

CHAMBER ACTION

1 The Commerce Council recommends the following:

2 **Council/Committee Substitute**

3 Remove the entire bill and insert:

4 A bill to be entitled

5 An act relating to real estate profession regulation;
6 amending s. 475.161, F.S.; providing for broker associate
7 or sales associate licensure as a professional limited
8 liability company; amending s. 475.181, F.S.; revising and
9 adding conditions for licensure; amending s. 475.183,
10 F.S.; providing continuing education requirements for
11 certain license renewal; requiring the Florida Real Estate
12 Commission to prescribe certain continuing education
13 courses; amending s. 475.25, F.S.; increasing a maximum
14 disciplinary administrative fine; providing additional
15 grounds for discipline for brokers; providing filing
16 limitations for administrative complaints against sales
17 associates; requiring the Department of Business and
18 Professional Regulation or the commission to provide
19 notification to certain persons upon the department's or
20 commission's filing of a formal complaint against a
21 licensee; amending s. 475.278, F.S.; revising the required
22 information on a transaction broker notice, a single agent
23 notice, and a no brokerage relationship notice; amending

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24 s. 475.42, F.S.; removing a cross-reference to conform to
25 changes made by the act; amending s. 475.451, F.S.;
26 requiring schools teaching real estate practice to keep
27 certain records and documents and make them available to
28 the department; requiring certain personnel of schools
29 teaching real estate practice to deliver course rosters to
30 the department by a certain date; specifying the
31 information required in a course roster; amending s.
32 475.453, F.S.; revising a provision relating to rental
33 information given by a broker or sales associate to a
34 prospective tenant; amending s. 475.701, F.S.; revising
35 definitions; amending s. 475.707, F.S.; revising a
36 provision relating to commission notice recording;
37 amending s. 475.709, F.S.; clarifying provisions relating
38 to claim of commission; amending s. 475.711, F.S.;
39 clarifying provisions relating to actions involving
40 disputed reserved proceeds; amending s. 475.713, F.S.;
41 revising the award of costs and attorney's fees in civil
42 actions concerning commission; amending s. 475.715, F.S.;
43 revising the method by which an owner's net proceeds are
44 computed; amending s. 475.719, F.S.; removing an exception
45 from a buyer's broker provision shielding the rights and
46 remedies available to an owner, a buyer, or a buyer's
47 broker; amending s. 475.807, F.S.; revising a provision
48 relating to the recordation of lien notices; providing
49 that the recording of a broker's lien notice or any
50 extension thereof and any lis pendens shall not constitute
51 notice of the existence of any lease; amending s. 721.20,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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52 F.S.; removing a cross-reference to conform to changes
 53 made by the act; repealing s. 475.452, F.S., relating to
 54 advance fees, deposit, accounting, penalty, and damages;
 55 providing an effective date.

56

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

58

59 Section 1. Section 475.161, Florida Statutes, is amended
 60 to read:

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

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

74 475.181 Licensure.--

75 (2) The commission shall certify for licensure any
 76 applicant who satisfies the requirements of ss. 475.17, 475.175,
 77 and 475.180. The commission may refuse to certify any applicant
 78 who has violated any of the provisions of s. 475.42 or who is
 79 subject to discipline under s. 475.25. The application shall

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80 expire 2 years ~~1 year~~ after the date received if the applicant
81 does not pass ~~fails to take~~ the appropriate examination.
82 Additionally, if an applicant does not pass the licensing
83 examination within 2 years after the successful course
84 completion date, the applicant's successful course completion is
85 invalid for licensure.

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

88 475.183 Inactive status.--

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

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

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

111 475.25 Discipline.--

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

121 (a) Has violated any provision of s. 455.227(1) or s.
122 475.42. However, licensees under this part are exempt from the
123 provisions of s. 455.227(1)(i).

