12) Any dealer registered under the Securities and
223 Exchange Act of 1934, as amended, or any federally insured
224 depository institution and any parent, subsidiary, or affiliate
225 thereof, in connection with the sale, exchange, purchase, or
226 rental of a business enterprise to or by a person who is an
227 accredited investor as defined by 15 U.S.C. s. 77b, the
228 Securities Act of 1933, or any regulation adopted thereunder.

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229 This exemption applies whether stock or assets of the business
230 enterprise are purchased or sold. The exemption does not apply
231 to a sale, exchange, purchase, or rental of land, buildings,
232 fixtures or other improvements to the land which is not made in
233 connection with the sale, exchange, purchase, or rental of a
234 business enterprise. Any reference to rental in this subsection
235 includes a lease transaction.

236 (13) Any property management firm or any owner of an
237 apartment complex for the act of paying a finder's fee or
238 referral fee to an unlicensed person who is a tenant in such
239 apartment complex provided the value of the fee does not exceed
240 \$50 per transaction. Nothing in this subsection authorizes an
241 unlicensed person to advertise or otherwise promote the person's
242 services in procuring or assisting in procuring prospective
243 lessees or tenants of apartment units. For purposes of this
244 subsection, "finder's fee" or "referral fee" means a fee paid,
245 credit towards rent, or some other thing of value provided to a
246 person for introducing or arranging an introduction between
247 parties to a transaction involving the rental or lease of an
248 apartment unit. It is a violation of s. 475.25(1)(h) and
249 punishable under s. 475.42 for a property management firm or any
250 owner of an apartment complex to pay a finder's fee or a
251 referral fee to an unlicensed person unless expressly authorized
252 by this subsection.

253 Section 24. Subsection (1) of section 475.02, Florida
254 Statutes, is amended to read:

255 475.02 Florida Real Estate Commission.--

256 (1) There is created within the department the Florida
257 Real Estate Commission. The commission shall consist of seven

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258 members who shall be appointed by the Governor, subject to
259 confirmation by the Senate. Four members must be licensed
260 brokers, each of whom has held an active license for the 5 years
261 preceding appointment; one member must be a licensed broker or a
262 licensed sales associate ~~salesperson~~ who has held an active
263 license for the 2 years preceding appointment; and two members
264 must be persons who are not, and have never been, brokers or
265 sales associates ~~salespersons~~. At least one member of the
266 commission must be 60 years of age or older. The current members
267 may complete their present terms unless removed for cause.

268 Section 25. Section 475.04, Florida Statutes, is amended
269 to read:

270 475.04 Duty of commission to educate members of
271 profession.--

272 (1) The commission shall foster the education of brokers,
273 broker associates ~~broker-salespersons~~, sales associates
274 ~~salespersons~~, and instructors concerning the ethical, legal, and
275 business principles which should govern their conduct.

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

284 (3) The commission may also publish and sell, at a
285 reasonable price intended to cover costs, a handbook on this
286 chapter and other publications intended to be textbooks or

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287 guidelines for study and guidance of students, applicants,
288 licensees, certificateholders, and permitholders, and members of
289 the general public, copyright of which shall be the property of
290 the state.

291 Section 26. Section 475.161, Florida Statutes, is created
292 to read:

293 475.161 Licensing of broker associates and sales
294 associates.--The commission shall license a broker associate or
295 sales associate as an individual or, upon the licensee providing
296 the commission with authorization from the Department of State,
297 as a professional corporation or limited liability company. A
298 license shall be issued in the licensee's legal name only and,
299 when appropriate, shall include the entity designation. This
300 section shall not operate to permit a broker associate or sales
301 associate to register or be licensed as a general partner,
302 member, manager, officer, or director of a brokerage firm under
303 s. 475.15.

304 Section 27. Section 475.17, Florida Statutes, is amended
305 to read:

306 475.17 Qualifications for practice.--

307 (1)(a) An applicant for licensure who is a natural person
308 must be at least 18 years of age; hold a high school diploma or
309 its equivalent; be honest, truthful, trustworthy, and of good
310 character; and have a good reputation for fair dealing. An
311 applicant for an active broker's license or a sales associate's
312 ~~salesperson's~~ license must be competent and qualified to make
313 real estate transactions and conduct negotiations therefor with
314 safety to investors and to those with whom the applicant may
315 undertake a relationship of trust and confidence. If the

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316 applicant has been denied registration or a license or has been
317 disbarred, or the applicant's registration or license to
318 practice or conduct any regulated profession, business, or
319 vocation has been revoked or suspended, by this or any other
320 state, any nation, or any possession or district of the United
321 States, or any court or lawful agency thereof, because of any
322 conduct or practices which would have warranted a like result
323 under this chapter, or if the applicant has been guilty of
324 conduct or practices in this state or elsewhere which would have
325 been grounds for revoking or suspending her or his license under
326 this chapter had the applicant then been registered, the
327 applicant shall be deemed not to be qualified unless, because of
328 lapse of time and subsequent good conduct and reputation, or
329 other reason deemed sufficient, it appears to the commission
330 that the interest of the public and investors will not likely be
331 endangered by the granting of registration. The commission may
332 adopt rules requiring an applicant for licensure to provide
333 written information to the commission regarding the applicant's
334 good character.

335 (b) An application may be disapproved if the applicant has
336 acted or attempted to act, or has held herself or himself out as
337 entitled to act, during the period of 1 year next prior to the
338 filing of the application, as a real estate broker or sales
339 associate ~~salesperson~~ in the state in violation of this chapter.
340 This paragraph may be deemed to bar any person from licensure
341 who has performed any of the acts or services described in s.
342 475.01(3), unless exempt pursuant to s. 475.011, during a period
343 of 1 year next preceding the filing of the application, or
344 during the pendency of the application, and until a valid

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345 current license has been duly issued to the person, regardless
346 of whether the performance of the act or service was done for
347 compensation or valuable consideration.

348 (2)(a)1. In addition to other requirements under this
349 part, the commission may require the satisfactory completion of
350 one or more of the educational courses or equivalent courses
351 conducted, offered, sponsored, prescribed, or approved pursuant
352 to s. 475.04, taken at an accredited college, university, or
353 community college, at an area technical center, or at a
354 registered real estate school, as a condition precedent for any
355 person to become licensed or to renew her or his license as a
356 broker, broker associate ~~broker-salesperson~~, or sales associate
357 ~~salesperson~~. The course or courses required for one to become
358 initially licensed shall not exceed a total of 63 classroom
359 hours of 50 minutes each, inclusive of examination, for a sales
360 associate ~~salesperson~~ and 72 classroom hours of 50 minutes each,
361 inclusive of examination, for a broker. The satisfactory
362 completion of an examination administered by the accredited
363 college, university, or community college, by the area technical
364 center, or by the registered real estate school shall be the
365 basis for determining satisfactory completion of the course.
366 However, notice of satisfactory completion shall not be issued
367 if the student has absences in excess of 8 classroom hours.

368 2. A distance learning course or courses shall be approved
369 by the commission as an option to classroom hours as
370 satisfactory completion of the course or courses as required by
371 this section. The schools authorized by this section have the
372 option of providing classroom courses, distance learning
373 courses, or both. However, satisfactory completion of a

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374 distance learning course requires the satisfactory completion of
375 a timed distance learning course examination. Such examination
376 shall not be required to be monitored or given at a centralized
377 location.

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

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

386 1. An active real estate sales associate's ~~salesperson's~~
387 license for at least 12 months during the preceding 5 years in
388 the office of one or more real estate brokers licensed in this
389 state or any other state, territory, or jurisdiction of the
390 United States or in any foreign national jurisdiction;

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

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

400
401 This paragraph does not apply to a person employed as a real
402 estate investigator by the Division of Real Estate, provided the

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403 person has been employed as a real estate investigator for at
404 least 24 months. The person must be currently employed as a real
405 estate investigator to sit for the real estate broker's
406 examination and have held a valid and current sales associate's
407 ~~salesperson's~~ license for at least 12 months.

408 (c) A person who has been licensed as a real estate sales
409 associate ~~salesperson~~ in Florida during the preceding 5 years
410 may not be licensed as a real estate broker unless, in addition
411 to the other requirements of law, she or he has completed the
412 sales associate ~~salesperson~~ postlicensure educational
413 requirements, if these requirements have been prescribed by the
414 commission pursuant to paragraph(3)(a).

415 (3)(a) The commission may prescribe a postlicensure
416 education requirement in order for a person to maintain a valid
417 sales associate's ~~salesperson's~~ license, which shall not exceed
418 45 classroom hours of 50 minutes each, inclusive of examination,
419 prior to the first renewal following initial licensure. If
420 prescribed, this shall consist of one or more commission-
421 approved courses which total at least 45 classroom hours on one
422 or more subjects which include, but are not limited to, property
423 management, appraisal, real estate finance, ~~or~~ the economics of
424 real estate management, marketing, technology, sales and listing
425 of properties, business office management, courses teaching
426 practical real estate application skills, development of
427 business plans, marketing of property, and time management.

428 Required postlicensure education courses must be provided by an
429 accredited college, university, or community college, by an area
430 technical center, by a registered real estate school, or by a
431 commission-approved sponsor.

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432 (b) Satisfactory completion of the postlicensure education
433 requirement is demonstrated by successfully meeting all
434 standards established for the commission-prescribed or
435 commission-approved institution or school. However, notice of
436 satisfactory completion shall not be issued if the student has
437 absences in excess of 10 percent of the required classroom hours
438 or has not satisfactorily completed a timed distance learning
439 course examination.

440 (c) The license of any sales associate ~~salesperson~~ who
441 does not complete the postlicensure education requirement prior
442 to the first renewal following initial licensure shall be
443 considered null and void. Such person wishing to again operate
444 as a real estate sales associate ~~salesperson~~ must requalify by
445 satisfactorily completing the sales associate's ~~salesperson's~~
446 prelicensure course and passing the state examination for
447 licensure as a sales associate ~~salesperson~~.

448 (d) A sales associate ~~salesperson~~ who is required to
449 complete any postlicensure education requirement must complete
450 any postlicensure education requirement and hold a current and
451 valid license in order to be eligible for licensure as a broker.

452 (4)(a) The commission may prescribe a postlicensure
453 education requirement in order for a person to maintain a valid
454 broker's license, which shall not exceed 60 classroom hours of
455 50 minutes each, inclusive of examination, prior to the first
456 renewal following initial licensure. If prescribed, this shall
457 consist of one or more commission-approved courses which total
458 at least 60 classroom hours on one or more subjects which
459 include, but are not limited to, advanced appraisal, advanced
460 property management, real estate marketing, business law,

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461 advanced real estate investment analyses, advanced legal
462 aspects, general accounting, real estate economics,
463 syndications, commercial brokerage, feasibility analyses,
464 advanced real estate finance, residential brokerage, advanced
465 marketing, technology, advanced business planning, time
466 management, or real estate brokerage office operations. Required
467 postlicensure education courses must be provided by an
468 accredited college, university, or community college, by an area
469 technical center, by a registered real estate school, or by a
470 commission-approved sponsor.

471 (b) Satisfactory completion of the postlicensure education
472 requirement is demonstrated by successfully meeting all
473 standards established for the commission-prescribed or
474 commission-approved institution or school. However, notice of
475 satisfactory completion shall not be issued if the student has
476 absences in excess of 10 percent of the required classroom hours
477 or has not satisfactorily completed a timed distance learning
478 course examination.

479 (c) The license of any broker who does not complete the
480 postlicensure education requirement prior to the first renewal
481 following initial licensure shall be considered null and void.
482 If the licensee wishes to operate as a sales associate
483 ~~salesperson~~, she or he may be issued a sales associate's
484 ~~salesperson's~~ license after providing proof that she or he has
485 satisfactorily completed the 14-hour continuing education course
486 within the 6 months following expiration of her or his broker's
487 license. To operate as a broker, the licensee must requalify by
488 satisfactorily completing the broker's prelicensure course and
489 passing the state examination for licensure as a broker.

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

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

500 (c)1. A distance learning course or courses shall be
501 approved by the commission as an option to classroom hours as
502 satisfactory completion of the postlicensure education course or
503 courses as required by this section. The schools or sponsors
504 authorized by this section have the option of providing
505 classroom courses, distance learning courses, or both. However,
506 satisfactory completion of a distance learning postlicensure
507 education course or courses requires the satisfactory completion
508 of a timed distance learning course examination. Such
509 examination shall not be required to be monitored or given at a
510 centralized location.

