



HB 0637

2003

1 A bill to be entitled
2 An act relating to regulation of real estate
3 professionals; amending s. 475.001, F.S.; redesignating
4 "salespersons" as "broker associates"; amending s. 475.01,
5 F.S.; defining and redefining terms; amending s. 475.011,
6 F.S.; revising exemptions from regulation requirements;
7 amending s. 475.02, F.S.; conforming terminology; amending
8 s. 475.03, F.S.; deleting authority of the Attorney
9 General with respect to retention of legal counsel by the
10 Florida Real Estate Commission; amending s. 475.04, F.S.;
11 conforming terminology; providing powers of independent
12 certification organizations; amending s. 475.15, F.S.;
13 revising requirements related to registration and
14 licensing of partnerships; amending s. 475.17, F.S.;
15 conforming terminology; requiring that distance learning
16 courses be interactive; authorizing additional subjects
17 for postlicensure education; amending s. 475.175, F.S.;
18 revising requirements for license examination
19 applications; amending s. 475.181, F.S.; conforming
20 terminology; amending s. 475.182, F.S.; providing
21 guidelines for approving specialty courses; providing for
22 duration of initial licenses; amending s. 475.215, F.S.;
23 conforming terminology; amending s. 475.22, F.S.; revising
24 requirements with respect to brokers' signs; amending s.
25 475.23, F.S.; providing for notice of change of address;
26 amending s. 475.25, F.S.; revising duties of licensees
27 with respect to escrowed property; providing guidelines
28 for real estate transactions in cooperation between
29 licensed professionals and professionals licensed out-of-
30 state; allowing a broker to place personal funds in his or



HB 0637

2003

31 her escrow account; providing a time limit on filing
32 complaints against a licensee; requiring notice to
33 employer of disciplinary action against a licensee;
34 providing for referral of criminal violations to
35 prosecuting authorities; amending s. 475.2755, F.S.;
36 conforming terminology and references; amending s.
37 475.278, F.S.; revising provisions relating to authorized
38 brokerage relationships; providing a presumption of
39 transaction brokerage; revising disclosure requirements;
40 amending s. 475.31, F.S.; providing effect of revocation
41 or suspension of broker's license; amending s. 475.37,
42 F.S.; conforming terminology; creating s. 475.4005, F.S.;
43 providing penalties for unlicensed practice of real
44 estate; providing for cease and desist orders; authorizing
45 rules; providing for deposit of fines, fees, and costs
46 collected; amending s. 475.41, F.S.; conforming
47 terminology; amending s. 475.42, F.S.; conforming
48 terminology; providing an additional ground for
49 disciplinary action; providing penalties; amending s.
50 475.43, F.S.; conforming terminology; amending s. 475.451,
51 F.S.; revising prerequisites for renewal of an instructor
52 permit; revising period for which instructor permits may
53 be issued; repealing the prohibition against real estate
54 schools advertising a guarantee that their pupils will
55 pass licensure examinations; removing an exemption from
56 instructor examination requirements; repealing s.
57 475.4511(3)-(5), F.S.; repealing prohibitions against
58 advertising that provides inducements to enroll based on
59 an employment guarantee, that is in conjunction with an
60 affiliated broker, and that refers to examination



HB 0637

2003

61 pass/fail ratios; amending ss. 475.453 and 475.455, F.S.;
 62 conforming terminology; amending s. 475.482, F.S.;
 63 increasing the maximum amount that may be in the Real
 64 Estate Recovery Fund; amending s. 475.483, F.S.; revising
 65 guidelines for payment of attorney's fees with respect to
 66 recovery from the fund; amending ss. 475.484 and 475.5017,
 67 F.S.; increasing maximum amounts payable from the fund;
 68 amending s. 475.612, F.S.; conforming terminology;
 69 amending s. 689.25, F.S.; prescribing facts and conditions
 70 the existence of which need not be disclosed in a real
 71 estate transaction; repealing s. 475.421, F.S., relating
 72 to publication of false or misleading information;
 73 repealing s. 475.422, F.S., relating to disclosure;
 74 repealing s. 475.452, F.S., relating to advance fees;
 75 amending ss. 83.49, 440.02, 443.036, 501.604, 687.14,
 76 721.20, and 760.29, F.S.; conforming terminology and
 77 references; providing an effective date.

78

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

80

81 Section 1. Section 475.001, Florida Statutes, is amended
 82 to read:

83 475.001 Purpose.--The Legislature deems it necessary in
 84 the interest of the public welfare to regulate real estate
 85 brokers, broker associates ~~salespersons~~, and schools in this
 86 state.

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

89 475.01 Definitions.--
 90 (1) As used in this part:



HB 0637

2003

91 (a) "Broker" means a person who, for another, and for a
92 compensation or valuable consideration directly or indirectly
93 paid or promised, expressly or impliedly, or with an intent to
94 collect or receive a compensation or valuable consideration
95 therefor, appraises, auctions, sells, exchanges, buys, rents, or
96 offers, attempts or agrees to appraise, auction, or negotiate
97 the sale, exchange, purchase, or rental of business enterprises
98 or business opportunities or any real property or any interest
99 in or concerning the same, including mineral rights or leases,
100 or who advertises or holds out to the public by any oral or
101 printed solicitation or representation that she or he is engaged
102 in the business of appraising, auctioning, buying, selling,
103 exchanging, leasing, or renting business enterprises or business
104 opportunities or real property of others or interests therein,
105 including mineral rights, or who takes any part in the procuring
106 of sellers, purchasers, lessors, or lessees of business
107 enterprises or business opportunities or the real property of
108 another, or leases, or interest therein, including mineral
109 rights, or who directs or assists in the procuring of prospects
110 or in the negotiation or closing of any transaction which does,
111 or is calculated to, result in a sale, exchange, or leasing
112 thereof, and who receives, expects, or is promised any
113 compensation or valuable consideration, directly or indirectly
114 therefor; and all persons who advertise rental property
115 information or lists. A broker renders a professional service
116 and is a professional within the meaning of s. 95.11(4)(a).
117 Where the term "appraise" or "appraising" appears in the
118 definition of the term "broker," it specifically excludes those
119 appraisal services which must be performed only by a state-
120 licensed or state-certified appraiser, and those appraisal



HB 0637

2003

121 services which may be performed by a registered assistant
122 appraiser as defined in part II. ~~The term "broker" also includes~~
123 ~~any person who is a general partner, officer, or director of a~~
124 ~~partnership or corporation which acts as a broker.~~ The term
125 "broker" also includes any person who is qualified to be issued
126 a license as a broker but who operates as a broker associate in
127 the employ of another and any person or entity who undertakes to
128 list or sell one or more timeshare periods per year in one or
129 more timeshare plans on behalf of any number of persons, except
130 as provided in ss. 475.011 and 721.20.

131 (b) "Broker associate" means a person who performs any act
132 specified in the definition of "broker" but who performs such
133 act under the employment of another person. A broker associate
134 renders a professional service and is a professional within the
135 meaning of s. 95.11(4)(a). This definition does not limit a
136 broker associate from registering as an officer or director of a
137 brokerage corporation or a general partner of a brokerage
138 partnership. A broker associate may also form or be a member of
139 a partnership, limited liability company, limited liability
140 partnership, or corporation with brokers and other broker
141 associates. ~~"Broker salesperson" means a person who is qualified~~
142 ~~to be issued a license as a broker but who operates as a~~
143 ~~salesperson in the employ of another.~~

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

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

149 (e) "Department" means the Department of Business and
150 Professional Regulation.



HB 0637

2003

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

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

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

161 (i) "Real property" or "real estate" means any interest or
162 estate in land and any interest in business enterprises or
163 business opportunities, including any assignment, leasehold,
164 subleasehold, or mineral right; however, the term does not
165 include any cemetery lot or right of burial in any cemetery; nor
166 does the term include the renting of a mobile home lot or
167 recreational vehicle lot in a mobile home park or travel park.

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

173 (j)(k) "Single agent" means a broker who represents, as a
174 fiduciary, either the buyer or seller but not both in the same
175 transaction.

176 (k)(l) "Transaction broker" means a broker who provides
177 limited representation to a buyer, a seller, or both, in a real
178 estate transaction, but does not represent either in a fiduciary
179 capacity or as a single agent. In a transaction broker
180 relationship, a buyer or seller is not responsible for the acts



HB 0637

2003

181 of a licensee. Additionally, the parties to a real estate
 182 transaction are giving up their rights to the undivided loyalty
 183 of a licensee. This aspect of limited representation allows a
 184 licensee to facilitate a real estate transaction by assisting
 185 both the buyer and the seller, but a licensee will not work to
 186 represent one party to the detriment of the other party when
 187 acting as a transaction broker to both parties.

188 (1)(m) "Voluntarily inactive status" means the licensure
 189 status that results when a licensee has applied to the
 190 department to be placed on inactive status and has paid the fee
 191 prescribed by rule.

192 (2) The terms "employ," "employment," "employer," and
 193 "employee," when used in this chapter and in rules adopted
 194 pursuant thereto to describe the relationship between a broker
 195 and a broker associate ~~salesperson~~, include an independent
 196 contractor relationship when such relationship is intended by
 197 and established between a broker and a broker associate
 198 ~~salesperson~~. The existence of such relationship shall not
 199 relieve either the broker or the broker associate ~~salesperson~~ of
 200 her or his duties, obligations, or responsibilities under this
 201 chapter.

202 (3) Wherever the word "operate" or "operating" as a
 203 broker, ~~broker-salesperson~~, or broker associate ~~salesperson~~
 204 appears in this chapter; in any order, rule, or regulation of
 205 the commission; in any pleading, indictment, or information
 206 under this chapter; in any court action or proceeding; or in any
 207 order or judgment of a court, it shall be deemed to mean the
 208 commission of one or more acts described in this chapter as
 209 constituting or defining a broker, ~~broker-salesperson~~, or broker
 210 associate ~~salesperson~~, not including, however, any of the



HB 0637

2003

211 exceptions stated therein. A single such act is sufficient to
212 bring a person within the meaning of this chapter, and each act,
213 if prohibited herein, constitutes a separate offense.

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

218 Section 3. Section 475.011, Florida Statutes, is amended
219 to read:

220 475.011 Exemptions.--This part does not apply to:

221 (1) Any person acting as an attorney in fact for the
222 purpose of the execution of contracts or conveyances only; as an
223 attorney at law within the scope of her or his duties as such;
224 as a certified public accountant, as defined in chapter 473,
225 within the scope of her or his duties as such; as the personal
226 representative, receiver, trustee, or master under, or by virtue
227 of, an appointment by will or by order of a court of competent
228 jurisdiction; or as trustee under a deed of trust, or under a
229 trust agreement, the ultimate purpose and intent whereof is
230 charitable, is philanthropic, or provides for those having a
231 natural right to the bounty of the donor or trustor;

232 (2) Any individual, corporation, partnership, trust, joint
233 venture, or other entity which sells, exchanges, or leases its
234 own real property; however, this exemption shall not be
235 available if and to the extent that an agent, employee, or
236 independent contractor paid a commission or other compensation
237 strictly on a transactional basis is employed to make sales,
238 exchanges, or leases to or with customers in the ordinary course
239 of an owner's business of selling, exchanging, or leasing real
240 property to the public;



HB 0637

2003

241 (3) Any employee of a public utility, a rural electric
242 cooperative, a railroad, or a state or local governmental agency
243 who acts within the scope of her or his employment, for which no
244 compensation in addition to the employee's salary is paid, to
245 buy, sell, appraise, exchange, rent, auction, or lease any real
246 property or any interest in real property for the use of her or
247 his employer;

248 (4) Any salaried employee of an owner, or of a registered
249 broker for an owner, of an apartment community who works in an
250 onsite rental office of the apartment community in a leasing
251 capacity, provided the salaried employee works without any other
252 compensation in addition to the salary;

253 (5) Any person employed for a salary as a manager of a
254 condominium or cooperative apartment complex as a result of any
255 activities or duties which the person may have in relation to
256 the renting of individual units within such condominium or
257 cooperative apartment complex if rentals arranged by the person
258 are for periods no greater than 1 year, provided the person
259 works without any other compensation in addition to the salary;

260 (6) Any person, partnership, corporation, or other legal
261 entity which, for another and for compensation or other valuable
262 consideration, sells, offers to sell, advertises for sale, buys,
263 offers to buy, or negotiates the sale or purchase of radio,
264 television, or cable enterprises licensed and regulated by the
265 Federal Communications Commission pursuant to the Communications
266 Act of 1934. However, if the sale or purchase of the radio,
267 television, or cable enterprise involves the sale or lease of
268 land, buildings, fixtures, and all other improvements to the
269 land, a broker or broker associate ~~salesperson~~ licensed under
270 this chapter shall be retained for the portion of the



HB 0637

2003

271 transaction which includes the land, buildings, fixtures, and
272 all other improvements to the land; ~~or~~

273 (7) Any full-time graduate student who is enrolled in a
274 commission-approved degree program in appraising at a college or
275 university in this state, if the student is acting under the
276 direct supervision of a licensed broker or a licensed or
277 certified appraiser and is engaged only in appraisal activities
278 related to the approved degree program. Any appraisal report by
279 the student must be issued in the name of the supervising
280 individual;-

281 (8)(a) An owner of one or part of one or more timeshare
282 periods for the owner's own use and occupancy who later offers
283 one or more of such periods for resale;-

284 (b) An exchange company, as that term is defined by s.
285 721.05(14), but only to the extent that the exchange company is
286 engaged in exchange program activities as described in and is in
287 compliance with s. 721.18;-

288 (9) Any person registered, licensed, or certified by the
289 department under part II as an appraiser or assistant appraiser
290 performing appraisals in accordance with that part;-

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

294 (11) Any person, partnership, corporation, or other legal
295 entity which, for another and for compensation or other valuable
296 consideration, rents or advertises for rent, for transient
297 occupancy, any public lodging establishment licensed under
298 chapter 509;-

299 (12) Any dealer registered under the Securities and
300 Exchange Act of 1934, as amended, or any federally insured



HB 0637

2003

301 depository institution and any parent, subsidiary, or affiliate
302 thereof, in connection with the sale, exchange, purchase, or
303 rental of a business enterprise to or by a person who is an
304 accredited investor as defined by 15 U.S.C. s. 77b, the
305 Securities Act of 1933, or any regulation adopted thereunder.
306 This exemption applies whether stock or assets of the business
307 enterprise are purchased or sold. The exemption does not apply
308 to a sale, exchange, purchase, or rental of land, buildings,
309 fixtures or other improvements to the land which is not made in
310 connection with the sale, exchange, purchase, or rental of a
311 business enterprise. Any reference to rental in this subsection
312 includes a lease transaction; or-

313 (13) Any property management firm or any owner of an
314 apartment complex for the act of paying a finder's fee or
315 referral fee to an unlicensed person who is a tenant in such
316 apartment complex provided the value of the fee does not exceed
317 \$50 per transaction. Nothing in this subsection authorizes an
318 unlicensed person to advertise or otherwise promote the person's
319 services in procuring or assisting in procuring prospective
320 lessees or tenants of apartment units. For purposes of this
321 subsection, "finder's fee" or "referral fee" means a fee paid,
322 credit towards rent, or some other thing of value provided to a
323 person for introducing or arranging an introduction between
324 parties to a transaction involving the rental or lease of an
325 apartment unit. It is a violation of s. 475.25(1)(h) and
326 punishable under s. 475.42 for a property management firm or any
327 owner of an apartment complex to pay a finder's fee or a
328 referral fee to an unlicensed person unless expressly authorized
329 by this subsection.



