

Bill No. CS for CS for SB 2238

Amendment No. ____ Barcode 651556

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Posey moved the following amendment:

12

13 **Senate Amendment (with title amendment)**

14 On page 28, between lines 7 and 8,

15

16 insert:

17 Section 21. Section 475.001, Florida Statutes, is

18 amended to read:

19 475.001 Purpose.--The Legislature deems it necessary
20 in the interest of the public welfare to regulate real estate
21 brokers, sales associates ~~salespersons~~, and schools in this
22 state.

23 Section 22. Section 475.01, Florida Statutes, is

24 amended to read:

25 475.01 Definitions.--

26 (1) As used in this part:

27 (a) "Broker" means a person who, for another, and for
28 a compensation or valuable consideration directly or
29 indirectly paid or promised, expressly or impliedly, or with
30 an intent to collect or receive a compensation or valuable
31 consideration therefor, appraises, auctions, sells, exchanges,

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1 buys, rents, or offers, attempts or agrees to appraise,
2 auction, or negotiate the sale, exchange, purchase, or rental
3 of business enterprises or business opportunities or any real
4 property or any interest in or concerning the same, including
5 mineral rights or leases, or who advertises or holds out to
6 the public by any oral or printed solicitation or
7 representation that she or he is engaged in the business of
8 appraising, auctioning, buying, selling, exchanging, leasing,
9 or renting business enterprises or business opportunities or
10 real property of others or interests therein, including
11 mineral rights, or who takes any part in the procuring of
12 sellers, purchasers, lessors, or lessees of business
13 enterprises or business opportunities or the real property of
14 another, or leases, or interest therein, including mineral
15 rights, or who directs or assists in the procuring of
16 prospects or in the negotiation or closing of any transaction
17 which does, or is calculated to, result in a sale, exchange,
18 or leasing thereof, and who receives, expects, or is promised
19 any compensation or valuable consideration, directly or
20 indirectly therefor; and all persons who advertise rental
21 property information or lists. A broker renders a professional
22 service and is a professional within the meaning of s.
23 95.11(4)(a). Where the term "appraise" or "appraising" appears
24 in the definition of the term "broker," it specifically
25 excludes those appraisal services which must be performed only
26 by a state-licensed or state-certified appraiser, and those
27 appraisal services which may be performed by a registered
28 assistant appraiser as defined in part II. The term "broker"
29 also includes any person who is a general partner, officer, or
30 director of a partnership or corporation which acts as a
31 broker. The term "broker" also includes any person or entity

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1 | who undertakes to list or sell one or more timeshare periods
2 | per year in one or more timeshare plans on behalf of any
3 | number of persons, except as provided in ss. 475.011 and
4 | 721.20.

5 | (b) "Broker associate ~~Broker salesperson~~" means a
6 | person who is qualified to be issued a license as a broker but
7 | who operates as a sales associate ~~salesperson~~ in the employ of
8 | another.

9 | (c) "Commission" means the Florida Real Estate
10 | Commission.

11 | (d) "Customer" means a member of the public who is or
12 | may be a buyer or seller of real property and may or may not
13 | be represented by a real estate licensee in an authorized
14 | brokerage relationship.

15 | (e) "Department" means the Department of Business and
16 | Professional Regulation.

17 | (f) "Fiduciary" means a broker in a relationship of
18 | trust and confidence between that broker as agent and the
19 | seller or buyer as principal. The duties of the broker as a
20 | fiduciary are loyalty, confidentiality, obedience, full
21 | disclosure, and accounting and the duty to use skill, care,
22 | and diligence.

23 | (g) "Involuntarily inactive status" means the
24 | licensure status that results when a license is not renewed at
25 | the end of the license period prescribed by the department.

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

28 | (i) "Real property" or "real estate" means any
29 | interest or estate in land and any interest in business
30 | enterprises or business opportunities, including any
31 | assignment, leasehold, subleasehold, or mineral right;

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1 however, the term does not include any cemetery lot or right
2 of burial in any cemetery; nor does the term include the
3 renting of a mobile home lot or recreational vehicle lot in a
4 mobile home park or travel park.

5 (j) "Sales associate ~~Salesperson~~" means a person who
6 performs any act specified in the definition of "broker," but
7 who performs such act under the direction, control, or
8 management of another person. A salesperson renders a
9 professional service and is a professional within the meaning
10 of s. 95.11(4)(a).

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

14 (l) "Transaction broker" means a broker who provides
15 limited representation to a buyer, a seller, or both, in a
16 real estate transaction, but does not represent either in a
17 fiduciary capacity or as a single agent. In a transaction
18 broker relationship, a buyer or seller is not responsible for
19 the acts of a licensee. Additionally, the parties to a real
20 estate transaction are giving up their rights to the undivided
21 loyalty of a licensee. This aspect of limited representation
22 allows a licensee to facilitate a real estate transaction by
23 assisting both the buyer and the seller, but a licensee will
24 not work to represent one party to the detriment of the other
25 party when acting as a transaction broker to both parties.

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

30 (2) The terms "employ," "employment," "employer," and
31 "employee," when used in this chapter and in rules adopted

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1 pursuant thereto to describe the relationship between a broker
2 and a sales associate ~~salesperson~~, include an independent
3 contractor relationship when such relationship is intended by
4 and established between a broker and a sales associate
5 ~~salesperson~~. The existence of such relationship shall not
6 relieve either the broker or the sales associate ~~salesperson~~
7 of her or his duties, obligations, or responsibilities under
8 this chapter.

9 (3) Wherever the word "operate" or "operating" as a
10 broker, broker associate ~~broker-salesperson~~, or sales
11 associate ~~salesperson~~ appears in this chapter; in any order,
12 rule, or regulation of the commission; in any pleading,
13 indictment, or information under this chapter; in any court
14 action or proceeding; or in any order or judgment of a court,
15 it shall be deemed to mean the commission of one or more acts
16 described in this chapter as constituting or defining a
17 broker, broker associate ~~broker-salesperson~~, or sales
18 associate ~~salesperson~~, not including, however, any of the
19 exceptions stated therein. A single such act is sufficient to
20 bring a person within the meaning of this chapter, and each
21 act, if prohibited herein, constitutes a separate offense.

22 (4) A broker acting as a trustee of a trust created
23 under chapter 689 is subject to the provisions of this chapter
24 unless the trustee is a bank, state or federal association, or
25 trust company possessing trust powers as defined in s.
26 658.12(23).