511 2. The commission shall provide for postlicensure
512 education courses to be made available by correspondence or
513 other suitable means to any person who, by reason of hardship,
514 as defined by rule, cannot attend the place or places where
515 courses are regularly conducted or does not have access to the
516 distance learning courses.

517 (6) The postlicensure education requirements of this
518 section, and the education course requirements for one to become

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519 initially licensed, do not apply to any applicant or licensee
520 who has received a 4-year degree in real estate from an
521 accredited institution of higher education.

522 (7) The commission may not approve prelicensure or
523 postlicensure distance learning courses for brokers, broker
524 associates, and sales associates by correspondence methods,
525 except in instances of hardship pursuant to subparagraphs
526 (2)(a)3. and (5)(c)2.

527 Section 28. Section 475.175, Florida Statutes, is amended
528 to read:

529 475.175 Examinations.--

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

532 (a) Submits to the department the appropriate notarized or
533 electronically authenticated application and fee, ~~two~~
534 ~~photographs of herself or himself taken within the preceding~~
535 ~~year,~~ and a fingerprint card. The fingerprint card shall be
536 forwarded to the Division of Criminal Justice Information
537 Systems within the Department of Law Enforcement for purposes of
538 processing the fingerprint card to determine if the applicant
539 has a criminal history record. The fingerprint card shall also
540 be forwarded to the Federal Bureau of Investigation for purposes
541 of processing the fingerprint card to determine if the applicant
542 has a criminal history record. The information obtained by the
543 processing of the fingerprint card by the Florida Department of
544 Law Enforcement and the Federal Bureau of Investigation shall be
545 sent to the department for the purpose of determining if the
546 applicant is statutorily qualified for examination. Effective

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547 July 1, 2006, an applicant shall provide fingerprints in
548 electronic format.

549 (b) Submits, at the time of examination the certificate
550 specified in subsection (2), the examination admissions
551 authorization letter card issued by the commission, and proof of
552 identification.

553 (2) Each accredited college, university, community
554 college, or registered real estate school shall notify the
555 commission of the names of all persons who have satisfactorily
556 completed the educational requirements provided for in s.
557 475.17(2), (3), and (4) in a manner prescribed by the
558 commission. Furthermore, each such educational institution
559 shall provide to each person satisfactorily completing the
560 educational requirements provided for in s. 475.17(2), (3), and
561 (4) a certificate as proof of such satisfactory completion.

562 Section 29. Subsection (1) of section 475.181, Florida
563 Statutes, is amended to read:

564 475.181 Licensure.--

565 (1) The department shall license any applicant whom the
566 commission certifies, pursuant to subsection (2), to be
567 qualified to practice as a broker or sales associate
568 salesperson.

569 Section 30. Section 475.182, Florida Statutes, is amended
570 to read:

571 475.182 Renewal of license; continuing education.--

572 (1) The department shall renew a license upon receipt of
573 the renewal application and fee. The renewal application for an
574 active license as broker, broker associate ~~broker salesperson,~~
575 or sales associate ~~salesperson~~ shall include proof satisfactory

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576 to the commission that the licensee has, since the issuance or
577 renewal of her or his current license, satisfactorily completed
578 at least 14 classroom hours of 50 minutes each of a continuing
579 education course during each biennium of a license period, as
580 prescribed by the commission. Approval or denial of a specialty
581 course must be based on the extent to which the course content
582 focuses on real estate issues relevant to the modern practice of
583 real estate by a real estate licensee, including technology used
584 in the real estate industry. The commission may accept as a
585 substitute for such continuing education course, on a classroom-
586 hour-for-classroom-hour basis, any satisfactorily completed
587 education course that the commission finds is adequate to
588 educate licensees within the intent of this section, including
589 an approved distance learning course. However, the commission
590 may not require, for the purpose of satisfactorily completing an
591 approved correspondence or distance learning course, a written
592 examination that is to be taken at a centralized location and is
593 to be monitored.

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

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

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

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605 Section 31. Section 475.215, Florida Statutes, is amended
606 to read:

607 475.215 Multiple licenses.--

608 (1) A licensed broker may be issued upon request
609 additional licenses as a broker, but not as a sales associate
610 ~~salesperson~~ or as a broker associate ~~broker-salesperson~~,
611 whenever it is clearly shown that the requested additional
612 licenses are necessary to the conduct of real estate brokerage
613 business and that the additional licenses will not be used in a
614 manner likely to be prejudicial to any person, including a
615 licensee under this chapter.

616 (2) A sales associate ~~salesperson~~ or broker associate
617 ~~broker-salesperson~~ shall have no more than one registered
618 employer at any one time.

619 Section 32. Subsection (1) of section 475.22, Florida
620 Statutes, is amended to read:

621 475.22 Broker to maintain office and sign at entrance of
622 office; registered office outside state; broker required to
623 cooperate in investigation.--

624 (1) Each active broker shall maintain an office, which
625 shall consist of at least one enclosed room in a building of
626 stationary construction. Each active broker shall maintain a
627 sign on or about the entrance of her or his principal office and
628 each branch office, which sign may be easily observed and read
629 by any person about to enter such office ~~and shall be of such~~
630 ~~form and minimum dimensions as shall be prescribed by the~~
631 ~~commission.~~ Each sign must contain the name of the broker,
632 together with the trade name, if any. For a partnership or
633 corporation, the sign must contain the name of the firm or

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634 corporation or trade name of the firm or corporation, together
635 with the name of at least one of the brokers. At a minimum, the
636 words "licensed real estate broker" or "lic. real estate broker"
637 must appear on the office entrance signs.

638 Section 33. Section 475.23, Florida Statutes, is amended
639 to read:

640 475.23 License to expire on change of address.--A license
641 shall cease to be in force whenever a broker changes her or his
642 business address, a real estate school operating under a permit
643 issued pursuant to s. 475.451 changes its business address, or a
644 sales associate ~~salesperson~~ working for a broker or an
645 instructor working for a real estate school changes employer.
646 The licensee shall notify the commission of the change no later
647 than 10 days after the change, on a form provided by the
648 commission. When a broker or a real estate school changes
649 business address, the brokerage firm or school permitholder must
650 file with the commission a notice of the change of address,
651 along with the names of any sales associates or instructors who
652 are no longer employed by the brokerage or school. Such
653 notification shall also fulfill the change of address
654 notification requirements for sales associates who remain
655 employed by the brokerage and instructors who remain employed by
656 the school.

657 Section 34. Subsection (1) of section 475.25, Florida
658 Statutes, is amended, and subsections (5) and (6) are added to
659 said section, to read:

660 475.25 Discipline.--

661 (1) The commission may deny an application for licensure,
662 registration, or permit, or renewal thereof; may place a

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663 licensee, registrant, or permittee on probation; may suspend a
664 license, registration, or permit for a period not exceeding 10
665 years; may revoke a license, registration, or permit; may impose
666 an administrative fine not to exceed \$1,000 for each count or
667 separate offense; and may issue a reprimand, and any or all of
668 the foregoing, if it finds that the licensee, registrant,
669 permittee, or applicant:

670 (a) Has violated any provision of s. 455.227(1) or s.
671 475.42. However, licensees under this part are exempt from the
672 provisions of s. 455.227(1)(i).

673 (b) Has been guilty of fraud, misrepresentation,
674 concealment, false promises, false pretenses, dishonest dealing
675 by trick, scheme, or device, culpable negligence, or breach of
676 trust in any business transaction in this state or any other
677 state, nation, or territory; has violated a duty imposed upon
678 her or him by law or by the terms of a listing contract,
679 written, oral, express, or implied, in a real estate
680 transaction; has aided, assisted, or conspired with any other
681 person engaged in any such misconduct and in furtherance
682 thereof; or has formed an intent, design, or scheme to engage in
683 any such misconduct and committed an overt act in furtherance of
684 such intent, design, or scheme. It is immaterial to the guilt
685 of the licensee that the victim or intended victim of the
686 misconduct has sustained no damage or loss; that the damage or
687 loss has been settled and paid after discovery of the
688 misconduct; or that such victim or intended victim was a
689 customer or a person in confidential relation with the licensee
690 or was an identified member of the general public.

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

695 (d)1. Has failed to account or deliver to any person,
696 including a licensee under this chapter, at the time which has
697 been agreed upon or is required by law or, in the absence of a
698 fixed time, upon demand of the person entitled to such
699 accounting and delivery, any personal property such as money,
700 fund, deposit, check, draft, abstract of title, mortgage,
701 conveyance, lease, or other document or thing of value,
702 including a share of a real estate commission if a civil
703 judgment relating to the practice of the licensee's profession
704 has been obtained against the licensee and said judgment has not
705 been satisfied in accordance with the terms of the judgment
706 within a reasonable time, or any secret or illegal profit, or
707 any divisible share or portion thereof, which has come into the
708 licensee's hands and which is not the licensee's property or
709 which the licensee is not in law or equity entitled to retain
710 under the circumstances. However, if the licensee, in good
711 faith, entertains doubt as to what person is entitled to the
712 accounting and delivery of the escrowed property, or if
713 conflicting demands have been made upon the licensee for the
714 escrowed property, which property she or he still maintains in
715 her or his escrow or trust account, the licensee shall promptly
716 notify the commission of such doubts or conflicting demands and
717 shall promptly:

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718 a. Request that the commission issue an escrow
719 disbursement order determining who is entitled to the escrowed
720 property;

721 b. With the consent of all parties, submit the matter to
722 arbitration;

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

725 d. With the written consent of all parties, submit the
726 matter to mediation. The department may conduct mediation or
727 may contract with public or private entities for mediation
728 services. However, the mediation process must be successfully
729 completed within 90 days following the last demand or the
730 licensee shall promptly employ one of the other escape
731 procedures contained in this section. Payment for mediation will
732 be as agreed to in writing by the parties. The department may
733 adopt rules to implement this section.

734
735 If the licensee promptly employs one of the escape procedures
736 contained herein, ~~and if she or he~~ abides by the order or
737 judgment resulting therefrom, no administrative complaint may be
738 filed against the licensee for failure to account for, deliver,
739 or maintain the escrowed property. Under certain circumstances,
740 which the commission shall set forth by rule, a licensee may
741 disburse property from the licensee's escrow account without
742 notifying the commission or employing one of the procedures
743 listed in sub-subparagraphs a.-d. If the buyer of a residential
744 condominium unit delivers to a licensee written notice of the
745 buyer's intent to cancel the contract for sale and purchase, as
746 authorized by s. 718.503, or if the buyer of real property in

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747 good faith fails to satisfy the terms in the financing clause of
748 a contract for sale and purchase, the licensee may return the
749 escrowed property to the purchaser without notifying the
750 commission or initiating any of the procedures listed in sub-
751 subparagraphs a.-d.

752 2. Has failed to deposit money in an escrow account when
753 the licensee is the purchaser of real estate under a contract
754 where the contract requires the purchaser to place deposit money
755 in an escrow account to be applied to the purchase price if the
756 sale is consummated.

757 (e) Has violated any of the provisions of this chapter or
758 any lawful order or rule made or issued under the provisions of
759 this chapter or chapter 455.

760 (f) Has been convicted or found guilty of, or entered a
761 plea of nolo contendere to, regardless of adjudication, a crime
762 in any jurisdiction which directly relates to the activities of
763 a licensed broker or sales associate ~~salesperson~~, or involves
764 moral turpitude or fraudulent or dishonest dealing. The record
765 of a conviction certified or authenticated in such form as to be
766 admissible in evidence under the laws of the state shall be
767 admissible as prima facie evidence of such guilt.

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

772 (h) Has shared a commission with, or paid a fee or other
773 compensation to, a person not properly licensed as a broker,
774 broker associate ~~broker-salesperson~~, or sales associate
775 ~~salesperson~~ under the laws of this state, for the referral of

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776 real estate business, clients, prospects, or customers, or for
777 any one or more of the services set forth in s. 475.01(1)(a).
778 For the purposes of this section, it is immaterial that the
779 person to whom such payment or compensation is given made the
780 referral or performed the service from within this state or
781 elsewhere; however, a licensed broker of this state may pay a
782 referral fee or share a real estate brokerage commission with a
783 broker licensed or registered under the laws of a foreign state
784 so long as the foreign broker does not violate any law of this
785 state.