HB 0637

2003

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

332 475.02 Florida Real Estate Commission.--

333 (1) There is created within the department the Florida
 334 Real Estate Commission. The commission shall consist of seven
 335 members who shall be appointed by the Governor, subject to
 336 confirmation by the Senate. Four members must be licensed
 337 brokers, each of whom has held an active license for the 5 years
 338 preceding appointment; one member must be a licensed broker or a
 339 licensed broker associate ~~salesperson~~ who has held an active
 340 license for the 2 years preceding appointment; and two members
 341 must be persons who are not, and have never been, brokers or
 342 broker associates ~~salespersons~~. At least one member of the
 343 commission must be 60 years of age or older. The current members
 344 may complete their present terms unless removed for cause.

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

347 475.03 Delegation of powers and duties; legal services.--

348 (2) ~~Subject to the prior approval of the Attorney General,~~
 349 The commission may retain independent legal counsel to provide
 350 legal advice to the commission on a specific matter.

351 Section 6. Section 475.04, Florida Statutes, is amended to
 352 read:

353 475.04 Duty of commission to educate members of
 354 profession.--

355 (1) The commission shall foster the education of brokers,
 356 broker associates ~~broker-salespersons, salespersons,~~ and
 357 instructors concerning the ethical, legal, and business
 358 principles which should govern their conduct.



HB 0637

2003

359 (2) For the purpose of performing its duty under
 360 subsection (1) to educate persons holding a license or permit,
 361 the commission may conduct, offer, sponsor, prescribe, or
 362 approve real estate educational courses for all persons licensed
 363 or permitted by the department as brokers, broker associates
 364 ~~broker-salespersons, salespersons,~~ or instructors; and the cost
 365 and expense of such courses shall be paid as provided in s.
 366 475.125.

367 (3) The commission may also publish and sell, at a
 368 reasonable price intended to cover costs, a handbook on this
 369 chapter and other publications intended to be textbooks or
 370 guidelines for study and guidance of students, applicants,
 371 licensees, certificateholders, and permitholders, and members of
 372 the general public, copyright of which shall be the property of
 373 the state.

374 (4) The commission may authorize independent certification
 375 organizations to certify or approve the delivery mechanism of
 376 distance learning courses. Certification must occur before the
 377 time a distance learning course is submitted to the commission
 378 for content approval by an accredited college, university,
 379 community college, area technical center, registered real estate
 380 school, or commission-approved sponsor.

381 Section 7. Section 475.15, Florida Statutes, is amended to
 382 read:

383 475.15 Registration and licensing of general partners,
 384 members, officers, and directors of a firm.-- Each partnership,
 385 limited liability partnership, limited liability company, or
 386 corporation which acts as a broker shall register with the
 387 commission and shall renew the licenses or registrations of its
 388 members, officers, and directors for each license period.



HB 0637

2003

389 However, if the ~~partnership is a limited partnership, only the~~
 390 ~~general partners must be licensed brokers or brokerage~~
 391 ~~corporations registered pursuant to this part. If the~~ license or
 392 registration of at least one active broker member is not in
 393 force, the registration of a corporation, limited liability
 394 company, limited liability partnership, or partnership is
 395 canceled automatically during that period of time.

396 Section 8. Section 475.17, Florida Statutes, is amended to
 397 read:

398 475.17 Qualifications for practice.--

399 (1)(a) An applicant for licensure who is a natural person
 400 must be at least 18 years of age; hold a high school diploma or
 401 its equivalent; be honest, truthful, trustworthy, and of good
 402 character; and have a good reputation for fair dealing. An
 403 applicant for an active broker's license or a broker associate's
 404 ~~salesperson's~~ license must be competent and qualified to make
 405 real estate transactions and conduct negotiations therefor with
 406 safety to investors and to those with whom the applicant may
 407 undertake a relationship of trust and confidence. If the
 408 applicant has been denied registration or a license or has been
 409 disbarred, or the applicant's registration or license to
 410 practice or conduct any regulated profession, business, or
 411 vocation has been revoked or suspended, by this or any other
 412 state, any nation, or any possession or district of the United
 413 States, or any court or lawful agency thereof, because of any
 414 conduct or practices which would have warranted a like result
 415 under this chapter, or if the applicant has been guilty of
 416 conduct or practices in this state or elsewhere which would have
 417 been grounds for revoking or suspending her or his license under
 418 this chapter had the applicant then been registered, the



HB 0637

2003

419 applicant shall be deemed not to be qualified unless, because of
420 lapse of time and subsequent good conduct and reputation, or
421 other reason deemed sufficient, it appears to the commission
422 that the interest of the public and investors will not likely be
423 endangered by the granting of registration. The commission may
424 adopt rules requiring an applicant for licensure to provide
425 written information to the commission regarding the applicant's
426 good character.

427 (b) An application may be disapproved if the applicant has
428 acted or attempted to act, or has held herself or himself out as
429 entitled to act, during the period of 1 year next prior to the
430 filing of the application, as a real estate broker or broker
431 associate ~~salesperson~~ in the state in violation of this chapter.
432 This paragraph may be deemed to bar any person from licensure
433 who has performed any of the acts or services described in s.
434 475.01(3), unless exempt pursuant to s. 475.011, during a period
435 of 1 year next preceding the filing of the application, or
436 during the pendency of the application, and until a valid
437 current license has been duly issued to the person, regardless
438 of whether the performance of the act or service was done for
439 compensation or valuable consideration.

440 (2)(a)1. In addition to other requirements under this
441 part, the commission may require the satisfactory completion of
442 one or more of the educational courses or equivalent courses
443 conducted, offered, sponsored, prescribed, or approved pursuant
444 to s. 475.04, taken at an accredited college, university, or
445 community college, at an area technical center, or at a
446 registered real estate school, as a condition precedent for any
447 person to become licensed or to renew her or his license as a
448 broker, ~~broker-salesperson~~, or broker associate ~~salesperson~~. The



HB 0637

2003

449 course or courses required for one to become initially licensed
450 shall not exceed a total of 63 classroom hours of 50 minutes
451 each, inclusive of examination, for a broker associate
452 ~~salesperson~~ and 72 classroom hours of 50 minutes each, inclusive
453 of examination, for a broker. The satisfactory completion of an
454 examination administered by the accredited college, university,
455 or community college, by the area technical center, or by the
456 registered real estate school shall be the basis for determining
457 satisfactory completion of the course. However, notice of
458 satisfactory completion shall not be issued if the student has
459 absences in excess of 8 classroom hours.

460 2. A distance learning course or courses shall be approved
461 by the commission as an option to classroom hours as
462 satisfactory completion of the course or courses as required by
463 this section. The schools authorized by this section have the
464 option of providing classroom courses, interactive distance
465 learning courses, or both. However, satisfactory completion of
466 a distance learning course requires the satisfactory completion
467 of a timed distance learning course examination. Such
468 examination shall not be required to be monitored or given at a
469 centralized location.

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

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



HB 0637

2003

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

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

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

492
 493 This paragraph does not apply to a person employed as a real
 494 estate investigator by the Division of Real Estate, provided the
 495 person has been employed as a real estate investigator for at
 496 least 24 months. The person must be currently employed as a real
 497 estate investigator to sit for the real estate broker's
 498 examination and have held a valid and current broker associate's
 499 ~~salesperson's~~ license for at least 12 months.

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



HB 0637

2003

507 (3)(a) The commission may prescribe a postlicensure
508 education requirement in order for a person to maintain a valid
509 broker associate's ~~salesperson's~~ license, which shall not exceed
510 45 classroom hours of 50 minutes each, inclusive of examination,
511 prior to the first renewal following initial licensure. If
512 prescribed, this shall consist of one or more commission-
513 approved courses which total at least 45 classroom hours on one
514 or more subjects which include, but are not limited to, property
515 management, appraisal, real estate finance, ~~or~~ the economics of
516 real estate management, marketing, technology, sales and listing
517 of properties, business office management, courses teaching
518 practical real estate application skills, development of
519 business plans, marketing of property, and time management.

520 Required postlicensure education courses must be provided by an
521 accredited college, university, or community college, by an area
522 technical center, by a registered real estate school, or by a
523 commission-approved sponsor.

524 (b) Satisfactory completion of the postlicensure education
525 requirement is demonstrated by successfully meeting all
526 standards established for the commission-prescribed or
527 commission-approved institution or school. However, notice of
528 satisfactory completion shall not be issued if the student has
529 absences in excess of 10 percent of the required classroom hours
530 or has not satisfactorily completed a timed distance learning
531 course examination.

532 (c) The license of any broker associate ~~salesperson~~ who
533 does not complete the postlicensure education requirement prior
534 to the first renewal following initial licensure shall be
535 considered null and void. Such person wishing to again operate
536 as a real estate broker associate ~~salesperson~~ must requalify by



HB 0637

2003

537 satisfactorily completing the broker associate's ~~salesperson's~~
538 prelicensure course and passing the state examination for
539 licensure as a broker associate ~~salesperson~~.

540 (d) A broker associate ~~salesperson~~ who is required to
541 complete any postlicensure education requirement must complete
542 any postlicensure education requirement and hold a current and
543 valid license in order to be eligible for licensure as a broker.

544 (4)(a) The commission may prescribe a postlicensure
545 education requirement in order for a person to maintain a valid
546 broker's license, which shall not exceed 60 classroom hours of
547 50 minutes each, inclusive of examination, prior to the first
548 renewal following initial licensure. If prescribed, this shall
549 consist of one or more commission-approved courses which total
550 at least 60 classroom hours on one or more subjects which
551 include, but are not limited to, advanced appraisal, advanced
552 property management, real estate marketing, business law,
553 advanced real estate investment analyses, advanced legal
554 aspects, general accounting, real estate economics,
555 syndications, commercial brokerage, feasibility analyses,
556 advanced real estate finance, residential brokerage, advanced
557 marketing, technology, advanced business planning, time
558 management, or real estate brokerage office operations. Required
559 postlicensure education courses must be provided by an
560 accredited college, university, or community college, by an area
561 technical center, by a registered real estate school, or by a
562 commission-approved sponsor.

563 (b) Satisfactory completion of the postlicensure education
564 requirement is demonstrated by successfully meeting all
565 standards established for the commission-prescribed or
566 commission-approved institution or school. However, notice of



HB 0637

2003

567 satisfactory completion shall not be issued if the student has
 568 absences in excess of 10 percent of the required classroom hours
 569 or has not satisfactorily completed a timed distance learning
 570 course examination.

571 (c) The license of any broker who does not complete the
 572 postlicensure education requirement prior to the first renewal
 573 following initial licensure shall be considered null and void.
 574 If the licensee wishes to operate as a broker associate
 575 ~~salesperson~~, she or he may be issued a broker associate's
 576 ~~salesperson's~~ license after providing proof that she or he has
 577 satisfactorily completed the 14-hour continuing education course
 578 within the 6 months following expiration of her or his broker's
 579 license. To operate as a broker, the licensee must requalify by
 580 satisfactorily completing the broker's prelicensure course and
 581 passing the state examination for licensure as a broker.

582 (5)(a) The commission may allow an additional 6-month
 583 period after the first renewal following initial licensure for
 584 completing the postlicensure education courses for broker
 585 associates ~~salespersons~~ and brokers who cannot, due to
 586 individual physical hardship, as defined by rule, complete the
 587 courses within the required time.

588 (b) Except as provided in subsection (4), broker
 589 associates ~~salespersons~~ and brokers are not required to meet the
 590 14-hour continuing education requirement prior to the first
 591 renewal following initial licensure.

592 (c)1. A distance learning course or courses shall be
 593 approved by the commission as an option to classroom hours as
 594 satisfactory completion of the postlicensure education course or
 595 courses as required by this section. The schools or sponsors
 596 authorized by this section have the option of providing



HB 0637

2003

597 classroom courses, interactive distance learning courses, or
598 both. However, satisfactory completion of a distance learning
599 postlicensure education course or courses requires the
600 satisfactory completion of a timed distance learning course
601 examination. Such examination shall not be required to be
602 monitored or given at a centralized location.

603 2. The commission shall provide for postlicensure
604 education courses to be made available by correspondence or
605 other suitable means to any person who, by reason of hardship,
606 as defined by rule, cannot attend the place or places where
607 courses are regularly conducted or does not have access to the
608 distance learning courses.

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

614 Section 9. Section 475.175, Florida Statutes, is amended
615 to read:

616 475.175 Examinations.--

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

619 (a) Submits to the department the appropriate notarized or
620 electronically authenticated application and fee, ~~two~~
621 ~~photographs of herself or himself taken within the preceding~~
622 ~~year,~~ and a fingerprint card. The fingerprint card shall be
623 forwarded to the Division of Criminal Justice Information
624 Systems within the Department of Law Enforcement for purposes of
625 processing the fingerprint card to determine if the applicant
626 has a criminal history record. The fingerprint card shall also



HB 0637

2003

627 be forwarded to the Federal Bureau of Investigation for purposes
628 of processing the fingerprint card to determine if the applicant
629 has a criminal history record. The information obtained by the
630 processing of the fingerprint card by the Florida Department of
631 Law Enforcement and the Federal Bureau of Investigation shall be
632 sent to the department for the purpose of determining if the
633 applicant is statutorily qualified for examination.

