

1 A bill to be entitled

2 An act relating to real estate profession regulation;  
3 amending s. 475.161, F.S.; providing for broker associate  
4 or sales associate licensure as a professional limited  
5 liability company; amending s. 475.181, F.S.; revising and  
6 adding conditions for licensure; amending s. 475.183,  
7 F.S.; providing continuing education requirements for  
8 certain license renewal; requiring the Florida Real Estate  
9 Commission to prescribe certain continuing education  
10 courses; amending s. 475.25, F.S.; increasing a maximum  
11 disciplinary administrative fine; providing additional  
12 grounds for discipline for brokers; providing filing  
13 limitations for administrative complaints against sales  
14 associates; requiring the Department of Business and  
15 Professional Regulation or the commission to provide  
16 notification to certain persons upon the department's or  
17 commission's filing of a formal complaint against a  
18 licensee; amending s. 475.278, F.S.; revising the required  
19 information on a transaction broker notice, a single agent  
20 notice, and a no brokerage relationship notice; amending  
21 s. 475.42, F.S.; removing a cross-reference to conform to  
22 changes made by the act; amending s. 475.451, F.S.;  
23 requiring schools teaching real estate practice to keep  
24 certain records and documents and make them available to  
25 the department; requiring certain personnel of schools  
26 teaching real estate practice to deliver course rosters to  
27 the department by a certain date; specifying the  
28 information required in a course roster; amending s.

HB 1009

2006

29 475.453, F.S.; revising a provision relating to rental  
30 information given by a broker or sales associate to a  
31 prospective tenant; amending s. 475.701, F.S.; revising  
32 definitions; amending s. 475.707, F.S.; revising a  
33 provision relating to commission notice recording;  
34 amending s. 475.709, F.S.; clarifying provisions relating  
35 to claim of commission; amending s. 475.711, F.S.;  
36 clarifying provisions relating to actions involving  
37 disputed reserved proceeds; amending s. 475.713, F.S.;  
38 revising the award of costs and attorney's fees in civil  
39 actions concerning commission; amending s. 475.715, F.S.;  
40 revising the method by which an owner's net proceeds are  
41 computed; amending s. 475.719, F.S.; removing an exception  
42 from a buyer's broker provision shielding the rights and  
43 remedies available to an owner, a buyer, or a buyer's  
44 broker; amending s. 475.807, F.S.; revising a provision  
45 relating to the recordation of lien notices; providing  
46 that the recording of a broker's lien notice or any  
47 extension thereof and any lis pendens shall not constitute  
48 notice of the existence of any lease; amending s. 721.20,  
49 F.S.; removing a cross-reference to conform to changes  
50 made by the act; repealing s. 475.452, F.S., relating to  
51 advance fees, deposit, accounting, penalty, and damages;  
52 providing an effective date.

53  
54 Be It Enacted by the Legislature of the State of Florida:  
55

HB 1009

2006

56 Section 1. Section 475.161, Florida Statutes, is amended  
57 to read:

58 475.161 Licensing of broker associates and sales  
59 associates.--The commission shall license a broker associate or  
60 sales associate as an individual or, upon the licensee providing  
61 the commission with authorization from the Department of State,  
62 as a professional corporation, limited liability company, or  
63 professional limited liability company. A license shall be  
64 issued in the licensee's legal name only and, when appropriate,  
65 shall include the entity designation. This section shall not  
66 operate to permit a broker associate or sales associate to  
67 register or be licensed as a general partner, member, manager,  
68 officer, or director of a brokerage firm under s. 475.15.

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

71 475.181 Licensure.--

72 (2) The commission shall certify for licensure any  
73 applicant who satisfies the requirements of ss. 475.17, 475.175,  
74 and 475.180. The commission may refuse to certify any applicant  
75 who has violated any of the provisions of s. 475.42 or who is  
76 subject to discipline under s. 475.25. The application shall  
77 expire 2 years ~~1 year~~ after the date received if the applicant  
78 does not pass ~~fails to take~~ the appropriate examination.  
79 Additionally, if an applicant does not pass the licensing  
80 examination within 2 years after the successful course  
81 completion date, the applicant's successful course completion is  
82 invalid for licensure.

HB 1009

2006

83 Section 3. Subsection (2) of section 475.183, Florida  
 84 Statutes, is amended to read:

85 475.183 Inactive status.--

86 (2) (a) A licensee may reactivate a license that has been  
 87 involuntarily inactive for 12 months or less by satisfactorily  
 88 completing at least 14 hours of a commission-prescribed  
 89 continuing education course. Notwithstanding the provisions of  
 90 s. 455.271, a licensee may reactivate a license that has been  
 91 involuntarily inactive for more than 12 months but fewer than 24  
 92 months by satisfactorily completing 28 hours of a commission-  
 93 prescribed education course.

