

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 direct, control, or
10 manage a broker associate or sales associate employed by such
11 broker. A rebuttable presumption exists that a broker
12 associate or sales associate is employed by a broker if the
13 records of the department establish that the broker associate
14 or sales associate is registered with that broker. A record of
15 licensure which is certified or authenticated in such form as
16 to be admissible in evidence under the laws of the state is
17 admissible as prima facie evidence of such registration.

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

21 (5) An administrative complaint against a broker, ~~or~~
22 broker associate, or sales associate shall ~~must~~ be filed
23 within 5 years after the time of the act giving rise to the
24 complaint or within 5 years after the time the act is
25 discovered or should have been discovered with the exercise of
26 due diligence.

27 (6) The department or commission shall promptly notify
28 a licensee's broker or employer, as defined in this part, in
29 writing, when a formal complaint is filed against the licensee
30 which alleges violations of this chapter or chapter 455. The
31 department may not issue a notification to the broker or

1 employer until 10 days after a finding of probable cause has
2 been found to exist by the probable cause panel, or by the
3 department, or until the licensee waives his or her privilege
4 of confidentiality under s. 455.225, whichever occurs first.

5 ~~(7)(6)~~ The commission shall promptly report to the
6 proper prosecuting authority any criminal violation of any
7 statute relating to the practice of a real estate profession
8 regulated by the commission.

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

12 475.278 Authorized brokerage relationships;
13 presumption of transaction brokerage; required disclosures.--

14 (2) TRANSACTION BROKER RELATIONSHIP.--

15 (c) Contents of disclosure.--The required notice given
16 under paragraph (b) must include the following information in
17 the following form:

18
19 ~~IMPORTANT NOTICE~~

20
21 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
22 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

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

30
31 TRANSACTION BROKER NOTICE

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

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

9
 10
 11
 12 Date Signature
 13
 14
 15 Signature
 16

17 This paragraph expires July 1, 2008.

18 (3) SINGLE AGENT RELATIONSHIP.--

19 (c) Contents of disclosure.--

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

23
 24 ~~IMPORTANT NOTICE~~
 25
 26 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
 27 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

28
 29 ~~You should not assume that any real estate broker or sales~~
 30 ~~associate represents you unless you agree to engage a real~~
 31 ~~estate licensee in an authorized brokerage relationship,~~

1 ~~either as a single agent or as a transaction broker. You are~~
2 ~~advised not to disclose any information you want to be held in~~
3 ~~confidence until you make a decision on representation.~~

4
5 SINGLE AGENT NOTICE

6
7 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
8 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

9
10 As a single agent, ...(insert name of Real Estate
11 Entity and its Associates)... owe to you the following duties:

- 12 1. Dealing honestly and fairly;
13 2. Loyalty;
14 3. Confidentiality;
15 4. Obedience;
16 5. Full disclosure;
17 6. Accounting for all funds;
18 7. Skill, care, and diligence in the transaction;
19 8. Presenting all offers and counteroffers in a timely
20 manner, unless a party has previously directed the licensee
21 otherwise in writing; and
22 9. Disclosing all known facts that materially affect
23 the value of residential real property and are not readily
24 observable.

25
26
27
28 Date Signature

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

4
5 CONSENT TO TRANSITION TO
6 TRANSACTION BROKER
7

8 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
9 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
10 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
11 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
12 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
13 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
14 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.
15

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

- 19 1. Dealing honestly and fairly;
20 2. Accounting for all funds;
21 3. Using skill, care, and diligence in the
22 transaction;
23 4. Disclosing all known facts that materially affect
24 the value of residential real property and are not readily
25 observable to the buyer;
26 5. Presenting all offers and counteroffers in a timely
27 manner, unless a party has previously directed the licensee
28 otherwise in writing;
29 6. Limited confidentiality, unless waived in writing
30 by a party. This limited confidentiality will prevent
31 disclosure that the seller will accept a price less than the

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

7
8 NO BROKERAGE RELATIONSHIP NOTICE

9
10 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
11 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER
12 DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

13
14 As a real estate licensee who has no brokerage
15 relationship with you, ...(insert name of Real Estate Entity
16 and its Associates)... owe to you the following duties:

- 17
18 1. Dealing honestly and fairly;
19 2. Disclosing all known facts that materially affect
20 the value of residential real property which are not readily
21 observable to the buyer.
22 3. Accounting for all funds entrusted to the licensee.

23
24 ...(Date)... (Signature)...