634 (b) Submits at the time of examination the certificate
635 specified in subsection (2), the examination admissions
636 authorization letter ~~card issued by the commission~~, and proof of
637 identification.

638 (2) Each accredited college, university, community
639 college, or registered real estate school shall notify the
640 commission of the names of all persons who have satisfactorily
641 completed the educational requirements provided for in s.
642 475.17(2), (3), and (4) in a manner prescribed by the
643 commission. Furthermore, each such educational institution
644 shall provide to each person satisfactorily completing the
645 educational requirements provided for in s. 475.17(2), (3), and
646 (4) a certificate as proof of such satisfactory completion.

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

649 475.181 Licensure.--

650 (1) The department shall license any applicant whom the
651 commission certifies, pursuant to subsection (2), to be
652 qualified to practice as a broker or broker associate
653 ~~salesperson~~.

654 Section 11. Section 475.182, Florida Statutes, is amended
655 to read:

656 475.182 Renewal of license; continuing education.--



HB 0637

2003

657 (1) The department shall renew a license upon receipt of
 658 the renewal application and fee. The renewal application for an
 659 active license as broker, ~~broker-salesperson~~, or broker
 660 associate salesperson shall include proof satisfactory to the
 661 commission that the licensee has, since the issuance or renewal
 662 of her or his current license, satisfactorily completed at least
 663 14 classroom hours of 50 minutes each of a continuing education
 664 course during each biennium of a license period, as prescribed
 665 by the commission. Approval or denial of a specialty course must
 666 be based on the extent to which the course content focuses on
 667 real estate issues relevant to the modern practice of real
 668 estate by a real estate licensee, including technology used in
 669 the real estate industry. The commission may accept as a
 670 substitute for such continuing education course, on a classroom-
 671 hour-for-classroom-hour basis, any satisfactorily completed
 672 education course that the commission finds is adequate to
 673 educate licensees within the intent of this section, including
 674 an approved distance learning course. However, the commission
 675 may not require, for the purpose of satisfactorily completing an
 676 approved correspondence or distance learning course, a written
 677 examination that is to be taken at a centralized location and is
 678 to be monitored.

679 (2) The initial license of a broker or broker associate
 680 shall be issued for a period of not less than 18 months or
 681 longer than 24 months from its effective date, and it shall
 682 expire no later than 24 months after its effective date.

683 (3)~~(2)~~ The department shall adopt rules establishing a
 684 procedure for the renewal of licenses ~~at least~~ every 4 years.

685 (4)~~(3)~~ Any license that ~~which~~ is not renewed at the end of
 686 the license period prescribed by the department shall



HB 0637

2003

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

690 (5)~~(4)~~ Sixty days before ~~prior to~~ the end of the license
691 period and automatic reversion of a license to inactive status,
692 the department shall mail a notice of renewal and possible
693 reversion to the last known address of the licensee.

694 Section 12. Section 475.215, Florida Statutes, is amended
695 to read:

696 475.215 Multiple licenses.--

697 (1) A licensed broker may be issued upon request
698 additional licenses as a broker, but not as a broker associate
699 ~~salesperson or as a broker-salesperson~~, whenever it is clearly
700 shown that the requested additional licenses are necessary to
701 the conduct of real estate brokerage business and that the
702 additional licenses will not be used in a manner likely to be
703 prejudicial to any person, including a licensee under this
704 chapter.

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

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

710 475.22 Broker to maintain office and sign at entrance of
711 office; registered office outside state; broker required to
712 cooperate in investigation.--

713 (1) Each active broker shall maintain an office, which
714 shall consist of at least one enclosed room in a building of
715 stationary construction. Each active broker shall maintain a
716 sign on or about the entrance of her or his principal office and



HB 0637

2003

717 each branch office, which sign may be easily observed and read
718 by any person about to enter such office ~~and shall be of such~~
719 ~~form and minimum dimensions as shall be prescribed by the~~
720 ~~commission.~~ Each sign must contain the name of the broker,
721 together with the trade name, if any. For a partnership or
722 corporation, the sign must contain the name of the firm or
723 corporation or trade name of the firm or corporation, together
724 with the name of at least one of the brokers. At a minimum, the
725 words "licensed real estate broker" or "lic. real estate broker"
726 must appear on the office entrance signs.

727 Section 14. Section 475.23, Florida Statutes, is amended
728 to read:

729 475.23 License to expire on change of address.-- A license
730 shall cease to be in force whenever a broker changes her or his
731 business address, a real estate school operating under a permit
732 issued pursuant to s. 475.451 changes its business address, or a
733 broker associate ~~salesperson~~ working for a broker or an
734 instructor working for a real estate school changes employer.
735 The licensee shall notify the commission of the change no later
736 than 10 days after the change, on a form provided by the
737 commission. When a broker or a real estate school changes
738 business address, the brokerage firm or school permitholder must
739 file a notice of the change of address with the commission, and
740 such notice also fulfills the change-of-address notification for
741 brokers and broker associates employed by the brokerage and
742 instructors employed by the school.

743 Section 15. Subsection (1) of section 475.25, Florida
744 Statutes, is amended, and subsections (5), (6), and (7) are
745 added to said section, to read:

746 475.25 Discipline.--



HB 0637

2003

747 (1) The commission may deny an application for licensure,
748 registration, or permit, or renewal thereof; may place a
749 licensee, registrant, or permittee on probation; may suspend a
750 license, registration, or permit for a period not exceeding 10
751 years; may revoke a license, registration, or permit; may impose
752 an administrative fine not to exceed \$1,000 for each count or
753 separate offense; and may issue a reprimand, and any or all of
754 the foregoing, if it finds that the licensee, registrant,
755 permittee, or applicant:

756 (a) Has violated any provision of s. 455.227(1) or s.
757 475.42. However, licensees under this part are exempt from the
758 provisions of s. 455.227(1)(i).

759 (b) Has been guilty of fraud, misrepresentation,
760 concealment, false promises, false pretenses, dishonest dealing
761 by trick, scheme, or device, culpable negligence, or breach of
762 trust in any business transaction in this state or any other
763 state, nation, or territory; has violated a duty imposed upon
764 her or him by law or by the terms of a listing contract,
765 written, oral, express, or implied, in a real estate
766 transaction; has aided, assisted, or conspired with any other
767 person engaged in any such misconduct and in furtherance
768 thereof; or has formed an intent, design, or scheme to engage in
769 any such misconduct and committed an overt act in furtherance of
770 such intent, design, or scheme. It is immaterial to the guilt
771 of the licensee that the victim or intended victim of the
772 misconduct has sustained no damage or loss; that the damage or
773 loss has been settled and paid after discovery of the
774 misconduct; or that such victim or intended victim was a
775 customer or a person in confidential relation with the licensee
776 or was an identified member of the general public.



HB 0637

2003

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

781 (d)1. Has failed to account or deliver to any person,
782 including a licensee under this chapter, at the time which has
783 been agreed upon or is required by law or, in the absence of a
784 fixed time, upon demand of the person entitled to such
785 accounting and delivery, any personal property such as money,
786 fund, deposit, check, draft, abstract of title, mortgage,
787 conveyance, lease, or other document or thing of value,
788 including a share of a real estate commission if a civil
789 judgment relating to the practice of the licensee's profession
790 has been obtained against the licensee and said judgment has not
791 been satisfied in accordance with the terms of the judgment
792 within a reasonable time, or any secret or illegal profit, or
793 any divisible share or portion thereof, which has come into the
794 licensee's hands and which is not the licensee's property or
795 which the licensee is not in law or equity entitled to retain
796 under the circumstances. However, if the licensee, ~~in good~~
797 ~~faith,~~ entertains doubt as to what person is entitled to the
798 accounting and delivery of the escrowed property, ~~or if~~
799 ~~conflicting demands have been made upon the licensee for the~~
800 ~~escrowed property, which property she or he still maintains in~~
801 ~~her or his escrow or trust account,~~ the licensee shall either
802 promptly notify the commission of such doubts or ~~conflicting~~
803 ~~demands and shall~~ promptly:

804 a. Request that the commission issue an escrow
805 disbursement order determining who is entitled to the escrowed
806 property;



HB 0637

2003

807 b. With the consent of all parties, submit the matter to
808 arbitration;

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

811 d. With the written consent of all parties, submit the
812 matter to mediation. The department may conduct mediation or
813 may contract with public or private entities for mediation
814 services. However, the mediation process must be successfully
815 completed within 90 days following the last demand or the
816 licensee shall promptly employ one of the other escape
817 procedures contained in this section. Payment for mediation will
818 be as agreed to in writing by the parties. The department may
819 adopt rules to implement this section.

820

821 In the alternative, a licensee may promptly disburse property
822 from the licensee's escrow account without notifying the
823 commission or employing one of the procedures listed in sub-
824 subparagraphs a.-d., and an administrative complaint may not be
825 filed against a licensee solely because the licensee did so.
826 However, a licensee may be civilly liable for improperly
827 disbursing escrowed property. If the licensee promptly employs
828 one of the escape procedures contained herein, and if she or he
829 abides by the order or judgment resulting therefrom, no
830 administrative complaint may be filed against the licensee for
831 failure to account for, deliver, or maintain the escrowed
832 property. If the buyer of a residential condominium unit
833 delivers to a licensee written notice of the buyer's intent to
834 cancel the contract for sale and purchase, as authorized by s.
835 718.503, or if the buyer of real property in good faith fails to
836 satisfy the terms in the financing clause of a contract for sale



HB 0637

2003

837 ~~and purchase, the licensee may return the escrowed property to~~
838 ~~the purchaser without notifying the commission or initiating any~~
839 ~~of the procedures listed in sub-subparagraphs a.-d.~~

840 2. Has failed to deposit money in an escrow account when
841 the licensee is the purchaser of real estate under a contract
842 where the contract requires the purchaser to place deposit money
843 in an escrow account to be applied to the purchase price if the
844 sale is consummated.

845 (e) Has violated any of the provisions of this chapter or
846 any lawful order or rule made or issued under the provisions of
847 this chapter or chapter 455.

848 (f) Has been convicted or found guilty of, or entered a
849 plea of nolo contendere to, regardless of adjudication, a crime
850 in any jurisdiction which directly relates to the activities of
851 a licensed broker or broker associate ~~salesperson~~, or involves
852 moral turpitude or fraudulent or dishonest dealing. The record
853 of a conviction certified or authenticated in such form as to be
854 admissible in evidence under the laws of the state shall be
855 admissible as prima facie evidence of such guilt.

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

860 (h) Has shared a commission with, or paid a fee or other
861 compensation to, a person not properly licensed as a broker,
862 ~~broker-salesperson~~, or broker associate ~~salesperson~~ under the
863 laws of this state, for the referral of real estate business,
864 clients, prospects, or customers, or for any one or more of the
865 services set forth in s. 475.01(1)(a). For the purposes of this
866 section, it is immaterial that the person to whom such payment



HB 0637

2003

867 or compensation is given made the referral or performed the
868 service from within this state or elsewhere; however, a licensed
869 broker of this state may pay a referral fee or share a real
870 estate brokerage commission with a broker licensed or registered
871 under the laws of a foreign state so long as the foreign broker
872 does not violate any law of this state. However, when a broker
873 has compensated a broker associate or a legal entity formed and
874 controlled by a broker associate, that broker associate may
875 compensate persons associated with the broker associate or legal
876 entity. Nothing in this paragraph or s. 475.17 is intended to
877 prevent a real estate broker licensed in this state from sharing
878 a commission on a cooperative real estate transaction, other
879 than a residential sale as defined in s. 475.278(5)(a), with a
880 person who holds an active real estate license in another state
881 or country, provided that:

882 1. Before the out-of-state real estate licensee performs
883 any act in this state which constitutes professional real estate
884 activity, the licensee and the cooperating real estate broker
885 licensed in this state shall enter a written agreement that
886 states the terms of cooperation and compensation, that the
887 services set forth in s. 475.01(1)(a), if conducted in this
888 state, will be under the supervision and control of the
889 cooperating broker licensed in this state, that the out-of-state
890 licensee will comply with all applicable laws of this state, and
891 that civil actions may be commenced against the out-of-state
892 real estate licensee, the cooperating real estate broker
893 licensed in this state, or both in any court of competent
894 jurisdiction in any county of this state in which a claim
895 arises;



HB 0637

2003

896 2. The cooperating real estate broker licensed in this
897 state or a Florida-licensed real estate broker engaged by the
898 cooperating broker accompanies the out-of-state real estate
899 licensee and the potential buyer or potential lessee during any
900 initial property showing; and

901 3. All subsequent property showings and all negotiations
902 regarding the cooperative real estate transaction are conducted
903 under the supervision, control, and express permission of the
904 cooperating real estate broker licensed in this state or a
905 Florida-licensed real estate broker engaged by the cooperating
906 broker.

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

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

918 (k) Has failed, if a broker, to immediately place, upon
919 receipt, any money, fund, deposit, check, or draft entrusted to
920 her or him by any person dealing with her or him as a broker in
921 an escrow account ~~with a title company, banking institution,~~
922 ~~credit union, or savings and loan association located and doing~~
923 ~~business~~ in this state in a manner consistent with the broker's
924 fiduciary obligations and requirements of timely disbursement,
925 ~~or to deposit such funds in a trust or escrow account maintained~~



HB 0637

2003

926 ~~by her or him with some bank, credit union, or savings and loan~~
927 ~~association located and doing business in this state, wherein~~
928 the funds shall be kept and, with the written consent of the
929 parties to a transaction, invested in a manner not inconsistent
930 with s. 18.10(2) until disbursement thereof is properly
931 authorized; or has failed, if a broker associate ~~salesperson~~, to
932 immediately place with her or his registered employer any money,
933 fund, deposit, check, or draft entrusted to her or him by any
934 person dealing with her or him as agent of the registered
935 employer. The commission shall establish rules to provide for
936 records to be maintained by the broker ~~and the manner in which~~
937 ~~such deposits shall be made.~~ A broker may place and maintain up
938 to \$5,000 of personal or brokerage funds in the broker's escrow
939 account and shall be provided a reasonable amount of time to
940 correct escrow errors if there is no shortage of funds and such
941 errors pose no significant threat to economically harm the
942 public. It is the intent of the Legislature that, in the event
943 of legal proceedings concerning a broker's escrow account, the
944 disbursement of escrowed funds not be delayed due to any dispute
945 over the personal or brokerage funds that may be present in the
946 escrow account.