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

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

797 (k) Has failed, if a broker, to immediately place, upon
798 receipt, any money, fund, deposit, check, or draft entrusted to
799 her or him by any person dealing with her or him as a broker in
800 escrow with a title company, banking institution, credit union,
801 or savings and loan association located and doing business in
802 this state, or to deposit such funds in a trust or escrow
803 account maintained by her or him with some bank, credit union,
804 or savings and loan association located and doing business in

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805 this state, wherein the funds shall be kept until disbursement
806 thereof is properly authorized; or has failed, if a sales
807 associate salesperson, to immediately place with her or his
808 registered employer any money, fund, deposit, check, or draft
809 entrusted to her or him by any person dealing with her or him as
810 agent of the registered employer. The commission shall establish
811 rules to provide for records to be maintained by the broker and
812 the manner in which such deposits shall be made. A broker may
813 place and maintain up to \$5,000 of personal or brokerage funds
814 in the broker's property management escrow account and up to
815 \$1,000 of personal or brokerage funds in the broker's sales
816 escrow account. A broker shall be provided a reasonable amount
817 of time to correct escrow errors if there is no shortage of
818 funds and such errors pose no significant threat to economically
819 harm the public. It is the intent of the Legislature that, in
820 the event of legal proceedings concerning a broker's escrow
821 account, the disbursement of escrowed funds not be delayed due
822 to any dispute over the personal or brokerage funds that may be
823 present in the escrow account.

824 (l) Has made or filed a report or record which the
825 licensee knows to be false, has willfully failed to file a
826 report or record required by state or federal law, has willfully
827 impeded or obstructed such filing, or has induced another person
828 to impede or obstruct such filing; but such reports or records
829 shall include only those which are signed in the capacity of a
830 licensed broker or sales associate salesperson.

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

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833 (n) Is confined in any county jail, postadjudication; is
834 confined in any state or federal prison or mental institution;
835 is under home confinement ordered in lieu of institutional
836 confinement; or, through mental disease or deterioration, can no
837 longer safely be entrusted to competently deal with the public.

838 (o) Has been found guilty, for a second time, of any
839 misconduct that warrants her or his suspension or has been found
840 guilty of a course of conduct or practices which show that she
841 or he is so incompetent, negligent, dishonest, or untruthful
842 that the money, property, transactions, and rights of investors,
843 or those with whom she or he may sustain a confidential
844 relation, may not safely be entrusted to her or him.

845 (p) Has failed to inform the commission in writing within
846 30 days after pleading guilty or nolo contendere to, or being
847 convicted or found guilty of, any felony.

848 (q) Has violated any provision of s. 475.2755 or s.
849 475.278, including the duties owed under those sections.

850 (r) Has failed in any written listing agreement to include
851 a definite expiration date, description of the property, price
852 and terms, fee or commission, and a proper signature of the
853 principal(s); and has failed to give the principal(s) a legible,
854 signed, true and correct copy of the listing agreement within 24
855 hours of obtaining the written listing agreement. The written
856 listing agreement shall contain no provision requiring the
857 person signing the listing to notify the broker of the intention
858 to cancel the listing after such definite expiration date.

859 (s) Has had a registration suspended, revoked, or
860 otherwise acted against in any jurisdiction. The record of the
861 disciplinary action certified or authenticated in such form as

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862 to be admissible in evidence under the laws of the state shall
863 be admissible as prima facie evidence of such disciplinary
864 action.

865 (t) Has violated any standard for the development or
866 communication of a real estate appraisal or other provision of
867 the Uniform Standards of Professional Appraisal Practice, as
868 defined in s. 475.611, as approved and adopted by the Appraisal
869 Standards Board of the Appraisal Foundation, as defined in s.
870 475.611. This paragraph does not apply to a real estate broker
871 or sales associate ~~salesperson~~ who, in the ordinary course of
872 business, performs a comparative market analysis, gives a broker
873 price opinion, or gives an opinion of value of real estate.
874 However, in no event may this comparative market analysis,
875 broker price opinion, or opinion of value of real estate be
876 referred to as an appraisal, as defined in s. 475.611.

877 (5) An administrative complaint against a broker or broker
878 associate must be filed within 5 years after the time of the act
879 giving rise to the complaint or within 5 years after the time
880 the act is discovered or should have been discovered with the
881 exercise of due diligence.

882 (6) The commission shall promptly report to the proper
883 prosecuting authority any criminal violation of any statute
884 relating to the practice of a real estate profession regulated
885 by the commission.

886 Section 35. Section 475.2755, Florida Statutes, is amended
887 to read:

888 475.2755 Designated sales associate ~~salesperson~~.--

889 (1) For purposes of this part, in any real estate
890 transaction other than a residential sale as defined in s.

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891 475.278(5)(a), and where the buyer and seller have assets of \$1
892 million or more, the broker at the request of the customers may
893 designate sales associates ~~salespersons~~ to act as single agents
894 for different customers in the same transaction. Such designated
895 sales associates ~~salespersons~~ shall have the duties of a single
896 agent as outlined in s. 475.278(3), including disclosure
897 requirements in s. 475.278(3)(b) and (c). In addition to
898 disclosure requirements in s. 475.278(3)(b) and (c), the buyer
899 and seller as customers shall both sign disclosures stating that
900 their assets meet the threshold described in this subsection and
901 requesting that the broker use the designated sales associate
902 ~~salesperson~~ form of representation. In lieu of the transition
903 disclosure requirement in s. 475.278(3)(c)2., the required
904 disclosure notice shall include the following:

905
906 FLORIDA LAW PROHIBITS A DESIGNATED SALES ASSOCIATE ~~SALESPERSON~~
907 FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY
908 THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE
909 INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALES ASSOCIATE
910 ~~SALESPERSON~~ IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A
911 DESIGNATED SALES ASSOCIATE ~~SALESPERSON~~ TO DISCLOSE INFORMATION
912 ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND
913 ALSO ALLOWS A DESIGNATED SALES ASSOCIATE ~~SALESPERSON~~ TO DISCLOSE
914 TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE BROKER,
915 CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE OF
916 SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER IN
917 REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER
918 MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH
919 INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.

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

Section 36. Section 475.278, Florida Statutes, is amended to read:

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

(1) BROKERAGE RELATIONSHIPS.--

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

(b) Presumption of transaction brokerage.--It shall be presumed that all licensees are operating as transaction brokers

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948 unless a single agent or no brokerage relationship is
949 established, in writing, with a customer.

950 (2) TRANSACTION BROKER RELATIONSHIP.--

951 (a) Transaction broker-duties of limited representation.--

952 A transaction broker provides a limited form of representation
953 to a buyer, a seller, or both in a real estate transaction but
954 does not represent either in a fiduciary capacity or as a single
955 agent. The duties of the real estate licensee in this limited
956 form of representation include the following:

957 1. Dealing honestly and fairly;

958 2. Accounting for all funds;

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

960 4. Disclosing all known facts that materially affect the
961 value of residential real property and are not readily

962 observable to the buyer;

963 5. Presenting all offers and counteroffers in a timely
964 manner, unless a party has previously directed the licensee
965 otherwise in writing;

966 6. Limited confidentiality, unless waived in writing by a
967 party. This limited confidentiality will prevent disclosure that
968 the seller will accept a price less than the asking or listed
969 price, that the buyer will pay a price greater than the price
970 submitted in a written offer, of the motivation of any party for
971 selling or buying property, that a seller or buyer will agree to
972 financing terms other than those offered, or of any other
973 information requested by a party to remain confidential; and

974 7. Any additional duties that are mutually agreed to with
975 a party.

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976 (b) Disclosure requirements.--Duties of a transaction
977 broker must be fully described and disclosed in writing to a
978 buyer or seller either as a separate and distinct disclosure
979 document or included as part of another document such as a
980 listing agreement or agreement for representation. The
981 disclosure must be made before, or at the time of, entering into
982 a listing agreement or an agreement for representation or before
983 the showing of property, whichever occurs first. When
984 incorporated into other documents, the required notice must be
985 of the same size type, or larger, as other provisions of the
986 document and must be conspicuous in its placement so as to
987 advise customers of the duties of limited representation, except
988 that the first sentence of the information identified in
989 paragraph (c) must be printed in uppercase and bold type. This
990 paragraph expires July 1, 2008.

991 (c) Contents of disclosure.--The required notice given
992 under paragraph (b) must include the following information in
993 the following form:

994

995 IMPORTANT NOTICE

996

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

999

1000 You should not assume that any real estate broker or sales
1001 associate ~~salesperson~~ represents you unless you agree to engage
1002 a real estate licensee in an authorized brokerage relationship,
1003 either as a single agent or as a transaction broker. You are

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1004 advised not to disclose any information you want to be held in
1005 confidence until you make a decision on representation.

1006
1007 TRANSACTION BROKER NOTICE

1008
1009 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
1010 TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE
1011 AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

1012
1013 As a transaction broker, _____ (insert name of
1014 Real Estate Firm and its Associates), provides to you a limited
1015 form of representation that includes the following duties:

1016 1. Dealing honestly and fairly;
1017 2. Accounting for all funds;
1018 3. Using skill, care, and diligence in the transaction;
1019 4. Disclosing all known facts that materially affect the
1020 value of residential real property and are not readily
1021 observable to the buyer;

1022 5. Presenting all offers and counteroffers in a timely
1023 manner, unless a party has previously directed the licensee
1024 otherwise in writing;

1025 6. Limited confidentiality, unless waived in writing by a
1026 party. This limited confidentiality will prevent disclosure that
1027 the seller will accept a price less than the asking or listed
1028 price, that the buyer will pay a price greater than the price
1029 submitted in a written offer, of the motivation of any party for
1030 selling or buying property, that a seller or buyer will agree to
1031 financing terms other than those offered, or of any other
1032 information requested by a party to remain confidential; and

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1033 7. Any additional duties that are entered into by this or
1034 by separate written agreement.

1035
1036 Limited representation means that a buyer or seller is not
1037 responsible for the acts of the licensee. Additionally, parties
1038 are giving up their rights to the undivided loyalty of the
1039 licensee. This aspect of limited representation allows a
1040 licensee to facilitate a real estate transaction by assisting
1041 both the buyer and the seller, but a licensee will not work to
1042 represent one party to the detriment of the other party when
1043 acting as a transaction broker to both parties.

Date Signature

1044

Signature

1045
1046 This paragraph expires July 1, 2008.

- 1047 (3) SINGLE AGENT RELATIONSHIP.--
1048 (a) Single agent-duties.--The duties of a real estate
1049 licensee owed to a buyer or seller who engages the real estate
1050 licensee as a single agent include the following:
1051 1. Dealing honestly and fairly;
1052 2. Loyalty;
1053 3. Confidentiality;
1054 4. Obedience;
1055 5. Full disclosure;
1056 6. Accounting for all funds;
1057 7. Skill, care, and diligence in the transaction;

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1058 8. Presenting all offers and counteroffers in a timely
1059 manner, unless a party has previously directed the licensee
1060 otherwise in writing; and

1061 9. Disclosing all known facts that materially affect the
1062 value of residential real property and are not readily
1063 observable.

1064 (b) Disclosure requirements.--

1065 1. Single agent disclosure.--Duties of a single agent must
1066 be fully described and disclosed in writing to a buyer or seller
1067 either as a separate and distinct disclosure document or
1068 included as part of another document such as a listing agreement
1069 or other agreement for representation. The disclosure must be
1070 made before, or at the time of, entering into a listing
1071 agreement or an agreement for representation or before the
1072 showing of property, whichever occurs first. When incorporated
1073 into other documents, the required notice must be of the same
1074 size type, or larger, as other provisions of the document and
1075 must be conspicuous in its placement so as to advise customers
1076 of the duties of a single agent, except that the first sentence
1077 of the information identified in paragraph (c) must be printed
1078 in uppercase and bold type.

1079 2. Transition to transaction broker disclosure.--A single
1080 agent relationship may be changed to a transaction broker
1081 relationship at any time during the relationship between an
1082 agent and principal, provided the agent first obtains the
1083 principal's written consent to the ~~gives the disclosure required~~
1084 ~~under paragraph (2)(b) and the principal gives to the agent~~
1085 ~~consent as required under subparagraph (c)2. before a change in~~
1086 relationship. This disclosure must be in writing to the

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1087 principal either as a separate and distinct document or included
1088 as part of other documents such as a listing agreement or other
1089 agreements for representation. When incorporated into other
1090 documents, the required notice must be of the same size type, or
1091 larger, as other provisions of the document and must be
1092 conspicuous in its placement so as to advise customers of the
1093 duties of limited representation, except that the first sentence
1094 of the information identified in subparagraph (c)2. must be
1095 printed in uppercase and bold type.