27 Section 23. Section 475.011, Florida Statutes, is
28 amended to read:

29 475.011 Exemptions.--This part does not apply to:

30 (1) Any person acting as an attorney in fact for the
31 purpose of the execution of contracts or conveyances only; as

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1 an attorney at law within the scope of her or his duties as
2 such; as a certified public accountant, as defined in chapter
3 473, within the scope of her or his duties as such; as the
4 personal representative, receiver, trustee, or master under,
5 or by virtue of, an appointment by will or by order of a court
6 of competent jurisdiction; or as trustee under a deed of
7 trust, or under a trust agreement, the ultimate purpose and
8 intent whereof is charitable, is philanthropic, or provides
9 for those having a natural right to the bounty of the donor or
10 trustor.†

11 (2) Any individual, corporation, partnership, trust,
12 joint venture, or other entity which sells, exchanges, or
13 leases its own real property; however, this exemption shall
14 not be available if and to the extent that an agent, employee,
15 or independent contractor paid a commission or other
16 compensation strictly on a transactional basis is employed to
17 make sales, exchanges, or leases to or with customers in the
18 ordinary course of an owner's business of selling, exchanging,
19 or leasing real property to the public.†

20 (3) Any employee of a public utility, a rural electric
21 cooperative, a railroad, or a state or local governmental
22 agency who acts within the scope of her or his employment, for
23 which no compensation in addition to the employee's salary is
24 paid, to buy, sell, appraise, exchange, rent, auction, or
25 lease any real property or any interest in real property for
26 the use of her or his employer.†

27 (4) Any salaried employee of an owner, or of a
28 registered broker for an owner, of an apartment community who
29 works in an onsite rental office of the apartment community in
30 a leasing capacity.†

31 (5) Any person employed for a salary as a manager of a

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1 condominium or cooperative apartment complex as a result of
2 any activities or duties which the person may have in relation
3 to the renting of individual units within such condominium or
4 cooperative apartment complex if rentals arranged by the
5 person are for periods no greater than 1 year.~~†~~

6 (6) Any person, partnership, corporation, or other
7 legal entity which, for another and for compensation or other
8 valuable consideration, sells, offers to sell, advertises for
9 sale, buys, offers to buy, or negotiates the sale or purchase
10 of radio, television, or cable enterprises licensed and
11 regulated by the Federal Communications Commission pursuant to
12 the Communications Act of 1934. However, if the sale or
13 purchase of the radio, television, or cable enterprise
14 involves the sale or lease of land, buildings, fixtures, and
15 all other improvements to the land, a broker or sales
16 associate ~~salesperson~~ licensed under this chapter shall be
17 retained for the portion of the transaction which includes the
18 land, buildings, fixtures, and all other improvements to the
19 land.~~†~~ ~~or~~

20 (7) Any full-time graduate student who is enrolled in
21 a commission-approved degree program in appraising at a
22 college or university in this state, if the student is acting
23 under the direct supervision of a licensed broker or a
24 licensed or certified appraiser and is engaged only in
25 appraisal activities related to the approved degree
26 program. Any appraisal report by the student must be issued
27 in the name of the supervising individual.

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

31 (b) An exchange company, as that term is defined by s.

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1 721.05(14), but only to the extent that the exchange company
 2 is engaged in exchange program activities as described in and
 3 is in compliance with s. 721.18.

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

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

10 (11) Any person, partnership, corporation, or other
 11 legal entity which, for another and for compensation or other
 12 valuable consideration, rents or advertises for rent, for
 13 transient occupancy, any public lodging establishment licensed
 14 under chapter 509.

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

29 (13) Any property management firm or any owner of an
 30 apartment complex for the act of paying a finder's fee or
 31 referral fee to an unlicensed person who is a tenant in such

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1 apartment complex provided the value of the fee does not
2 exceed \$50 per transaction. Nothing in this subsection
3 authorizes an unlicensed person to advertise or otherwise
4 promote the person's services in procuring or assisting in
5 procuring prospective lessees or tenants of apartment units.
6 For purposes of this subsection, "finder's fee" or "referral
7 fee" means a fee paid, credit towards rent, or some other
8 thing of value provided to a person for introducing or
9 arranging an introduction between parties to a transaction
10 involving the rental or lease of an apartment unit. It is a
11 violation of s. 475.25(1)(h) and punishable under s. 475.42
12 for a property management firm or any owner of an apartment
13 complex to pay a finder's fee or a referral fee to an
14 unlicensed person unless expressly authorized by this
15 subsection.

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

18 475.02 Florida Real Estate Commission.--

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

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1 Section 25. Section 475.04, Florida Statutes, is
2 amended to read:

3 475.04 Duty of commission to educate members of
4 profession.--

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

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

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

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

27 475.161 Licensing of broker associates and sales
28 associates.--The commission shall license a broker associate
29 or sales associate as an individual or, upon the licensee
30 providing the commission with authorization from the
31 Department of State, as a professional corporation or limited

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1 liability company. A license shall be issued in the licensee s
 2 legal name only and, when appropriate, shall include the
 3 entity designation. This section shall not operate to permit a
 4 broker associate or sales associate to register or be licensed
 5 as a general partner, member, manager, officer, or director of
 6 a brokerage firm under s. 475.15.

7 Section 27. Section 475.17, Florida Statutes, is
 8 amended to read:

9 475.17 Qualifications for practice.--

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

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1 and subsequent good conduct and reputation, or other reason
2 deemed sufficient, it appears to the commission that the
3 interest of the public and investors will not likely be
4 endangered by the granting of registration. The commission may
5 adopt rules requiring an applicant for licensure to provide
6 written information to the commission regarding the
7 applicant's good character.

8 (b) An application may be disapproved if the applicant
9 has acted or attempted to act, or has held herself or himself
10 out as entitled to act, during the period of 1 year next prior
11 to the filing of the application, as a real estate broker or
12 sales associate ~~salesperson~~ in the state in violation of this
13 chapter. This paragraph may be deemed to bar any person from
14 licensure who has performed any of the acts or services
15 described in s. 475.01(3), unless exempt pursuant to s.
16 475.011, during a period of 1 year next preceding the filing
17 of the application, or during the pendency of the application,
18 and until a valid current license has been duly issued to the
19 person, regardless of whether the performance of the act or
20 service was done for compensation or valuable consideration.

21 (2)(a)1. In addition to other requirements under this
22 part, the commission may require the satisfactory completion
23 of one or more of the educational courses or equivalent
24 courses conducted, offered, sponsored, prescribed, or approved
25 pursuant to s. 475.04, taken at an accredited college,
26 university, or community college, at an area technical center,
27 or at a registered real estate school, as a condition
28 precedent for any person to become licensed or to renew her or
29 his license as a broker, broker associate ~~broker-salesperson~~,
30 or sales associate ~~salesperson~~. The course or courses required
31 for one to become initially licensed shall not exceed a total

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1 of 63 classroom hours of 50 minutes each, inclusive of
2 examination, for a sales associate ~~salesperson~~ and 72
3 classroom hours of 50 minutes each, inclusive of examination,
4 for a broker. The satisfactory completion of an examination
5 administered by the accredited college, university, or
6 community college, by the area technical center, or by the
7 registered real estate school shall be the basis for
8 determining satisfactory completion of the course. However,
9 notice of satisfactory completion shall not be issued if the
10 student has absences in excess of 8 classroom hours.

11 2. A distance learning course or courses shall be
12 approved by the commission as an option to classroom hours as
13 satisfactory completion of the course or courses as required
14 by this section. The schools authorized by this section have
15 the option of providing classroom courses, distance learning
16 courses, or both. However, satisfactory completion of a
17 distance learning course requires the satisfactory completion
18 of a timed distance learning course examination. Such
19 examination shall not be required to be monitored or given at
20 a centralized location.

21 3. Such required course or courses must be made
22 available by correspondence or other suitable means to any
23 person who, by reason of hardship, as defined by rule, cannot
24 attend the place or places where the course or courses are
25 regularly conducted or does not have access to the distance
26 learning course or courses.

