

By Senator Posey

24-1584-06

See HB

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

1 requiring certain personnel of schools teaching
2 real estate practice to deliver course rosters
3 to the department by a certain date; specifying
4 the information required in a course roster;
5 amending s. 475.453, F.S.; revising a provision
6 relating to rental information given by a
7 broker or sales associate to a prospective
8 tenant; amending s. 475.701, F.S.; revising
9 definitions; amending s. 475.707, F.S.;
10 revising a provision relating to commission
11 notice recording; amending s. 475.709, F.S.;
12 clarifying provisions relating to claim of
13 commission; amending s. 475.711, F.S.;
14 clarifying provisions relating to actions
15 involving disputed reserved proceeds; amending
16 s. 475.713, F.S.; revising the award of costs
17 and attorney's fees in civil actions concerning
18 commission; amending s. 475.715, F.S.; revising
19 the method by which an owner's net proceeds are
20 computed; amending s. 475.719, F.S.; removing
21 an exception from a buyer's broker provision
22 shielding the rights and remedies available to
23 an owner, a buyer, or a buyer's broker;
24 amending s. 475.807, F.S.; revising a provision
25 relating to the recordation of lien notices;
26 providing that the recording of a broker's lien
27 notice or any extension thereof and any lis
28 pendens shall not constitute notice of the
29 existence of any lease; amending s. 721.20,
30 F.S.; removing a cross-reference to conform to
31 changes made by the act; repealing s. 475.452,

1 F.S., relating to advance fees, deposit,
2 accounting, penalty, and damages; providing an
3 effective date.

4
5 Be It Enacted by the Legislature of the State of Florida:

6
7 Section 1. Section 475.161, Florida Statutes, is
8 amended to read:

9 475.161 Licensing of broker associates and sales
10 associates.--The commission shall license a broker associate
11 or sales associate as an individual or, upon the licensee
12 providing the commission with authorization from the
13 Department of State, as a professional corporation, limited
14 liability company, or professional limited liability company.
15 A license shall be issued in the licensee's legal name only
16 and, when appropriate, shall include the entity designation.
17 This section shall not operate to permit a broker associate or
18 sales associate to register or be licensed as a general
19 partner, member, manager, officer, or director of a brokerage
20 firm under s. 475.15.

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

23 475.181 Licensure.--

24 (2) The commission shall certify for licensure any
25 applicant who satisfies the requirements of ss. 475.17,
26 475.175, and 475.180. The commission may refuse to certify any
27 applicant who has violated any of the provisions of s. 475.42
28 or who is subject to discipline under s. 475.25. The
29 application shall expire 2 years ~~1 year~~ after the date
30 received if the applicant does not pass ~~fails to take~~ the
31 appropriate examination. Additionally, if an applicant does

1 not pass the licensing examination within 2 years after the
2 successful course completion date, the applicant's successful
3 course completion is invalid for licensure.

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

6 475.183 Inactive status.--

7 (2)(a) A licensee may reactivate a license that has
8 been involuntarily inactive for 12 months or less by
9 satisfactorily completing at least 14 hours of a
10 commission-prescribed continuing education course.

11 Notwithstanding the provisions of s. 455.271, a licensee may
12 reactivate a license that has been involuntarily inactive for
13 more than 12 months but fewer than 24 months by satisfactorily
14 completing 28 hours of a commission-prescribed education
15 course.

16 (b) Any license ~~that~~ ~~which~~ has been involuntarily
17 inactive for more than 2 years shall automatically expire.
18 Once a license expires, it becomes null and void without any
19 further action by the commission or department. Ninety days
20 prior to expiration of the license, the department shall give
21 notice to the licensee. The commission shall prescribe by rule
22 a fee not to exceed \$100 for the late renewal of an
23 involuntarily inactive license. The department shall collect
24 the current renewal fee for each renewal period in which the
25 license was involuntarily inactive in addition to any
26 applicable late renewal fee.