1096 (c) Contents of disclosure.--

1097 1. Single agent duties disclosure.--The notice required
1098 under subparagraph (b)1. must include the following information
1099 in the following form:

1100

1101

IMPORTANT NOTICE

1102

1103 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS
1104 NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

1105

1106 You should not assume that any real estate broker or sales
1107 associate ~~salesperson~~ represents you unless you agree to engage
1108 a real estate licensee in an authorized brokerage relationship,
1109 either as a single agent or as a transaction broker. You are
1110 advised not to disclose any information you want to be held in
1111 confidence until you make a decision on representation.

1112

1113

SINGLE AGENT NOTICE

1114

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1115 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
1116 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

1117
1118 As a single agent, _____ (insert name of
1119 Real Estate Entity and its Associates) owe to you the following
1120 duties:

- 1121 1. Dealing honestly and fairly;
- 1122 2. Loyalty;
- 1123 3. Confidentiality;
- 1124 4. Obedience;
- 1125 5. Full disclosure;
- 1126 6. Accounting for all funds;
- 1127 7. Skill, care, and diligence in the transaction;
- 1128 8. Presenting all offers and counteroffers in a timely
1129 manner, unless a party has previously directed the licensee
1130 otherwise in writing; and
- 1131 9. Disclosing all known facts that materially affect the
1132 value of residential real property and are not readily
1133 observable.

Date Signature

1134

1135 2. Transition disclosure.--To gain the principal's written
1136 consent to a change in relationship, a licensee must use the
1137 following disclosure ~~The notice required under subparagraph~~
1138 ~~(b)2. must include the following information in the following~~
1139 ~~form as well as the information required in paragraph (2)(c):~~

1141 CONSENT TO TRANSITION TO TRANSACTION BROKER

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1142
1143 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
1144 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
1145 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
1146 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
1147 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
1148 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
1149 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

1150

1151 As a transaction broker, _____ (insert name of
1152 Real Estate Entity and its Associates), provides to you a
1153 limited form of representation that includes the following
1154 duties:

1155 1. Dealing honestly and fairly;
1156 2. Accounting for all funds;
1157 3. Using skill, care, and diligence in the transaction;
1158 4. Disclosing all known facts that materially affect the
1159 value of residential real property and are not readily
1160 observable to the buyer;

1161 5. Presenting all offers and counteroffers in a timely
1162 manner, unless a party has previously directed the licensee
1163 otherwise in writing;

1164 6. Limited confidentiality, unless waived in writing by a
1165 party. This limited confidentiality will prevent disclosure that
1166 the seller will accept a price less than the asking or listed
1167 price, that the buyer will pay a price greater than the price
1168 submitted in a written offer, of the motivation of any party for
1169 selling or buying property, that a seller or buyer will agree to

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1170 financing terms other than those offered, or of any other
1171 information requested by a party to remain confidential; and
1172 7. Any additional duties that are entered into by this or
1173 by separate written agreement.

1174

1175 Limited representation means that a buyer or seller is not
1176 responsible for the acts of the licensee. Additionally, parties
1177 are giving up their rights to the undivided loyalty of the
1178 licensee. This aspect of limited representation allows a
1179 licensee to facilitate a real estate transaction by assisting
1180 both the buyer and the seller, but a licensee shall not work to
1181 represent one party to the detriment of the other party when
1182 acting as a transaction broker to both parties.

1183

1184 _____I agree that my agent may assume the role and duties
1185 of a transaction broker. [must be initialed or signed]

1186

1187 (4) NO BROKERAGE RELATIONSHIP.--

1188 (a) No brokerage relationship-duties.--A real estate
1189 licensee owes to a potential seller or buyer with whom the
1190 licensee has no brokerage relationship the following duties:

1191 1. Dealing honestly and fairly;
1192 2. Disclosing all known facts that materially affect the
1193 value of the residential real property which are not readily
1194 observable to the buyer; and

1195 3. Accounting for all funds entrusted to the licensee.

1196 (b) Disclosure requirements.--Duties of a licensee who has
1197 no brokerage relationship with a buyer or seller must be fully
1198 described and disclosed in writing to the buyer or seller. The

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1199 disclosure must be made before the showing of property. When
1200 incorporated into other documents, the required notice must be
1201 of the same size type, or larger, as other provisions of the
1202 document and must be conspicuous in its placement so as to
1203 advise customers of the duties of a licensee that has no
1204 brokerage relationship with a buyer or seller, except that the
1205 first sentence of the information identified in paragraph (c)
1206 must be printed in uppercase bold type.

1207 (c) Contents of disclosure.--The notice required under
1208 paragraph (b) must include the following information in the
1209 following form:

1210

1211 IMPORTANT NOTICE

1212

1213 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS
1214 NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

1215

1216 You should not assume that any real estate broker or sales
1217 associate ~~salesperson~~ represents you unless you agree to engage
1218 a real estate licensee in an authorized brokerage relationship,
1219 either as a single agent or as a transaction broker. You are
1220 advised not to disclose any information you want to be held in
1221 confidence until you decide on representation.

1222

1223 NO BROKERAGE RELATIONSHIP NOTICE

1224

1225 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
1226 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE
1227 THEIR DUTIES TO SELLERS AND BUYERS.

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1256

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

1. Dealing honestly and fairly;
2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer.
3. Accounting for all funds entrusted to the licensee.

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

(5) APPLICABILITY.--

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

(b) Disclosure limitations.--

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

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1257 identification badges worn by the owner's employee or single
1258 agent.

1259 2. The real estate licensee disclosure requirements of
1260 this section do not apply to: nonresidential transactions; the
1261 rental or leasing of real property, unless an option to purchase
1262 all or a portion of the property improved with four or fewer
1263 residential units is given; a bona fide "open house" or model
1264 home showing that does not involve eliciting confidential
1265 information, the execution of a contractual offer or an
1266 agreement for representation, or negotiations concerning price,
1267 terms, or conditions of a potential sale; unanticipated casual
1268 conversations between a licensee and a seller or buyer which do
1269 not involve eliciting confidential information, the execution of
1270 a contractual offer or agreement for representation, or
1271 negotiations concerning price, terms, or conditions of a
1272 potential sale; responding to general factual questions from a
1273 potential buyer or seller concerning properties that have been
1274 advertised for sale; situations in which a licensee's
1275 communications with a potential buyer or seller are limited to
1276 providing general factual information, oral or written, about
1277 the qualifications, background, and services of the licensee or
1278 the licensee's brokerage firm; auctions; appraisals; and
1279 dispositions of any interest in business enterprises or business
1280 opportunities, except for property with four or fewer
1281 residential units.

1282 Section 37. Subsection (1) of section 475.31, Florida
1283 Statutes, is amended to read:

1284 475.31 Final orders.--

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1285 (1) An order revoking or suspending the license of a
1286 broker shall automatically cause ~~cancel~~ the licenses of all
1287 sales associates and broker associates ~~salespersons~~ registered
1288 with the broker, and, if a partnership or corporation, of all
1289 members, officers, and directors thereof to become involuntarily
1290 inactive, while the license of the broker is inoperative or
1291 until new employment or connection is secured.

1292 Section 38. Section 475.37, Florida Statutes, is amended
1293 to read:

1294 475.37 Effect of reversal of order of court or
1295 commission.--If the order of the court or commission denying a
1296 license or taking any disciplinary action against a licensee is
1297 finally reversed and set aside, the defendant shall be restored
1298 to her or his rights and privileges as a broker or sales
1299 associate ~~salesperson~~ as of the date of filing the mandate or a
1300 copy thereof with the commission. The matters and things alleged
1301 in the information shall not thereafter be reexamined in any
1302 other proceeding concerning the licensure of the defendant. If
1303 the inquiry concerned was in reference to an application for
1304 licensure, the application shall stand approved, and such
1305 application shall be remanded for further proceedings according
1306 to law.

1307 Section 39. Section 475.41, Florida Statutes, is amended
1308 to read:

1309 475.41 Contracts of unlicensed person for commissions
1310 invalid.--No contract for a commission or compensation for any
1311 act or service enumerated in s. 475.01(3) is valid unless the
1312 broker or sales associate ~~salesperson~~ has complied with this

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1313 chapter in regard to issuance and renewal of the license at the
1314 time the act or service was performed.

1315 Section 40. Subsection (1) of section 475.42, Florida
1316 Statutes, is amended to read:

1317 475.42 Violations and penalties.--

1318 (1) VIOLATIONS.--

1319 (a) A ~~No~~ person may not shall operate as a broker or sales
1320 associate salesperson without being the holder of a valid and
1321 current active license therefor. Any person who violates this
1322 paragraph commits a felony of the third degree, punishable as
1323 provided in s. 775.082 or s. 775.083, or, if a corporation, as
1324 provided in s. 775.083.

1325 (b) A ~~No~~ person licensed as a sales associate may not
1326 salesperson shall operate as a broker or operate as a sales
1327 associate salesperson for any person not registered as her or
1328 his employer.

1329 (c) A ~~No~~ broker may not shall employ, or continue in
1330 employment, any person as a sales associate salesperson who is
1331 not the holder of a valid and current license as sales associate
1332 salesperson; but a license as sales associate salesperson may be
1333 issued to a person licensed as an active broker, upon request
1334 and surrender of the license as broker, without a fee in
1335 addition to that paid for the issuance of the broker's active
1336 license.

1337 (d) A sales associate may not ~~No salesperson shall~~ collect
1338 any money in connection with any real estate brokerage
1339 transaction, whether as a commission, deposit, payment, rental,
1340 or otherwise, except in the name of the employer and with the
1341 express consent of the employer; and no real estate sales

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1342 associate salesperson, whether the holder of a valid and current
1343 license or not, shall commence or maintain any action for a
1344 commission or compensation in connection with a real estate
1345 brokerage transaction against any person except a person
1346 registered as her or his employer at the time the sales
1347 associate salesperson performed the act or rendered the service
1348 for which the commission or compensation is due.

1349 (e) A ~~No~~ person may not ~~shall~~ violate any lawful order or
1350 rule of the commission which is binding upon her or him.

1351 (f) A ~~No~~ person may not ~~shall~~ commit any conduct or
1352 practice set forth in s. 475.25(1)(b), (c), (d), or (h).

1353 (g) A ~~No~~ person may not ~~shall~~ make any false affidavit or
1354 affirmation intended for use as evidence by or before the
1355 commission or a member thereof, or by any of its authorized
1356 representatives, nor may ~~shall~~ any person give false testimony
1357 under oath or affirmation to or before the commission or any
1358 member thereof in any proceeding authorized by this chapter.

1359 (h) A ~~No~~ person may not ~~shall~~ fail or refuse to appear at
1360 the time and place designated in a subpoena issued with respect
1361 to a violation of this chapter, unless because of facts that are
1362 sufficient to excuse appearance in response to a subpoena from
1363 the circuit court; nor may ~~shall~~ a person who is present before
1364 the commission or a member thereof or one of its authorized
1365 representatives acting under authority of this chapter refuse to
1366 be sworn or to affirm or fail or refuse to answer fully any
1367 question propounded by the commission, the member, or such
1368 representative, or by any person by the authority of such
1369 officer or appointee; nor may ~~shall~~ any person, so being

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1370 present, conduct herself or himself in a disorderly,
1371 disrespectful, or contumacious manner.

1372 (i) A ~~No~~ person may not ~~shall~~ obstruct or hinder in any
1373 manner the enforcement of this chapter or the performance of any
1374 lawful duty by any person acting under the authority of this
1375 chapter or interfere with, intimidate, or offer any bribe to any
1376 member of the commission or any of its employees or any person
1377 who is, or is expected to be, a witness in any investigation or
1378 proceeding relating to a violation of this chapter.