947 (1) Has made or filed a report or record which the
948 licensee knows to be false, has willfully failed to file a
949 report or record required by state or federal law, has willfully
950 impeded or obstructed such filing, or has induced another person
951 to impede or obstruct such filing; but such reports or records
952 shall include only those which are signed in the capacity of a
953 licensed broker or broker associate ~~salesperson~~.

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



HB 0637

2003

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

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

968 (p) Has failed to inform the commission in writing within
969 30 days after pleading guilty or nolo contendere to, or being
970 convicted or found guilty of, any felony.

971 (q) Has violated any provision of s. 475.2755 or s.
972 475.278, including the duties owed under those sections.

973 (r) Has failed in any written listing agreement to include
974 a definite expiration date, description of the property, price
975 and terms, fee or commission, and a proper signature of the
976 principal(s); and has failed to give the principal(s) a legible,
977 signed, true and correct copy of the listing agreement within 24
978 hours of obtaining the written listing agreement. The written
979 listing agreement shall contain no provision requiring the
980 person signing the listing to notify the broker of the intention
981 to cancel the listing after such definite expiration date.

982 (s) Has had a registration suspended, revoked, or
983 otherwise acted against in any jurisdiction. The record of the
984 disciplinary action certified or authenticated in such form as
985 to be admissible in evidence under the laws of the state shall



HB 0637

2003

986 be admissible as prima facie evidence of such disciplinary
987 action.

988 (t) Has violated any standard for the development or
989 communication of a real estate appraisal or other provision of
990 the Uniform Standards of Professional Appraisal Practice, as
991 defined in s. 475.611, as approved and adopted by the Appraisal
992 Standards Board of the Appraisal Foundation, as defined in s.
993 475.611. This paragraph does not apply to a real estate broker
994 or broker associate ~~salesperson~~ who, in the ordinary course of
995 business, performs a comparative market analysis, gives a broker
996 price opinion, or gives an opinion of value of real estate.
997 However, in no event may this comparative market analysis,
998 broker price opinion, or opinion of value of real estate be
999 referred to as an appraisal, as defined in s. 475.611.

1000 (5) An administrative complaint against a broker or broker
1001 associate must be filed within 4 years after the time of the act
1002 giving rise to the complaint or within 2 years after the time
1003 the act is discovered or should have been discovered with the
1004 exercise of due diligence. In no event may a complaint be filed
1005 more than 6 years after the date of the act giving rise to the
1006 complaint.

1007 (6) The commission shall promptly notify the licensee's
1008 employer, in writing, any time the commission places a licensee
1009 on probation, reprimands a licensee, suspends or revokes the
1010 license of a licensee, imposes an administrative fine against a
1011 licensee, or takes any other final disciplinary action against a
1012 licensee.

1013 (7) The commission shall promptly report to the proper
1014 prosecuting authority for prosecution any criminal violation of



HB 0637

2003

1015 any statute relating to the practice of a real estate profession
 1016 regulated by the commission.

1017 Section 16. Section 475.2755, Florida Statutes, is amended
 1018 to read:

1019 475.2755 Designated broker associate ~~salesperson~~.--

1020 (1) For purposes of this part, in any real estate
 1021 transaction other than a residential sale as defined in s.
 1022 475.278(5)(a), and where the buyer and seller have assets of \$1
 1023 million or more, the broker at the request of the customers may
 1024 designate broker associates ~~salespersons~~ to act as single agents
 1025 for different customers in the same transaction. Such designated
 1026 broker associates ~~salespersons~~ shall have the duties of a single
 1027 agent as outlined in s. 475.278(2)(~~3~~), including disclosure
 1028 requirements in s. 475.278(2)(~~3~~)(b) and (c). In addition to
 1029 disclosure requirements in s. 475.278(2)(~~3~~)(b) and (c), the
 1030 buyer and seller as customers shall both sign disclosures
 1031 stating that their assets meet the threshold described in this
 1032 subsection and requesting that the broker use the designated
 1033 broker associate ~~salesperson~~ form of representation. In lieu of
 1034 the transition disclosure requirement in s. 475.278(3)(b)(~~e~~)~~2~~.,
 1035 the required disclosure notice shall include the following:

1036
 1037 FLORIDA LAW PROHIBITS A DESIGNATED BROKER ASSOCIATE ~~SALESPERSON~~
 1038 FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY
 1039 THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE
 1040 INSTRUCTION OF THE CUSTOMER THE DESIGNATED BROKER ASSOCIATE
 1041 ~~SALESPERSON~~ IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A
 1042 DESIGNATED BROKER ASSOCIATE ~~SALESPERSON~~ TO DISCLOSE INFORMATION
 1043 ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND
 1044 ALSO ALLOWS A DESIGNATED BROKER ASSOCIATE ~~SALESPERSON~~ TO



HB 0637

2003

1045 DISCLOSE TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE
 1046 BROKER, CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE
 1047 OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER
 1048 IN REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER
 1049 MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH
 1050 INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.

1051 (2) For purposes of this section, the term "buyer" means a
 1052 transferee or lessee in a real property transaction, and the
 1053 term "seller" means the transferor or lessor in a real property
 1054 transaction.

1055 Section 17. Section 475.278, Florida Statutes, is amended
 1056 to read:

1057 (Substantial rewording of section. See
 1058 s. 475.278, F.S., for present text.)

1059 475.278 Authorized brokerage relationships.--

1060 (1) TRANSACTION BROKER RELATIONSHIP.--

1061 (a) Presumption of transaction brokerage.--It shall be
 1062 presumed that all licensees are operating as transaction brokers
 1063 unless a single agent or no brokerage relationship is
 1064 established, in writing, with a customer.

1065 (b) Transaction broker duties.--A transaction broker
 1066 provides a limited form of representation to a buyer, a seller,
 1067 or both in a real estate transaction but does not represent
 1068 either in a fiduciary capacity or as a single agent. The duties
 1069 of a licensee in this limited form of representation include the
 1070 following:

- 1071 1. Dealing honestly and fairly;
- 1072 2. Accounting for all funds;
- 1073 3. Using skill, care, and diligence in the transaction;



HB 0637

2003

1074 4. Disclosing all known facts that materially affect the
 1075 value of residential real property and are not readily
 1076 observable to the buyer;

1077 5. Presenting all offers and counteroffers in a timely
 1078 manner, unless a party has previously directed the licensee
 1079 otherwise in writing;

1080 6. Limited confidentiality, unless waived in writing by a
 1081 party. This limited confidentiality will prevent disclosure that
 1082 the seller will accept a price less than the asking or listed
 1083 price, that the buyer will pay a price greater than the price
 1084 submitted in a written offer, of the motivation of any party for
 1085 selling or buying property, that a seller or buyer will agree to
 1086 financing terms other than those offered, or of any other
 1087 information requested by a party to remain confidential; and

1088 7. Any additional duties that are mutually agreed to with
 1089 a party.

1090 (2) SINGLE AGENT RELATIONSHIP.--

1091 (a) Single agent duties.--The duties a licensee owes to a
 1092 buyer or seller who engages the licensee as a single agent
 1093 include the following:

1094 1. Dealing honestly and fairly;

1095 2. Loyalty;

1096 3. Confidentiality;

1097 4. Obedience;

1098 5. Full disclosure;

1099 6. Accounting for all funds;

1100 7. Skill, care, and diligence in the transaction;

1101 8. Presenting all offers and counteroffers in a timely
 1102 manner, unless a party has previously directed the licensee
 1103 otherwise in writing; and



HB 0637

2003

1104 9. Disclosing all known facts that materially affect the
 1105 value of residential real property and are not readily
 1106 observable.

1107 (b) Disclosure requirements.--Licensees who seek to enter
 1108 into a single agent relationship with a potential buyer or
 1109 potential seller must give the potential buyer or potential
 1110 seller the disclosure contained in paragraph(c), either as a
 1111 separate and distinct disclosure document or included as part of
 1112 another document such as a listing agreement or other agreement
 1113 for representation. The disclosure must be made before, or at
 1114 the time of, entering into a listing agreement or an agreement
 1115 for representation or before the showing of property, whichever
 1116 occurs first. When incorporated into other documents, the
 1117 required disclosure must be of the same size type, or larger, as
 1118 other provisions of the document and must be conspicuous in its
 1119 placement so as to advise customers of the duties of a single
 1120 agent, except that the first sentence of the disclosure
 1121 contained in paragraph (c) must be printed in uppercase bold
 1122 type.

1123 (c) Contents of disclosure.--The disclosure required under
 1124 paragraph (b) must include the following information in the
 1125 following form:

1126
 1127 SINGLE AGENT NOTICE

1128
 1129 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
 1130 SINGLE AGENTS DISCLOSE THEIR DUTIES TO BUYERS AND SELLERS.

1131
 1132 As a single agent, (insert name of Real Estate
 1133 Entity and its Associate) owe to you the following duties:



HB 0637

2003

1163 (a) From single agent relationship.--A single agent
1164 relationship may be changed to a transaction broker relationship
1165 at any time during the relationship between an agent and
1166 principal, provided the agent gives the disclosure contained in
1167 paragraph (b) to the principal and the principal gives written
1168 consent to the agent before a change in relationship. This
1169 disclosure must be given to the principal in writing, either as
1170 a separate and distinct document or included as part of other
1171 documents such as a listing agreement or other agreements for
1172 representation. When incorporated into other documents, the
1173 required disclosure must be of the same size type, or larger, as
1174 other provisions of the document and must be conspicuous in its
1175 placement so as to advise customers of the duties of limited
1176 representation, except that the first sentence of the disclosure
1177 must be printed in uppercase bold type.

1178 (b) Contents of disclosure.--The disclosure required under
1179 paragraph (a) must include the following information in the
1180 following form:

1181
1182 TRANSITION TO

1183 TRANSACTION BROKER NOTICE

1184
1185 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
1186 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
1187 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
1188 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
1189 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
1190 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
1191 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

1192



HB 0637

2003

1193 As a transaction broker, (insert name of Real
 1194 Estate Firm and its Associate), provides to you a limited form
 1195 of representation that includes the following duties:

- 1196 1. Dealing honestly and fairly;
- 1197 2. Accounting for all funds;
- 1198 3. Using skill, care, and diligence in the transaction;
- 1199 4. Disclosing all known facts that materially affect the

1200 value of residential real property and are not readily
 1201 observable to the buyer;

- 1202 5. Presenting all offers and counteroffers in a timely
 1203 manner, unless a party has previously directed the licensee
 1204 otherwise in writing;

- 1205 6. Limited confidentiality, unless waived in writing by a
 1206 party. This limited confidentiality will prevent disclosure that
 1207 the seller will accept a price less than the asking or listed
 1208 price, that the buyer will pay a price greater than the price
 1209 submitted in a written offer, of the motivation of any party for
 1210 selling or buying property, that a seller or buyer will agree to
 1211 financing terms other than those offered, or of any other
 1212 information requested by a party to remain confidential; and

- 1213 7. Any additional duties that are entered into by this or
 1214 by separate written agreement.

1215

1216 Limited representation means that a buyer or seller is not
 1217 responsible for the acts of the licensee. Additionally, parties
 1218 are giving up their rights to the undivided loyalty of the
 1219 licensee. This aspect of limited representation allows a
 1220 licensee to facilitate a real estate transaction by assisting
 1221 both the buyer and the seller, but a licensee will not work to



HB 0637

2003

1222 represent one party to the detriment of the other party when
1223 acting as a transaction broker to both parties.

1224
1225 I agree that the licensee named above may assume the role and
1226 duties of a transaction broker.

1227
1228
1229 Date Signature

1230
1231
1232 Signature

1233 (4) NO BROKERAGE RELATIONSHIP.--

1234 (a) Brokerage relationship not required.--This part does
1235 not require a customer to enter into a brokerage relationship
1236 with any licensee.

1237 (b) No brokerage relationship duties.--A licensee owes to
1238 a potential seller or potential buyer with whom the licensee has
1239 no brokerage relationship the following duties:

- 1240 1. Dealing honestly and fairly;
- 1241 2. Disclosing all known facts that materially affect the
1242 value of the residential real property which are not readily
1243 observable to the buyer; and
- 1244 3. Accounting for all funds entrusted to the licensee.

1245 (c) Disclosure requirements.--A licensee who has no
1246 brokerage relationship with a potential buyer or potential
1247 seller must give the potential buyer or potential seller the
1248 disclosure contained in paragraph (d). The disclosure must be
1249 given in writing prior to the showing of property. When
1250 incorporated into other documents, the required disclosure must
1251 be of the same size type, or larger, as other provisions of the



HB 0637

2003

1252 document and must be conspicuous in its placement so as to
1253 advise customers of the duties of a licensee that has no
1254 brokerage relationship with a buyer or seller, except that the
1255 first sentence of the information identified in paragraph (d)
1256 must be printed in uppercase bold type.

1257 (d) Contents of disclosure.--The disclosure required under
1258 paragraph (c) must include the following information in the
1259 following form:

1260
1261 NO BROKERAGE RELATIONSHIP NOTICE

1262
1263 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
1264 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OF BUYER DISCLOSE
1265 THEIR DUTIES TO SELLERS AND BUYERS.

1266
1267 As a real estate licensee who has no brokerage relationship with
1268 you, (insert name of Real Estate Entity and its
1269 Associate) owe to you the following duties:

- 1270 1. Dealing honestly and fairly;
1271 2. Disclosing all known facts that materially affect the
1272 value of residential real property which are not readily
1273 observable to the buyer.
1274 3. Accounting for all funds entrusted to the licensee.

1275
1276
1277 Date

1276
1277 Signature

1278
1279
1280 Signature

1281 (5) APPLICABILITY.--



HB 0637

2003

1282 (a) Residential sales.--The disclosure requirements
1283 contained in this section apply to all residential sales. As
1284 used in this subsection, the term "residential sale" means the
1285 sale of improved residential property of four units or fewer,
1286 the sale of unimproved residential property intended for use of
1287 four units or fewer, or the sale of agricultural property of 10
1288 acres or less.

1289 (b) Disclosure limitations.--

1290 1. The disclosure requirements contained in this section
1291 do not apply when a licensee knows that the potential seller or
1292 buyer is represented by a single agent or a transaction broker;
1293 or when an owner is selling new residential units built by the
1294 owner and the circumstances or setting should reasonably inform
1295 the potential buyer that the owner's employee or single agent is
1296 acting on behalf of the owner, whether because of the location
1297 of the sales office or because of office signage or placards or
1298 identification badges worn by the owner's employee or single
1299 agent.