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

30 1. An active real estate sales associate's
31 ~~salesperson's~~ license for at least 12 months during the

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1 preceding 5 years in the office of one or more real estate
 2 brokers licensed in this state or any other state, territory,
 3 or jurisdiction of the United States or in any foreign
 4 national jurisdiction;

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

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

14
 15 This paragraph does not apply to a person employed as a real
 16 estate investigator by the Division of Real Estate, provided
 17 the person has been employed as a real estate investigator for
 18 at least 24 months. The person must be currently employed as a
 19 real estate investigator to sit for the real estate broker's
 20 examination and have held a valid and current sales
 21 associate's ~~salesperson's~~ license for at least 12 months.

22 (c) A person who has been licensed as a real estate
 23 sales associate ~~salesperson~~ in Florida during the preceding 5
 24 years may not be licensed as a real estate broker unless, in
 25 addition to the other requirements of law, she or he has
 26 completed the sales associate ~~salesperson~~ postlicensure
 27 educational requirements, if these requirements have been
 28 prescribed by the commission pursuant to paragraph(3)(a).

29 (3)(a) The commission may prescribe a postlicensure
 30 education requirement in order for a person to maintain a
 31 valid sales associate's ~~salesperson's~~ license, which shall not

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1 exceed 45 classroom hours of 50 minutes each, inclusive of
2 examination, prior to the first renewal following initial
3 licensure. If prescribed, this shall consist of one or more
4 commission-approved courses which total at least 45 classroom
5 hours on one or more subjects which include, but are not
6 limited to, property management, appraisal, real estate
7 finance, ~~or~~ the economics of real estate management,
8 marketing, technology, sales and listing of properties,
9 business office management, courses teaching practical real
10 estate application skills, development of business plans,
11 marketing of property, and time management. Required
12 postlicensure education courses must be provided by an
13 accredited college, university, or community college, by an
14 area technical center, by a registered real estate school, or
15 by a commission-approved sponsor.

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

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

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1 (d) A sales associate ~~salesperson~~ who is required to
2 complete any postlicensure education requirement must complete
3 any postlicensure education requirement and hold a current and
4 valid license in order to be eligible for licensure as a
5 broker.

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

26 (b) Satisfactory completion of the postlicensure
27 education requirement is demonstrated by successfully meeting
28 all standards established for the commission-prescribed or
29 commission-approved institution or school. However, notice of
30 satisfactory completion shall not be issued if the student has
31 absences in excess of 10 percent of the required classroom

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1 hours or has not satisfactorily completed a timed distance
2 learning course examination.

3 (c) The license of any broker who does not complete
4 the postlicensure education requirement prior to the first
5 renewal following initial licensure shall be considered null
6 and void. If the licensee wishes to operate as a sales
7 associate ~~salesperson~~, she or he may be issued a sales
8 associate's ~~salesperson's~~ license after providing proof that
9 she or he has satisfactorily completed the 14-hour continuing
10 education course within the 6 months following expiration of
11 her or his broker's license. To operate as a broker, the
12 licensee must requalify by satisfactorily completing the
13 broker's prelicensure course and passing the state examination
14 for licensure as a broker.

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

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

25 (c)1. A distance learning course or courses shall be
26 approved by the commission as an option to classroom hours as
27 satisfactory completion of the postlicensure education course
28 or courses as required by this section. The schools or
29 sponsors authorized by this section have the option of
30 providing classroom courses, distance learning courses, or
31 both. However, satisfactory completion of a distance learning

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1 postlicensure education course or courses requires the
 2 satisfactory completion of a timed distance learning course
 3 examination. Such examination shall not be required to be
 4 monitored or given at a centralized location.

5 2. The commission shall provide for postlicensure
 6 education courses to be made available by correspondence or
 7 other suitable means to any person who, by reason of hardship,
 8 as defined by rule, cannot attend the place or places where
 9 courses are regularly conducted or does not have access to the
 10 distance learning courses.

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

16 (7) The commission may not approve prelicensure or
 17 postlicensure distance learning courses for brokers, broker
 18 associates, and sales associates by correspondence methods,
 19 except in instances of hardship pursuant to subparagraphs
 20 (2)(a)3. and (5)(c)2.

21 Section 28. Section 475.175, Florida Statutes, is
 22 amended to read:

23 475.175 Examinations.--

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

26 (a) Submits to the department the appropriate
 27 notarized or electronically authenticated application and fee,
 28 ~~two photographs of herself or himself taken within the~~
 29 ~~preceding year,~~ and a fingerprint card. The fingerprint card
 30 shall be forwarded to the Division of Criminal Justice
 31 Information Systems within the Department of Law Enforcement

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1 for purposes of processing the fingerprint card to determine
2 if the applicant has a criminal history record. The
3 fingerprint card shall also be forwarded to the Federal Bureau
4 of Investigation for purposes of processing the fingerprint
5 card to determine if the applicant has a criminal history
6 record. The information obtained by the processing of the
7 fingerprint card by the Florida Department of Law Enforcement
8 and the Federal Bureau of Investigation shall be sent to the
9 department for the purpose of determining if the applicant is
10 statutorily qualified for examination. Effective July 1, 2006,
11 an applicant shall provide fingerprints in electronic format.

12 (b) Submits at the time of examination the certificate
13 specified in subsection (2), the examination admissions
14 authorization letter ~~card issued by the commission~~, and proof
15 of identification.

16 (2) Each accredited college, university, community
17 college, or registered real estate school shall notify the
18 commission of the names of all persons who have satisfactorily
19 completed the educational requirements provided for in s.
20 475.17(2), (3), and (4) in a manner prescribed by the
21 commission. Furthermore, each such educational institution
22 shall provide to each person satisfactorily completing the
23 educational requirements provided for in s. 475.17(2), (3),
24 and (4) a certificate as proof of such satisfactory
25 completion.

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

28 475.181 Licensure.--

29 (1) The department shall license any applicant whom
30 the commission certifies, pursuant to subsection (2), to be
31 qualified to practice as a broker or sales associate

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1 ~~salesperson.~~

2 Section 30. Section 475.182, Florida Statutes, is
3 amended to read:

4 475.182 Renewal of license; continuing education.--

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

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

30 (3) Any license ~~that~~ which is not renewed at the end
31 of the license period prescribed by the department shall

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1 automatically revert to involuntarily inactive status. Such
2 license may subsequently be renewed only if the licensee meets
3 the other qualifications specified in s. 475.183.

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

8 Section 31. Section 475.215, Florida Statutes, is
9 amended to read:

10 475.215 Multiple licenses.--

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

19 (2) A sales associate ~~salesperson~~ or broker associate
20 ~~broker-salesperson~~ shall have no more than one registered
21 employer at any one time.