124 (b) Has been guilty of fraud, misrepresentation,
125 concealment, false promises, false pretenses, dishonest dealing
126 by trick, scheme, or device, culpable negligence, or breach of
127 trust in any business transaction in this state or any other
128 state, nation, or territory; has violated a duty imposed upon
129 her or him by law or by the terms of a listing contract,
130 written, oral, express, or implied, in a real estate
131 transaction; has aided, assisted, or conspired with any other
132 person engaged in any such misconduct and in furtherance
133 thereof; or has formed an intent, design, or scheme to engage in
134 any such misconduct and committed an overt act in furtherance of

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135 such intent, design, or scheme. It is immaterial to the guilt of
136 the licensee that the victim or intended victim of the
137 misconduct has sustained no damage or loss; that the damage or
138 loss has been settled and paid after discovery of the
139 misconduct; or that such victim or intended victim was a
140 customer or a person in confidential relation with the licensee
141 or was an identified member of the general public.

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

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

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163 accounting and delivery of the escrowed property, or if
164 conflicting demands have been made upon the licensee for the
165 escrowed property, which property she or he still maintains in
166 her or his escrow or trust account, the licensee shall promptly
167 notify the commission of such doubts or conflicting demands and
168 shall promptly:

169 a. Request that the commission issue an escrow
170 disbursement order determining who is entitled to the escrowed
171 property;

172 b. With the consent of all parties, submit the matter to
173 arbitration;

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

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

185
186 If the licensee promptly employs one of the escape procedures
187 contained herein and abides by the order or judgment resulting
188 therefrom, no administrative complaint may be filed against the
189 licensee for failure to account for, deliver, or maintain the
190 escrowed property. Under certain circumstances, which the

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191 commission shall set forth by rule, a licensee may disburse
192 property from the licensee's escrow account without notifying
193 the commission or employing one of the procedures listed in sub-
194 subparagraphs a.-d. If the buyer of a residential condominium
195 unit delivers to a licensee written notice of the buyer's intent
196 to cancel the contract for sale and purchase, as authorized by
197 s. 718.503, or if the buyer of real property in good faith fails
198 to satisfy the terms in the financing clause of a contract for
199 sale and purchase, the licensee may return the escrowed property
200 to the purchaser without notifying the commission or initiating
201 any of the procedures listed in sub-subparagraphs a.-d.

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

207 (e) Has violated any of the provisions of this chapter or
208 any lawful order or rule made or issued under the provisions of
209 this chapter or chapter 455.

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

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

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

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

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

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

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

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

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

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

294 (p) Has failed to inform the commission in writing within
 295 30 days after pleading guilty or nolo contendere to, or being
 296 convicted or found guilty of, any felony.

297 (q) Has violated any provision of s. 475.2755 or s.
 298 475.278, including the duties owed under those sections.

299 (r) Has failed in any written listing agreement to include
 300 a definite expiration date, description of the property, price

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301 and terms, fee or commission, and a proper signature of the
302 principal(s); and has failed to give the principal(s) a legible,
303 signed, true and correct copy of the listing agreement within 24
304 hours of obtaining the written listing agreement. The written
305 listing agreement shall contain no provision requiring the
306 person signing the listing to notify the broker of the intention
307 to cancel the listing after such definite expiration date.

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

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

326 (u) Has failed, if a broker, to manage or supervise a
327 broker associate or sales associate who is employed by such

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328 broker or who is registered with the department as employed by
329 such broker.

330 (v) Has failed, if a broker, to review the brokerage's
331 trust accounting procedures in order to ensure compliance with
332 this chapter.

333 (5) An administrative complaint against a broker, or
334 broker associate, or sales associate shall ~~must~~ be filed within
335 5 years after the time of the act giving rise to the complaint
336 or within 5 years after the time the act is discovered or should
337 have been discovered with the exercise of due diligence.