1300 2. The disclosure requirements contained in this section
1301 do not apply to nonresidential transactions; the rental or
1302 leasing of real property, unless an option to purchase all or a
1303 portion of the property improved with four or fewer residential
1304 units is given; a bona fide "open house" or model home showing
1305 that does not involve eliciting confidential information, the
1306 execution of a contractual offer or an agreement for
1307 representation, or negotiations concerning price, terms, or
1308 conditions of a potential sale; unanticipated casual
1309 conversations between a licensee and a seller or buyer which do
1310 not involve eliciting confidential information, the execution of
1311 a contractual offer or agreement for representation, or



HB 0637

2003

1312 negotiations concerning price, terms, or conditions of a
 1313 potential sale; responding to general factual questions from a
 1314 potential buyer or seller concerning properties that have been
 1315 advertised for sale; situations in which a licensee's
 1316 communications with a potential buyer or seller are limited to
 1317 providing general factual information, oral or written, about
 1318 the qualifications, background, and services of the licensee or
 1319 the licensee's brokerage firm; auctions; appraisals; and
 1320 dispositions of any interest in business enterprises or business
 1321 opportunities, except for property with four or fewer
 1322 residential units.

1323 Section 18. Subsection (1) of section 475.31, Florida
 1324 Statutes, is amended to read:

1325 475.31 Final orders.--

1326 (1) An order revoking or suspending the license of a
 1327 broker shall automatically cause ~~cancel~~ the licenses of all
 1328 broker associates ~~salespersons~~ registered with the broker, and,
 1329 if a partnership or corporation, of all members, officers, and
 1330 directors thereof to become involuntarily inactive, while the
 1331 license of the broker is inoperative or until new employment or
 1332 connection is secured.

1333 Section 19. Section 475.37, Florida Statutes, is amended
 1334 to read:

1335 475.37 Effect of reversal of order of court or
 1336 commission.--If the order of the court or commission denying a
 1337 license or taking any disciplinary action against a licensee is
 1338 finally reversed and set aside, the defendant shall be restored
 1339 to her or his rights and privileges as a broker or broker
 1340 associate ~~salesperson~~ as of the date of filing the mandate or a
 1341 copy thereof with the commission. The matters and things alleged



HB 0637

2003

1342 in the information shall not thereafter be reexamined in any
1343 other proceeding concerning the licensure of the defendant. If
1344 the inquiry concerned was in reference to an application for
1345 licensure, the application shall stand approved, and such
1346 application shall be remanded for further proceedings according
1347 to law.

1348 Section 20. Section 475.4005, Florida Statutes, is created
1349 to read:

1350 475.4005 Unlicensed practice of profession regulated in
1351 this chapter; cease and desist notice; civil penalty;
1352 enforcement; citations; allocation of moneys.--

1353 (1) When the commission has probable cause to believe that
1354 any person not licensed by the department has violated any
1355 provision of this chapter or any statute that relates to the
1356 practice of a profession regulated under this chapter or any
1357 rule adopted pursuant thereto, the commission may issue and
1358 deliver to such person a notice to cease and desist from such
1359 violation. In addition, the commission may issue and deliver a
1360 notice to cease and desist to any person who aids and abets such
1361 unlicensed practice by employing such unlicensed persons. The
1362 issuance of a notice to cease and desist shall not constitute
1363 agency action for which a hearing under ss. 120.569 and 120.57
1364 may be sought. For the purpose of enforcing a cease and desist
1365 order, the commission may file a proceeding in the name of the
1366 state seeking issuance of an injunction or a writ of mandamus
1367 against any person who violates any provision of such order. In
1368 addition to the foregoing remedies, the commission may impose an
1369 administrative penalty not to exceed \$5,000 per incident
1370 pursuant to the provisions of chapter 120 or may issue a
1371 citation pursuant to subsection (3). If the commission is



HB 0637

2003

1372 required to seek enforcement of the order for a penalty pursuant
1373 to s. 120.569, it is entitled to collect its attorney's fees and
1374 costs, together with any cost of collection.

1375 (2) In addition to or in lieu of any remedy provided in
1376 subsection (1), the department may seek the imposition of a
1377 civil penalty through the circuit court for any violation for
1378 which the commission may issue a notice to cease and desist
1379 under subsection (1). The civil penalty shall be no less than
1380 \$500 and no more than \$5,000 for each offense. The court may
1381 also award to the prevailing party court costs and reasonable
1382 attorney's fees and, if the commission prevails, may also award
1383 reasonable costs of investigation.

1384 (3)(a) Notwithstanding s. 455.225, the commission shall
1385 adopt rules to permit the issuance of citations for unlicensed
1386 practice of a profession regulated under this chapter. The
1387 citation shall be issued to the subject and shall contain the
1388 subject's name and any other information the department
1389 determines to be necessary to identify the subject, a brief
1390 factual statement, the sections of law allegedly violated, and
1391 the penalty imposed. The citation must clearly state that the
1392 subject may choose, in lieu of accepting the citation, to follow
1393 the procedure under s. 455.225. If the subject disputes the
1394 matter in the citation, the procedures set forth in s. 455.225
1395 must be followed. However, if the subject does not dispute the
1396 matter in the citation with the commission within 30 days after
1397 the citation is served, the citation shall become a final order
1398 of the commission. The penalty shall be a fine of not less than
1399 \$500 or more than \$5,000 or other conditions as established by
1400 rule.



HB 0637

2003

1401 (b) Each day that the unlicensed practice continues after
 1402 issuance of a citation constitutes a separate violation.

1403 (c) The commission may recover the costs of investigation,
 1404 in addition to any penalty provided according to commission rule
 1405 as part of the penalty levied pursuant to the citation.

1406 (d) Service of a citation may be made by personal service
 1407 or certified mail, restricted delivery, to the subject at the
 1408 subject's last known address.

1409 (4) All fines, fees, and costs collected through the
 1410 procedures set forth in this section shall be allocated to the
 1411 Real Estate Recovery Fund.

1412 (5) The commission shall employ attorneys and
 1413 investigators to investigate and prosecute unlicensed activity
 1414 in real estate transactions.

1415 Section 21. Section 475.41, Florida Statutes, is amended
 1416 to read:

1417 475.41 Contracts of unlicensed person for commissions
 1418 invalid.--No contract for a commission or compensation for any
 1419 act or service enumerated in s. 475.01(3) is valid unless the
 1420 broker or broker associate ~~salesperson~~ has complied with this
 1421 chapter in regard to issuance and renewal of the license at the
 1422 time the act or service was performed.

1423 Section 22. Subsection (1) of section 475.42, Florida
 1424 Statutes, is amended to read:

1425 475.42 Violations and penalties.--

1426 (1) VIOLATIONS.--

1427 (a) A ~~No~~ person may not ~~shall~~ operate as a broker or
 1428 broker associate ~~salesperson~~ without being the holder of a valid
 1429 and current active license therefor.



HB 0637

2003

1430 (b) A ~~No~~ person licensed as a broker associate may not
1431 ~~salesperson shall~~ operate as a broker or operate as a broker
1432 associate salesperson for any person not registered as her or
1433 his employer.

1434 (c) A ~~No~~ broker may not shall employ, or continue in
1435 employment, any person as a broker or broker associate
1436 ~~salesperson~~ who is not the holder of a valid and current license
1437 as broker or broker associate, respectively salesperson; but a
1438 ~~license as salesperson may be issued to a person licensed as an~~
1439 ~~active broker, upon request and surrender of the license as~~
1440 ~~broker, without a fee in addition to that paid for the issuance~~
1441 ~~of the broker's active license.~~

1442 (d) A broker associate may not ~~No salesperson shall~~
1443 collect any money in connection with any real estate brokerage
1444 transaction, whether as a commission, deposit, payment, rental,
1445 or otherwise, except in the name of the employer and with the
1446 express consent of the employer; and no real estate broker
1447 associate salesperson, whether the holder of a valid and current
1448 license or not, shall commence or maintain any action for a
1449 commission or compensation in connection with a real estate
1450 brokerage transaction against any person except a person
1451 registered as her or his employer at the time the broker
1452 associate salesperson performed the act or rendered the service
1453 for which the commission or compensation is due.

1454 (e) A ~~No~~ person may not shall violate any lawful order or
1455 rule of the commission which is binding upon her or him.

1456 (f) A ~~No~~ person may not shall commit any conduct or
1457 practice set forth in s. 475.25(1)(b), (c), (d), or (h).

1458 (g) A ~~No~~ person may not shall make any false affidavit or
1459 affirmation intended for use as evidence by or before the



HB 0637

2003

1460 commission or a member thereof, or by any of its authorized
1461 representatives, nor may ~~shall~~ any person give false testimony
1462 under oath or affirmation to or before the commission or any
1463 member thereof in any proceeding authorized by this chapter.

1464 (h) A ~~No~~ person may not ~~shall~~ fail or refuse to appear at
1465 the time and place designated in a subpoena issued with respect
1466 to a violation of this chapter, unless because of facts that are
1467 sufficient to excuse appearance in response to a subpoena from
1468 the circuit court; nor may ~~shall~~ a person who is present before
1469 the commission or a member thereof or one of its authorized
1470 representatives acting under authority of this chapter refuse to
1471 be sworn or to affirm or fail or refuse to answer fully any
1472 question propounded by the commission, the member, or such
1473 representative, or by any person by the authority of such
1474 officer or appointee; nor may ~~shall~~ any person, so being
1475 present, conduct herself or himself in a disorderly,
1476 disrespectful, or contumacious manner.

1477 (i) A ~~No~~ person may not ~~shall~~ obstruct or hinder in any
1478 manner the enforcement of this chapter or the performance of any
1479 lawful duty by any person acting under the authority of this
1480 chapter or interfere with, intimidate, or offer any bribe to any
1481 member of the commission or any of its employees or any person
1482 who is, or is expected to be, a witness in any investigation or
1483 proceeding relating to a violation of this chapter.

1484 (j) A ~~No~~ broker or broker associate may not ~~salesperson~~
1485 ~~shall~~ place, or cause to be placed, upon the public records of
1486 any county, any contract, assignment, deed, will, mortgage,
1487 affidavit, or other writing which purports to affect the title
1488 of, or encumber, any real property if the same is known to her
1489 or him to be false, void, or not authorized to be placed of



HB 0637

2003

1490 record, or not executed in the form entitling it to be recorded,
 1491 or the execution or recording whereof has not been authorized by
 1492 the owner of the property, maliciously or for the purpose of
 1493 collecting a commission, or to coerce the payment of money to
 1494 the broker or broker associate ~~salesperson~~ or other person, or
 1495 for any unlawful purpose. However, nothing in this paragraph
 1496 shall be construed to prohibit a broker or a broker associate
 1497 ~~salesperson~~ from recording a judgment rendered by a court of
 1498 this state or to prohibit a broker from placing a lien on a
 1499 property where expressly permitted by contractual agreement.

1500 (k) A ~~No~~ person may not ~~shall~~ operate as a broker under a
 1501 trade name without causing the trade name to be noted in the
 1502 records of the commission and placed on the person's license, or
 1503 so operate as a member of a partnership or as a corporation or
 1504 as an officer or manager thereof, unless such partnership or
 1505 corporation is the holder of a valid current registration.

1506 (l) A ~~No~~ person may not ~~shall~~ knowingly conceal any
 1507 information relating to violations of this chapter.

1508 (m) A ~~No~~ person may not ~~shall~~ undertake to list or sell
 1509 one or more timeshare periods per year in one or more timeshare
 1510 plans on behalf of any number of persons without first being the
 1511 holder of a valid and current license as a broker or broker
 1512 associate ~~salesperson~~ pursuant to this chapter, except as
 1513 provided in s. 475.011 and chapter 721.

1514 (n) A ~~No~~ broker or broker associate ~~may not~~ ~~salesperson~~
 1515 ~~shall~~ enter into any listing or other agreement regarding her or
 1516 his services in connection with the resale of a timeshare period
 1517 unless the broker or broker associate ~~salesperson~~ fully and
 1518 fairly discloses all material aspects of the agreement to the
 1519 owner of the timeshare period ~~and fully complies with the~~



HB 0637

2003

1520 ~~provisions of s. 475.452.~~ Further, a ~~no~~ broker or broker
 1521 associate may not use salesperson shall utilize any form of
 1522 contract or purchase and sale agreement in connection with the
 1523 resale of a timeshare period unless the contract or purchase and
 1524 sale agreement fully and fairly discloses all material aspects
 1525 of the timeshare plan and the rights and obligations of both
 1526 buyer and seller. The commission is authorized to adopt
 1527 ~~promulgate~~ rules pursuant to chapter 120 as necessary to
 1528 implement, enforce, and interpret this paragraph.

1529 (o) A person may not disseminate or cause to be
 1530 disseminated by any means any false or misleading information
 1531 for the purpose of offering for sale, or for the purpose of
 1532 causing or inducing any other person to purchase, lease, or
 1533 rent, real estate located in the state or for the purpose of
 1534 causing or inducing any other person to acquire an interest in
 1535 the title to real estate located in the state.

1536 Section 23. Section 475.43, Florida Statutes, is amended
 1537 to read:

1538 475.43 Presumptions.--In all criminal cases, contempt
 1539 cases, and other cases filed pursuant to this chapter, if a
 1540 party has sold, leased, or let real estate, the title to which
 1541 was not in the party when it was offered for sale, lease, or
 1542 letting, or such party has maintained an office bearing signs
 1543 that real estate is for sale, lease, or rental thereat, or has
 1544 advertised real estate for sale, lease, or rental, generally, or
 1545 describing property, the title to which was not in such party at
 1546 the time, it shall be a presumption that such party was acting
 1547 or attempting to act as a real estate broker, and the burden of
 1548 proof shall be upon him or her to show that he or she was not
 1549 acting or attempting to act as a broker or broker associate



HB 0637

2003

1550 ~~salesperson~~. All contracts, options, or other devices not based
 1551 upon a substantial consideration, or that are otherwise employed
 1552 to permit an unlicensed person to sell, lease, or let real
 1553 estate, the beneficial title to which has not, in good faith,
 1554 passed to such party for a substantial consideration, are hereby
 1555 declared void and ineffective in all cases, suits, or
 1556 proceedings had or taken under this chapter; however, this
 1557 section shall not apply to irrevocable gifts, to unconditional
 1558 contracts to purchase, or to options based upon a substantial
 1559 consideration actually paid and not subject to any agreements to
 1560 return or right of return reserved.