27 Section 4. Subsections (1) and (5) of section 475.25,
28 Florida Statutes, are amended, subsection (6) is renumbered as
29 subsection (7), and a new subsection (6) is added to that
30 section, to read:

31 475.25 Discipline.--

1 (1) The commission may deny an application for
2 licensure, registration, or permit, or renewal thereof; may
3 place a licensee, registrant, or permittee on probation; may
4 suspend a license, registration, or permit for a period not
5 exceeding 10 years; may revoke a license, registration, or
6 permit; may impose an administrative fine not to exceed \$5,000
7 ~~\$1,000~~ for each count or separate offense; and may issue a
8 reprimand, and any or all of the foregoing, if it finds that
9 the licensee, registrant, permittee, or applicant:
10 (a) Has violated any provision of s. 455.227(1) or s.
11 475.42. However, licensees under this part are exempt from the
12 provisions of s. 455.227(1)(i).
13 (b) Has been guilty of fraud, misrepresentation,
14 concealment, false promises, false pretenses, dishonest
15 dealing by trick, scheme, or device, culpable negligence, or
16 breach of trust in any business transaction in this state or
17 any other state, nation, or territory; has violated a duty
18 imposed upon her or him by law or by the terms of a listing
19 contract, written, oral, express, or implied, in a real estate
20 transaction; has aided, assisted, or conspired with any other
21 person engaged in any such misconduct and in furtherance
22 thereof; or has formed an intent, design, or scheme to engage
23 in any such misconduct and committed an overt act in
24 furtherance of such intent, design, or scheme. It is
25 immaterial to the guilt of the licensee that the victim or
26 intended victim of the misconduct has sustained no damage or
27 loss; that the damage or loss has been settled and paid after
28 discovery of the misconduct; or that such victim or intended
29 victim was a customer or a person in confidential relation
30 with the licensee or was an identified member of the general
31 public.

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

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

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

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

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

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

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

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

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

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

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

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

1 fee or share a real estate brokerage commission with a broker
2 licensed or registered under the laws of a foreign state so
3 long as the foreign broker does not violate any law of this
4 state.

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

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

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

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

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

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

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

29 (o) Has been found guilty, for a second time, of any
30 misconduct that warrants her or his suspension or has been
31 found guilty of a course of conduct or practices which show

1 | that she or he is so incompetent, negligent, dishonest, or
2 | untruthful that the money, property, transactions, and rights
3 | of investors, or those with whom she or he may sustain a
4 | confidential relation, may not safely be entrusted to her or
5 | him.

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

9 | (q) Has violated any provision of s. 475.2755 or s.
10 | 475.278, including the duties owed under those sections.

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

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

27 | (t) Has violated any standard for the development or
28 | communication of a real estate appraisal or other provision of
29 | the Uniform Standards of Professional Appraisal Practice, as
30 | defined in s. 475.611, as approved and adopted by the
31 | Appraisal Standards Board of the Appraisal Foundation, as

1 | defined in s. 475.611. This paragraph does not apply to a real
2 | estate broker or sales associate who, in the ordinary course
3 | of business, performs a comparative market analysis, gives a
4 | broker price opinion, or gives an opinion of value of real
5 | estate. However, in no event may this comparative market
6 | analysis, broker price opinion, or opinion of value of real
7 | estate be referred to as an appraisal, as defined in s.
8 | 475.611.

9 | (u) Has failed, if a broker, to reasonably manage or
10 | supervise any broker associate or sales associate whose
11 | license is affiliated with such broker.

12 | (v) Has failed, if a broker, to review the brokerage's
13 | trust accounting practices in order to ensure compliance with
14 | this chapter.

15 | (5) An administrative complaint against a broker, ~~or~~
16 | broker associate, or sales associate shall must be filed
17 | within 5 years after the time of the act giving rise to the
18 | complaint or within 5 years after the time the act is
19 | discovered or should have been discovered with the exercise of
20 | due diligence.

21 | (6) The department shall promptly notify a licensee's
22 | broker or employer, as defined in this part, in writing any
23 | time the department files a formal complaint against a
24 | licensee. The notice required in this subsection shall be
25 | provided by the commission in those instances where the
26 | commission files a formal complaint against a licensee.