1379 (j) A ~~No~~ broker or sales associate may not ~~salesperson~~
1380 ~~shall~~ place, or cause to be placed, upon the public records of
1381 any county, any contract, assignment, deed, will, mortgage,
1382 affidavit, or other writing which purports to affect the title
1383 of, or encumber, any real property if the same is known to her
1384 or him to be false, void, or not authorized to be placed of
1385 record, or not executed in the form entitling it to be recorded,
1386 or the execution or recording whereof has not been authorized by
1387 the owner of the property, maliciously or for the purpose of
1388 collecting a commission, or to coerce the payment of money to
1389 the broker or sales associate ~~salesperson~~ or other person, or
1390 for any unlawful purpose. However, nothing in this paragraph
1391 shall be construed to prohibit a broker or a sales associate
1392 ~~salesperson~~ from recording a judgment rendered by a court of
1393 this state or to prohibit a broker from placing a lien on a
1394 property where expressly permitted by contractual agreement.

1395 (k) A ~~No~~ person may not ~~shall~~ operate as a broker under a
1396 trade name without causing the trade name to be noted in the
1397 records of the commission and placed on the person's license, or
1398 so operate as a member of a partnership or as a corporation or

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1399 as an officer or manager thereof, unless such partnership or
1400 corporation is the holder of a valid current registration.

1401 (l) A ~~No~~ person may not ~~shall~~ knowingly conceal any
1402 information relating to violations of this chapter.

1403 (m) A ~~No~~ person may not ~~shall~~ undertake to list or sell
1404 one or more timeshare periods per year in one or more timeshare
1405 plans on behalf of any number of persons without first being the
1406 holder of a valid and current license as a broker or sales
1407 associate ~~salesperson~~ pursuant to this chapter, except as
1408 provided in s. 475.011 and chapter 721.

1409 (n) A ~~No~~ broker or sales associate may not ~~salesperson~~
1410 ~~shall~~ enter into any listing or other agreement regarding her or
1411 his services in connection with the resale of a timeshare period
1412 unless the broker or sales associate ~~salesperson~~ fully and
1413 fairly discloses all material aspects of the agreement to the
1414 owner of the timeshare period and fully complies with the
1415 provisions of s. 475.452. Further, a ~~no~~ broker or sales
1416 associate may not use ~~salesperson shall utilize~~ any form of
1417 contract or purchase and sale agreement in connection with the
1418 resale of a timeshare period unless the contract or purchase and
1419 sale agreement fully and fairly discloses all material aspects
1420 of the timeshare plan and the rights and obligations of both
1421 buyer and seller. The commission is authorized to adopt
1422 ~~promulgate~~ rules pursuant to chapter 120 as necessary to
1423 implement, enforce, and interpret this paragraph.

1424 (o) A person may not disseminate or cause to be
1425 disseminated by any means any false or misleading information
1426 for the purpose of offering for sale, or for the purpose of
1427 causing or inducing any other person to purchase, lease, or

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1428 rent, real estate located in the state or for the purpose of
1429 causing or inducing any other person to acquire an interest in
1430 the title to real estate located in the state.

1431 Section 41. Section 475.43, Florida Statutes, is amended
1432 to read:

1433 475.43 Presumptions.--In all criminal cases, contempt
1434 cases, and other cases filed pursuant to this chapter, if a
1435 party has sold, leased, or let real estate, the title to which
1436 was not in the party when it was offered for sale, lease, or
1437 letting, or such party has maintained an office bearing signs
1438 that real estate is for sale, lease, or rental thereat, or has
1439 advertised real estate for sale, lease, or rental, generally, or
1440 describing property, the title to which was not in such party at
1441 the time, it shall be a presumption that such party was acting
1442 or attempting to act as a real estate broker, and the burden of
1443 proof shall be upon him or her to show that he or she was not
1444 acting or attempting to act as a broker or sales associate
1445 ~~salesperson~~. All contracts, options, or other devices not based
1446 upon a substantial consideration, or that are otherwise employed
1447 to permit an unlicensed person to sell, lease, or let real
1448 estate, the beneficial title to which has not, in good faith,
1449 passed to such party for a substantial consideration, are hereby
1450 declared void and ineffective in all cases, suits, or
1451 proceedings had or taken under this chapter; however, this
1452 section shall not apply to irrevocable gifts, to unconditional
1453 contracts to purchase, or to options based upon a substantial
1454 consideration actually paid and not subject to any agreements to
1455 return or right of return reserved.

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1456 Section 42. Section 475.451, Florida Statutes, is amended
1457 to read:

1458 475.451 Schools teaching real estate practice.--

1459 (1) Each person, school, or institution, except approved
1460 and accredited colleges, universities, community colleges, and
1461 area technical centers in this state, which offers or conducts
1462 any course of study in real estate practice, teaches any course
1463 prescribed by the commission as a condition precedent to
1464 licensure or renewal of licensure as a broker or sales associate
1465 ~~salesperson~~, or teaches any course designed or represented to
1466 enable or assist applicants for licensure as brokers or sales
1467 associates ~~salespersons~~ to pass examinations for such licensure
1468 shall, before commencing or continuing further to offer or
1469 conduct such course or courses, obtain a permit from the
1470 department and abide by the regulations imposed upon such
1471 person, school, or institution by this chapter and rules of the
1472 commission adopted pursuant to this chapter. The exemption for
1473 colleges, universities, community colleges, and area technical
1474 centers is limited to transferable college credit courses
1475 offered by such institutions.

1476 (2) An applicant for a permit to operate a proprietary
1477 real estate school, to be a chief administrator of a proprietary
1478 real estate school or a state institution, or to be an
1479 instructor for a proprietary real estate school or a state
1480 institution must meet the qualifications for practice set forth
1481 in s. 475.17(1) and the following minimal requirements:

1482 (a) "School permitholder" means the individual who is
1483 responsible for directing the overall operation of a proprietary
1484 real estate school. A school permitholder must be the holder of

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1485 a license as a broker, either active or voluntarily inactive, or
1486 must have passed an instructor's examination approved by the
1487 commission. A school permitholder must also meet the
1488 requirements of a school instructor if actively engaged in
1489 teaching.

1490 (b) "Chief administrative person" means the individual who
1491 is responsible for the administration of the overall policies
1492 and practices of the institution or proprietary real estate
1493 school. A chief administrative person must also meet the
1494 requirements of a school instructor if actively engaged in
1495 teaching.

1496 (c) "School instructor" means an individual who instructs
1497 persons in the classroom in noncredit college courses in a
1498 college, university, or community college or courses in an area
1499 technical center or proprietary real estate school.

1500 1. Before commencing to provide such instruction, the
1501 applicant must certify the applicant's competency and obtain an
1502 instructor permit by meeting one of the following requirements:

1503 a. Hold a bachelor's degree in a business-related subject,
1504 such as real estate, finance, accounting, business
1505 administration, or its equivalent and hold a valid broker's
1506 license in this state.

1507 b. Hold a bachelor's degree, have extensive real estate
1508 experience, as defined by rule, and hold a valid broker's
1509 license in this state.

1510 c. Pass an instructor's examination approved by the
1511 commission.

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1512 2. Any requirement by the commission for a teaching
1513 demonstration or practical examination must apply to all school
1514 instructor applicants.

1515 3. The department shall renew an instructor permit upon
1516 receipt of a renewal application and fee. The renewal
1517 application shall include proof that the permitholder has, since
1518 the issuance or renewal of the current permit, successfully
1519 completed a minimum of 7 ~~15~~ classroom hours of instruction in
1520 real estate subjects or instructional techniques, as prescribed
1521 by the commission. The commission shall adopt rules providing
1522 for the renewal of instructor permits at least every 2 years.
1523 Any permit which is not renewed at the end of the permit period
1524 established by the department shall automatically revert to
1525 involuntarily inactive status.

1526
1527 The department may require an applicant to submit names of
1528 persons having knowledge concerning the applicant and the
1529 enterprise; may propound interrogatories to such persons and to
1530 the applicant concerning the character of the applicant,
1531 including the taking of fingerprints for processing through the
1532 Federal Bureau of Investigation; and shall make such
1533 investigation of the applicant or the school or institution as
1534 it may deem necessary to the granting of the permit. If an
1535 objection is filed, it shall be considered in the same manner as
1536 objections or administrative complaints against other applicants
1537 for licensure by the department.

1538 (3) It is unlawful for any person, school, or institution
1539 to offer the courses described in subsection (1) or to conduct
1540 classes in such courses, regardless of the number of pupils,

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1541 whether by correspondence or otherwise, without first procuring
1542 a permit, or to guarantee that its pupils will pass any
1543 examinations required for licensure, or to represent that the
1544 issuance of a permit is any recommendation or endorsement of the
1545 person, school, or institution to which it is issued or of any
1546 course of instruction given thereunder.

1547 (4) Any person who violates this section commits a
1548 misdemeanor of the second degree, punishable as provided in s.
1549 775.082 or s. 775.083.

1550 (5) The location of classes and frequency of class
1551 meetings and the provision of distance learning courses shall be
1552 in the discretion of the school offering real estate courses, so
1553 long as such courses conform to s. 475.17(2).

1554 (6) Any course prescribed by the commission as a condition
1555 precedent to any person's becoming initially licensed as a sales
1556 associate ~~salesperson~~ may be taught in any real estate school
1557 through the use of a video tape of instruction by a currently
1558 permitted instructor from any such school or may be taught by
1559 distance learning pursuant to s. 475.17(2). The commission may
1560 require that any such video tape course have a single session of
1561 live instruction by a currently permitted instructor from any
1562 such school; however, this requirement shall not exceed 3
1563 classroom hours. All other prescribed courses, except the
1564 continuing education course required by s. 475.182, shall be
1565 taught by a currently permitted school instructor personally in
1566 attendance at such course or by distance learning pursuant to s.
1567 475.17. The continuing education course required by s. 475.182
1568 may be taught by distance learning pursuant to s. 475.17 or by
1569 an equivalent correspondence course; however, any such

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1570 correspondence course shall be required to have a final
1571 examination, prepared and administered by the school issuing the
1572 correspondence course. The continuing education requirements
1573 provided in this section or provided in any other section in
1574 this chapter do not apply with respect to any attorney who is
1575 otherwise qualified under the provisions of this chapter.

1576 ~~(7) Any person holding a school instructor permit on~~
1577 ~~October 1, 1983, is exempt from the instructor examination~~
1578 ~~requirements of paragraph (2)(c) as long as the person~~
1579 ~~continuously holds such a permit and complies with all other~~
1580 ~~requirements of this chapter.~~

1581 (7)(8) A permitholder under this section may be issued
1582 additional permits whenever it is clearly shown that the
1583 requested additional permits are necessary to the conduct of the
1584 business of a real estate school and that the additional permits
1585 will not be used in a manner likely to be prejudicial to any
1586 person, including a licensee or a permitholder under this
1587 chapter.

1588 Section 43. Subsections (4) and (5) of section 475.4511,
1589 Florida Statutes, are repealed.

1590 Section 44. Section 475.453, Florida Statutes, is amended
1591 to read:

1592 475.453 Rental information; contract or receipt; refund;
1593 penalty.--

1594 (1) Each broker or sales associate ~~salesperson~~ who
1595 attempts to negotiate a rental, or who furnishes rental
1596 information to a prospective tenant, for a fee paid by the
1597 prospective tenant shall provide such prospective tenant with a
1598 contract or receipt, which contract or receipt contains a

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1599 provision for the repayment of any amount over 25 percent of the
1600 fee to the prospective tenant if the prospective tenant does not
1601 obtain a rental. If the rental information provided by the
1602 broker or sales associate ~~salesperson~~ to a prospective tenant is
1603 not current or accurate in any material respect, the full fee
1604 shall be repaid to the prospective tenant upon demand. A demand
1605 from the prospective tenant for the return of the fee, or any
1606 part thereof, shall be made within 30 days following the day on
1607 which the real estate broker or sales associate ~~salesperson~~ has
1608 contracted to perform services to the prospective tenant. The
1609 contract or receipt shall also conform to the guidelines adopted
1610 by the commission in order to effect disclosure of material
1611 information regarding the service to be provided to the
1612 prospective tenant.

1613 (2) The commission may adopt a guideline for the form of
1614 the contract or receipt required to be provided by brokers or
1615 sales associates ~~salespersons~~ pursuant to the provisions of
1616 subsection (1).

1617 (3)(a) Any person who violates any provision of subsection
1618 (1) is guilty of a misdemeanor of the first degree, punishable
1619 as provided in s. 775.082 or s. 775.083.

1620 (b) In addition to the penalty prescribed in paragraph
1621 (a), the license of any broker or sales associate ~~salesperson~~
1622 who participates in any rental information transaction which is
1623 in violation of the provisions of subsection (1) shall be
1624 subject to suspension or revocation by the commission in the
1625 manner prescribed by law.