1561 Section 24. Section 475.451, Florida Statutes, is amended
 1562 to read:

1563 475.451 Schools teaching real estate practice.--

1564 (1) Each person, school, or institution, except approved
 1565 and accredited colleges, universities, community colleges, and
 1566 area technical centers in this state, which offers or conducts
 1567 any course of study in real estate practice, teaches any course
 1568 prescribed by the commission as a condition precedent to
 1569 licensure or renewal of licensure as a broker or broker
 1570 associate ~~salesperson~~, or teaches any course designed or
 1571 represented to enable or assist applicants for licensure as
 1572 brokers or broker associates ~~salespersons~~ to pass examinations
 1573 for such licensure shall, before commencing or continuing
 1574 further to offer or conduct such course or courses, obtain a
 1575 permit from the department and abide by the regulations imposed
 1576 upon such person, school, or institution by this chapter and
 1577 rules of the commission adopted pursuant to this chapter. The
 1578 exemption for colleges, universities, community colleges, and



HB 0637

2003

1579 area technical centers is limited to transferable college credit
1580 courses offered by such institutions.

1581 (2) An applicant for a permit to operate a proprietary
1582 real estate school, to be a chief administrator of a proprietary
1583 real estate school or a state institution, or to be an
1584 instructor for a proprietary real estate school or a state
1585 institution must meet the qualifications for practice set forth
1586 in s. 475.17(1) and the following minimal requirements:

1587 (a) "School permitholder" means the individual who is
1588 responsible for directing the overall operation of a proprietary
1589 real estate school. A school permitholder must be the holder of
1590 a license as a broker, either active or voluntarily inactive, or
1591 must have passed an instructor's examination approved by the
1592 commission. A school permitholder must also meet the
1593 requirements of a school instructor if actively engaged in
1594 teaching.

1595 (b) "Chief administrative person" means the individual who
1596 is responsible for the administration of the overall policies
1597 and practices of the institution or proprietary real estate
1598 school. A chief administrative person must also meet the
1599 requirements of a school instructor if actively engaged in
1600 teaching.

1601 (c) "School instructor" means an individual who instructs
1602 persons in the classroom in noncredit college courses in a
1603 college, university, or community college or courses in an area
1604 technical center or proprietary real estate school.

1605 1. Before commencing to provide such instruction, the
1606 applicant must certify the applicant's competency and obtain an
1607 instructor permit by meeting one of the following requirements:



HB 0637

2003

1608 a. Hold a bachelor's degree in a business-related subject,
1609 such as real estate, finance, accounting, business
1610 administration, or its equivalent and hold a valid broker's
1611 license in this state.

1612 b. Hold a bachelor's degree, have extensive real estate
1613 experience, as defined by rule, and hold a valid broker's
1614 license in this state.

1615 c. Pass an instructor's examination approved by the
1616 commission.

1617 2. Any requirement by the commission for a teaching
1618 demonstration or practical examination must apply to all school
1619 instructor applicants.

1620 3. The department shall renew an instructor permit upon
1621 receipt of a renewal application and fee. The renewal
1622 application shall include proof that the permitholder has, since
1623 the issuance or renewal of the current permit, successfully
1624 completed a minimum of 4 ~~15~~ classroom hours of instruction
1625 provided by the commission covering changes in the law and case
1626 law for each biennium of a license period in real estate
1627 subjects or instructional techniques, as prescribed by the
1628 ~~commission~~. The commission shall adopt rules providing for the
1629 renewal of instructor permits at least every 4 ~~2~~ years. Any
1630 permit which is not renewed at the end of the permit period
1631 established by the department shall automatically revert to
1632 involuntarily inactive status.

1633
1634 The department may require an applicant to submit names of
1635 persons having knowledge concerning the applicant and the
1636 enterprise; may propound interrogatories to such persons and to
1637 the applicant concerning the character of the applicant,



HB 0637

2003

1638 including the taking of fingerprints for processing through the
1639 Federal Bureau of Investigation; and shall make such
1640 investigation of the applicant or the school or institution as
1641 it may deem necessary to the granting of the permit. If an
1642 objection is filed, it shall be considered in the same manner as
1643 objections or administrative complaints against other applicants
1644 for licensure by the department.

1645 (3) It is unlawful for any person, school, or institution
1646 to offer the courses described in subsection (1) or to conduct
1647 classes in such courses, regardless of the number of pupils,
1648 whether by correspondence or otherwise, without first procuring
1649 a permit, ~~or to guarantee that its pupils will pass any~~
1650 ~~examinations required for licensure,~~ or to represent that the
1651 issuance of a permit is any recommendation or endorsement of the
1652 person, school, or institution to which it is issued or of any
1653 course of instruction given thereunder.

1654 (4) Any person who violates this section commits a
1655 misdemeanor of the second degree, punishable as provided in s.
1656 775.082 or s. 775.083.

1657 (5) The location of classes and frequency of class
1658 meetings and the provision of interactive distance learning
1659 courses shall be in the discretion of the school offering real
1660 estate courses, so long as such courses conform to s. 475.17(2).

1661 (6) Any course prescribed by the commission as a condition
1662 precedent to any person's becoming initially licensed as a
1663 broker associate ~~salesperson~~ may be taught in any real estate
1664 school through the use of a video tape of instruction by a
1665 currently permitted instructor from any such school or may be
1666 taught by interactive distance learning pursuant to s.
1667 475.17(2). The commission may require that any such video tape



HB 0637

2003

1668 course have a single session of live instruction by a currently
1669 permitted instructor from any such school; however, this
1670 requirement shall not exceed 3 classroom hours. All other
1671 prescribed courses, except the continuing education course
1672 required by s. 475.182, shall be taught by a currently permitted
1673 school instructor personally in attendance at such course or by
1674 interactive distance learning pursuant to s. 475.17. The
1675 continuing education course required by s. 475.182 may be taught
1676 by interactive distance learning pursuant to s. 475.17 or by an
1677 equivalent correspondence course; however, any such
1678 correspondence course shall be required to have a final
1679 examination, prepared and administered by the school issuing the
1680 correspondence course. The continuing education requirements
1681 provided in this section or provided in any other section in
1682 this chapter do not apply with respect to any attorney who is
1683 otherwise qualified under the provisions of this chapter.

1684 ~~(7) Any person holding a school instructor permit on~~
1685 ~~October 1, 1983, is exempt from the instructor examination~~
1686 ~~requirements of paragraph (2)(c) as long as the person~~
1687 ~~continuously holds such a permit and complies with all other~~
1688 ~~requirements of this chapter.~~

1689 (7)(8) A permitholder under this section may be issued
1690 additional permits whenever it is clearly shown that the
1691 requested additional permits are necessary to the conduct of the
1692 business of a real estate school and that the additional permits
1693 will not be used in a manner likely to be prejudicial to any
1694 person, including a licensee or a permitholder under this
1695 chapter.

1696 Section 25. Subsections (3), (4), and (5) of section
1697 475.4511, Florida Statutes, are repealed.



HB 0637

2003

1698 Section 26. Section 475.453, Florida Statutes, is amended
 1699 to read:

1700 475.453 Rental information; contract or receipt; refund;
 1701 penalty.--

1702 (1) Each broker or broker associate ~~salesperson~~ who
 1703 attempts to negotiate a rental, or who furnishes rental
 1704 information to a prospective tenant, for a fee paid by the
 1705 prospective tenant shall provide such prospective tenant with a
 1706 contract or receipt, which contract or receipt contains a
 1707 provision for the repayment of any amount over 25 percent of the
 1708 fee to the prospective tenant if the prospective tenant does not
 1709 obtain a rental. If the rental information provided by the
 1710 broker or broker associate ~~salesperson~~ to a prospective tenant
 1711 is not current or accurate in any material respect, the full fee
 1712 shall be repaid to the prospective tenant upon demand. A demand
 1713 from the prospective tenant for the return of the fee, or any
 1714 part thereof, shall be made within 30 days following the day on
 1715 which the real estate broker or broker associate ~~salesperson~~ has
 1716 contracted to perform services to the prospective tenant. The
 1717 contract or receipt shall also conform to the guidelines adopted
 1718 by the commission in order to effect disclosure of material
 1719 information regarding the service to be provided to the
 1720 prospective tenant.

1721 (2) The commission may adopt a guideline for the form of
 1722 the contract or receipt required to be provided by brokers or
 1723 broker associates ~~salespersons~~ pursuant to the provisions of
 1724 subsection (1).

1725 (3)(a) Any person who violates any provision of subsection
 1726 (1) is guilty of a misdemeanor of the first degree, punishable
 1727 as provided in s. 775.082 or s. 775.083.



HB 0637

2003

1728 (b) In addition to the penalty prescribed in paragraph
1729 (a), the license of any broker or broker associate ~~salesperson~~
1730 who participates in any rental information transaction which is
1731 in violation of the provisions of subsection (1) shall be
1732 subject to suspension or revocation by the commission in the
1733 manner prescribed by law.

1734 Section 27. Section 475.455, Florida Statutes, is amended
1735 to read:

1736 475.455 Exchange of disciplinary information.--The
1737 commission shall inform the Division of Florida Land Sales,
1738 Condominiums, and Mobile Homes of the Department of Business and
1739 Professional Regulation of any disciplinary action the
1740 commission has taken against any of its licensees. The division
1741 shall inform the commission of any disciplinary action the
1742 division has taken against any broker or broker associate
1743 ~~salesperson~~ registered with the division.

1744 Section 28. Section 475.482, Florida Statutes, is amended
1745 to read:

1746 475.482 Real Estate Recovery Fund.--There is created the
1747 Florida Real Estate Recovery Fund as a separate account in the
1748 Professional Regulation Trust Fund.

1749 (1) The Florida Real Estate Recovery Fund shall be
1750 disbursed as provided in s. 475.484, on order of the commission,
1751 as reimbursement to any person, partnership, or corporation
1752 adjudged by a court of competent civil jurisdiction in this
1753 state to have suffered monetary damages by reason of any act
1754 committed, as a part of any real estate brokerage transaction
1755 involving real property in this state, by any broker or broker
1756 associate ~~salesperson~~ who:



HB 0637

2003

1757 (a) Was, at the time the alleged act was committed, the
1758 holder of a current, valid, active real estate license issued
1759 under this part;

1760 (b) Was neither the seller, buyer, landlord, or tenant in
1761 the transaction nor an officer or a director of a corporation, a
1762 member of a partnership, a member of a limited liability
1763 company, or a partner of a limited liability partnership which
1764 was the seller, buyer, landlord, or tenant in the transaction;
1765 and

1766 (c) Was acting solely in the capacity of a real estate
1767 licensee in the transaction;

1768
1769 provided the act was a violation proscribed in s. 475.25 or s.
1770 475.42.

1771 (2) The Real Estate Recovery Fund shall also be disbursed
1772 as provided in s. 475.484, on order of the commission, as
1773 reimbursement to any broker or broker associate ~~salesperson~~ who
1774 is required by a court of competent civil jurisdiction to pay
1775 monetary damages due to a distribution of escrow moneys which is
1776 made in compliance with an escrow disbursement order issued by
1777 the commission. However, in no case shall the fund be disbursed
1778 when the broker or broker associate ~~salesperson~~ fails to notify
1779 the commission and to diligently defend an action wherein the
1780 broker or broker associate ~~salesperson~~ may be required by a
1781 court of competent civil jurisdiction to pay monetary damages
1782 due to a distribution of escrow moneys which is made in
1783 compliance with an escrow disbursement order issued by the
1784 commission.

1785 (3) A fee of \$3.50 per year shall be added to the license
1786 fee for both new licenses and renewals of licenses for brokers,



HB 0637

2003

1787 and a fee of \$1.50 per year shall be added for new licenses and
1788 renewals of licenses for broker associates ~~salespersons~~. This
1789 fee shall be in addition to the regular license fee and shall be
1790 deposited in or transferred to the Real Estate Recovery Fund.
1791 If the fund at any time exceeds \$1 million ~~\$750,000~~, collection
1792 of special fees for this fund shall be discontinued at the end
1793 of the licensing renewal cycle. Such special fees shall not be
1794 reimposed unless the fund is reduced below \$500,000 by
1795 disbursement made in accordance with this chapter.

1796 (4) In addition, all moneys collected from fines imposed
1797 by the commission and collected by the department shall be
1798 transferred into the Real Estate Recovery Fund.

1799 Section 29. Paragraph (a) of subsection (1) and
1800 subsections (2) and (3) of section 475.483, Florida Statutes,
1801 are amended to read:

1802 475.483 Conditions for recovery; eligibility.--

1803 (1) Any person is eligible to seek recovery from the Real
1804 Estate Recovery Fund if:

1805 (a) Such person has received a final judgment in a court
1806 of competent civil jurisdiction in this state against an
1807 individual broker or broker associate ~~salesperson~~ in any action
1808 wherein the cause of action was based on a real estate brokerage
1809 transaction. If such person is unable to secure a final judgment
1810 against a licensee due to the death of the licensee, the
1811 commission may waive the requirement for a final judgment. The
1812 filing of a bankruptcy petition by a broker or broker associate
1813 ~~salesperson~~ does not relieve a claimant from the obligation to
1814 obtain a final judgment against the licensee. In this instance,
1815 the claimant must seek to have assets involving the real estate
1816 transaction that gave rise to the claim removed from the



HB 0637

2003

1817 bankruptcy proceedings so that the matter might be heard in a
1818 court of competent civil jurisdiction in this state. If, after
1819 due diligence, the claimant is precluded by action of the
1820 bankruptcy court from securing a final judgment against the
1821 licensee, the commission may waive the requirement for a final
1822 judgment.

1823 (2) A person is not qualified to make a claim for recovery
1824 from the Real Estate Recovery Fund, if:

1825 (a) Such person is the spouse of the judgment debtor or a
1826 personal representative of such spouse;

1827 (b) Such person is a licensed broker or broker associate
1828 ~~salesperson~~ who acted as a single agent or transaction broker in
1829 the transaction that is the subject of the claim;

1830 (c) Such person's claim is based upon a real estate
1831 transaction in which the licensed broker or broker associate
1832 ~~salesperson~~ was the owner of or controlled the property involved
1833 in the transaction; in which the licensee was dealing for the
1834 licensee's own account; or in which the licensee was not acting
1835 as a broker or broker associate ~~salesperson~~;

1836 (d) Such person's claim is based upon a real estate
1837 transaction in which the broker or broker associate ~~salesperson~~
1838 did not hold a valid, current, and active license at the time of
1839 the real estate transaction; or

1840 (e) The judgment is against a real estate brokerage
1841 corporation, partnership, limited liability company, or limited
1842 liability partnership.