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

24 475.22 Broker to maintain office and sign at entrance
25 of office; registered office outside state; broker required to
26 cooperate in investigation.--

27 (1) Each active broker shall maintain an office, which
28 shall consist of at least one enclosed room in a building of
29 stationary construction. Each active broker shall maintain a
30 sign on or about the entrance of her or his principal office
31 and each branch office, which sign may be easily observed and

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1 read by any person about to enter such office ~~and shall be of~~
 2 ~~such form and minimum dimensions as shall be prescribed by the~~
 3 ~~commission. Each sign must contain the name of the broker,~~
 4 ~~together with the trade name, if any. For a partnership or~~
 5 ~~corporation, the sign must contain the name of the firm or~~
 6 ~~corporation or trade name of the firm or corporation, together~~
 7 ~~with the name of at least one of the brokers. At a minimum,~~
 8 ~~the words "licensed real estate broker" or "lic. real estate~~
 9 ~~broker" must appear on the office entrance signs.~~

10 Section 33. Section 475.23, Florida Statutes, is
 11 amended to read:

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

29 Section 34. Subsection (1) of section 475.25, Florida
 30 Statutes, is amended, and subsections (5) and (6) are added to
 31 that section, to read:

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1 475.25 Discipline.--

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

11 (a) Has violated any provision of s. 455.227(1) or s.
 12 475.42. However, licensees under this part are exempt from the
 13 provisions of s. 455.227(1)(i).

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

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1 public.

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

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

29 a. Request that the commission issue an escrow
30 disbursement order determining who is entitled to the escrowed
31 property;

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1 b. With the consent of all parties, submit the matter
2 to arbitration;

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

5 d. With the written consent of all parties, submit the
6 matter to mediation. The department may conduct mediation or
7 may contract with public or private entities for mediation
8 services. However, the mediation process must be successfully
9 completed within 90 days following the last demand or the
10 licensee shall promptly employ one of the other escape
11 procedures contained in this section. Payment for mediation
12 will be as agreed to in writing by the parties. The department
13 may adopt rules to implement this section.

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

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1 2. Has failed to deposit money in an escrow account
 2 when the licensee is the purchaser of real estate under a
 3 contract where the contract requires the purchaser to place
 4 deposit money in an escrow account to be applied to the
 5 purchase price if the sale is consummated.

6 (e) Has violated any of the provisions of this chapter
 7 or any lawful order or rule made or issued under the
 8 provisions of this chapter or chapter 455.

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

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

23 (h) Has shared a commission with, or paid a fee or
 24 other compensation to, a person not properly licensed as a
 25 broker, broker associate ~~broker-salesperson~~, or sales
 26 associate ~~salesperson~~ under the laws of this state, for the
 27 referral of real estate business, clients, prospects, or
 28 customers, or for any one or more of the services set forth in
 29 s. 475.01(1)(a). For the purposes of this section, it is
 30 immaterial that the person to whom such payment or
 31 compensation is given made the referral or performed the

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1 service from within this state or elsewhere; however, a
2 licensed broker of this state may pay a referral fee or share
3 a real estate brokerage commission with a broker licensed or
4 registered under the laws of a foreign state so long as the
5 foreign broker does not violate any law of this state.

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

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

18 (k) Has failed, if a broker, to immediately place,
19 upon receipt, any money, fund, deposit, check, or draft
20 entrusted to her or him by any person dealing with her or him
21 as a broker in escrow with a title company, banking
22 institution, credit union, or savings and loan association
23 located and doing business in this state, or to deposit such
24 funds in a trust or escrow account maintained by her or him
25 with some bank, credit union, or savings and loan association
26 located and doing business in this state, wherein the funds
27 shall be kept until disbursement thereof is properly
28 authorized; or has failed, if a sales associate ~~salesperson~~,
29 to immediately place with her or his registered employer any
30 money, fund, deposit, check, or draft entrusted to her or him
31 by any person dealing with her or him as agent of the

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1 registered employer. The commission shall establish rules to
2 provide for records to be maintained by the broker and the
3 manner in which such deposits shall be made. A broker may
4 place and maintain up to \$5,000 of personal or brokerage funds
5 in the broker's property management escrow account and up to
6 \$1,000 of personal or brokerage funds in the broker's sales
7 escrow account. A broker shall be provided a reasonable amount
8 of time to correct escrow errors if there is no shortage of
9 funds and such errors pose no significant threat to
10 economically harm the public. It is the intent of the
11 Legislature that, in the event of legal proceedings concerning
12 a broker's escrow account, the disbursement of escrowed funds
13 not be delayed due to any dispute over the personal or
14 brokerage funds that may be present in the escrow account.

15 (l) Has made or filed a report or record which the
16 licensee knows to be false, has willfully failed to file a
17 report or record required by state or federal law, has
18 willfully impeded or obstructed such filing, or has induced
19 another person to impede or obstruct such filing; but such
20 reports or records shall include only those which are signed
21 in the capacity of a licensed broker or sales associate
22 salesperson.

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

25 (n) Is confined in any county jail, postadjudication;
26 is confined in any state or federal prison or mental
27 institution; is under home confinement ordered in lieu of
28 institutional confinement; or, through mental disease or
29 deterioration, can no longer safely be entrusted to
30 competently deal with the public.

31 (o) Has been found guilty, for a second time, of any

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1 misconduct that warrants her or his suspension or has been
2 found guilty of a course of conduct or practices which show
3 that she or he is so incompetent, negligent, dishonest, or
4 untruthful that the money, property, transactions, and rights
5 of investors, or those with whom she or he may sustain a
6 confidential relation, may not safely be entrusted to her or
7 him.

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

11 (q) Has violated any provision of s. 475.2755 or s.
12 475.278, including the duties owed under those sections.

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

23 (s) Has had a registration suspended, revoked, or
24 otherwise acted against in any jurisdiction. The record of the
25 disciplinary action certified or authenticated in such form as
26 to be admissible in evidence under the laws of the state shall
27 be admissible as prima facie evidence of such disciplinary
28 action.

29 (t) Has violated any standard for the development or
30 communication of a real estate appraisal or other provision of
31 the Uniform Standards of Professional Appraisal Practice, as

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1 defined in s. 475.611, as approved and adopted by the
2 Appraisal Standards Board of the Appraisal Foundation, as
3 defined in s. 475.611. This paragraph does not apply to a real
4 estate broker or sales associate ~~salesperson~~ who, in the
5 ordinary course of business, performs a comparative market
6 analysis, gives a broker price opinion, or gives an opinion of
7 value of real estate. However, in no event may this
8 comparative market analysis, broker price opinion, or opinion
9 of value of real estate be referred to as an appraisal, as
10 defined in s. 475.611.

11 (5) An administrative complaint against a broker or
12 broker associate must be filed within 5 years after the time
13 of the act giving rise to the complaint or within 5 years
14 after the time the act is discovered or should have been
15 discovered with the exercise of due diligence.

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

20 Section 35. Section 475.2755, Florida Statutes, is
21 amended to read:

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

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

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

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

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

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

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

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1 (1) BROKERAGE RELATIONSHIPS.--

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

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

22 (2) TRANSACTION BROKER RELATIONSHIP.--

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

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

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

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

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

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

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

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

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1 except that the first sentence of the information identified
2 in paragraph (c) must be printed in uppercase and bold type.

3 This paragraph expires July 1, 2008.

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

8 IMPORTANT NOTICE

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

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

19
20 TRANSACTION BROKER NOTICE

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

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

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

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

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

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

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

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

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

29 _____ Date

Signature

31

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Signature

This paragraph expires July 1, 2008.