1626 Section 45. Section 475.455, Florida Statutes, is amended
1627 to read:

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1628 475.455 Exchange of disciplinary information.--The
1629 commission shall inform the Division of Florida Land Sales,
1630 Condominiums, and Mobile Homes of the Department of Business and
1631 Professional Regulation of any disciplinary action the
1632 commission has taken against any of its licensees. The division
1633 shall inform the commission of any disciplinary action the
1634 division has taken against any broker or sales associate
1635 ~~salesperson~~ registered with the division.

1636 Section 46. Section 475.482, Florida Statutes, is amended
1637 to read:

1638 475.482 Real Estate Recovery Fund.--There is created the
1639 Florida Real Estate Recovery Fund as a separate account in the
1640 Professional Regulation Trust Fund.

1641 (1) The Florida Real Estate Recovery Fund shall be
1642 disbursed as provided in s. 475.484, on order of the commission,
1643 as reimbursement to any person, partnership, or corporation
1644 adjudged by a court of competent civil jurisdiction in this
1645 state to have suffered monetary damages by reason of any act
1646 committed, as a part of any real estate brokerage transaction
1647 involving real property in this state, by any broker or sales
1648 associate ~~salesperson~~ who:

1649 (a) Was, at the time the alleged act was committed, the
1650 holder of a current, valid, active real estate license issued
1651 under this part;

1652 (b) Was neither the seller, buyer, landlord, or tenant in
1653 the transaction nor an officer or a director of a corporation, a
1654 member of a partnership, a member of a limited liability
1655 company, or a partner of a limited liability partnership which

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1656 was the seller, buyer, landlord, or tenant in the transaction;
1657 and

1658 (c) Was acting solely in the capacity of a real estate
1659 licensee in the transaction;

1660

1661 provided the act was a violation proscribed in s. 475.25 or s.
1662 475.42.

1663 (2) The Real Estate Recovery Fund shall also be disbursed
1664 as provided in s. 475.484, on order of the commission, as
1665 reimbursement to any broker or sales associate ~~salesperson~~ who
1666 is required by a court of competent civil jurisdiction to pay
1667 monetary damages due to a distribution of escrow moneys which is
1668 made in compliance with an escrow disbursement order issued by
1669 the commission. However, in no case shall the fund be disbursed
1670 when the broker or sales associate ~~salesperson~~ fails to notify
1671 the commission and to diligently defend an action wherein the
1672 broker or sales associate ~~salesperson~~ may be required by a court
1673 of competent civil jurisdiction to pay monetary damages due to a
1674 distribution of escrow moneys which is made in compliance with
1675 an escrow disbursement order issued by the commission.

1676 (3) A fee of \$3.50 per year shall be added to the license
1677 fee for both new licenses and renewals of licenses for brokers,
1678 and a fee of \$1.50 per year shall be added for new licenses and
1679 renewals of licenses for sales associates ~~salespersons~~. This
1680 fee shall be in addition to the regular license fee and shall be
1681 deposited in or transferred to the Real Estate Recovery Fund.
1682 If the fund at any time exceeds \$1 million ~~\$750,000~~, collection
1683 of special fees for this fund shall be discontinued at the end
1684 of the licensing renewal cycle. Such special fees shall not be

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1685 reimposed unless the fund is reduced below \$500,000 by
1686 disbursement made in accordance with this chapter.

1687 (4) In addition, all moneys collected from fines imposed
1688 by the commission and collected by the department shall be
1689 transferred into the Real Estate Recovery Fund.

1690 Section 47. Paragraph (a) of subsection (1) and
1691 subsections (2) and (3) of section 475.483, Florida Statutes,
1692 are amended to read:

1693 475.483 Conditions for recovery; eligibility.--

1694 (1) Any person is eligible to seek recovery from the Real
1695 Estate Recovery Fund if:

1696 (a) Such person has received a final judgment in a court
1697 of competent civil jurisdiction in this state against an
1698 individual broker or sales associate ~~salesperson~~ in any action
1699 wherein the cause of action was based on a real estate brokerage
1700 transaction. If such person is unable to secure a final judgment
1701 against a licensee due to the death of the licensee, the
1702 commission may waive the requirement for a final judgment. The
1703 filing of a bankruptcy petition by a broker or sales associate
1704 ~~salesperson~~ does not relieve a claimant from the obligation to
1705 obtain a final judgment against the licensee. In this instance,
1706 the claimant must seek to have assets involving the real estate
1707 transaction that gave rise to the claim removed from the
1708 bankruptcy proceedings so that the matter might be heard in a
1709 court of competent civil jurisdiction in this state. If, after
1710 due diligence, the claimant is precluded by action of the
1711 bankruptcy court from securing a final judgment against the
1712 licensee, the commission may waive the requirement for a final
1713 judgment.

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1714 (2) A person is not qualified to make a claim for recovery
1715 from the Real Estate Recovery Fund, if:

1716 (a) Such person is the spouse of the judgment debtor or a
1717 personal representative of such spouse;

1718 (b) Such person is a licensed broker or sales associate
1719 ~~salesperson~~ who acted as a single agent or transaction broker in
1720 the transaction that is the subject of the claim;

1721 (c) Such person's claim is based upon a real estate
1722 transaction in which the licensed broker or sales associate
1723 ~~salesperson~~ was the owner of or controlled the property involved
1724 in the transaction; in which the licensee was dealing for the
1725 licensee's own account; or in which the licensee was not acting
1726 as a broker or sales associate ~~salesperson~~;

1727 (d) Such person's claim is based upon a real estate
1728 transaction in which the broker or sales associate ~~salesperson~~
1729 did not hold a valid, current, and active license at the time of
1730 the real estate transaction; or

1731 (e) The judgment is against a real estate brokerage
1732 corporation, partnership, limited liability company, or limited
1733 liability partnership.

1734 (3) ~~The commission may pay attorney's fees and court costs~~
1735 If the claim is of the type described in s. 475.482(2), the
1736 commission shall pay the defendant's reasonable attorney's fees
1737 and court costs and, if the plaintiff prevails in court, the
1738 plaintiff's reasonable attorney's fees and court costs.

1739 Section 48. Subsections (1), (3), (4), (5), and (7) of
1740 section 475.484, Florida Statutes, are amended to read:

1741 475.484 Payment from the fund.--

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1742 (1) Any person who meets all of the conditions prescribed
1743 in s. 475.482(1) or (2) may apply to the commission to cause
1744 payment to be made to such person from the Real Estate Recovery
1745 Fund:

1746 (a) Under s. 475.482(1), in an amount equal to the
1747 unsatisfied portion of such person's judgment or \$50,000
1748 ~~\$25,000~~, whichever is less, but only to the extent and amount
1749 reflected in the judgment as being actual or compensatory
1750 damages. Except as provided in s. 475.483, treble damages, court
1751 costs, attorney's fees, and interest shall not be recovered from
1752 the fund.

1753 (b) Under s. 475.482(2), in an amount equal to the
1754 judgment against the broker or sales associate ~~salesperson~~ or
1755 \$50,000 ~~\$25,000~~, whichever is less.

1756 (3) Payments for claims arising out of the same
1757 transaction shall be limited, in the aggregate, to \$50,000
1758 ~~\$25,000~~, regardless of the number of claimants or parcels of
1759 real estate involved in the transaction.

1760 (4) Payments for claims based upon judgments against any
1761 one broker or sales associate ~~salesperson~~ may not exceed, in the
1762 aggregate, \$150,000 ~~\$75,000~~.

1763 (5) If at any time the moneys in the Real Estate Recovery
1764 Fund are insufficient to satisfy any valid claim or portion
1765 thereof, the commission shall satisfy such unpaid claim or
1766 portion thereof as soon as a sufficient amount of money has been
1767 deposited in or transferred to the fund. When there is more than
1768 one unsatisfied claim outstanding, such claims shall be paid in
1769 the order in which the claims were approved by the commission.
1770 However, if the total claims approved at any one commission

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1771 meeting exceed the aggregate amount established in subsection
1772 (4) against any one broker or sales associate ~~salesperson~~, the
1773 claims approved on that day shall be prorated.

1774 (7) Upon the payment of any amount from the Real Estate
1775 Recovery Fund in settlement of a claim in satisfaction of a
1776 judgment against a broker or sales associate ~~salesperson~~ as
1777 described in s. 475.482(1), the license of such broker or sales
1778 associate ~~salesperson~~ shall be automatically suspended upon the
1779 date of payment from the fund. The license of such broker or
1780 sales associate ~~salesperson~~ may not be reinstated until the
1781 licensee has repaid in full, plus interest, the amount paid from
1782 the fund. No further administrative action is necessary. A
1783 discharge of bankruptcy does not relieve a licensee from the
1784 penalties and disabilities provided in this section, except to
1785 the extent that this subsection conflicts with 11 U.S.C. s. 525,
1786 in which case the commission may order the license not to be
1787 suspended or otherwise discriminated against.

1788 Section 49. Subsection (2) of section 475.5017, Florida
1789 Statutes, is amended to read:

1790 475.5017 Injunctive relief; powers.--

1791 (2) All expenses of the receiver shall be paid out of the
1792 assets of the brokerage firm upon application to and approval by
1793 the court. If the assets are not sufficient to pay all the
1794 expenses of the receiver, the court may order disbursement from
1795 the Real Estate Recovery Fund, which may not exceed \$100,000
1796 ~~\$75,000~~ per receivership.

1797 Section 50. Subsections (2) and (3) of section 475.612,
1798 Florida Statutes, are amended to read:

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1799 475.612 Certification, licensure, or registration
1800 required.--

1801 (2) This section does not preclude a broker, sales
1802 associate salesperson, or broker associate ~~broker-salesperson~~
1803 who is not a certified or licensed real estate appraiser or
1804 registered assistant real estate appraiser from appraising real
1805 estate for compensation. Such persons may continue to provide
1806 appraisals and appraisal services for compensation so long as
1807 they do not represent themselves as certified, licensed, or
1808 registered under this part.

1809 (3) This section does not apply to a real estate broker or
1810 sales associate salesperson who, in the ordinary course of
1811 business, performs a comparative market analysis, gives a broker
1812 price opinion, or gives an opinion of the value of real estate.
1813 However, in no event may this comparative market analysis,
1814 broker price opinion, or opinion of value of real estate be
1815 referred to or construed as an appraisal.

1816 Section 51. Section 689.25, Florida Statutes, is amended
1817 to read:

1818 689.25 Failure to disclose homicide, suicide, deaths, or
1819 diagnosis of HIV or AIDS infection in an occupant of real
1820 property.--

1821 (1)(a) The fact that an occupant of real property is
1822 infected or has been infected with human immunodeficiency virus
1823 or diagnosed with acquired immune deficiency syndrome is not a
1824 material fact that must be disclosed in a real estate
1825 transaction.

1826 (b) The fact that a property was, or was at any time
1827 suspected to have been, the site of a homicide, suicide, or

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1828 death is not a material fact that must be disclosed in a real
1829 estate transaction.

1830 (2) A ~~No~~ cause of action shall not arise ~~arises~~ against an
1831 owner of real property, ~~or~~ his or her agent, an ~~or against any~~
1832 agent of a transferee of real property, or a person licensed
1833 under chapter 475 for the failure to disclose to the transferee
1834 that the property was or was suspected to have been the site of
1835 a homicide, suicide, or death or that an occupant of that
1836 property was infected with human immunodeficiency virus or
1837 diagnosed with acquired immune deficiency syndrome.

1838 Section 52. Sections 475.421 and 475.422, Florida
1839 Statutes, are repealed.

1840 Section 53. Paragraph (d) of subsection (3) of section
1841 83.49, Florida Statutes, is amended to read:

1842 83.49 Deposit money or advance rent; duty of landlord and
1843 tenant.--

1844 (3)

1845 (d) Compliance with this section by an individual or
1846 business entity authorized to conduct business in this state,
1847 including Florida-licensed real estate brokers and sales
1848 associates ~~salespersons~~, shall constitute compliance with all
1849 other relevant Florida Statutes pertaining to security deposits
1850 held pursuant to a rental agreement or other landlord-tenant
1851 relationship. Enforcement personnel shall look solely to this
1852 section to determine compliance. This section prevails over any
1853 conflicting provisions in chapter 475 and in other sections of
1854 the Florida Statutes, and shall operate to permit licensed real
1855 estate brokers to disburse security deposits and deposit money

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1856 without having to comply with the notice and settlement
1857 procedures contained in s. 475.25(1)(d).