94 (b) Any license that ~~which~~ has been involuntarily inactive  
 95 for more than 2 years shall automatically expire. Once a license  
 96 expires, it becomes null and void without any further action by  
 97 the commission or department. Ninety days prior to expiration of  
 98 the license, the department shall give notice to the licensee.  
 99 The commission shall prescribe by rule a fee not to exceed \$100  
 100 for the late renewal of an involuntarily inactive license. The  
 101 department shall collect the current renewal fee for each  
 102 renewal period in which the license was involuntarily inactive  
 103 in addition to any applicable late renewal fee.

104 Section 4. Subsections (1) and (5) of section 475.25,  
 105 Florida Statutes, are amended, subsection (6) is renumbered as  
 106 subsection (7), and a new subsection (6) is added to that  
 107 section, to read:

108 475.25 Discipline.--

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

HB 1009

2006

111 licensee, registrant, or permittee on probation; may suspend a  
112 license, registration, or permit for a period not exceeding 10  
113 years; may revoke a license, registration, or permit; may impose  
114 an administrative fine not to exceed \$5,000 ~~\$1,000~~ for each  
115 count or separate offense; and may issue a reprimand, and any or  
116 all of the foregoing, if it finds that the licensee, registrant,  
117 permittee, or applicant:

118 (a) Has violated any provision of s. 455.227(1) or s.  
119 475.42. However, licensees under this part are exempt from the  
120 provisions of s. 455.227(1)(i).

121 (b) Has been guilty of fraud, misrepresentation,  
122 concealment, false promises, false pretenses, dishonest dealing  
123 by trick, scheme, or device, culpable negligence, or breach of  
124 trust in any business transaction in this state or any other  
125 state, nation, or territory; has violated a duty imposed upon  
126 her or him by law or by the terms of a listing contract,  
127 written, oral, express, or implied, in a real estate  
128 transaction; has aided, assisted, or conspired with any other  
129 person engaged in any such misconduct and in furtherance  
130 thereof; or has formed an intent, design, or scheme to engage in  
131 any such misconduct and committed an overt act in furtherance of  
132 such intent, design, or scheme. It is immaterial to the guilt of  
133 the licensee that the victim or intended victim of the  
134 misconduct has sustained no damage or loss; that the damage or  
135 loss has been settled and paid after discovery of the  
136 misconduct; or that such victim or intended victim was a  
137 customer or a person in confidential relation with the licensee  
138 or was an identified member of the general public.

HB 1009

2006

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

143 (d)1. Has failed to account or deliver to any person,  
144 including a licensee under this chapter, at the time which has  
145 been agreed upon or is required by law or, in the absence of a  
146 fixed time, upon demand of the person entitled to such  
147 accounting and delivery, any personal property such as money,  
148 fund, deposit, check, draft, abstract of title, mortgage,  
149 conveyance, lease, or other document or thing of value,  
150 including a share of a real estate commission if a civil  
151 judgment relating to the practice of the licensee's profession  
152 has been obtained against the licensee and said judgment has not  
153 been satisfied in accordance with the terms of the judgment  
154 within a reasonable time, or any secret or illegal profit, or  
155 any divisible share or portion thereof, which has come into the  
156 licensee's hands and which is not the licensee's property or  
157 which the licensee is not in law or equity entitled to retain  
158 under the circumstances. However, if the licensee, in good  
159 faith, entertains doubt as to what person is entitled to the  
160 accounting and delivery of the escrowed property, or if  
161 conflicting demands have been made upon the licensee for the  
162 escrowed property, which property she or he still maintains in  
163 her or his escrow or trust account, the licensee shall promptly  
164 notify the commission of such doubts or conflicting demands and  
165 shall promptly:

166 a. Request that the commission issue an escrow  
 167 disbursement order determining who is entitled to the escrowed  
 168 property;

169 b. With the consent of all parties, submit the matter to  
 170 arbitration;

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

173 d. With the written consent of all parties, submit the  
 174 matter to mediation. The department may conduct mediation or may  
 175 contract with public or private entities for mediation services.  
 176 However, the mediation process must be successfully completed  
 177 within 90 days following the last demand or the licensee shall  
 178 promptly employ one of the other escape procedures contained in  
 179 this section. Payment for mediation will be as agreed to in  
 180 writing by the parties. The department may adopt rules to  
 181 implement this section.