27 | ~~(7)(6)~~ The commission shall promptly report to the
28 | proper prosecuting authority any criminal violation of any
29 | statute relating to the practice of a real estate profession
30 | regulated by the commission.
31 |

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

4 475.278 Authorized brokerage relationships;
5 presumption of transaction brokerage; required disclosures.--

6 (2) TRANSACTION BROKER RELATIONSHIP.--

7 (c) Contents of disclosure.--The required notice given
8 under paragraph (b) must include the following information in
9 the following form:

10
11 ~~IMPORTANT NOTICE~~

12
13 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
14 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

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

22
23 TRANSACTION BROKER NOTICE

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

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

- 1 1. Dealing honestly and fairly;
2 2. Accounting for all funds;
3 3. Using skill, care, and diligence in the
4 transaction;
5 4. Disclosing all known facts that materially affect
6 the value of residential real property and are not readily
7 observable to the buyer;
8 5. Presenting all offers and counteroffers in a timely
9 manner, unless a party has previously directed the licensee
10 otherwise in writing;
11 6. Limited confidentiality, unless waived in writing
12 by a party. This limited confidentiality will prevent
13 disclosure that the seller will accept a price less than the
14 asking or listed price, that the buyer will pay a price
15 greater than the price submitted in a written offer, of the
16 motivation of any party for selling or buying property, that a
17 seller or buyer will agree to financing terms other than those
18 offered, or of any other information requested by a party to
19 remain confidential; and
20 7. Any additional duties that are entered into by this
21 or by separate written agreement.

22
23 Limited representation means that a buyer or seller is not
24 responsible for the acts of the licensee. Additionally,
25 parties are giving up their rights to the undivided loyalty of
26 the licensee. This aspect of limited representation allows a
27 licensee to facilitate a real estate transaction by assisting
28 both the buyer and the seller, but a licensee will not work to
29 represent one party to the detriment of the other party when
30 acting as a transaction broker to both parties.
31

1
2
3 Date Signature
4
5
6 Signature
7
8 This paragraph expires July 1, 2008.
9 (3) SINGLE AGENT RELATIONSHIP.--
10 (c) Contents of disclosure.--
11 1. Single agent duties disclosure.--The notice
12 required under subparagraph (b)1. must include the following
13 information in the following form:
14
15 ~~IMPORTANT NOTICE~~
16
17 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
18 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~
19
20 ~~You should not assume that any real estate broker or sales~~
21 ~~associate represents you unless you agree to engage a real~~
22 ~~estate licensee in an authorized brokerage relationship,~~
23 ~~either as a single agent or as a transaction broker. You are~~
24 ~~advised not to disclose any information you want to be held in~~
25 ~~confidence until you make a decision on representation.~~
26
27 SINGLE AGENT NOTICE
28
29 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
30 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.
31

1 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
2 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
3 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

4
5 As a transaction broker, ...(insert name of Real Estate Firm
6 and its Associates)..., provides to you a limited form of
7 representation that includes the following duties:

- 8 1. Dealing honestly and fairly;
- 9 2. Accounting for all funds;
- 10 3. Using skill, care, and diligence in the
11 transaction;
- 12 4. Disclosing all known facts that materially affect
13 the value of residential real property and are not readily
14 observable to the buyer;
- 15 5. Presenting all offers and counteroffers in a timely
16 manner, unless a party has previously directed the licensee
17 otherwise in writing;
- 18 6. Limited confidentiality, unless waived in writing
19 by a party. This limited confidentiality will prevent
20 disclosure that the seller will accept a price less than the
21 asking or listed price, that the buyer will pay a price
22 greater than the price submitted in a written offer, of the
23 motivation of any party for selling or buying property, that a
24 seller or buyer will agree to financing terms other than those
25 offered, or of any other information requested by a party to
26 remain confidential; and
- 27 7. Any additional duties that are entered into by this
28 or by separate written agreement.