(3) SINGLE AGENT RELATIONSHIP.--

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

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

(b) Disclosure requirements.--

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

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1 NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

2

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

9

10 SINGLE AGENT NOTICE

11

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

14

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

18

1. Dealing honestly and fairly;

19

2. Loyalty;

20

3. Confidentiality;

21

4. Obedience;

22

5. Full disclosure;

23

6. Accounting for all funds;

24

7. Skill, care, and diligence in the transaction;

25

8. Presenting all offers and counteroffers in a timely

26 manner, unless a party has previously directed the licensee

27 otherwise in writing; and

28

9. Disclosing all known facts that materially affect

29 the value of residential real property and are not readily

30 observable.

31

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1 _____ Date _____

2 _____ Signature _____

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

9

10 CONSENT TO TRANSITION TO
11 TRANSACTION BROKER

12

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

20

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

25 1. Dealing honestly and fairly;

26 2. Accounting for all funds;

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

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

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

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

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

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

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

27
28 (4) NO BROKERAGE RELATIONSHIP.--

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

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1 confidence until you decide on representation.

2

3 NO BROKERAGE RELATIONSHIP NOTICE

4

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

8

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

13

14 1. Dealing honestly and fairly;

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

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

19

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

21 (5) APPLICABILITY.--

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

29 (b) Disclosure limitations.--

30 1. The real estate disclosure requirements of this
31 section do not apply when a licensee knows that the potential

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1 seller or buyer is represented by a single agent or a
2 transaction broker; or when an owner is selling new
3 residential units built by the owner and the circumstances or
4 setting should reasonably inform the potential buyer that the
5 owner's employee or single agent is acting on behalf of the
6 owner, whether because of the location of the sales office or
7 because of office signage or placards or identification badges
8 worn by the owner's employee or single agent.

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

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

3 475.31 Final orders.--

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

11 Section 38. Section 475.37, Florida Statutes, is
12 amended to read:

13 475.37 Effect of reversal of order of court or
14 commission.--If the order of the court or commission denying a
15 license or taking any disciplinary action against a licensee
16 is finally reversed and set aside, the defendant shall be
17 restored to her or his rights and privileges as a broker or
18 sales associate ~~salesperson~~ as of the date of filing the
19 mandate or a copy thereof with the commission. The matters and
20 things alleged in the information shall not thereafter be
21 reexamined in any other proceeding concerning the licensure of
22 the defendant. If the inquiry concerned was in reference to an
23 application for licensure, the application shall stand
24 approved, and such application shall be remanded for further
25 proceedings according to law.

26 Section 39. Section 475.41, Florida Statutes, is
27 amended to read:

28 475.41 Contracts of unlicensed person for commissions
29 invalid.--No contract for a commission or compensation for any
30 act or service enumerated in s. 475.01(3) is valid unless the
31 broker or sales associate ~~salesperson~~ has complied with this

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

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

5 475.42 Violations and penalties.--

6 (1) VIOLATIONS.--

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

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

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

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

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1 for a commission or compensation in connection with a real
2 estate brokerage transaction against any person except a
3 person registered as her or his employer at the time the sales
4 associate ~~salesperson~~ performed the act or rendered the
5 service for which the commission or compensation is due.

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

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

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

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

29 (i) A ~~No~~ person may not ~~shall~~ obstruct or hinder in
30 any manner the enforcement of this chapter or the performance
31 of any lawful duty by any person acting under the authority of

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1 this chapter or interfere with, intimidate, or offer any bribe
2 to any member of the commission or any of its employees or any
3 person who is, or is expected to be, a witness in any
4 investigation or proceeding relating to a violation of this
5 chapter.

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

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

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

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

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

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

29 Section 41. Section 475.43, Florida Statutes, is
 30 amended to read:

31 475.43 Presumptions.--In all criminal cases, contempt

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

23 Section 42. Section 475.451, Florida Statutes, is
24 amended to read:

25 475.451 Schools teaching real estate practice.--

26 (1) Each person, school, or institution, except
27 approved and accredited colleges, universities, community
28 colleges, and area technical centers in this state, which
29 offers or conducts any course of study in real estate
30 practice, teaches any course prescribed by the commission as a
31 condition precedent to licensure or renewal of licensure as a

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1 broker or sales associate ~~salesperson~~, or teaches any course
2 designed or represented to enable or assist applicants for
3 licensure as brokers or sales associates ~~salespersons~~ to pass
4 examinations for such licensure shall, before commencing or
5 continuing further to offer or conduct such course or courses,
6 obtain a permit from the department and abide by the
7 regulations imposed upon such person, school, or institution
8 by this chapter and rules of the commission adopted pursuant
9 to this chapter. The exemption for colleges, universities,
10 community colleges, and area technical centers is limited to
11 transferable college credit courses offered by such
12 institutions.

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

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

28 (b) "Chief administrative person" means the individual
29 who is responsible for the administration of the overall
30 policies and practices of the institution or proprietary real
31 estate school. A chief administrative person must also meet

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1 the requirements of a school instructor if actively engaged in
2 teaching.

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

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

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

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

19 c. Pass an instructor's examination approved by the
20 commission.

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

24 3. The department shall renew an instructor permit
25 upon receipt of a renewal application and fee. The renewal
26 application shall include proof that the permitholder has,
27 since the issuance or renewal of the current permit,
28 successfully completed a minimum of 7 ~~15~~ classroom hours of
29 instruction in real estate subjects or instructional
30 techniques, as prescribed by the commission. The commission
31 shall adopt rules providing for the renewal of instructor

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

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

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

27 | (4) Any person who violates this section commits a
28 | misdemeanor of the second degree, punishable as provided in s.
29 | 775.082 or s. 775.083.

30 | (5) The location of classes and frequency of class
31 | meetings and the provision of distance learning courses shall

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1 be in the discretion of the school offering real estate
2 courses, so long as such courses conform to s. 475.17(2).

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

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

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

8 Section 43. Subsections (4) and (5) of section
9 475.4511, Florida Statutes, are repealed.

10 Section 44. Section 475.453, Florida Statutes, is
11 amended to read:

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

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

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1 service to be provided to the prospective tenant.

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

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

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

15 Section 45. Section 475.455, Florida Statutes, is
16 amended to read:

17 475.455 Exchange of disciplinary information.--The
18 commission shall inform the Division of Florida Land Sales,
19 Condominiums, and Mobile Homes of the Department of Business
20 and Professional Regulation of any disciplinary action the
21 commission has taken against any of its licensees. The
22 division shall inform the commission of any disciplinary
23 action the division has taken against any broker or sales
24 associate ~~salesperson~~ registered with the division.

25 Section 46. Section 475.482, Florida Statutes, is
26 amended to read:

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

30 (1) The Florida Real Estate Recovery Fund shall be
31 disbursed as provided in s. 475.484, on order of the

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1 | commission, as reimbursement to any person, partnership, or
 2 | corporation adjudged by a court of competent civil
 3 | jurisdiction in this state to have suffered monetary damages
 4 | by reason of any act committed, as a part of any real estate
 5 | brokerage transaction involving real property in this state,
 6 | by any broker or sales associate ~~salesperson~~ who:

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

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

16 | (c) Was acting solely in the capacity of a real estate
 17 | licensee in the transaction;

18 |
 19 | provided the act was a violation proscribed in s. 475.25 or s.
 20 | 475.42.

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

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1 civil jurisdiction to pay monetary damages due to a
 2 distribution of escrow moneys which is made in compliance with
 3 an escrow disbursement order issued by the commission.