182  
 183 If the licensee promptly employs one of the escape procedures  
 184 contained herein and abides by the order or judgment resulting  
 185 therefrom, no administrative complaint may be filed against the  
 186 licensee for failure to account for, deliver, or maintain the  
 187 escrowed property. Under certain circumstances, which the  
 188 commission shall set forth by rule, a licensee may disburse  
 189 property from the licensee's escrow account without notifying  
 190 the commission or employing one of the procedures listed in sub-  
 191 subparagraphs a.-d. If the buyer of a residential condominium  
 192 unit delivers to a licensee written notice of the buyer's intent  
 193 to cancel the contract for sale and purchase, as authorized by

HB 1009

2006

194 s. 718.503, or if the buyer of real property in good faith fails  
195 to satisfy the terms in the financing clause of a contract for  
196 sale and purchase, the licensee may return the escrowed property  
197 to the purchaser without notifying the commission or initiating  
198 any of the procedures listed in sub-subparagraphs a.-d.

199 2. Has failed to deposit money in an escrow account when  
200 the licensee is the purchaser of real estate under a contract  
201 where the contract requires the purchaser to place deposit money  
202 in an escrow account to be applied to the purchase price if the  
203 sale is consummated.

204 (e) Has violated any of the provisions of this chapter or  
205 any lawful order or rule made or issued under the provisions of  
206 this chapter or chapter 455.

207 (f) Has been convicted or found guilty of, or entered a  
208 plea of nolo contendere to, regardless of adjudication, a crime  
209 in any jurisdiction which directly relates to the activities of  
210 a licensed broker or sales associate, or involves moral  
211 turpitude or fraudulent or dishonest dealing. The record of a  
212 conviction certified or authenticated in such form as to be  
213 admissible in evidence under the laws of the state shall be  
214 admissible as prima facie evidence of such guilt.

215 (g) Has had a broker's or sales associate's license  
216 revoked, suspended, or otherwise acted against, or has had an  
217 application for such licensure denied, by the real estate  
218 licensing agency of another state, territory, or country.

219 (h) Has shared a commission with, or paid a fee or other  
220 compensation to, a person not properly licensed as a broker,  
221 broker associate, or sales associate under the laws of this



HB 1009

2006

222 state, for the referral of real estate business, clients,  
223 prospects, or customers, or for any one or more of the services  
224 set forth in s. 475.01(1)(a). For the purposes of this section,  
225 it is immaterial that the person to whom such payment or  
226 compensation is given made the referral or performed the service  
227 from within this state or elsewhere; however, a licensed broker  
228 of this state may pay a referral fee or share a real estate  
229 brokerage commission with a broker licensed or registered under  
230 the laws of a foreign state so long as the foreign broker does  
231 not violate any law of this state.

232 (i) Has become temporarily incapacitated from acting as a  
233 broker or sales associate with safety to investors or those in a  
234 fiduciary relation with her or him because of drunkenness, use  
235 of drugs, or temporary mental derangement; but suspension of a  
236 license in such a case shall be only for the period of such  
237 incapacity.

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

243 (k) Has failed, if a broker, to immediately place, upon  
244 receipt, any money, fund, deposit, check, or draft entrusted to  
245 her or him by any person dealing with her or him as a broker in  
246 escrow with a title company, banking institution, credit union,  
247 or savings and loan association located and doing business in  
248 this state, or to deposit such funds in a trust or escrow  
249 account maintained by her or him with some bank, credit union,

HB 1009

2006

250 or savings and loan association located and doing business in  
251 this state, wherein the funds shall be kept until disbursement  
252 thereof is properly authorized; or has failed, if a sales  
253 associate, to immediately place with her or his registered  
254 employer any money, fund, deposit, check, or draft entrusted to  
255 her or him by any person dealing with her or him as agent of the  
256 registered employer. The commission shall establish rules to  
257 provide for records to be maintained by the broker and the  
258 manner in which such deposits shall be made. A broker may place  
259 and maintain up to \$5,000 of personal or brokerage funds in the  
260 broker's property management escrow account and up to \$1,000 of  
261 personal or brokerage funds in the broker's sales escrow  
262 account. A broker shall be provided a reasonable amount of time  
263 to correct escrow errors if there is no shortage of funds and  
264 such errors pose no significant threat to economically harm the  
265 public. It is the intent of the Legislature that, in the event  
266 of legal proceedings concerning a broker's escrow account, the  
267 disbursement of escrowed funds not be delayed due to any dispute  
268 over the personal or brokerage funds that may be present in the  
269 escrow account.

270 (1) Has made or filed a report or record which the  
271 licensee knows to be false, has willfully failed to file a  
272 report or record required by state or federal law, has willfully  
273 impeded or obstructed such filing, or has induced another person  
274 to impede or obstruct such filing; but such reports or records  
275 shall include only those which are signed in the capacity of a  
276 licensed broker or sales associate.

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

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

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

291 (p) Has failed to inform the commission in writing within  
 292 30 days after pleading guilty or nolo contendere to, or being  
 293 convicted or found guilty of, any felony.

294 (q) Has violated any provision of s. 475.2755 or s.  
 295 475.278, including the duties owed under those sections.