1858 Section 54. Paragraph (d) of subsection (15) of section
1859 440.02, Florida Statutes, is amended to read:

1860 440.02 Definitions.--When used in this chapter, unless the
1861 context clearly requires otherwise, the following terms shall
1862 have the following meanings:

1863 (15)

1864 (d) "Employee" does not include:

1865 1. An independent contractor, if:

1866 a. The independent contractor maintains a separate
1867 business with his or her own work facility, truck, equipment,
1868 materials, or similar accommodations;

1869 b. The independent contractor holds or has applied for a
1870 federal employer identification number, unless the independent
1871 contractor is a sole proprietor who is not required to obtain a
1872 federal employer identification number under state or federal
1873 requirements;

1874 c. The independent contractor performs or agrees to
1875 perform specific services or work for specific amounts of money
1876 and controls the means of performing the services or work;

1877 d. The independent contractor incurs the principal
1878 expenses related to the service or work that he or she performs
1879 or agrees to perform;

1880 e. The independent contractor is responsible for the
1881 satisfactory completion of work or services that he or she
1882 performs or agrees to perform and is or could be held liable for
1883 a failure to complete the work or services;

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1884 f. The independent contractor receives compensation for
1885 work or services performed for a commission or on a per-job or
1886 competitive-bid basis and not on any other basis;

1887 g. The independent contractor may realize a profit or
1888 suffer a loss in connection with performing work or services;

1889 h. The independent contractor has continuing or recurring
1890 business liabilities or obligations; and

1891 i. The success or failure of the independent contractor's
1892 business depends on the relationship of business receipts to
1893 expenditures.

1894
1895 However, the determination as to whether an individual included
1896 in the Standard Industrial Classification Manual of 1987,
1897 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
1898 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
1899 or a newspaper delivery person, is an independent contractor is
1900 governed not by the criteria in this paragraph but by common-law
1901 principles, giving due consideration to the business activity of
1902 the individual. Notwithstanding the provisions of this paragraph
1903 or any other provision of this chapter, with respect to any
1904 commercial building project estimated to be valued at \$250,000
1905 or greater, a person who is actively engaged in the construction
1906 industry is not an independent contractor and is either an
1907 employer or an employee who may not be exempt from the coverage
1908 requirements of this chapter.

1909 2. A real estate licensee ~~salesperson or agent~~, if that
1910 person agrees, in writing, to perform for remuneration solely by
1911 way of commission.

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1912 3. Bands, orchestras, and musical and theatrical
1913 performers, including disk jockeys, performing in licensed
1914 premises as defined in chapter 562, if a written contract
1915 evidencing an independent contractor relationship is entered
1916 into before the commencement of such entertainment.

1917 4. An owner-operator of a motor vehicle who transports
1918 property under a written contract with a motor carrier which
1919 evidences a relationship by which the owner-operator assumes the
1920 responsibility of an employer for the performance of the
1921 contract, if the owner-operator is required to furnish the
1922 necessary motor vehicle equipment and all costs incidental to
1923 the performance of the contract, including, but not limited to,
1924 fuel, taxes, licenses, repairs, and hired help; and the owner-
1925 operator is paid a commission for transportation service and is
1926 not paid by the hour or on some other time-measured basis.

1927 5. A person whose employment is both casual and not in the
1928 course of the trade, business, profession, or occupation of the
1929 employer.

1930 6. A volunteer, except a volunteer worker for the state or
1931 a county, municipality, or other governmental entity. A person
1932 who does not receive monetary remuneration for services is
1933 presumed to be a volunteer unless there is substantial evidence
1934 that a valuable consideration was intended by both employer and
1935 employee. For purposes of this chapter, the term "volunteer"
1936 includes, but is not limited to:

1937 a. Persons who serve in private nonprofit agencies and who
1938 receive no compensation other than expenses in an amount less
1939 than or equivalent to the standard mileage and per diem expenses
1940 provided to salaried employees in the same agency or, if such

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1941 agency does not have salaried employees who receive mileage and
1942 per diem, then such volunteers who receive no compensation other
1943 than expenses in an amount less than or equivalent to the
1944 customary mileage and per diem paid to salaried workers in the
1945 community as determined by the department; and

1946 b. Volunteers participating in federal programs
1947 established under Pub. L. No. 93-113.

1948 7. Any officer of a corporation who elects to be exempt
1949 from this chapter.

1950 8. A sole proprietor or officer of a corporation who
1951 actively engages in the construction industry, and a partner in
1952 a partnership that is actively engaged in the construction
1953 industry, who elects to be exempt from the provisions of this
1954 chapter. Such sole proprietor, officer, or partner is not an
1955 employee for any reason until the notice of revocation of
1956 election filed pursuant to s. 440.05 is effective.

1957 9. An exercise rider who does not work for a single horse
1958 farm or breeder, and who is compensated for riding on a case-by-
1959 case basis, provided a written contract is entered into prior to
1960 the commencement of such activity which evidences that an
1961 employee/employer relationship does not exist.

1962 10. A taxicab, limousine, or other passenger vehicle-for-
1963 hire driver who operates said vehicles pursuant to a written
1964 agreement with a company which provides any dispatch, marketing,
1965 insurance, communications, or other services under which the
1966 driver and any fees or charges paid by the driver to the company
1967 for such services are not conditioned upon, or expressed as a
1968 proportion of, fare revenues.

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1969 11. A person who performs services as a sports official
1970 for an entity sponsoring an interscholastic sports event or for
1971 a public entity or private, nonprofit organization that sponsors
1972 an amateur sports event. For purposes of this subparagraph, such
1973 a person is an independent contractor. For purposes of this
1974 subparagraph, the term "sports official" means any person who is
1975 a neutral participant in a sports event, including, but not
1976 limited to, umpires, referees, judges, linespersons,
1977 scorekeepers, or timekeepers. This subparagraph does not apply
1978 to any person employed by a district school board who serves as
1979 a sports official as required by the employing school board or
1980 who serves as a sports official as part of his or her
1981 responsibilities during normal school hours.

1982 Section 55. Paragraph (n) of subsection (21) of section
1983 443.036, Florida Statutes, is amended to read:

1984 443.036 Definitions.--As used in this chapter, unless the
1985 context clearly requires otherwise:

1986 (21) EMPLOYMENT.--"Employment," subject to the other
1987 provisions of this chapter, means any service performed by an
1988 employee for the person employing him or her.

1989 (n) Exclusions generally.--The term "employment" does not
1990 include:

1991 1. Domestic service in a private home, local college club,
1992 or local chapter of a college fraternity or sorority, except as
1993 provided in paragraph (g).

1994 2. Service performed on or in connection with a vessel or
1995 aircraft not an American vessel or American aircraft, if the
1996 employee is employed on and in connection with such vessel or
1997 aircraft when outside the United States.

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1998 3. Service performed by an individual in, or as an officer
1999 or member of the crew of a vessel while it is engaged in, the
2000 catching, taking, harvesting, cultivating, or farming of any
2001 kind of fish, shellfish, crustacea, sponges, seaweeds, or other
2002 aquatic forms of animal and vegetable life, including service
2003 performed by any such individual as an ordinary incident to any
2004 such activity, except:

2005 a. Service performed in connection with the catching or
2006 taking of salmon or halibut for commercial purposes.

2007 b. Service performed on, or in connection with, a vessel
2008 of more than 10 net tons, determined in the manner provided for
2009 determining the register tonnage of merchant vessels under the
2010 laws of the United States.

2011 4. Service performed by an individual in the employ of his
2012 or her son, daughter, or spouse, including step relationships,
2013 and service performed by a child, or stepchild, under the age of
2014 21 in the employ of his or her father or mother, or stepfather
2015 or stepmother.

2016 5. Service performed in the employ of the United States
2017 Government or of an instrumentality of the United States which
2018 is:

2019 a. Wholly or partially owned by the United States.

2020 b. Exempt from the tax imposed by s. 3301 of the Internal
2021 Revenue Code by virtue of any provision of federal law which
2022 specifically refers to such section, or the corresponding
2023 section of prior law, in granting such exemption; except that to
2024 the extent that the Congress shall permit states to require any
2025 instrumentalities of the United States to make payments into an
2026 unemployment fund under a state unemployment compensation law,

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2027 all of the provisions of this law shall be applicable to such
2028 instrumentalities, and to services performed for such
2029 instrumentalities, in the same manner, to the same extent, and
2030 on the same terms as to all other employers, employing units,
2031 individuals, and services. If this state is not certified for
2032 any year by the Secretary of Labor under s. 3304 of the federal
2033 Internal Revenue Code, the payments required of such
2034 instrumentalities with respect to such year shall be refunded by
2035 the division from the fund in the same manner and within the
2036 same period as is provided in s. 443.141(6) with respect to
2037 contributions erroneously collected.

2038 6. Service performed in the employ of a state, or any
2039 political subdivision thereof, or any instrumentality of any one
2040 or more of the foregoing which is wholly owned by one or more
2041 states or political subdivisions, except as provided in
2042 paragraph (b), and any service performed in the employ of any
2043 instrumentality of one or more states or political subdivisions,
2044 to the extent that the instrumentality is, with respect to such
2045 service, immune under the Constitution of the United States from
2046 the tax imposed by s. 3301 of the Internal Revenue Code.

2047 7. Service performed in the employ of a corporation,
2048 community chest, fund, or foundation, organized and operated
2049 exclusively for religious, charitable, scientific, testing for
2050 public safety, literary, or educational purposes, or for the
2051 prevention of cruelty to children or animals, no part of the net
2052 earnings of which inures to the benefit of any private
2053 shareholder or individual, no substantial part of the activities
2054 of which is carrying on propaganda or otherwise attempting to
2055 influence legislation, and which does not participate in, or

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2056 intervene in (including the publishing or distributing of
2057 statements), any political campaign on behalf of any candidate
2058 for public office, except as provided in paragraph (c).

2059 8. Service with respect to which unemployment compensation
2060 is payable under an unemployment compensation system established
2061 by an Act of Congress.

2062 9.a. Service performed in any calendar quarter in the
2063 employ of any organization exempt from income tax under s.
2064 501(a) of the Internal Revenue Code, other than an organization
2065 described in s. 401(a), or under s. 521, if the remuneration for
2066 such service is less than \$50.

2067 b. Service performed in the employ of a school, college,
2068 or university, if such service is performed by a student who is
2069 enrolled and is regularly attending classes at such school,
2070 college, or university.

2071 10. Service performed in the employ of a foreign
2072 government, including service as a consular or other officer or
2073 employee of a nondiplomatic representative.

2074 11. Service performed in the employ of an instrumentality
2075 wholly owned by a foreign government:

2076 a. If the service is of a character similar to that
2077 performed in foreign countries by employees of the United States
2078 Government or of an instrumentality thereof; and

2079 b. The Secretary of State shall certify to the Secretary
2080 of the Treasury that the foreign government, with respect to
2081 whose instrumentality exemption is claimed, grants an equivalent
2082 exemption with respect to similar service performed in the
2083 foreign country by employees of the United States Government and
2084 of instrumentalities thereof.

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2085 12. Service performed as a student nurse in the employ of
2086 a hospital or a nurses' training school by an individual who is
2087 enrolled and is regularly attending classes in a nurses'
2088 training school chartered or approved pursuant to a state law;
2089 service performed as an intern in the employ of a hospital by an
2090 individual who has completed a 4-year course in a medical school
2091 chartered or approved pursuant to state law; and service
2092 performed by a patient of a hospital for such hospital.

2093 13. Service performed by an individual for a person as an
2094 insurance agent or as an insurance solicitor, if all such
2095 service performed by such individual for such person is
2096 performed for remuneration solely by way of commission, except
2097 for such services performed in accordance with 26 U.S.C.S. s.
2098 3306(c)(7) and (8). For purposes of this subsection, those
2099 benefits excluded from the definition of wages pursuant to
2100 subparagraphs (40)(b)2.-6., inclusive, shall not be considered
2101 remuneration.

2102 14. Service performed by an individual for a person as a
2103 real estate licensee ~~salesperson or agent~~, if all such service
2104 performed by such individual for such person is performed for
2105 remuneration solely by way of commission.