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

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

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

22 475.483 Conditions for recovery; eligibility.--

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

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

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

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

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

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

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

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

30 (e) The judgment is against a real estate brokerage
31 corporation, partnership, limited liability company, or

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1 limited liability partnership.

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

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

9 475.484 Payment from the fund.--

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

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

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

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

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

31 (5) If at any time the moneys in the Real Estate

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

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

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

29 475.5017 Injunctive relief; powers.--

30 (2) All expenses of the receiver shall be paid out of
31 the assets of the brokerage firm upon application to and

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1 approval by the court. If the assets are not sufficient to pay
 2 all the expenses of the receiver, the court may order
 3 disbursement from the Real Estate Recovery Fund, which may not
 4 exceed ~~\$100,000~~ \$75,000 per receivership.

5 Section 50. Subsections (2) and (3) of section
 6 475.612, Florida Statutes, are amended to read:

7 475.612 Certification, licensure, or registration
 8 required.--

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

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

24 Section 51. Section 689.25, Florida Statutes, is
 25 amended to read:

26 689.25 Failure to disclose homicide, suicide, deaths,
 27 or diagnosis of HIV or AIDS infection in an occupant of real
 28 property.--

29 (1)(a) The fact that an occupant of real property is
 30 infected or has been infected with human immunodeficiency
 31 virus or diagnosed with acquired immune deficiency syndrome is

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1 not a material fact that must be disclosed in a real estate
2 transaction.

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

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

16 Section 52. Sections 475.421 and 475.422, Florida
17 Statutes, are repealed.

18 Section 53. Paragraph (d) of subsection (3) of section
19 83.49, Florida Statutes, is amended to read:

20 83.49 Deposit money or advance rent; duty of landlord
21 and tenant.--

22 (3)

23 (d) Compliance with this section by an individual or
24 business entity authorized to conduct business in this state,
25 including Florida-licensed real estate brokers and sales
26 associates ~~salespersons~~, shall constitute compliance with all
27 other relevant Florida Statutes pertaining to security
28 deposits held pursuant to a rental agreement or other
29 landlord-tenant relationship. Enforcement personnel shall look
30 solely to this section to determine compliance. This section
31 prevails over any conflicting provisions in chapter 475 and in

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1 other sections of the Florida Statutes, and shall operate to
2 permit licensed real estate brokers to disburse security
3 deposits and deposit money without having to comply with the
4 notice and settlement procedures contained in s. 475.25(1)(d).

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

7 440.02 Definitions.--When used in this chapter, unless
8 the context clearly requires otherwise, the following terms
9 shall have the following meanings:

10 (15)

11 (d) "Employee" does not include:

12 1. An independent contractor, if:

13 a. The independent contractor maintains a separate
14 business with his or her own work facility, truck, equipment,
15 materials, or similar accommodations;

16 b. The independent contractor holds or has applied for
17 a federal employer identification number, unless the
18 independent contractor is a sole proprietor who is not
19 required to obtain a federal employer identification number
20 under state or federal requirements;

21 c. The independent contractor performs or agrees to
22 perform specific services or work for specific amounts of
23 money and controls the means of performing the services or
24 work;

25 d. The independent contractor incurs the principal
26 expenses related to the service or work that he or she
27 performs or agrees to perform;

28 e. The independent contractor is responsible for the
29 satisfactory completion of work or services that he or she
30 performs or agrees to perform and is or could be held liable
31 for a failure to complete the work or services;

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- 1 f. The independent contractor receives compensation
- 2 for work or services performed for a commission or on a
- 3 per-job or competitive-bid basis and not on any other basis;
- 4 g. The independent contractor may realize a profit or
- 5 suffer a loss in connection with performing work or services;
- 6 h. The independent contractor has continuing or
- 7 recurring business liabilities or obligations; and
- 8 i. The success or failure of the independent
- 9 contractor' s business depends on the relationship of business
- 10 receipts to expenditures.

11

12 However, the determination as to whether an individual

13 included in the Standard Industrial Classification Manual of

14 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,

15 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,

16 2448, or 2449, or a newspaper delivery person, is an

17 independent contractor is governed not by the criteria in this

18 paragraph but by common-law principles, giving due

19 consideration to the business activity of the individual.

20 Notwithstanding the provisions of this paragraph or any other

21 provision of this chapter, with respect to any commercial

22 building project estimated to be valued at \$250,000 or

23 greater, a person who is actively engaged in the construction

24 industry is not an independent contractor and is either an

25 employer or an employee who may not be exempt from the

26 coverage requirements of this chapter.

27 2. A real estate licensee ~~salesperson or agent~~, if

28 that person agrees, in writing, to perform for remuneration

29 solely by way of commission.

30 3. Bands, orchestras, and musical and theatrical

31 performers, including disk jockeys, performing in licensed

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1 premises as defined in chapter 562, if a written contract
2 evidencing an independent contractor relationship is entered
3 into before the commencement of such entertainment.

4 4. An owner-operator of a motor vehicle who transports
5 property under a written contract with a motor carrier which
6 evidences a relationship by which the owner-operator assumes
7 the responsibility of an employer for the performance of the
8 contract, if the owner-operator is required to furnish the
9 necessary motor vehicle equipment and all costs incidental to
10 the performance of the contract, including, but not limited
11 to, fuel, taxes, licenses, repairs, and hired help; and the
12 owner-operator is paid a commission for transportation service
13 and is not paid by the hour or on some other time-measured
14 basis.

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

18 6. A volunteer, except a volunteer worker for the
19 state or a county, municipality, or other governmental entity.
20 A person who does not receive monetary remuneration for
21 services is presumed to be a volunteer unless there is
22 substantial evidence that a valuable consideration was
23 intended by both employer and employee. For purposes of this
24 chapter, the term "volunteer" includes, but is not limited to:

25 a. Persons who serve in private nonprofit agencies and
26 who receive no compensation other than expenses in an amount
27 less than or equivalent to the standard mileage and per diem
28 expenses provided to salaried employees in the same agency or,
29 if such agency does not have salaried employees who receive
30 mileage and per diem, then such volunteers who receive no
31 compensation other than expenses in an amount less than or

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1 equivalent to the customary mileage and per diem paid to
2 salaried workers in the community as determined by the
3 department; and

4 b. Volunteers participating in federal programs
5 established under Pub. L. No. 93-113.

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

8 8. A sole proprietor or officer of a corporation who
9 actively engages in the construction industry, and a partner
10 in a partnership that is actively engaged in the construction
11 industry, who elects to be exempt from the provisions of this
12 chapter. Such sole proprietor, officer, or partner is not an
13 employee for any reason until the notice of revocation of
14 election filed pursuant to s. 440.05 is effective.

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

21 10. A taxicab, limousine, or other passenger
22 vehicle-for-hire driver who operates said vehicles pursuant to
23 a written agreement with a company which provides any
24 dispatch, marketing, insurance, communications, or other
25 services under which the driver and any fees or charges paid
26 by the driver to the company for such services are not
27 conditioned upon, or expressed as a proportion of, fare
28 revenues.