1843 (3) ~~The commission may pay attorney's fees and court costs~~
1844 If the claim is of the type described in s. 475.482(2), the
1845 commission shall pay the defendant's attorney's fees and court



HB 0637

2003

1846 costs and, if the plaintiff prevails in court, the plaintiff's
 1847 attorney's fees and court costs.

1848 Section 30. Subsections (1), (3), (4), (5), and (7) of
 1849 section 475.484, Florida Statutes, are amended to read:

1850 475.484 Payment from the fund.--

1851 (1) Any person who meets all of the conditions prescribed
 1852 in s. 475.482(1) or (2) may apply to the commission to cause
 1853 payment to be made to such person from the Real Estate Recovery
 1854 Fund:

1855 (a) Under s. 475.482(1), in an amount equal to the
 1856 unsatisfied portion of such person's judgment or \$50,000
 1857 ~~\$25,000~~, whichever is less, but only to the extent and amount
 1858 reflected in the judgment as being actual or compensatory
 1859 damages. Except as provided in s. 475.483, treble damages, court
 1860 costs, attorney's fees, and interest shall not be recovered from
 1861 the fund.

1862 (b) Under s. 475.482(2), in an amount equal to the
 1863 judgment against the broker or broker associate ~~salesperson~~ or
 1864 \$50,000 ~~\$25,000~~, whichever is less.

1865 (3) Payments for claims arising out of the same
 1866 transaction shall be limited, in the aggregate, to \$50,000
 1867 ~~\$25,000~~, regardless of the number of claimants or parcels of
 1868 real estate involved in the transaction.

1869 (4) Payments for claims based upon judgments against any
 1870 one broker or broker associate ~~salesperson~~ may not exceed, in
 1871 the aggregate, \$150,000 ~~\$75,000~~.

1872 (5) If at any time the moneys in the Real Estate Recovery
 1873 Fund are insufficient to satisfy any valid claim or portion
 1874 thereof, the commission shall satisfy such unpaid claim or
 1875 portion thereof as soon as a sufficient amount of money has been



HB 0637

2003

1876 deposited in or transferred to the fund. When there is more than
1877 one unsatisfied claim outstanding, such claims shall be paid in
1878 the order in which the claims were approved by the commission.
1879 However, if the total claims approved at any one commission
1880 meeting exceed the aggregate amount established in subsection
1881 (4) against any one broker or broker associate ~~salesperson~~, the
1882 claims approved on that day shall be prorated.

1883 (7) Upon the payment of any amount from the Real Estate
1884 Recovery Fund in settlement of a claim in satisfaction of a
1885 judgment against a broker or broker associate ~~salesperson~~ as
1886 described in s. 475.482(1), the license of such broker or broker
1887 associate ~~salesperson~~ shall be automatically suspended upon the
1888 date of payment from the fund. The license of such broker or
1889 broker associate ~~salesperson~~ may not be reinstated until the
1890 licensee has repaid in full, plus interest, the amount paid from
1891 the fund. No further administrative action is necessary. A
1892 discharge of bankruptcy does not relieve a licensee from the
1893 penalties and disabilities provided in this section, except to
1894 the extent that this subsection conflicts with 11 U.S.C. s. 525,
1895 in which case the commission may order the license not to be
1896 suspended or otherwise discriminated against.

1897 Section 31. Subsection (2) of section 475.5017, Florida
1898 Statutes, is amended to read:

1899 475.5017 Injunctive relief; powers.--

1900 (2) All expenses of the receiver shall be paid out of the
1901 assets of the brokerage firm upon application to and approval by
1902 the court. If the assets are not sufficient to pay all the
1903 expenses of the receiver, the court may order disbursement from
1904 the Real Estate Recovery Fund, which may not exceed \$100,000
1905 ~~\$75,000~~ per receivership.



HB 0637

2003

1906 Section 32. Subsections (2) and (3) of section 475.612,
 1907 Florida Statutes, are amended to read:

1908 475.612 Certification, licensure, or registration
 1909 required.--

1910 (2) This section does not preclude a broker, ~~salesperson,~~
 1911 or broker associate ~~broker-salesperson~~ who is not a certified or
 1912 licensed real estate appraiser or registered assistant real
 1913 estate appraiser from appraising real estate for compensation.
 1914 Such persons may continue to provide appraisals and appraisal
 1915 services for compensation so long as they do not represent
 1916 themselves as certified, licensed, or registered under this
 1917 part.

1918 (3) This section does not apply to a real estate broker or
 1919 broker associate ~~salesperson~~ who, in the ordinary course of
 1920 business, performs a comparative market analysis, gives a broker
 1921 price opinion, or gives an opinion of the value of real estate.

1922 However, in no event may this comparative market analysis,
 1923 broker price opinion, or opinion of value of real estate be
 1924 referred to or construed as an appraisal.

1925 Section 33. Section 689.25, Florida Statutes, is amended
 1926 to read:

1927 689.25 Failure to disclose homicide, other felony,
 1928 suicide, deaths, or diagnosis of HIV or AIDS infection in an
 1929 occupant of real property.--

1930 (1)(a) The fact that an occupant of real property is
 1931 infected or has been infected with human immunodeficiency virus
 1932 or diagnosed with acquired immune deficiency syndrome is not a
 1933 material fact that must be disclosed in a real estate
 1934 transaction.



HB 0637

2003

1935 (b) The fact that a property was, or was at any time
 1936 suspected to have been, the site of a homicide or other felony,
 1937 suicide, or death is not a material fact that must be disclosed
 1938 in a real estate transaction.

1939 (2) A ~~No~~ cause of action shall not arise ~~arises~~ against an
 1940 owner of real property, ~~or~~ his or her agent, an ~~or against any~~
 1941 agent of a transferee of real property, or a person licensed
 1942 under chapter 475 for the failure to disclose to the transferee
 1943 that the property was or was suspected to have been the site of
 1944 a homicide or other felony, suicide, or death ~~or~~ that an
 1945 occupant of that property was infected with human
 1946 immunodeficiency virus or diagnosed with acquired immune
 1947 deficiency syndrome.

1948 Section 34. Sections 475.421, 475.422, and 475.452,
 1949 Florida Statutes, are repealed.

1950 Section 35. Paragraph (d) of subsection (3) of section
 1951 83.49, Florida Statutes, is amended to read:

1952 83.49 Deposit money or advance rent; duty of landlord and
 1953 tenant.--

1954 (3)

1955 (d) Compliance with this section by an individual or
 1956 business entity authorized to conduct business in this state,
 1957 including Florida-licensed real estate brokers and broker
 1958 associates ~~salespersons~~, shall constitute compliance with all
 1959 other relevant Florida Statutes pertaining to security deposits
 1960 held pursuant to a rental agreement or other landlord-tenant
 1961 relationship. Enforcement personnel shall look solely to this
 1962 section to determine compliance. This section prevails over any
 1963 conflicting provisions in chapter 475 and in other sections of
 1964 the Florida Statutes, and shall operate to permit licensed real



HB 0637

2003

1965 estate brokers to disburse security deposits and deposit money
 1966 without having to comply with the notice and settlement
 1967 procedures contained in s. 475.25(1)(d).

1968 Section 36. Paragraph (d) of subsection (15) of section
 1969 440.02, Florida Statutes, is amended to read:

1970 440.02 Definitions.--When used in this chapter, unless the
 1971 context clearly requires otherwise, the following terms shall
 1972 have the following meanings:

1973 (15)

1974 (d) "Employee" does not include:

1975 1. An independent contractor, if:

1976 a. The independent contractor maintains a separate
 1977 business with his or her own work facility, truck, equipment,
 1978 materials, or similar accommodations;

1979 b. The independent contractor holds or has applied for a
 1980 federal employer identification number, unless the independent
 1981 contractor is a sole proprietor who is not required to obtain a
 1982 federal employer identification number under state or federal
 1983 requirements;

1984 c. The independent contractor performs or agrees to
 1985 perform specific services or work for specific amounts of money
 1986 and controls the means of performing the services or work;

1987 d. The independent contractor incurs the principal
 1988 expenses related to the service or work that he or she performs
 1989 or agrees to perform;

1990 e. The independent contractor is responsible for the
 1991 satisfactory completion of work or services that he or she
 1992 performs or agrees to perform and is or could be held liable for
 1993 a failure to complete the work or services;



HB 0637

2003

1994 f. The independent contractor receives compensation for
 1995 work or services performed for a commission or on a per-job or
 1996 competitive-bid basis and not on any other basis;

1997 g. The independent contractor may realize a profit or
 1998 suffer a loss in connection with performing work or services;

1999 h. The independent contractor has continuing or recurring
 2000 business liabilities or obligations; and

2001 i. The success or failure of the independent contractor's
 2002 business depends on the relationship of business receipts to
 2003 expenditures.

2004
 2005 However, the determination as to whether an individual included
 2006 in the Standard Industrial Classification Manual of 1987,
 2007 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
 2008 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
 2009 or a newspaper delivery person, is an independent contractor is
 2010 governed not by the criteria in this paragraph but by common-law
 2011 principles, giving due consideration to the business activity of
 2012 the individual. Notwithstanding the provisions of this paragraph
 2013 or any other provision of this chapter, with respect to any
 2014 commercial building project estimated to be valued at \$250,000
 2015 or greater, a person who is actively engaged in the construction
 2016 industry is not an independent contractor and is either an
 2017 employer or an employee who may not be exempt from the coverage
 2018 requirements of this chapter.

2019 2. A real estate broker or broker associate ~~salesperson or~~
 2020 ~~agent~~, if that person agrees, in writing, to perform for
 2021 remuneration solely by way of commission.

2022 3. Bands, orchestras, and musical and theatrical
 2023 performers, including disk jockeys, performing in licensed



HB 0637

2003

2024 premises as defined in chapter 562, if a written contract
 2025 evidencing an independent contractor relationship is entered
 2026 into before the commencement of such entertainment.

2027 4. An owner-operator of a motor vehicle who transports
 2028 property under a written contract with a motor carrier which
 2029 evidences a relationship by which the owner-operator assumes the
 2030 responsibility of an employer for the performance of the
 2031 contract, if the owner-operator is required to furnish the
 2032 necessary motor vehicle equipment and all costs incidental to
 2033 the performance of the contract, including, but not limited to,
 2034 fuel, taxes, licenses, repairs, and hired help; and the owner-
 2035 operator is paid a commission for transportation service and is
 2036 not paid by the hour or on some other time-measured basis.

2037 5. A person whose employment is both casual and not in the
 2038 course of the trade, business, profession, or occupation of the
 2039 employer.

2040 6. A volunteer, except a volunteer worker for the state or
 2041 a county, municipality, or other governmental entity. A person
 2042 who does not receive monetary remuneration for services is
 2043 presumed to be a volunteer unless there is substantial evidence
 2044 that a valuable consideration was intended by both employer and
 2045 employee. For purposes of this chapter, the term "volunteer"
 2046 includes, but is not limited to:

2047 a. Persons who serve in private nonprofit agencies and who
 2048 receive no compensation other than expenses in an amount less
 2049 than or equivalent to the standard mileage and per diem expenses
 2050 provided to salaried employees in the same agency or, if such
 2051 agency does not have salaried employees who receive mileage and
 2052 per diem, then such volunteers who receive no compensation other
 2053 than expenses in an amount less than or equivalent to the



HB 0637

2003

2054 customary mileage and per diem paid to salaried workers in the
 2055 community as determined by the department; and

2056 b. Volunteers participating in federal programs
 2057 established under Pub. L. No. 93-113.

2058 7. Any officer of a corporation who elects to be exempt
 2059 from this chapter.

2060 8. A sole proprietor or officer of a corporation who
 2061 actively engages in the construction industry, and a partner in
 2062 a partnership that is actively engaged in the construction
 2063 industry, who elects to be exempt from the provisions of this
 2064 chapter. Such sole proprietor, officer, or partner is not an
 2065 employee for any reason until the notice of revocation of
 2066 election filed pursuant to s. 440.05 is effective.

2067 9. An exercise rider who does not work for a single horse
 2068 farm or breeder, and who is compensated for riding on a case-by-
 2069 case basis, provided a written contract is entered into prior to
 2070 the commencement of such activity which evidences that an
 2071 employee/employer relationship does not exist.

2072 10. A taxicab, limousine, or other passenger vehicle-for-
 2073 hire driver who operates said vehicles pursuant to a written
 2074 agreement with a company which provides any dispatch, marketing,
 2075 insurance, communications, or other services under which the
 2076 driver and any fees or charges paid by the driver to the company
 2077 for such services are not conditioned upon, or expressed as a
 2078 proportion of, fare revenues.

2079 11. A person who performs services as a sports official
 2080 for an entity sponsoring an interscholastic sports event or for
 2081 a public entity or private, nonprofit organization that sponsors
 2082 an amateur sports event. For purposes of this subparagraph, such
 2083 a person is an independent contractor. For purposes of this



HB 0637

2003

2084 subparagraph, the term "sports official" means any person who is
 2085 a neutral participant in a sports event, including, but not
 2086 limited to, umpires, referees, judges, linespersons,
 2087 scorekeepers, or timekeepers. This subparagraph does not apply
 2088 to any person employed by a district school board who serves as
 2089 a sports official as required by the employing school board or
 2090 who serves as a sports official as part of his or her
 2091 responsibilities during normal school hours.

2092 Section 37. Paragraph (n) of subsection (21) of section
 2093 443.036, Florida Statutes, is amended to read:

2094 443.036 Definitions.--As used in this chapter, unless the
 2095 context clearly requires otherwise:

2096 (21) EMPLOYMENT.--"Employment," subject to the other
 2097 provisions of this chapter, means any service performed by an
 2098 employee for the person employing him or her.

2099 (n) *Exclusions generally*.--The term "employment" does not
 2100 include:

2101 1. Domestic service in a private home, local college club,
 2102 or local chapter of a college fraternity or sorority, except as
 2103 provided in paragraph (g).

2104 2. Service performed on or in connection with a vessel or
 2105 aircraft not an American vessel or American aircraft, if the
 2106 employee is employed on and in connection with such vessel or
 2107 aircraft when outside the United States.