338 (6) The department or commission shall promptly notify a
339 licensee's broker or employer, as defined in this part, in
340 writing, when a formal complaint is filed against the licensee
341 alleging violations of this chapter or chapter 455. The
342 department shall not issue a notification to the broker or
343 employer until 10 days after a finding of probable cause has
344 been found to exist by the probable cause panel or by the
345 department, or until the licensee waives his or her privilege of
346 confidentiality under s. 455.225, whichever occurs first.

347 (7)~~(6)~~ The commission shall promptly report to the proper
348 prosecuting authority any criminal violation of any statute
349 relating to the practice of a real estate profession regulated
350 by the commission.

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

354 475.278 Authorized brokerage relationships; presumption of
355 transaction brokerage; required disclosures.--

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356 (2) TRANSACTION BROKER RELATIONSHIP.--

357 (c) Contents of disclosure.--The required notice given
358 under paragraph (b) must include the following information in
359 the following form:

360

361 ~~IMPORTANT NOTICE~~

362

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

365

366 ~~You should not assume that any real estate broker or sales~~
367 ~~associate represents you unless you agree to engage a real~~
368 ~~estate licensee in an authorized brokerage relationship, either~~
369 ~~as a single agent or as a transaction broker. You are advised~~
370 ~~not to disclose any information you want to be held in~~
371 ~~confidence until you make a decision on representation.~~

372

373 TRANSACTION BROKER NOTICE

374

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

378

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

- 382 1. Dealing honestly and fairly;
383 2. Accounting for all funds;

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- 384 3. Using skill, care, and diligence in the transaction;
 385 4. Disclosing all known facts that materially affect the
 386 value of residential real property and are not readily
 387 observable to the buyer;
 388 5. Presenting all offers and counteroffers in a timely
 389 manner, unless a party has previously directed the licensee
 390 otherwise in writing;
 391 6. Limited confidentiality, unless waived in writing by a
 392 party. This limited confidentiality will prevent disclosure that
 393 the seller will accept a price less than the asking or listed
 394 price, that the buyer will pay a price greater than the price
 395 submitted in a written offer, of the motivation of any party for
 396 selling or buying property, that a seller or buyer will agree to
 397 financing terms other than those offered, or of any other
 398 information requested by a party to remain confidential; and
 399 7. Any additional duties that are entered into by this or
 400 by separate written agreement.

401
 402 Limited representation means that a buyer or seller is not
 403 responsible for the acts of the licensee. Additionally, parties
 404 are giving up their rights to the undivided loyalty of the
 405 licensee. This aspect of limited representation allows a
 406 licensee to facilitate a real estate transaction by assisting
 407 both the buyer and the seller, but a licensee will not work to
 408 represent one party to the detriment of the other party when
 409 acting as a transaction broker to both parties.

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Date

Signature

Signature

This paragraph expires July 1, 2008.

(3) SINGLE AGENT RELATIONSHIP.--

(c) Contents of disclosure.--

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

~~IMPORTANT NOTICE~~

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

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

SINGLE AGENT NOTICE

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

436
437 As a single agent, (insert name of Real Estate Entity and
438 its Associates) owe to you the following duties:

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

452

Date

Signature

453

454 2. Transition disclosure.--To gain the principal's written
455 consent to a change in relationship, a licensee must use the
456 following disclosure:

457

458

CONSENT TO TRANSITION TO

459

TRANSACTION BROKER

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460
461 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
462 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
463 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
464 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
465 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
466 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
467 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

468
469 As a transaction broker, (insert name of Real Estate Firm and
470 its Associates) , provides to you a limited form of
471 representation that includes the following duties:

- 472 1. Dealing honestly and fairly;
- 473 2. Accounting for all funds;
- 474 3. Using skill, care, and diligence in the transaction;
- 475 4. Disclosing all known facts that materially affect the
476 value of residential real property and are not readily
477 observable to the buyer;
- 478 5. Presenting all offers and counteroffers in a timely
479 manner, unless a party has previously directed the licensee
480 otherwise in writing;
- 481 6. Limited confidentiality, unless waived in writing by a
482 party. This limited confidentiality will prevent disclosure that
483 the seller will accept a price less than the asking or listed
484 price, that the buyer will pay a price greater than the price
485 submitted in a written offer, of the motivation of any party for
486 selling or buying property, that a seller or buyer will agree to

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487 financing terms other than those offered, or of any other
488 information requested by a party to remain confidential; and

489 7. Any additional duties that are entered into by this or
490 by separate written agreement.