296 (r) Has failed in any written listing agreement to include  
 297 a definite expiration date, description of the property, price  
 298 and terms, fee or commission, and a proper signature of the  
 299 principal(s); and has failed to give the principal(s) a legible,  
 300 signed, true and correct copy of the listing agreement within 24  
 301 hours of obtaining the written listing agreement. The written  
 302 listing agreement shall contain no provision requiring the  
 303 person signing the listing to notify the broker of the intention  
 304 to cancel the listing after such definite expiration date.

305 (s) Has had a registration suspended, revoked, or  
306 otherwise acted against in any jurisdiction. The record of the  
307 disciplinary action certified or authenticated in such form as  
308 to be admissible in evidence under the laws of the state shall  
309 be admissible as prima facie evidence of such disciplinary  
310 action.

311 (t) Has violated any standard for the development or  
312 communication of a real estate appraisal or other provision of  
313 the Uniform Standards of Professional Appraisal Practice, as  
314 defined in s. 475.611, as approved and adopted by the Appraisal  
315 Standards Board of the Appraisal Foundation, as defined in s.  
316 475.611. This paragraph does not apply to a real estate broker  
317 or sales associate who, in the ordinary course of business,  
318 performs a comparative market analysis, gives a broker price  
319 opinion, or gives an opinion of value of real estate. However,  
320 in no event may this comparative market analysis, broker price  
321 opinion, or opinion of value of real estate be referred to as an  
322 appraisal, as defined in s. 475.611.

323 (u) Has failed, if a broker, to reasonably manage or  
324 supervise any broker associate or sales associate whose license  
325 is affiliated with such broker.

326 (v) Has failed, if a broker, to review the brokerage's  
327 trust accounting practices in order to ensure compliance with  
328 this chapter.

329 (5) An administrative complaint against a broker, ~~or~~  
330 broker associate, or sales associate shall ~~must~~ be filed within  
331 5 years after the time of the act giving rise to the complaint

332 or within 5 years after the time the act is discovered or should  
 333 have been discovered with the exercise of due diligence.

334 (6) The department shall promptly notify a licensee's  
 335 broker or employer, as defined in this part, in writing any time  
 336 the department files a formal complaint against a licensee. The  
 337 notice required in this subsection shall be provided by the  
 338 commission in those instances where the commission files a  
 339 formal complaint against a licensee.

340 (7)~~(6)~~ The commission shall promptly report to the proper  
 341 prosecuting authority any criminal violation of any statute  
 342 relating to the practice of a real estate profession regulated  
 343 by the commission.

344 Section 5. Paragraph (c) of subsection (2), paragraph (c)  
 345 of subsection (3), and paragraph (c) of subsection (4) of  
 346 section 475.278, Florida Statutes, are amended to read:

347 475.278 Authorized brokerage relationships; presumption of  
 348 transaction brokerage; required disclosures.--

349 (2) TRANSACTION BROKER RELATIONSHIP.--

350 (c) Contents of disclosure.--The required notice given  
 351 under paragraph (b) must include the following information in  
 352 the following form:

353  
 354 ~~IMPORTANT NOTICE~~

355  
 356 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~  
 357 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

359 ~~You should not assume that any real estate broker or sales~~  
 360 ~~associate represents you unless you agree to engage a real~~  
 361 ~~estate licensee in an authorized brokerage relationship, either~~  
 362 ~~as a single agent or as a transaction broker. You are advised~~  
 363 ~~not to disclose any information you want to be held in~~  
 364 ~~confidence until you make a decision on representation.~~

365  
 366 TRANSACTION BROKER NOTICE

367  
 368 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS~~  
 369 ~~TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE~~  
 370 ~~AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.~~

371  
 372 As a transaction broker, (insert name of Real Estate Firm and  
 373 its Associates) , provides to you a limited form of  
 374 representation that includes the following duties:

- 375 1. Dealing honestly and fairly;
- 376 2. Accounting for all funds;
- 377 3. Using skill, care, and diligence in the transaction;
- 378 4. Disclosing all known facts that materially affect the  
 379 value of residential real property and are not readily  
 380 observable to the buyer;
- 381 5. Presenting all offers and counteroffers in a timely  
 382 manner, unless a party has previously directed the licensee  
 383 otherwise in writing;
- 384 6. Limited confidentiality, unless waived in writing by a  
 385 party. This limited confidentiality will prevent disclosure that  
 386 the seller will accept a price less than the asking or listed

HB 1009

2006

387 price, that the buyer will pay a price greater than the price  
 388 submitted in a written offer, of the motivation of any party for  
 389 selling or buying property, that a seller or buyer will agree to  
 390 financing terms other than those offered, or of any other  
 391 information requested by a party to remain confidential; and

392 7. Any additional duties that are entered into by this or  
 393 by separate written agreement.