2108 3. Service performed by an individual in, or as an officer
 2109 or member of the crew of a vessel while it is engaged in, the
 2110 catching, taking, harvesting, cultivating, or farming of any
 2111 kind of fish, shellfish, crustacea, sponges, seaweeds, or other
 2112 aquatic forms of animal and vegetable life, including service



HB 0637

2003

2113 performed by any such individual as an ordinary incident to any
 2114 such activity, except:

2115 a. Service performed in connection with the catching or
 2116 taking of salmon or halibut for commercial purposes.

2117 b. Service performed on, or in connection with, a vessel
 2118 of more than 10 net tons, determined in the manner provided for
 2119 determining the register tonnage of merchant vessels under the
 2120 laws of the United States.

2121 4. Service performed by an individual in the employ of his
 2122 or her son, daughter, or spouse, including step relationships,
 2123 and service performed by a child, or stepchild, under the age of
 2124 21 in the employ of his or her father or mother, or stepfather
 2125 or stepmother.

2126 5. Service performed in the employ of the United States
 2127 Government or of an instrumentality of the United States which
 2128 is:

2129 a. Wholly or partially owned by the United States.

2130 b. Exempt from the tax imposed by s. 3301 of the Internal
 2131 Revenue Code by virtue of any provision of federal law which
 2132 specifically refers to such section, or the corresponding
 2133 section of prior law, in granting such exemption; except that to
 2134 the extent that the Congress shall permit states to require any
 2135 instrumentalities of the United States to make payments into an
 2136 unemployment fund under a state unemployment compensation law,
 2137 all of the provisions of this law shall be applicable to such
 2138 instrumentalities, and to services performed for such
 2139 instrumentalities, in the same manner, to the same extent, and
 2140 on the same terms as to all other employers, employing units,
 2141 individuals, and services. If this state is not certified for
 2142 any year by the Secretary of Labor under s. 3304 of the federal



HB 0637

2003

2143 Internal Revenue Code, the payments required of such
 2144 instrumentalities with respect to such year shall be refunded by
 2145 the division from the fund in the same manner and within the
 2146 same period as is provided in s. 443.141(6) with respect to
 2147 contributions erroneously collected.

2148 6. Service performed in the employ of a state, or any
 2149 political subdivision thereof, or any instrumentality of any one
 2150 or more of the foregoing which is wholly owned by one or more
 2151 states or political subdivisions, except as provided in
 2152 paragraph (b), and any service performed in the employ of any
 2153 instrumentality of one or more states or political subdivisions,
 2154 to the extent that the instrumentality is, with respect to such
 2155 service, immune under the Constitution of the United States from
 2156 the tax imposed by s. 3301 of the Internal Revenue Code.

2157 7. Service performed in the employ of a corporation,
 2158 community chest, fund, or foundation, organized and operated
 2159 exclusively for religious, charitable, scientific, testing for
 2160 public safety, literary, or educational purposes, or for the
 2161 prevention of cruelty to children or animals, no part of the net
 2162 earnings of which inures to the benefit of any private
 2163 shareholder or individual, no substantial part of the activities
 2164 of which is carrying on propaganda or otherwise attempting to
 2165 influence legislation, and which does not participate in, or
 2166 intervene in (including the publishing or distributing of
 2167 statements), any political campaign on behalf of any candidate
 2168 for public office, except as provided in paragraph (c).

2169 8. Service with respect to which unemployment compensation
 2170 is payable under an unemployment compensation system established
 2171 by an Act of Congress.



HB 0637

2003

2172 9.a. Service performed in any calendar quarter in the
2173 employ of any organization exempt from income tax under s.
2174 501(a) of the Internal Revenue Code, other than an organization
2175 described in s. 401(a), or under s. 521, if the remuneration for
2176 such service is less than \$50.

2177 b. Service performed in the employ of a school, college,
2178 or university, if such service is performed by a student who is
2179 enrolled and is regularly attending classes at such school,
2180 college, or university.

2181 10. Service performed in the employ of a foreign
2182 government, including service as a consular or other officer or
2183 employee of a nondiplomatic representative.

2184 11. Service performed in the employ of an instrumentality
2185 wholly owned by a foreign government:

2186 a. If the service is of a character similar to that
2187 performed in foreign countries by employees of the United States
2188 Government or of an instrumentality thereof; and

2189 b. The Secretary of State shall certify to the Secretary
2190 of the Treasury that the foreign government, with respect to
2191 whose instrumentality exemption is claimed, grants an equivalent
2192 exemption with respect to similar service performed in the
2193 foreign country by employees of the United States Government and
2194 of instrumentalities thereof.

2195 12. Service performed as a student nurse in the employ of
2196 a hospital or a nurses' training school by an individual who is
2197 enrolled and is regularly attending classes in a nurses'
2198 training school chartered or approved pursuant to a state law;
2199 service performed as an intern in the employ of a hospital by an
2200 individual who has completed a 4-year course in a medical school



HB 0637

2003

2201 chartered or approved pursuant to state law; and service
 2202 performed by a patient of a hospital for such hospital.

2203 13. Service performed by an individual for a person as an
 2204 insurance agent or as an insurance solicitor, if all such
 2205 service performed by such individual for such person is
 2206 performed for remuneration solely by way of commission, except
 2207 for such services performed in accordance with 26 U.S.C.S. s.
 2208 3306(c)(7) and (8). For purposes of this subsection, those
 2209 benefits excluded from the definition of wages pursuant to
 2210 subparagraphs (40)(b)2.-6., inclusive, shall not be considered
 2211 remuneration.

2212 14. Service performed by an individual for a person as a
 2213 real estate broker or broker associate ~~salesperson or agent~~, if
 2214 all such service performed by such individual for such person is
 2215 performed for remuneration solely by way of commission.

2216 15. Service performed by an individual under the age of 18
 2217 in the delivery or distribution of newspapers or shopping news,
 2218 not including delivery or distribution to any point for
 2219 subsequent delivery or distribution.

2220 16. Service covered by an arrangement between the division
 2221 and the agency charged with the administration of any other
 2222 state or federal unemployment compensation law pursuant to which
 2223 all services performed by an individual for an employing unit
 2224 during the period covered by such employing unit's duly approved
 2225 election are deemed to be performed entirely within such
 2226 agency's state or under such federal law.

2227 17. Service performed by an individual who is enrolled at
 2228 a nonprofit or public educational institution which normally
 2229 maintains a regular faculty and curriculum and normally has a
 2230 regularly organized body of students in attendance at the place



HB 0637

2003

2231 where its educational activities are carried on as a student in
2232 a full-time program, taken for credit at such institution, which
2233 combines academic instruction with work experience, if such
2234 service is an integral part of such program, and such
2235 institution has so certified to the employer, except that this
2236 subparagraph does not apply to service performed in a program
2237 established for or on behalf of an employer or group of
2238 employers.

2239 18. Service performed by an individual for a person as a
2240 barber, if all such service performed by such individual for
2241 such person is performed for remuneration solely by way of
2242 commission.

2243 19. Casual labor not in the course of the employer's trade
2244 or business.

2245 20. Service performed by a speech therapist, occupational
2246 therapist, or physical therapist who is nonsalaried and working
2247 pursuant to a written contract with a home health agency as
2248 defined in s. 400.462.

2249 21. Service performed by a direct seller. For purposes of
2250 this subparagraph, the term "direct seller" means a person:

2251 a.(I) Who is engaged in the trade or business of selling
2252 or soliciting the sale of consumer products to buyers on a buy-
2253 sell basis or a deposit-commission basis, or on any similar
2254 basis, for resale in the home or in any other place that is not
2255 a permanent retail establishment; or

2256 (II) Who is engaged in the trade or business of selling or
2257 soliciting the sale of consumer products in the home or in any
2258 other place that is not a permanent retail establishment;

2259 b. Substantially all of whose remuneration for services
2260 described in sub-subparagraph a., whether or not paid in cash,



HB 0637

2003

2261 is directly related to sales or other output, rather than to the
2262 number of hours worked; and

2263 c. Who performs such services pursuant to a written
2264 contract with the person for whom the services are performed,
2265 which contract provides that the person will not be treated as
2266 an employee with respect to such services for federal tax
2267 purposes.

2268 22. Service performed by a nonresident alien individual
2269 for the period he or she is temporarily present in the United
2270 States as a nonimmigrant under subparagraph (F) or subparagraph
2271 (J) of s. 101(a)(15) of the Immigration and Nationality Act, and
2272 which is performed to carry out the purpose specified in
2273 subparagraph (F) or subparagraph (J), as the case may be.

2274 23. Service performed by an individual for remuneration
2275 for a private, for-profit delivery or messenger service, if the
2276 individual:

2277 a. Is free to accept or reject jobs from the delivery or
2278 messenger service and the delivery or messenger service has no
2279 control over when the individual works;

2280 b. Is remunerated for each delivery, or the remuneration
2281 is based on factors that relate to the work performed, including
2282 receipt of a percentage of any rate schedule;

2283 c. Pays all expenses and the opportunity for profit or
2284 loss rests solely with the individual;

2285 d. Is responsible for operating costs, including fuel,
2286 repairs, supplies, and motor vehicle insurance;

2287 e. Determines the method of performing the service,
2288 including selection of routes and order of deliveries;

2289 f. Is responsible for the completion of a specific job and
2290 is liable for any failure to complete that job;



HB 0637

2003

2291 g. Enters into a contract with the delivery or messenger
 2292 service which specifies the relationship of the individual to
 2293 the delivery or messenger service to be that of an independent
 2294 contractor and not that of an employee; and

2295 h. Provides the vehicle used to perform the service.

2296 24. Service performed in agricultural labor by an
 2297 individual who is an alien admitted to the United States to
 2298 perform service in agricultural labor pursuant to ss.
 2299 101(a)(15)(H) and 214(c) of the Immigration and Nationality Act.

2300 25. Service performed by a person who is an inmate of a
 2301 penal institution.

2302 Section 38. Subsection (25) of section 501.604, Florida
 2303 Statutes, is amended to read:

2304 501.604 Exemptions.--The provisions of this part, except
 2305 ss. 501.608 and 501.616(6) and (7), do not apply to:

2306 (25) A person who is a licensed real estate broker
 2307 ~~salesperson~~ or broker associate pursuant to chapter 475 and who
 2308 is soliciting within the scope of the chapter.

2309 Section 39. Subsection (4) of section 687.14, Florida
 2310 Statutes, is amended to read:

2311 687.14 Definitions.--As used in this act, unless the
 2312 context otherwise requires:

2313 (4) "Loan broker" means any person, except any bank or
 2314 savings and loan association, trust company, building and loan
 2315 association, credit union, consumer finance company, retail
 2316 installment sales company, securities broker-dealer, real estate
 2317 broker or broker associate ~~salesperson~~, attorney, federal
 2318 Housing Administration or United States Department of Veterans
 2319 Affairs approved lender, credit card company, installment loan
 2320 licensee, mortgage broker or lender, or insurance company,



HB 0637

2003

2321 provided that the person excepted is licensed by and subject to
 2322 regulation or supervision of any agency of the United States or
 2323 this state and is acting within the scope of the license; and
 2324 also excepting subsidiaries of licensed or chartered consumer
 2325 finance companies, banks, or savings and loan associations; who:

2326 (a) For or in expectation of consideration arranges or
 2327 attempts to arrange or offers to fund a loan of money, a credit
 2328 card, or a line of credit;

2329 (b) For or in expectation of consideration assists or
 2330 advises a borrower in obtaining or attempting to obtain a loan
 2331 of money, a credit card, a line of credit, or related guarantee,
 2332 enhancement, or collateral of any kind or nature;

2333 (c) Acts for or on behalf of a loan broker for the purpose
 2334 of soliciting borrowers; or

2335 (d) Holds herself or himself out as a loan broker.

2336 Section 40. Subsections (1) and (6) of section 721.20,
 2337 Florida Statutes, are amended to read:

2338 721.20 Licensing requirements; suspension or revocation of
 2339 license; exceptions to applicability; collection of advance fees
 2340 for listings unlawful.--

2341 (1) Any seller of a timeshare plan must be a licensed real
 2342 estate ~~salesperson~~, broker, or broker associate ~~broker-~~
 2343 ~~salesperson~~ as defined in s. 475.01, except as provided in s.
 2344 475.011.

2345 (6) ~~Notwithstanding the provisions of s. 475.452,~~ It is
 2346 unlawful for any real estate broker, ~~salesperson~~, or broker
 2347 associate ~~broker-salesperson~~ to collect any advance fee for the
 2348 listing of any timeshare estate or timeshare license.

2349 Section 41. Paragraph (a) of subsection (1) of section
 2350 760.29, Florida Statutes, is amended to read:



HB 0637

2003

2351 760.29 Exemptions.--

2352 (1)(a) Nothing in ss. 760.23 and 760.25 applies to:

2353 1. Any single-family house sold or rented by its owner,

2354 provided such private individual owner does not own more than

2355 three single-family houses at any one time. In the case of the

2356 sale of a single-family house by a private individual owner who

2357 does not reside in such house at the time of the sale or who was

2358 not the most recent resident of the house prior to the sale, the

2359 exemption granted by this paragraph applies only with respect to

2360 one sale within any 24-month period. In addition, the bona fide

2361 private individual owner shall not own any interest in, nor

2362 shall there be owned or reserved on his or her behalf, under any

2363 express or voluntary agreement, title to, or any right to all or

2364 a portion of the proceeds from the sale or rental of, more than

2365 three single-family houses at any one time. The sale or rental

2366 of any single-family house shall be excepted from the

2367 application of ss. 760.20-760.37 only if the house is sold or

2368 rented:

2369 a. Without the use in any manner of the sales or rental

2370 facilities or the sales or rental services of any real estate

2371 broker, broker associate, or agent, ~~or salesperson~~ or such

2372 facilities or services of any person in the business of selling

2373 or renting dwellings, or of any employee or agent of any such

2374 broker, broker associate, agent, ~~salesperson~~, or person; and

2375 b. Without the publication, posting, or mailing, after

2376 notice, of any advertisement or written notice in violation of

2377 s. 760.23(3).

2378

2379 Nothing in this provision prohibits the use of attorneys, escrow

2380 agents, abstractors, title companies, and other such



HB 0637

2003

2381 professional assistance as is necessary to perfect or transfer
2382 the title.

2383 2. Rooms or units in dwellings containing living quarters
2384 occupied or intended to be occupied by no more than four
2385 families living independently of each other, if the owner
2386 actually maintains and occupies one of such living quarters as
2387 his or her residence.

2388 Section 42. This act shall take effect July 1, 2003.