491
492 Limited representation means that a buyer or seller is not
493 responsible for the acts of the licensee. Additionally, parties
494 are giving up their rights to the undivided loyalty of the
495 licensee. This aspect of limited representation allows a
496 licensee to facilitate a real estate transaction by assisting
497 both the buyer and the seller, but a licensee will not work to
498 represent one party to the detriment of the other party when
499 acting as a transaction broker to both parties.

500
501 _____I agree that my agent may assume the role
502 and duties of a transaction broker. [must be initialed or
503 signed]

504 (4) NO BROKERAGE RELATIONSHIP.--

505 (c) Contents of disclosure.--The notice required under
506 paragraph (b) must include the following information in the
507 following form:

508
509 ~~IMPORTANT NOTICE~~
510
511 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
512 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

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514 ~~You should not assume that any real estate broker or sales~~
 515 ~~associate represents you unless you agree to engage a real~~
 516 ~~estate licensee in an authorized brokerage relationship, either~~
 517 ~~as a single agent or as a transaction broker. You are advised~~
 518 ~~not to disclose any information you want to be held in~~
 519 ~~confidence until you decide on representation.~~

521 NO BROKERAGE RELATIONSHIP NOTICE

522
 523 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
 524 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE
 525 THEIR DUTIES TO SELLERS AND BUYERS.

526
 527 As a real estate licensee who has no brokerage relationship
 528 with you, (insert name of Real Estate Entity and its
 529 Associates) owe to you the following duties:

- 530
 531 1. Dealing honestly and fairly;
 532 2. Disclosing all known facts that materially affect the
 533 value of residential real property which are not readily
 534 observable to the buyer.
 535 3. Accounting for all funds entrusted to the licensee.

536
 537 (Date)

(Signature)

538
 539 Section 6. Paragraph (n) of subsection (1) of section
 540 475.42, Florida Statutes, is amended to read:

541 475.42 Violations and penalties.--

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542 (1) VIOLATIONS.--

543 (n) A broker or sales associate may not enter into any
 544 listing or other agreement regarding her or his services in
 545 connection with the resale of a timeshare period unless the
 546 broker or sales associate fully and fairly discloses all
 547 material aspects of the agreement to the owner of the timeshare
 548 period ~~and fully complies with the provisions of s. 475.452.~~
 549 Further, a broker or sales associate may not use any form of
 550 contract or purchase and sale agreement in connection with the
 551 resale of a timeshare period unless the contract or purchase and
 552 sale agreement fully and fairly discloses all material aspects
 553 of the timeshare plan and the rights and obligations of both
 554 buyer and seller. The commission is authorized to adopt rules
 555 pursuant to chapter 120 as necessary to implement, enforce, and
 556 interpret this paragraph.

557 Section 7. Subsections (8) and (9) are added to section
 558 475.451, Florida Statutes, to read:

559 475.451 Schools teaching real estate practice.--

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

567 (9) (a) Each school permitholder of a proprietary real
 568 estate school, each chief administrative person of such an
 569 institution, or each course sponsor shall deliver to the

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570 department, in a format acceptable to the department, a copy of
571 the classroom course roster of courses that require satisfactory
572 completion of an examination no later than 30 days beyond the
573 end of the calendar month in which the course was completed.