394  
 395 Limited representation means that a buyer or seller is not  
 396 responsible for the acts of the licensee. Additionally, parties  
 397 are giving up their rights to the undivided loyalty of the  
 398 licensee. This aspect of limited representation allows a  
 399 licensee to facilitate a real estate transaction by assisting  
 400 both the buyer and the seller, but a licensee will not work to  
 401 represent one party to the detriment of the other party when  
 402 acting as a transaction broker to both parties.

403  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature

404

\_\_\_\_\_  
 Signature

405

406 This paragraph expires July 1, 2008.

407 (3) SINGLE AGENT RELATIONSHIP.--

408 (c) Contents of disclosure.--

409 1. Single agent duties disclosure.--The notice required  
 410 under subparagraph (b)1. must include the following information  
 411 in the following form:

412  
 413 ~~IMPORTANT NOTICE~~

414  
 415 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~  
 416 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

417  
 418 ~~You should not assume that any real estate broker or sales~~  
 419 ~~associate represents you unless you agree to engage a real~~  
 420 ~~estate licensee in an authorized brokerage relationship, either~~  
 421 ~~as a single agent or as a transaction broker. You are advised~~  
 422 ~~not to disclose any information you want to be held in~~  
 423 ~~confidence until you make a decision on representation.~~

424  
 425 SINGLE AGENT NOTICE

426  
 427 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS  
 428 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

429  
 430 As a single agent, (insert name of Real Estate Entity and  
 431 its Associates) owe to you the following duties:

- 432 1. Dealing honestly and fairly;  
 433 2. Loyalty;  
 434 3. Confidentiality;  
 435 4. Obedience;  
 436 5. Full disclosure;



- 437 6. Accounting for all funds;
- 438 7. Skill, care, and diligence in the transaction;
- 439 8. Presenting all offers and counteroffers in a timely
- 440 manner, unless a party has previously directed the licensee
- 441 otherwise in writing; and
- 442 9. Disclosing all known facts that materially affect the
- 443 value of residential real property and are not readily
- 444 observable.

\_\_\_\_\_  
Date Signature

446  
447 2. Transition disclosure.--To gain the principal's written  
448 consent to a change in relationship, a licensee must use the  
449 following disclosure:

CONSENT TO TRANSITION TO  
TRANSACTION BROKER

450  
451  
452  
453  
454 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER  
455 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT  
456 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER  
457 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE  
458 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO  
459 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP  
460 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

HB 1009

2006

462 As a transaction broker, (insert name of Real Estate Firm and  
463 its Associates) , provides to you a limited form of  
464 representation that includes the following duties:

- 465 1. Dealing honestly and fairly;
- 466 2. Accounting for all funds;
- 467 3. Using skill, care, and diligence in the transaction;
- 468 4. Disclosing all known facts that materially affect the  
469 value of residential real property and are not readily  
470 observable to the buyer;
- 471 5. Presenting all offers and counteroffers in a timely  
472 manner, unless a party has previously directed the licensee  
473 otherwise in writing;
- 474 6. Limited confidentiality, unless waived in writing by a  
475 party. This limited confidentiality will prevent disclosure that  
476 the seller will accept a price less than the asking or listed  
477 price, that the buyer will pay a price greater than the price  
478 submitted in a written offer, of the motivation of any party for  
479 selling or buying property, that a seller or buyer will agree to  
480 financing terms other than those offered, or of any other  
481 information requested by a party to remain confidential; and
- 482 7. Any additional duties that are entered into by this or  
483 by separate written agreement.

484  
485 Limited representation means that a buyer or seller is not  
486 responsible for the acts of the licensee. Additionally, parties  
487 are giving up their rights to the undivided loyalty of the  
488 licensee. This aspect of limited representation allows a  
489 licensee to facilitate a real estate transaction by assisting

HB 1009

2006

490 both the buyer and the seller, but a licensee will not work to  
 491 represent one party to the detriment of the other party when  
 492 acting as a transaction broker to both parties.

493  
 494 \_\_\_\_\_ I agree that my agent may assume the role  
 495 and duties of a transaction broker. [must be initialed or  
 496 signed]

497 (4) NO BROKERAGE RELATIONSHIP.--

498 (c) Contents of disclosure.--The notice required under  
 499 paragraph (b) must include the following information in the  
 500 following form:

501

502 ~~IMPORTANT NOTICE~~

503

504 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~  
 505 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

506

507 ~~You should not assume that any real estate broker or sales~~  
 508 ~~associate represents you unless you agree to engage a real~~  
 509 ~~estate licensee in an authorized brokerage relationship, either~~  
 510 ~~as a single agent or as a transaction broker. You are advised~~  
 511 ~~not to disclose any information you want to be held in~~  
 512 ~~confidence until you decide on representation.~~

513

514 NO BROKERAGE RELATIONSHIP NOTICE

515

HB 1009

2006

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

519  
 520 As a real estate licensee who has no brokerage relationship  
 521 with you, (insert name of Real Estate Entity and its  
 522 Associates) owe to you the following duties:

- 523
- 524 1. Dealing honestly and fairly;
  - 525 2. Disclosing all known facts that materially affect the  
 526 value of residential real property which are not readily  
 527 observable to the buyer.
  - 528 3. Accounting for all funds entrusted to the licensee.

