

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.
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.

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

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

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

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

475.181 Licensure.--

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

81 completion date, the applicant's successful course completion is
82 invalid for licensure.

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
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.

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.

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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
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
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,
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 | (l) 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 direct, control, or
 324 manage a broker associate or sales associate employed by such
 325 broker. A rebuttable presumption exists that a broker
 326 associate or sales associate is employed by a broker if the
 327 records of the department establish that the broker associate or
 328 sales associate is registered with that broker. A record of
 329 licensure which is certified or authenticated in such form as to
 330 be admissible in evidence under the laws of the state is
 331 admissible as prima facie evidence of such registration.

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

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

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

347 department, or until the licensee waives his or her privilege of
 348 confidentiality under s. 455.225, whichever occurs first.

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

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

356 475.278 Authorized brokerage relationships; presumption of
 357 transaction brokerage; required disclosures.--

358 (2) TRANSACTION BROKER RELATIONSHIP.--

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

362 ~~IMPORTANT NOTICE~~

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

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

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TRANSACTION BROKER NOTICE

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

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

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

401 7. Any additional duties that are entered into by this or
 402 by separate written agreement.

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

412

 Date Signature

 Signature

413
 414
 415 This paragraph expires July 1, 2008.

- 416 (3) SINGLE AGENT RELATIONSHIP.--
 417 (c) Contents of disclosure.--
 418 1. Single agent duties disclosure.--The notice required
 419 under subparagraph (b)1. must include the following information
 420 in the following form:

421
 422 ~~IMPORTANT NOTICE~~

423

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

426
 427 ~~You should not assume that any real estate broker or sales~~
 428 ~~associate represents you unless you agree to engage a real~~
 429 ~~estate licensee in an authorized brokerage relationship, either~~
 430 ~~as a single agent or as a transaction broker. You are advised~~
 431 ~~not to disclose any information you want to be held in~~
 432 ~~confidence until you make a decision on representation.~~

433
 434 SINGLE AGENT NOTICE

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

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

- 441 1. Dealing honestly and fairly;
 442 2. Loyalty;
 443 3. Confidentiality;
 444 4. Obedience;
 445 5. Full disclosure;
 446 6. Accounting for all funds;
 447 7. Skill, care, and diligence in the transaction;
 448 8. Presenting all offers and counteroffers in a timely
 449 manner, unless a party has previously directed the licensee
 450 otherwise in writing; and

451 9. Disclosing all known facts that materially affect the
 452 value of residential real property and are not readily
 453 observable.
 454

Date	Signature
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455
 456 2. Transition disclosure.--To gain the principal's written
 457 consent to a change in relationship, a licensee must use the
 458 following disclosure:
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CONSENT TO TRANSITION TO
 TRANSACTION BROKER

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 463 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
 464 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
 465 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
 466 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
 467 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
 468 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
 469 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.
 470

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

- 474 1. Dealing honestly and fairly;
- 475 2. Accounting for all funds;

- 476 3. Using skill, care, and diligence in the transaction;
 477 4. Disclosing all known facts that materially affect the
 478 value of residential real property and are not readily
 479 observable to the buyer;
 480 5. Presenting all offers and counteroffers in a timely
 481 manner, unless a party has previously directed the licensee
 482 otherwise in writing;
 483 6. Limited confidentiality, unless waived in writing by a
 484 party. This limited confidentiality will prevent disclosure that
 485 the seller will accept a price less than the asking or listed
 486 price, that the buyer will pay a price greater than the price
 487 submitted in a written offer, of the motivation of any party for
 488 selling or buying property, that a seller or buyer will agree to
 489 financing terms other than those offered, or of any other
 490 information requested by a party to remain confidential; and
 491 7. Any additional duties that are entered into by this or
 492 by separate written agreement.

493
 494 Limited representation means that a buyer or seller is not
 495 responsible for the acts of the licensee. Additionally, parties
 496 are giving up their rights to the undivided loyalty of the
 497 licensee. This aspect of limited representation allows a
 498 licensee to facilitate a real estate transaction by assisting
 499 both the buyer and the seller, but a licensee will not work to
 500 represent one party to the detriment of the other party when
 501 acting as a transaction broker to both parties.
 502

503 _____ I agree that my agent may assume the role
 504 and duties of a transaction broker. [must be initialed or
 505 signed]

506 (4) NO BROKERAGE RELATIONSHIP.--

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

510

511 ~~IMPORTANT NOTICE~~

512

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

515

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

522

523 NO BROKERAGE RELATIONSHIP NOTICE

524

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

528

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

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

538

539 (Date) (Signature)