574 (b) The course roster shall consist of the institution or
575 school name and permit number, if applicable, the instructor's
576 name and permit number, if applicable, course title, beginning
577 and ending dates of the course, number of course hours, course
578 location, if applicable, each student's full name and license
579 number, if applicable, each student's mailing address, and the
580 numerical grade each student achieved. The course roster shall
581 also include the signature of the school permitholder, the chief
582 administrative person, or the course sponsor.

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

585 475.453 Rental information; contract or receipt; refund;
586 penalty.--

587 (1) Each broker or sales associate who ~~attempts to~~
588 ~~negotiate a rental, or who~~ furnishes a rental information list
589 to a prospective tenant, for a fee paid by the prospective
590 tenant, shall provide such prospective tenant with a contract or
591 receipt, which contract or receipt contains a provision for the
592 repayment of any amount over 25 percent of the fee to the
593 prospective tenant if the prospective tenant does not obtain a
594 rental. If the rental information list provided by the broker or
595 sales associate to a prospective tenant is not current or
596 accurate in any material respect, the full fee shall be repaid
597 to the prospective tenant upon demand. A demand from the

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598 prospective tenant for the return of the fee, or any part
599 thereof, shall be made within 30 days following the day on which
600 the real estate broker or sales associate has contracted to
601 perform services to the prospective tenant. The contract or
602 receipt shall also conform to the guidelines adopted by the
603 commission in order to effect disclosure of material information
604 regarding the service to be provided to the prospective tenant.

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

607 475.701 Definitions.--As used in this part:

608 (10) "Disputed reserved proceeds" means the portion of the
609 owner's net proceeds reserved by a closing agent under s.
610 475.709 that the owner disputes the broker's right to receive
611 ~~such reserved proceeds~~ under s. 475.709(5).

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

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

621 (b) Any costs incurred by the owner to close the
622 disposition, including, but not limited to, real estate transfer
623 tax, title insurance premiums, ad valorem taxes and assessments,
624 and escrow fees payable by the owner pursuant to an agreement
625 with the buyer.

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

628 475.707 Recording commission notice; effectiveness.--

629 (3) A commission notice recorded under this part expires 1
630 year after the date of recording, unless the owner remains
631 obligated to pay a commission to the broker ~~brokerage agreement~~
632 ~~remains effective~~ after the expiration date of the commission
633 notice and the broker records an extension notice in the same
634 public records within the last 60 days before such expiration
635 date. An extension notice shall refer to the recording
636 information of the original commission notice, shall state that
637 the owner remains obligated to pay a commission to the broker
638 ~~brokerage agreement remains effective~~, and shall include the
639 information and be executed in the manner as required by s.
640 475.705(1) for the original commission notice. A timely recorded
641 extension notice shall extend the expiration date of the
642 original recorded commission notice by 1 additional year.
643 Successive extension notices may be recorded for so long as the
644 owner remains obligated to pay a commission to the broker
645 ~~brokerage agreement remains effective between the broker and the~~
646 ~~owner~~. Within 10 days after recording an extension notice, the
647 broker shall deliver a copy thereof to the owner.

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

650 475.709 Duties of closing agent; reservation of owner's
651 net proceeds.--

652 (6) The commission claimed in the commission notice shall
653 be deemed confirmed by the owner, and the closing agent shall

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654 release the reserved proceeds to the broker, if the closing
655 agent is required pursuant to subsection (1) to reserve any or
656 all of the owner's net proceeds~~,~~ and if all of the following
657 conditions have been met:

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

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

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

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

666 475.711 Interpleader or other proceedings; deposit of
667 reserved proceeds in court registry; discharge of closing agent
668 from further liability.--

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

678 (a) The closing agent has reserved all or a portion of the
679 owner's net proceeds pursuant to s. 475.709 and the owner
680 disputes the release to the broker of all or any portion of the
681 reserved proceeds.