529  
 530 (Date) (Signature)

531  
 532 Section 6. Paragraph (n) of subsection (1) of section  
 533 475.42, Florida Statutes, is amended to read:

534 475.42 Violations and penalties.--

535 (1) VIOLATIONS.--

536 (n) A broker or sales associate may not enter into any  
 537 listing or other agreement regarding her or his services in  
 538 connection with the resale of a timeshare period unless the  
 539 broker or sales associate fully and fairly discloses all  
 540 material aspects of the agreement to the owner of the timeshare  
 541 period ~~and fully complies with the provisions of s. 475.452.~~  
 542 Further, a broker or sales associate may not use any form of  
 543 contract or purchase and sale agreement in connection with the

HB 1009

2006

544 resale of a timeshare period unless the contract or purchase and  
545 sale agreement fully and fairly discloses all material aspects  
546 of the timeshare plan and the rights and obligations of both  
547 buyer and seller. The commission is authorized to adopt rules  
548 pursuant to chapter 120 as necessary to implement, enforce, and  
549 interpret this paragraph.

550 Section 7. Subsections (8) and (9) are added to section  
551 475.451, Florida Statutes, to read:

552 475.451 Schools teaching real estate practice.--

553 (8) Beginning October 1, 2006, each person, school, or  
554 institution permitted under this section is required to keep  
555 registration records, course rosters, attendance records, a file  
556 copy of each examination and progress test, and all student  
557 answer sheets for a period of at least 3 years subsequent to the  
558 beginning of each course and make them available to the  
559 department for inspection and copying upon request.

560 (9) (a) Each school permitholder of a proprietary real  
561 estate school, each chief administrative person of such an  
562 institution, or each course sponsor shall deliver to the  
563 department, in a format acceptable to the department, a copy of  
564 the classroom course roster of courses that require satisfactory  
565 completion of an examination no later than 30 days beyond the  
566 end of the calendar month in which the course was completed.

567 (b) The course roster shall consist of the institution or  
568 school name and permit number, if applicable, the instructor's  
569 name and permit number, if applicable, course title, beginning  
570 and ending dates of the course, number of course hours, course  
571 location, if applicable, each student's full name and license

HB 1009

2006

572 number, if applicable, each student's mailing address, and the  
 573 numerical grade each student achieved. The course roster shall  
 574 also include the signature of the school permitholder, the chief  
 575 administrative person, or the course sponsor.

576 Section 8. Subsection (1) of section 475.453, Florida  
 577 Statutes, is amended to read:

578 475.453 Rental information; contract or receipt; refund;  
 579 penalty.--

580 (1) Each broker or sales associate who ~~attempts to~~  
 581 ~~negotiate a rental, or who~~ furnishes a rental information list  
 582 to a prospective tenant, for a fee paid by the prospective  
 583 tenant, shall provide such prospective tenant with a contract or  
 584 receipt, which contract or receipt contains a provision for the  
 585 repayment of any amount over 25 percent of the fee to the  
 586 prospective tenant if the prospective tenant does not obtain a  
 587 rental. If the rental information list provided by the broker or  
 588 sales associate to a prospective tenant is not current or  
 589 accurate in any material respect, the full fee shall be repaid  
 590 to the prospective tenant upon demand. A demand from the  
 591 prospective tenant for the return of the fee, or any part  
 592 thereof, shall be made within 30 days following the day on which  
 593 the real estate broker or sales associate has contracted to  
 594 perform services to the prospective tenant. The contract or  
 595 receipt shall also conform to the guidelines adopted by the  
 596 commission in order to effect disclosure of material information  
 597 regarding the service to be provided to the prospective tenant.

598 Section 9. Subsections (10) and (12) of section 475.701,  
 599 Florida Statutes, are amended to read:

600 475.701 Definitions.--As used in this part:

601 (10) "Disputed reserved proceeds" means the portion of the  
 602 owner's net proceeds reserved by a closing agent under s.  
 603 475.709 that the owner disputes the broker's right to receive  
 604 ~~such reserved proceeds~~ under s. 475.709(5).