29
30 Limited representation means that a buyer or seller is not
31 responsible for the acts of the licensee. Additionally,

1 parties are giving up their rights to the undivided loyalty of
2 the licensee. This aspect of limited representation allows a
3 licensee to facilitate a real estate transaction by assisting
4 both the buyer and the seller, but a licensee will not work to
5 represent one party to the detriment of the other party when
6 acting as a transaction broker to both parties.

7
8I agree that my agent may assume the role and
9 duties of a transaction broker. [must be initialed or signed]

10 (4) NO BROKERAGE RELATIONSHIP.--

11 (c) Contents of disclosure.--The notice required under
12 paragraph (b) must include the following information in the
13 following form:

14
15 ~~IMPORTANT NOTICE~~

16
17 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
18 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

19
20 ~~You should not assume that any real estate broker or sales~~
21 ~~associate represents you unless you agree to engage a real~~
22 ~~estate licensee in an authorized brokerage relationship,~~
23 ~~either as a single agent or as a transaction broker. You are~~
24 ~~advised not to disclose any information you want to be held in~~
25 ~~confidence until you decide on representation.~~

26
27 NO BROKERAGE RELATIONSHIP NOTICE

28
29 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
30 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER
31 DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

1
 2 As a real estate licensee who has no brokerage
 3 relationship with you, ...(insert name of Real Estate Entity
 4 and its Associates)... owe to you the following duties:
 5
 6 1. Dealing honestly and fairly;
 7 2. Disclosing all known facts that materially affect
 8 the value of residential real property which are not readily
 9 observable to the buyer.
 10 3. Accounting for all funds entrusted to the licensee.
 11
 12 ...(Date)... ...(Signature)...

13 Section 6. Paragraph (n) of subsection (1) of section
 14 475.42, Florida Statutes, is amended to read:
 15 475.42 Violations and penalties.--
 16 (1) VIOLATIONS.--
 17 (n) A broker or sales associate may not enter into any
 18 listing or other agreement regarding her or his services in
 19 connection with the resale of a timeshare period unless the
 20 broker or sales associate fully and fairly discloses all
 21 material aspects of the agreement to the owner of the
 22 timeshare period ~~and fully complies with the provisions of s.~~
 23 ~~475.452~~. Further, a broker or sales associate may not use any
 24 form of contract or purchase and sale agreement in connection
 25 with the resale of a timeshare period unless the contract or
 26 purchase and sale agreement fully and fairly discloses all
 27 material aspects of the timeshare plan and the rights and
 28 obligations of both buyer and seller. The commission is
 29 authorized to adopt rules pursuant to chapter 120 as necessary
 30 to implement, enforce, and interpret this paragraph.
 31

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

3 475.451 Schools teaching real estate practice.--

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

12 (9)(a) Each school permitholder of a proprietary real
13 estate school, each chief administrative person of such an
14 institution, or each course sponsor shall deliver to the
15 department, in a format acceptable to the department, a copy
16 of the classroom course roster of courses that require
17 satisfactory completion of an examination no later than 30
18 days beyond the end of the calendar month in which the course
19 was completed.

20 (b) The course roster shall consist of the institution
21 or school name and permit number, if applicable, the
22 instructor's name and permit number, if applicable, course
23 title, beginning and ending dates of the course, number of
24 course hours, course location, if applicable, each student's
25 full name and license number, if applicable, each student's
26 mailing address, and the numerical grade each student
27 achieved. The course roster shall also include the signature
28 of the school permitholder, the chief administrative person,
29 or the course sponsor.

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

1 475.453 Rental information; contract or receipt;
2 refund; penalty.--

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

22 Section 9. Subsections (10) and (12) of section
23 475.701, Florida Statutes, are amended to read:

24 475.701 Definitions.--As used in this part:

25 (10) "Disputed reserved proceeds" means the portion of
26 the owner's net proceeds reserved by a closing agent under s.
27 475.709 that the owner disputes the broker's right to receive
28 ~~such reserved proceeds~~ under s. 475.709(5).