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

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

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

690 475.713 Civil action concerning commission; order to show
691 cause; hearing; release of proceeds; award of costs and
692 attorney's fees.--

693 (5)(a) In a civil action commenced by the owner or the
694 broker under this section or in an interpleader action or other
695 proceeding commenced by the closing agent under s. 475.711, the
696 owner or the broker that is not the prevailing party shall be
697 required to pay:

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

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

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

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

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710 Section 14. Section 475.715, Florida Statutes, is amended
711 to read:

712 475.715 Priority of recorded commission notice.--All
713 statutory liens, consensual liens, mortgages, deeds of trust,
714 assignments of rents, and other encumbrances, including all
715 advances or charges made or accruing thereunder, whether
716 voluntary or obligatory, and all modifications, extensions,
717 renewals, and replacements thereof, recorded prior to the
718 recording of a commission notice pursuant to the provisions of
719 s. 475.707, have priority over the commission notice. The
720 closing agent shall compute the owner's net proceeds by
721 subtracting from the gross sales proceeds,~~and the amount~~
722 required to discharge any such prior recorded lien and the
723 amount of money secured by any such prior recorded lien that
724 ~~liens shall be subtracted from gross sales proceeds in computing~~
725 ~~the owner's net proceeds unless~~ the buyer permits ~~the same~~ to
726 remain a lien against the title to the commercial real estate. A
727 prior recorded lien includes, without limitation, a valid
728 construction lien claim that is recorded after the recording of
729 the broker's commission notice but which relates back to a
730 notice of commencement recorded under s. 713.13 prior to the
731 recording date of the broker's commission notice.

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

734 475.719 Buyer's broker.--As used in this section, the term
735 "buyer's broker" means a broker that is entitled to receive
736 payment from the buyer of commercial real estate of any fee or
737 other compensation for licensed services, as specified in a

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738 written contract made between the buyer and the broker on or
739 after the effective date of this act relating to the buyer's
740 purchase of the commercial real estate.

741 (3) No such notice given by the buyer's broker pursuant to
742 subsection (2) shall constitute a tortious interference with the
743 sale or disposition or financing of the commercial real estate,
744 ~~except this section shall not affect the rights and remedies~~
745 ~~otherwise available to the owner, the buyer, or the buyer's~~
746 ~~broker under other applicable law.~~

747 Section 16. Paragraph (b) of subsection (8) of section
748 475.807, Florida Statutes, is amended, and subsection (9) is
749 added to that section, to read:

750 475.807 Recording lien notice; effectiveness.--

751 (8)

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

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766 | to the broker ~~brokerage agreement remains effective~~, and shall
 767 | include the same information and be executed in the same manner
 768 | as required by s. 475.805(1) for the original lien notice. A
 769 | timely recorded extension notice shall extend the expiration
 770 | date of the original recorded lien notice by 10 additional
 771 | years. Successive extension notices may be recorded for so long
 772 | as the owner remains obligated to pay a commission to the broker
 773 | ~~brokerage agreement remains effective between the broker and the~~
 774 | ~~owner~~. Within 10 days after recording an extension notice, the
 775 | broker shall deliver a copy thereof to the owner.

776 | (9) Neither the recording of a broker's lien notice or any
 777 | extension thereof nor the recording of any lis pendens to
 778 | foreclose a broker's lien thereunder shall constitute notice to
 779 | any creditor or subsequent purchaser pursuant to s. 695.01 or
 780 | chapter 712 of the existence of any lease described in the lien
 781 | notice, extension notice, or lis pendens.

782 | Section 17. Subsection (6) of section 721.20, Florida
 783 | Statutes, is amended to read:

784 | 721.20 Licensing requirements; suspension or revocation of
 785 | license; exceptions to applicability; collection of advance fees
 786 | for listings unlawful.--

787 | (6) ~~Notwithstanding the provisions of s. 475.452,~~ It is
 788 | unlawful for any real estate broker, broker associate, or sales
 789 | associate to collect any advance fee for the listing of any
 790 | timeshare estate or timeshare license.

791 | Section 18. Section 475.452, Florida Statutes, is
 792 | repealed.

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