540

541 Section 6. Paragraph (n) of subsection (1) of section
 542 475.42, Florida Statutes, is amended to read:

543 475.42 Violations and penalties.--

544 (1) VIOLATIONS.--

545 (n) A broker or sales associate may not enter into any
 546 listing or other agreement regarding her or his services in
 547 connection with the resale of a timeshare period unless the
 548 broker or sales associate fully and fairly discloses all
 549 material aspects of the agreement to the owner of the timeshare
 550 period ~~and fully complies with the provisions of s. 475.452.~~
 551 Further, a broker or sales associate may not use any form of
 552 contract or purchase and sale agreement in connection with the
 553 resale of a timeshare period unless the contract or purchase and
 554 sale agreement fully and fairly discloses all material aspects
 555 of the timeshare plan and the rights and obligations of both

556 | buyer and seller. The commission is authorized to adopt rules
557 | pursuant to chapter 120 as necessary to implement, enforce, and
558 | interpret this paragraph.

559 | Section 7. Subsections (8) and (9) are added to section
560 | 475.451, Florida Statutes, to read:

561 | 475.451 Schools teaching real estate practice.--

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

569 | (9) (a) Each school permitholder of a proprietary real
570 | estate school, each chief administrative person of such an
571 | institution, or each course sponsor shall deliver to the
572 | department, in a format acceptable to the department, a copy of
573 | the classroom course roster of courses that require satisfactory
574 | completion of an examination no later than 30 days beyond the
575 | end of the calendar month in which the course was completed.

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

583 also include the signature of the school permitholder, the chief
 584 administrative person, or the course sponsor.

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

587 475.453 Rental information; contract or receipt; refund;
 588 penalty.--

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

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

609 475.701 Definitions.--As used in this part:

610 (10) "Disputed reserved proceeds" means the portion of the
 611 owner's net proceeds reserved by a closing agent under s.
 612 475.709 that the owner disputes the broker's right to receive
 613 ~~such reserved proceeds~~ under s. 475.709(5).

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

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

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

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

630 475.707 Recording commission notice; effectiveness.--

631 (3) A commission notice recorded under this part expires 1
 632 year after the date of recording, unless the owner remains
 633 obligated to pay a commission to the broker ~~brokerage agreement~~
 634 ~~remains effective~~ after the expiration date of the commission
 635 notice and the broker records an extension notice in the same
 636 public records within the last 60 days before such expiration

637 date. An extension notice shall refer to the recording
638 information of the original commission notice, shall state that
639 the owner remains obligated to pay a commission to the broker
640 ~~brokerage agreement remains effective~~, and shall include the
641 information and be executed in the manner as required by s.
642 475.705(1) for the original commission notice. A timely recorded
643 extension notice shall extend the expiration date of the
644 original recorded commission notice by 1 additional year.
645 Successive extension notices may be recorded for so long as the
646 owner remains obligated to pay a commission to the broker
647 ~~brokerage agreement remains effective between the broker and the~~
648 ~~owner~~. Within 10 days after recording an extension notice, the
649 broker shall deliver a copy thereof to the owner.

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

652 475.709 Duties of closing agent; reservation of owner's
653 net proceeds.--

654 (6) The commission claimed in the commission notice shall
655 be deemed confirmed by the owner, and the closing agent shall
656 release the reserved proceeds to the broker, if the closing
657 agent is required pursuant to subsection (1) to reserve any or
658 all of the owner's net proceeds, and if all of the following
659 conditions have been met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

712 Section 14. Section 475.715, Florida Statutes, is amended
 713 to read:

714 475.715 Priority of recorded commission notice.--All
 715 statutory liens, consensual liens, mortgages, deeds of trust,
 716 assignments of rents, and other encumbrances, including all

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

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

736 475.719 Buyer's broker.--As used in this section, the term
 737 "buyer's broker" means a broker that is entitled to receive
 738 payment from the buyer of commercial real estate of any fee or
 739 other compensation for licensed services, as specified in a
 740 written contract made between the buyer and the broker on or
 741 after the effective date of this act relating to the buyer's
 742 purchase of the commercial real estate.

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

749 Section 16. Paragraph (b) of subsection (8) of section
750 475.807, Florida Statutes, is amended, and subsection (9) is
751 added to that section, to read:

752 475.807 Recording lien notice; effectiveness.--

753 (8)

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

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

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

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

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

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

793 Section 18. Section 475.452, Florida Statutes, is
 794 repealed.

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