29 (12) "Owner's net proceeds" means the gross sales
30 proceeds that the owner is entitled to receive from the
31

1 disposition of any commercial real estate specified in a
2 brokerage agreement, less all of the following:

3 (a) The amount of Any money secured by that is
4 ~~required to pay~~ any encumbrance, claim, or lien that has
5 priority over the recorded commission notice as provided in s.
6 475.715 ~~other than an encumbrance, claim, or lien that the~~
7 ~~buyer of the commercial real estate authorizes to remain after~~
8 ~~the disposition.~~

9 (b) Any costs incurred by the owner to close the
10 disposition, including, but not limited to, real estate
11 transfer tax, title insurance premiums, ad valorem taxes and
12 assessments, and escrow fees payable by the owner pursuant to
13 an agreement with the buyer.

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

16 475.707 Recording commission notice; effectiveness.--

17 (3) A commission notice recorded under this part
18 expires 1 year after the date of recording, unless the owner
19 remains obligated to pay a commission to the broker ~~brokerage~~
20 ~~agreement remains effective~~ after the expiration date of the
21 commission notice and the broker records an extension notice
22 in the same public records within the last 60 days before such
23 expiration date. An extension notice shall refer to the
24 recording information of the original commission notice, shall
25 state that the owner remains obligated to pay a commission to
26 the broker ~~brokerage agreement remains effective~~, and shall
27 include the information and be executed in the manner as
28 required by s. 475.705(1) for the original commission notice.
29 A timely recorded extension notice shall extend the expiration
30 date of the original recorded commission notice by 1
31 additional year. Successive extension notices may be recorded

1 for so long as the owner remains obligated to pay a commission
2 to the broker ~~brokerage agreement remains effective between~~
3 ~~the broker and the owner~~. Within 10 days after recording an
4 extension notice, the broker shall deliver a copy thereof to
5 the owner.

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

8 475.709 Duties of closing agent; reservation of
9 owner's net proceeds.--

10 (6) The commission claimed in the commission notice
11 shall be deemed confirmed by the owner, and the closing agent
12 shall release the reserved proceeds to the broker, if the
13 closing agent is required pursuant to subsection (1) to
14 reserve any or all of the owner's net proceeds, and if all of
15 the following conditions have been met:

- 16 (a) Five days have passed after the closing.
17 (b) The owner has neither confirmed nor disputed the
18 claimed commission to the closing agent.
19 (c) The closing agent receives reasonably satisfactory
20 evidence that the broker delivered a copy of the commission
21 notice to the owner in accordance with s. 475.705.

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

24 475.711 Interpleader or other proceedings; deposit of
25 reserved proceeds in court registry; discharge of closing
26 agent from further liability.--

27 (1) The closing agent shall, by interpleader action or
28 other legal proceeding, seek adjudication of the rights of the
29 parties with respect to disputed reserved proceeds by the
30 county court or circuit court, whichever may have jurisdiction
31 of controversies in the amount of the disputed reserved

1 | proceeds, in a county where all or a portion of the commercial
2 | real estate is located if, after the closing of a transaction
3 | for the disposition of the commercial real estate, all of the
4 | following conditions are met:

5 | (a) The closing agent has reserved all or a portion of
6 | the owner's net proceeds pursuant to s. 475.709 and the owner
7 | disputes the release to the broker of all or any portion of
8 | the reserved proceeds.

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

12 | (c) Neither the owner nor the broker have commenced a
13 | civil action to determine the rights of the parties with
14 | respect to the disputed reserved proceeds.

15 | Section 13. Subsection (5) of section 475.713, Florida
16 | Statutes, is amended to read:

17 | 475.713 Civil action concerning commission; order to
18 | show cause; hearing; release of proceeds; award of costs and
19 | attorney's fees.--

20 | (5)(a) In a civil action commenced by the owner or the
21 | broker under this section or in an interpleader action or
22 | other proceeding commenced by the closing agent under s.
23 | 475.711, the owner or the broker that is not the prevailing
24 | party shall be required to pay:

25 | 1. The costs and reasonable attorney's fees incurred
26 | in the action by the prevailing party.

27 | 2. The costs and reasonable attorney's fees incurred
28 | in the action by the closing agent.