2106 15. Service performed by an individual under the age of 18
2107 in the delivery or distribution of newspapers or shopping news,
2108 not including delivery or distribution to any point for
2109 subsequent delivery or distribution.

2110 16. Service covered by an arrangement between the division
2111 and the agency charged with the administration of any other
2112 state or federal unemployment compensation law pursuant to which
2113 all services performed by an individual for an employing unit

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2114 during the period covered by such employing unit's duly approved
2115 election are deemed to be performed entirely within such
2116 agency's state or under such federal law.

2117 17. Service performed by an individual who is enrolled at
2118 a nonprofit or public educational institution which normally
2119 maintains a regular faculty and curriculum and normally has a
2120 regularly organized body of students in attendance at the place
2121 where its educational activities are carried on as a student in
2122 a full-time program, taken for credit at such institution, which
2123 combines academic instruction with work experience, if such
2124 service is an integral part of such program, and such
2125 institution has so certified to the employer, except that this
2126 subparagraph does not apply to service performed in a program
2127 established for or on behalf of an employer or group of
2128 employers.

2129 18. Service performed by an individual for a person as a
2130 barber, if all such service performed by such individual for
2131 such person is performed for remuneration solely by way of
2132 commission.

2133 19. Casual labor not in the course of the employer's trade
2134 or business.

2135 20. Service performed by a speech therapist, occupational
2136 therapist, or physical therapist who is nonsalaried and working
2137 pursuant to a written contract with a home health agency as
2138 defined in s. 400.462.

2139 21. Service performed by a direct seller. For purposes of
2140 this subparagraph, the term "direct seller" means a person:

2141 a.(I) Who is engaged in the trade or business of selling
2142 or soliciting the sale of consumer products to buyers on a buy-

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2143 sell basis or a deposit-commission basis, or on any similar
2144 basis, for resale in the home or in any other place that is not
2145 a permanent retail establishment; or

2146 (II) Who is engaged in the trade or business of selling or
2147 soliciting the sale of consumer products in the home or in any
2148 other place that is not a permanent retail establishment;

2149 b. Substantially all of whose remuneration for services
2150 described in sub-subparagraph a., whether or not paid in cash,
2151 is directly related to sales or other output, rather than to the
2152 number of hours worked; and

2153 c. Who performs such services pursuant to a written
2154 contract with the person for whom the services are performed,
2155 which contract provides that the person will not be treated as
2156 an employee with respect to such services for federal tax
2157 purposes.

2158 22. Service performed by a nonresident alien individual
2159 for the period he or she is temporarily present in the United
2160 States as a nonimmigrant under subparagraph (F) or subparagraph
2161 (J) of s. 101(a)(15) of the Immigration and Nationality Act, and
2162 which is performed to carry out the purpose specified in
2163 subparagraph (F) or subparagraph (J), as the case may be.

2164 23. Service performed by an individual for remuneration
2165 for a private, for-profit delivery or messenger service, if the
2166 individual:

2167 a. Is free to accept or reject jobs from the delivery or
2168 messenger service and the delivery or messenger service has no
2169 control over when the individual works;

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2170 b. Is remunerated for each delivery, or the remuneration
2171 is based on factors that relate to the work performed, including
2172 receipt of a percentage of any rate schedule;

2173 c. Pays all expenses and the opportunity for profit or
2174 loss rests solely with the individual;

2175 d. Is responsible for operating costs, including fuel,
2176 repairs, supplies, and motor vehicle insurance;

2177 e. Determines the method of performing the service,
2178 including selection of routes and order of deliveries;

2179 f. Is responsible for the completion of a specific job and
2180 is liable for any failure to complete that job;

2181 g. Enters into a contract with the delivery or messenger
2182 service which specifies the relationship of the individual to
2183 the delivery or messenger service to be that of an independent
2184 contractor and not that of an employee; and

2185 h. Provides the vehicle used to perform the service.

2186 24. Service performed in agricultural labor by an
2187 individual who is an alien admitted to the United States to
2188 perform service in agricultural labor pursuant to ss.
2189 101(a)(15)(H) and 214(c) of the Immigration and Nationality Act.

2190 25. Service performed by a person who is an inmate of a
2191 penal institution.

2192 Section 56. Subsection (25) of section 501.604, Florida
2193 Statutes, is amended to read:

2194 501.604 Exemptions.--The provisions of this part, except
2195 ss. 501.608 and 501.616(6) and (7), do not apply to:

2196 (25) A person ~~who is a licensed real estate salesperson or~~
2197 ~~broker~~ pursuant to chapter 475 and who is soliciting within the
2198 scope of the chapter.

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2199 Section 57. Subsection (4) of section 687.14, Florida
2200 Statutes, is amended to read:

2201 687.14 Definitions.--As used in this act, unless the
2202 context otherwise requires:

2203 (4) "Loan broker" means any person, except any bank or
2204 savings and loan association, trust company, building and loan
2205 association, credit union, consumer finance company, retail
2206 installment sales company, securities broker-dealer, real estate
2207 broker or sales associate ~~salesperson~~, attorney, federal Housing
2208 Administration or United States Department of Veterans Affairs
2209 approved lender, credit card company, installment loan licensee,
2210 mortgage broker or lender, or insurance company, provided that
2211 the person excepted is licensed by and subject to regulation or
2212 supervision of any agency of the United States or this state and
2213 is acting within the scope of the license; and also excepting
2214 subsidiaries of licensed or chartered consumer finance
2215 companies, banks, or savings and loan associations; who:

2216 (a) For or in expectation of consideration arranges or
2217 attempts to arrange or offers to fund a loan of money, a credit
2218 card, or a line of credit;

2219 (b) For or in expectation of consideration assists or
2220 advises a borrower in obtaining or attempting to obtain a loan
2221 of money, a credit card, a line of credit, or related guarantee,
2222 enhancement, or collateral of any kind or nature;

2223 (c) Acts for or on behalf of a loan broker for the purpose
2224 of soliciting borrowers; or

2225 (d) Holds herself or himself out as a loan broker.

2226 Section 58. Subsections (1) and (6) of section 721.20,
2227 Florida Statutes, are amended to read:

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2228 721.20 Licensing requirements; suspension or revocation of
2229 license; exceptions to applicability; collection of advance fees
2230 for listings unlawful.--

2231 (1) Any seller of a timeshare plan must be a licensed real
2232 estate ~~salesperson~~, broker, broker associate, or sales associate
2233 ~~broker-salesperson~~ as defined in s. 475.01, except as provided
2234 in s. 475.011.

2235 (6) Notwithstanding the provisions of s. 475.452, it is
2236 unlawful for any real estate broker, broker associate
2237 ~~salesperson~~, or sales associate ~~broker-salesperson~~ to collect
2238 any advance fee for the listing of any timeshare estate or
2239 timeshare license.

2240 Section 59. Paragraph (a) of subsection (1) of section
2241 760.29, Florida Statutes, is amended to read:

2242 760.29 Exemptions.--

2243 (1)(a) Nothing in ss. 760.23 and 760.25 applies to:

2244 1. Any single-family house sold or rented by its owner,
2245 provided such private individual owner does not own more than
2246 three single-family houses at any one time. In the case of the
2247 sale of a single-family house by a private individual owner who
2248 does not reside in such house at the time of the sale or who was
2249 not the most recent resident of the house prior to the sale, the
2250 exemption granted by this paragraph applies only with respect to
2251 one sale within any 24-month period. In addition, the bona fide
2252 private individual owner shall not own any interest in, nor
2253 shall there be owned or reserved on his or her behalf, under any
2254 express or voluntary agreement, title to, or any right to all or
2255 a portion of the proceeds from the sale or rental of, more than
2256 three single-family houses at any one time. The sale or rental

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2257 of any single-family house shall be excepted from the
2258 application of ss. 760.20-760.37 only if the house is sold or
2259 rented:

2260 a. Without the use in any manner of the sales or rental
2261 facilities or the sales or rental services of any real estate
2262 licensee ~~broker, agent, or salesperson~~ or such facilities or
2263 services of any person in the business of selling or renting
2264 dwellings, or of any employee or agent of any such licensee
2265 ~~broker, agent, salesperson,~~ or person; and

2266 b. Without the publication, posting, or mailing, after
2267 notice, of any advertisement or written notice in violation of
2268 s. 760.23(3).

2269
2270 Nothing in this provision prohibits the use of attorneys, escrow
2271 agents, abstractors, title companies, and other such
2272 professional assistance as is necessary to perfect or transfer
2273 the title.

2274 2. Rooms or units in dwellings containing living quarters
2275 occupied or intended to be occupied by no more than four
2276 families living independently of each other, if the owner
2277 actually maintains and occupies one of such living quarters as
2278 his or her residence.

2279
2280
2281 ===== T I T L E A M E N D M E N T =====

2282 Remove line(s) 60, and insert:
2283 F.S.; conforming terminology; amending s. 475.001, F.S.;
2284 conforming terminology; amending s. 475.01, F.S.; redesignating
2285 "broker-salespersons" as "broker associates" and "salespersons"

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2286 as "sales associates"; expanding the definition of "transaction
2287 broker"; amending s. 475.011, F.S.; conforming terminology;
2288 amending ss. 475.02 and 475.04, F.S.; conforming terminology;
2289 creating s. 475.161, F.S.; providing for licensing of broker
2290 associates and sales associates; amending s. 475.17, F.S.;
2291 revising qualifications for practice; authorizing additional
2292 subjects for postlicensure education; restricting approval of
2293 distance learning courses to instances of hardship; conforming
2294 terminology; amending s. 475.175, F.S.; revising requirements to
2295 take the license examination; revising requirements with respect
2296 to notice of completion of educational requirements; amending s.
2297 475.181, F.S.; conforming terminology; amending s. 475.182,
2298 F.S.; providing guidelines for approving specialty courses;
2299 conforming terminology; amending s. 475.215, F.S.; conforming
2300 terminology; amending s. 475.22, F.S.; revising requirements
2301 with respect to brokers' signs; amending s. 475.23, F.S.;
2302 providing for notice of change of address; conforming
2303 terminology; amending s. 475.25, F.S.; revising duties of
2304 licensees with respect to escrowed property; allowing a broker
2305 to place personal or brokerage funds in property management and
2306 sales escrow accounts; providing penalties; providing a time
2307 limit on filing complaints against a licensee; providing for
2308 referral of criminal violations to prosecuting authorities;
2309 conforming terminology; amending s. 475.2755, F.S.; conforming
2310 terminology; amending s. 475.278, F.S.; revising provisions
2311 relating to authorized brokerage relationships; providing a
2312 presumption of transaction brokerage; revising disclosure
2313 requirements; amending s. 475.31, F.S.; providing effect of
2314 revocation or suspension of a broker's license; conforming

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2315 terminology; amending ss. 475.37 and 475.41, F.S.; conforming
2316 terminology; amending s. 475.42, F.S.; providing an additional
2317 ground for disciplinary action relating to false or misleading
2318 information on real estate located in the state; providing
2319 penalties; conforming terminology; amending s. 475.43, F.S.;
2320 conforming terminology; amending s. 475.451, F.S.; revising
2321 prerequisites for renewal of an instructor permit; removing an
2322 exemption from instructor examination requirements; conforming
2323 terminology; repealing s. 475.451(4) and (5), F.S., relating to
2324 the prohibition against a school advertising in conjunction with
2325 an affiliated broker and publishing a "pass/fail" ratio;
2326 amending ss. 475.453 and 475.455, F.S.; conforming terminology;
2327 amending s. 475.482, F.S.; increasing the maximum amount that
2328 may be in the Real Estate Recovery Fund; conforming terminology;
2329 amending s. 475.483, F.S.; revising guidelines for payment of
2330 attorney's fees with respect to recovery from the fund;
2331 conforming terminology; amending ss. 475.484 and 475.5017, F.S.;
2332 increasing maximum amounts payable from the fund; conforming
2333 terminology; amending s. 475.612, F.S.; conforming terminology;
2334 amending s. 689.25, F.S.; prescribing facts and conditions the
2335 existence of which need not be disclosed in a real estate
2336 transaction; repealing s. 475.421, F.S., relating to publication
2337 of false or misleading information on real estate located in the
2338 state; repealing s. 475.422, F.S., relating to disclosure of
2339 termite and roof inspection reports; amending ss. 83.49, 440.02,
2340 443.036, 501.604, 687.14, 721.20, and 760.29, F.S.; conforming
2341 terminology; providing an effective date.

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