605 (12) "Owner's net proceeds" means the gross sales proceeds  
 606 that the owner is entitled to receive from the disposition of  
 607 any commercial real estate specified in a brokerage agreement,  
 608 less all of the following:

609 (a) The amount of Any money secured by ~~that is required to~~  
 610 ~~pay~~ any encumbrance, claim, or lien that has priority over the  
 611 recorded commission notice as provided in s. 475.715 ~~other than~~  
 612 ~~an encumbrance, claim, or lien that the buyer of the commercial~~  
 613 ~~real estate authorizes to remain after the disposition.~~

614 (b) Any costs incurred by the owner to close the  
 615 disposition, including, but not limited to, real estate transfer  
 616 tax, title insurance premiums, ad valorem taxes and assessments,  
 617 and escrow fees payable by the owner pursuant to an agreement  
 618 with the buyer.

619 Section 10. Subsection (3) of section 475.707, Florida  
 620 Statutes, is amended to read:

621 475.707 Recording commission notice; effectiveness.--

622 (3) A commission notice recorded under this part expires 1  
 623 year after the date of recording, unless the owner remains  
 624 obligated to pay a commission to the broker ~~brokerage agreement~~  
 625 ~~remains effective~~ after the expiration date of the commission  
 626 notice and the broker records an extension notice in the same  
 627 public records within the last 60 days before such expiration

HB 1009

2006

628 date. An extension notice shall refer to the recording  
629 information of the original commission notice, shall state that  
630 the owner remains obligated to pay a commission to the broker  
631 ~~brokerage agreement remains effective~~, and shall include the  
632 information and be executed in the manner as required by s.  
633 475.705(1) for the original commission notice. A timely recorded  
634 extension notice shall extend the expiration date of the  
635 original recorded commission notice by 1 additional year.  
636 Successive extension notices may be recorded for so long as the  
637 owner remains obligated to pay a commission to the broker  
638 ~~brokerage agreement remains effective between the broker and the~~  
639 ~~owner~~. Within 10 days after recording an extension notice, the  
640 broker shall deliver a copy thereof to the owner.

641 Section 11. Subsection (6) of section 475.709, Florida  
642 Statutes, is amended to read:

643 475.709 Duties of closing agent; reservation of owner's  
644 net proceeds.--

645 (6) The commission claimed in the commission notice shall  
646 be deemed confirmed by the owner, and the closing agent shall  
647 release the reserved proceeds to the broker, if the closing  
648 agent is required pursuant to subsection (1) to reserve any or  
649 all of the owner's net proceeds, and if all of the following  
650 conditions have been met:

651 (a) Five days have passed after the closing.

652 (b) The owner has neither confirmed nor disputed the  
653 claimed commission to the closing agent.



HB 1009

2006

654 (c) The closing agent receives reasonably satisfactory  
655 evidence that the broker delivered a copy of the commission  
656 notice to the owner in accordance with s. 475.705.

657 Section 12. Subsection (1) of section 475.711, Florida  
658 Statutes, is amended to read:

659 475.711 Interpleader or other proceedings; deposit of  
660 reserved proceeds in court registry; discharge of closing agent  
661 from further liability.--

662 (1) The closing agent shall, by interpleader action or  
663 other legal proceeding, seek adjudication of the rights of the  
664 parties with respect to disputed reserved proceeds by the county  
665 court or circuit court, whichever may have jurisdiction of  
666 controversies in the amount of the disputed reserved proceeds,  
667 in a county where all or a portion of the commercial real estate  
668 is located if, after the closing of a transaction for the  
669 disposition of the commercial real estate, all of the following  
670 conditions are met:

671 (a) The closing agent has reserved all or a portion of the  
672 owner's net proceeds pursuant to s. 475.709 and the owner  
673 disputes the release to the broker of all or any portion of the  
674 reserved proceeds.

675 (b) The owner and the broker have not agreed in writing,  
676 within 5 days after the closing, regarding the closing agent's  
677 release of the disputed reserved proceeds.

678 (c) Neither the owner nor the broker have commenced a  
679 civil action to determine the rights of the parties with respect  
680 to the disputed reserved proceeds.

681 Section 13. Subsection (5) of section 475.713, Florida  
 682 Statutes, is amended to read:

683 475.713 Civil action concerning commission; order to show  
 684 cause; hearing; release of proceeds; award of costs and  
 685 attorney's fees.--

686 (5) (a) In a civil action commenced by the owner or the  
 687 broker under this section or in an interpleader action or other  
 688 proceeding commenced by the closing agent under s. 475.711, the  
 689 owner or the broker that is not the prevailing party shall be  
 690 required to pay:

691 1. The costs and reasonable attorney's fees incurred in  
 692 the action by the prevailing party.

693 2. The costs and reasonable attorney's fees incurred in  
 694 the action by the closing agent.

695 3. The amount of any costs, recording charges, and service  
 696 charges of the clerk of court that were deducted from the  
 697 disputed reserved proceeds under s. 475.711(2) in determining  
 698 the net amount thereof deposited into the registry of the court.

699 (b) If the court determines that neither the owner nor the  
 700 broker is the prevailing party, the amounts set forth in  
 701 subparagraphs (a) 2.1 and 3.2 shall be divided equally between  
 702 and paid by the owner and the broker.