29 | 3. The amount of any costs, recording charges, and
30 | service charges of the clerk of court that were deducted from
31 | the disputed reserved proceeds under s. 475.711(2) in

1 determining the net amount thereof deposited into the registry
2 of the court.

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

7 Section 14. Section 475.715, Florida Statutes, is
8 amended to read:

9 475.715 Priority of recorded commission notice.--All
10 statutory liens, consensual liens, mortgages, deeds of trust,
11 assignments of rents, and other encumbrances, including all
12 advances or charges made or accruing thereunder, whether
13 voluntary or obligatory, and all modifications, extensions,
14 renewals, and replacements thereof, recorded prior to the
15 recording of a commission notice pursuant to the provisions of
16 s. 475.707, have priority over the commission notice. The
17 closing agent shall compute the owner's net proceeds by
18 subtracting from the gross sales proceeds, and the amount
19 required to discharge any such prior recorded lien and the
20 amount of money secured by any such prior recorded lien that
21 liens shall be subtracted from gross sales proceeds in
22 computing the owner's net proceeds unless the buyer permits
23 ~~the same~~ to remain a lien against the title to the commercial
24 real estate. A prior recorded lien includes, without
25 limitation, a valid construction lien claim that is recorded
26 after the recording of the broker's commission notice but
27 which relates back to a notice of commencement recorded under
28 s. 713.13 prior to the recording date of the broker's
29 commission notice.

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

1 475.719 Buyer's broker.--As used in this section, the
2 term "buyer's broker" means a broker that is entitled to
3 receive payment from the buyer of commercial real estate of
4 any fee or other compensation for licensed services, as
5 specified in a written contract made between the buyer and the
6 broker on or after the effective date of this act relating to
7 the buyer's purchase of the commercial real estate.

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

14 Section 16. Paragraph (b) of subsection (8) of section
15 475.807, Florida Statutes, is amended, and subsection (9) is
16 added to that section, to read:

17 475.807 Recording lien notice; effectiveness.--

18 (8)

19 (b) To the extent that a lien notice recorded by a
20 broker under this part claims an automatic renewal commission
21 that is earned but not then payable, the lien notice expires
22 10 years after the date of recording, unless within that time
23 the broker commences an action to foreclose the lien under s.
24 475.809 and records a notice of lis pendens in the public
25 records of the county where the lien notice was recorded. If
26 the owner remains obligated to pay a commission to the broker
27 ~~brokerage agreement remains effective~~, the broker may extend
28 the expiration date of a lien notice for an automatic renewal
29 commission by recording an extension notice in the same public
30 records within the last 6 months before such expiration date.
31 An extension notice shall refer to the recording information

1 of the original lien notice, shall state that the owner
2 remains obligated to pay a commission to the broker ~~brokerage~~
3 ~~agreement remains effective~~, and shall include the same
4 information and be executed in the same manner as required by
5 s. 475.805(1) for the original lien notice. A timely recorded
6 extension notice shall extend the expiration date of the
7 original recorded lien notice by 10 additional years.
8 Successive extension notices may be recorded for so long as
9 the owner remains obligated to pay a commission to the broker
10 ~~brokerage agreement remains effective between the broker and~~
11 ~~the owner~~. Within 10 days after recording an extension notice,
12 the broker shall deliver a copy thereof to the owner.

13 (9) Neither the recording of a broker's lien notice or
14 any extension thereof nor the recording of any lis pendens to
15 foreclose a broker's lien thereunder shall constitute notice
16 to any creditor or subsequent purchaser pursuant to s. 695.01
17 or chapter 712 of the existence of any lease described in the
18 lien notice, extension notice, or lis pendens.

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

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

24 (6) ~~Notwithstanding the provisions of s. 475.452,~~ It
25 is unlawful for any real estate broker, broker associate, or
26 sales associate to collect any advance fee for the listing of
27 any timeshare estate or timeshare license.

28 Section 18. Section 475.452, Florida Statutes, is
29 repealed.

30 Section 19. This act shall take effect July 1, 2006.
31