29 11. A person who performs services as a sports
30 official for an entity sponsoring an interscholastic sports
31 event or for a public entity or private, nonprofit

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1 organization that sponsors an amateur sports event. For
2 purposes of this subparagraph, such a person is an independent
3 contractor. For purposes of this subparagraph, the term
4 "sports official" means any person who is a neutral
5 participant in a sports event, including, but not limited to,
6 umpires, referees, judges, linespersons, scorekeepers, or
7 timekeepers. This subparagraph does not apply to any person
8 employed by a district school board who serves as a sports
9 official as required by the employing school board or who
10 serves as a sports official as part of his or her
11 responsibilities during normal school hours.

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

14 443.036 Definitions.--As used in this chapter, unless
15 the context clearly requires otherwise:

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

19 (n) Exclusions generally.--The term "employment" does
20 not include:

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

24 2. Service performed on or in connection with a vessel
25 or aircraft not an American vessel or American aircraft, if
26 the employee is employed on and in connection with such vessel
27 or aircraft when outside the United States.

28 3. Service performed by an individual in, or as an
29 officer or member of the crew of a vessel while it is engaged
30 in, the catching, taking, harvesting, cultivating, or farming
31 of any kind of fish, shellfish, crustacea, sponges, seaweeds,

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1 or other aquatic forms of animal and vegetable life, including
2 service performed by any such individual as an ordinary
3 incident to any such activity, except:

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

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

10 4. Service performed by an individual in the employ of
11 his or her son, daughter, or spouse, including step
12 relationships, and service performed by a child, or stepchild,
13 under the age of 21 in the employ of his or her father or
14 mother, or stepfather or stepmother.

15 5. Service performed in the employ of the United
16 States Government or of an instrumentality of the United
17 States which is:

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

19 b. Exempt from the tax imposed by s. 3301 of the
20 Internal Revenue Code by virtue of any provision of federal
21 law which specifically refers to such section, or the
22 corresponding section of prior law, in granting such
23 exemption; except that to the extent that the Congress shall
24 permit states to require any instrumentalities of the United
25 States to make payments into an unemployment fund under a
26 state unemployment compensation law, all of the provisions of
27 this law shall be applicable to such instrumentalities, and to
28 services performed for such instrumentalities, in the same
29 manner, to the same extent, and on the same terms as to all
30 other employers, employing units, individuals, and services.

31 If this state is not certified for any year by the Secretary

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1 of Labor under s. 3304 of the federal Internal Revenue Code,
2 the payments required of such instrumentalities with respect
3 to such year shall be refunded by the division from the fund
4 in the same manner and within the same period as is provided
5 in s. 443.141(6) with respect to contributions erroneously
6 collected.

7 6. Service performed in the employ of a state, or any
8 political subdivision thereof, or any instrumentality of any
9 one or more of the foregoing which is wholly owned by one or
10 more states or political subdivisions, except as provided in
11 paragraph (b), and any service performed in the employ of any
12 instrumentality of one or more states or political
13 subdivisions, to the extent that the instrumentality is, with
14 respect to such service, immune under the Constitution of the
15 United States from the tax imposed by s. 3301 of the Internal
16 Revenue Code.

17 7. Service performed in the employ of a corporation,
18 community chest, fund, or foundation, organized and operated
19 exclusively for religious, charitable, scientific, testing for
20 public safety, literary, or educational purposes, or for the
21 prevention of cruelty to children or animals, no part of the
22 net earnings of which inures to the benefit of any private
23 shareholder or individual, no substantial part of the
24 activities of which is carrying on propaganda or otherwise
25 attempting to influence legislation, and which does not
26 participate in, or intervene in (including the publishing or
27 distributing of statements), any political campaign on behalf
28 of any candidate for public office, except as provided in
29 paragraph (c).

30 8. Service with respect to which unemployment
31 compensation is payable under an unemployment compensation

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1 system established by an Act of Congress.

2 9.a. Service performed in any calendar quarter in the
3 employ of any organization exempt from income tax under s.
4 501(a) of the Internal Revenue Code, other than an
5 organization described in s. 401(a), or under s. 521, if the
6 remuneration for such service is less than \$50.

7 b. Service performed in the employ of a school,
8 college, or university, if such service is performed by a
9 student who is enrolled and is regularly attending classes at
10 such school, college, or university.

11 10. Service performed in the employ of a foreign
12 government, including service as a consular or other officer
13 or employee of a nondiplomatic representative.

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

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

19 b. The Secretary of State shall certify to the
20 Secretary of the Treasury that the foreign government, with
21 respect to whose instrumentality exemption is claimed, grants
22 an equivalent exemption with respect to similar service
23 performed in the foreign country by employees of the United
24 States Government and of instrumentalities thereof.

25 12. Service performed as a student nurse in the employ
26 of a hospital or a nurses' training school by an individual
27 who is enrolled and is regularly attending classes in a
28 nurses' training school chartered or approved pursuant to a
29 state law; service performed as an intern in the employ of a
30 hospital by an individual who has completed a 4-year course in
31 a medical school chartered or approved pursuant to state law;

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1 and service performed by a patient of a hospital for such
2 hospital.

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

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

16 15. Service performed by an individual under the age
17 of 18 in the delivery or distribution of newspapers or
18 shopping news, not including delivery or distribution to any
19 point for subsequent delivery or distribution.

20 16. Service covered by an arrangement between the
21 division and the agency charged with the administration of any
22 other state or federal unemployment compensation law pursuant
23 to which all services performed by an individual for an
24 employing unit during the period covered by such employing
25 unit's duly approved election are deemed to be performed
26 entirely within such agency's state or under such federal law.

27 17. Service performed by an individual who is enrolled
28 at a nonprofit or public educational institution which
29 normally maintains a regular faculty and curriculum and
30 normally has a regularly organized body of students in
31 attendance at the place where its educational activities are

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1 carried on as a student in a full-time program, taken for
2 credit at such institution, which combines academic
3 instruction with work experience, if such service is an
4 integral part of such program, and such institution has so
5 certified to the employer, except that this subparagraph does
6 not apply to service performed in a program established for or
7 on behalf of an employer or group of employers.

8 18. Service performed by an individual for a person as
9 a barber, if all such service performed by such individual for
10 such person is performed for remuneration solely by way of
11 commission.

12 19. Casual labor not in the course of the employer's
13 trade or business.

14 20. Service performed by a speech therapist,
15 occupational therapist, or physical therapist who is
16 nonsalaried and working pursuant to a written contract with a
17 home health agency as defined in s. 400.462.

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

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

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

29 b. Substantially all of whose remuneration for
30 services described in sub-subparagraph a., whether or not paid
31 in cash, is directly related to sales or other output, rather

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1 than to the number of hours worked; and

2 c. Who performs such services pursuant to a written
3 contract with the person for whom the services are performed,
4 which contract provides that the person will not be treated as
5 an employee with respect to such services for federal tax
6 purposes.

7 22. Service performed by a nonresident alien
8 individual for the period he or she is temporarily present in
9 the United States as a nonimmigrant under subparagraph (F) or
10 subparagraph (J) of s. 101(a)(15) of the Immigration and
11 Nationality Act, and which is performed to carry out the
12 purpose specified in subparagraph (F) or subparagraph (J), as
13 the case may be.