703 Section 14. Section 475.715, Florida Statutes, is amended  
 704 to read:

705 475.715 Priority of recorded commission notice.--All  
 706 statutory liens, consensual liens, mortgages, deeds of trust,  
 707 assignments of rents, and other encumbrances, including all  
 708 advances or charges made or accruing thereunder, whether

HB 1009

2006

709 voluntary or obligatory, and all modifications, extensions,  
 710 renewals, and replacements thereof, recorded prior to the  
 711 recording of a commission notice pursuant to the provisions of  
 712 s. 475.707, have priority over the commission notice. The  
 713 closing agent shall compute the owner's net proceeds by  
 714 subtracting from the gross sales proceeds, and the amount  
 715 required to discharge any such prior recorded lien and the  
 716 amount of money secured by any such prior recorded lien that  
 717 ~~liens shall be subtracted from gross sales proceeds in computing~~  
 718 ~~the owner's net proceeds unless~~ the buyer permits the same to  
 719 remain a lien against the title to the commercial real estate. A  
 720 prior recorded lien includes, without limitation, a valid  
 721 construction lien claim that is recorded after the recording of  
 722 the broker's commission notice but which relates back to a  
 723 notice of commencement recorded under s. 713.13 prior to the  
 724 recording date of the broker's commission notice.

725 Section 15. Subsection (3) of section 475.719, Florida  
 726 Statutes, is amended to read:

727 475.719 Buyer's broker.--As used in this section, the term  
 728 "buyer's broker" means a broker that is entitled to receive  
 729 payment from the buyer of commercial real estate of any fee or  
 730 other compensation for licensed services, as specified in a  
 731 written contract made between the buyer and the broker on or  
 732 after the effective date of this act relating to the buyer's  
 733 purchase of the commercial real estate.

734 (3) No such notice given by the buyer's broker pursuant to  
 735 subsection (2) shall constitute a tortious interference with the  
 736 sale or disposition or financing of the commercial real estate,

HB 1009

2006

737 ~~except this section shall not affect the rights and remedies~~  
738 ~~otherwise available to the owner, the buyer, or the buyer's~~  
739 ~~broker under other applicable law.~~

740 Section 16. Paragraph (b) of subsection (8) of section  
741 475.807, Florida Statutes, is amended, and subsection (9) is  
742 added to that section, to read:

743 475.807 Recording lien notice; effectiveness.--

744 (8)

745 (b) To the extent that a lien notice recorded by a broker  
746 under this part claims an automatic renewal commission that is  
747 earned but not then payable, the lien notice expires 10 years  
748 after the date of recording, unless within that time the broker  
749 commences an action to foreclose the lien under s. 475.809 and  
750 records a notice of lis pendens in the public records of the  
751 county where the lien notice was recorded. If the owner remains  
752 obligated to pay a commission to the broker ~~brokerage agreement~~  
753 ~~remains effective~~, the broker may extend the expiration date of  
754 a lien notice for an automatic renewal commission by recording  
755 an extension notice in the same public records within the last 6  
756 months before such expiration date. An extension notice shall  
757 refer to the recording information of the original lien notice,  
758 shall state that the owner remains obligated to pay a commission  
759 to the broker ~~brokerage agreement remains effective~~, and shall  
760 include the same information and be executed in the same manner  
761 as required by s. 475.805(1) for the original lien notice. A  
762 timely recorded extension notice shall extend the expiration  
763 date of the original recorded lien notice by 10 additional  
764 years. Successive extension notices may be recorded for so long

HB 1009

2006

765 as the owner remains obligated to pay a commission to the broker  
766 ~~brokerage agreement remains effective between the broker and the~~  
767 ~~owner~~. Within 10 days after recording an extension notice, the  
768 broker shall deliver a copy thereof to the owner.

769 (9) Neither the recording of a broker's lien notice or any  
770 extension thereof nor the recording of any lis pendens to  
771 foreclose a broker's lien thereunder shall constitute notice to  
772 any creditor or subsequent purchaser pursuant to s. 695.01 or  
773 chapter 712 of the existence of any lease described in the lien  
774 notice, extension notice, or lis pendens.

775 Section 17. Subsection (6) of section 721.20, Florida  
776 Statutes, is amended to read:

777 721.20 Licensing requirements; suspension or revocation of  
778 license; exceptions to applicability; collection of advance fees  
779 for listings unlawful.--

780 (6) ~~Notwithstanding the provisions of s. 475.452,~~ It is  
781 unlawful for any real estate broker, broker associate, or sales  
782 associate to collect any advance fee for the listing of any  
783 timeshare estate or timeshare license.

784 Section 18. Section 475.452, Florida Statutes, is  
785 repealed.

786 Section 19. This act shall take effect July 1, 2006.