14 23. Service performed by an individual for
15 remuneration for a private, for-profit delivery or messenger
16 service, if the individual:

17 a. Is free to accept or reject jobs from the delivery
18 or messenger service and the delivery or messenger service has
19 no control over when the individual works;

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

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

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

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

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

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1 g. Enters into a contract with the delivery or
2 messenger service which specifies the relationship of the
3 individual to the delivery or messenger service to be that of
4 an independent contractor and not that of an employee; and

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

6 24. Service performed in agricultural labor by an
7 individual who is an alien admitted to the United States to
8 perform service in agricultural labor pursuant to ss.
9 101(a)(15)(H) and 214(c) of the Immigration and Nationality
10 Act.

11 25. Service performed by a person who is an inmate of
12 a penal institution.

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

15 501.604 Exemptions.--The provisions of this part,
16 except ss. 501.608 and 501.616(6) and (7), do not apply to:

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

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

22 687.14 Definitions.--As used in this act, unless the
23 context otherwise requires:

24 (4) "Loan broker" means any person, except any bank or
25 savings and loan association, trust company, building and loan
26 association, credit union, consumer finance company, retail
27 installment sales company, securities broker-dealer, real
28 estate broker or sales associate ~~salesperson~~, attorney,
29 federal Housing Administration or United States Department of
30 Veterans Affairs approved lender, credit card company,
31 installment loan licensee, mortgage broker or lender, or

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1 insurance company, provided that the person excepted is
2 licensed by and subject to regulation or supervision of any
3 agency of the United States or this state and is acting within
4 the scope of the license; and also excepting subsidiaries of
5 licensed or chartered consumer finance companies, banks, or
6 savings and loan associations; who:

7 (a) For or in expectation of consideration arranges or
8 attempts to arrange or offers to fund a loan of money, a
9 credit card, or a line of credit;

10 (b) For or in expectation of consideration assists or
11 advises a borrower in obtaining or attempting to obtain a loan
12 of money, a credit card, a line of credit, or related
13 guarantee, enhancement, or collateral of any kind or nature;

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

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

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

19 721.20 Licensing requirements; suspension or
20 revocation of license; exceptions to applicability; collection
21 of advance fees for listings unlawful.--

22 (1) Any seller of a timeshare plan must be a licensed
23 real estate ~~salesperson~~, broker, broker associate, or sales
24 associate ~~broker-salesperson~~ as defined in s. 475.01, except
25 as provided in s. 475.011.

26 (6) Notwithstanding the provisions of s. 475.452, it
27 is unlawful for any real estate broker, broker associate
28 ~~salesperson~~, or sales associate ~~broker-salesperson~~ to collect
29 any advance fee for the listing of any timeshare estate or
30 timeshare license.

31 Section 59. Paragraph (a) of subsection (1) of section

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1 760.29, Florida Statutes, is amended to read:

2 760.29 Exemptions.--

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

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

21 a. Without the use in any manner of the sales or
22 rental facilities or the sales or rental services of any real
23 estate licensee ~~broker, agent, or salesperson~~ or such
24 facilities or services of any person in the business of
25 selling or renting dwellings, or of any employee or agent of
26 any such licensee ~~broker, agent, salesperson, or person~~; and

27 b. Without the publication, posting, or mailing, after
28 notice, of any advertisement or written notice in violation of
29 s. 760.23(3).

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31 Nothing in this provision prohibits the use of attorneys,

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1 escrow agents, abstractors, title companies, and other such
2 professional assistance as is necessary to perfect or transfer
3 the title.

4 2. Rooms or units in dwellings containing living
5 quarters occupied or intended to be occupied by no more than
6 four families living independently of each other, if the owner
7 actually maintains and occupies one of such living quarters as
8 his or her residence.

9 Section 60. This act shall take effect July 1, 2003.

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11

12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 3, line 2, after the semicolon,

15

16 insert:

17 amending s. 475.001, F.S.; conforming
18 terminology; amending s. 475.01, F.S.;
19 redesignating "broker-salespersons" as "broker
20 associates" and "salespersons" as "sales
21 associates"; expanding the definition of
22 "transaction broker"; amending s. 475.011,
23 F.S.; conforming terminology; amending ss.
24 475.02 and 475.04, F.S.; conforming
25 terminology; creating s. 475.161, F.S.;
26 providing for licensing of broker associates
27 and sales associates; amending s. 475.17, F.S.;
28 revising qualifications for practice;
29 authorizing additional subjects for
30 postlicensure education; restricting approval
31 of distance learning courses to instances of

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1 hardship; conforming terminology; amending s.
2 475.175, F.S.; revising requirements to take
3 the license examination; revising requirements
4 with respect to notice of completion of
5 educational requirements; amending s. 475.181,
6 F.S.; conforming terminology; amending s.
7 475.182, F.S.; providing guidelines for
8 approving specialty courses; conforming
9 terminology; amending s. 475.215, F.S.;
10 conforming terminology; amending s. 475.22,
11 F.S.; revising requirements with respect to
12 brokers' signs; amending s. 475.23, F.S.;
13 providing for notice of change of address;
14 conforming terminology; amending s. 475.25,
15 F.S.; revising duties of licensees with respect
16 to escrowed property; allowing a broker to
17 place personal or brokerage funds in property
18 management and sales escrow accounts; providing
19 penalties; providing a time limit on filing
20 complaints against a licensee; providing for
21 referral of criminal violations to prosecuting
22 authorities; conforming terminology; amending
23 s. 475.2755, F.S.; conforming terminology;
24 amending s. 475.278, F.S.; revising provisions
25 relating to authorized brokerage relationships;
26 providing a presumption of transaction
27 brokerage; revising disclosure requirements;
28 amending s. 475.31, F.S.; providing effect of
29 revocation or suspension of a broker's license;
30 conforming terminology; amending ss. 475.37 and
31 475.41, F.S.; conforming terminology; amending

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1 s. 475.42, F.S.; providing an additional ground
2 for disciplinary action relating to false or
3 misleading information on real estate located
4 in the state; providing penalties; conforming
5 terminology; amending s. 475.43, F.S.;
6 conforming terminology; amending s. 475.451,
7 F.S.; revising prerequisites for renewal of an
8 instructor permit; removing an exemption from
9 instructor examination requirements; conforming
10 terminology; repealing s. 475.4511(4) and (5),
11 F.S., relating to the prohibition against a
12 school advertising in conjunction with an
13 affiliated broker and publishing a "pass/fail"
14 ratio; amending ss. 475.453 and 475.455, F.S.;
15 conforming terminology; amending s. 475.482,
16 F.S.; increasing the maximum amount that may be
17 in the Real Estate Recovery Fund; conforming
18 terminology; amending s. 475.483, F.S.;
19 revising guidelines for payment of attorney's
20 fees with respect to recovery from the fund;
21 conforming terminology; amending ss. 475.484
22 and 475.5017, F.S.; increasing maximum amounts
23 payable from the fund; conforming terminology;
24 amending s. 475.612, F.S.; conforming
25 terminology; amending s. 689.25, F.S.;
26 prescribing facts and conditions the existence
27 of which need not be disclosed in a real estate
28 transaction; repealing s. 475.421, F.S.,
29 relating to publication of false or misleading
30 information on real estate located in the
31 state; repealing s. 475.422, F.S., relating to

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1 disclosure of termite and roof inspection
2 reports; amending ss. 83.49, 440.02, 443.036,
3 501.604, 687.14, 721.20, and 760.29, F.S. ;
4 conforming terminology;

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