25 Section 6. Paragraph (n) of subsection (1) of section
26 475.42, Florida Statutes, is amended to read:

27 475.42 Violations and penalties.--

28 (1) VIOLATIONS.--

29 (n) A broker or sales associate may not enter into any
30 listing or other agreement regarding her or his services in
31 connection with the resale of a timeshare period unless the

1 broker or sales associate fully and fairly discloses all
2 material aspects of the agreement to the owner of the
3 timeshare period ~~and fully complies with the provisions of s.~~
4 ~~475.452~~. Further, a broker or sales associate may not use any
5 form of contract or purchase and sale agreement in connection
6 with the resale of a timeshare period unless the contract or
7 purchase and sale agreement fully and fairly discloses all
8 material aspects of the timeshare plan and the rights and
9 obligations of both buyer and seller. The commission is
10 authorized to adopt rules pursuant to chapter 120 as necessary
11 to implement, enforce, and interpret this paragraph.

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

14 475.451 Schools teaching real estate practice.--

15 (8) Beginning October 1, 2006, each person, school, or
16 institution permitted under this section is required to keep
17 registration records, course rosters, attendance records, a
18 file copy of each examination and progress test, and all
19 student answer sheets for a period of at least 3 years
20 subsequent to the beginning of each course and make them
21 available to the department for inspection and copying upon
22 request.

23 (9)(a) Each school permitholder of a proprietary real
24 estate school, each chief administrative person of such an
25 institution, or each course sponsor shall deliver to the
26 department, in a format acceptable to the department, a copy
27 of the classroom course roster of courses that require
28 satisfactory completion of an examination no later than 30
29 days beyond the end of the calendar month in which the course
30 was completed.

31

1 (b) The course roster shall consist of the institution
2 or school name and permit number, if applicable, the
3 instructor's name and permit number, if applicable, course
4 title, beginning and ending dates of the course, number of
5 course hours, course location, if applicable, each student's
6 full name and license number, if applicable, each student's
7 mailing address, and the numerical grade each student
8 achieved. The course roster shall also include the signature
9 of the school permitholder, the chief administrative person,
10 or the course sponsor.

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

13 475.453 Rental information; contract or receipt;
14 refund; penalty.--

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

1 information regarding the service to be provided to the
2 prospective tenant.

3 Section 9. Subsections (10) and (12) of section
4 475.701, Florida Statutes, are amended to read:

5 475.701 Definitions.--As used in this part:

6 (10) "Disputed reserved proceeds" means the portion of
7 the owner's net proceeds reserved by a closing agent under s.
8 475.709 that the owner disputes the broker's right to receive
9 ~~such reserved proceeds~~ under s. 475.709(5).

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

14 (a) The amount of Any money secured by that is
15 ~~required to pay~~ any encumbrance, claim, or lien that has
16 priority over the recorded commission notice as provided in s.
17 475.715 ~~other than an encumbrance, claim, or lien that the~~
18 ~~buyer of the commercial real estate authorizes to remain after~~
19 ~~the disposition.~~

20 (b) Any costs incurred by the owner to close the
21 disposition, including, but not limited to, real estate
22 transfer tax, title insurance premiums, ad valorem taxes and
23 assessments, and escrow fees payable by the owner pursuant to
24 an agreement with the buyer.

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

27 475.707 Recording commission notice; effectiveness.--

28 (3) A commission notice recorded under this part
29 expires 1 year after the date of recording, unless the owner
30 remains obligated to pay a commission to the broker ~~brokerage~~
31 ~~agreement remains effective~~ after the expiration date of the

1 commission notice and the broker records an extension notice
2 in the same public records within the last 60 days before such
3 expiration date. An extension notice shall refer to the
4 recording information of the original commission notice, shall
5 state that the owner remains obligated to pay a commission to
6 the broker ~~brokerage agreement remains effective~~, and shall
7 include the information and be executed in the manner as
8 required by s. 475.705(1) for the original commission notice.
9 A timely recorded extension notice shall extend the expiration
10 date of the original recorded commission notice by 1
11 additional year. Successive extension notices may be recorded
12 for so long as the owner remains obligated to pay a commission
13 to the broker ~~brokerage agreement remains effective between~~
14 ~~the broker and the owner~~. Within 10 days after recording an
15 extension notice, the broker shall deliver a copy thereof to
16 the owner.

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

19 475.709 Duties of closing agent; reservation of
20 owner's net proceeds.--

21 (6) The commission claimed in the commission notice
22 shall be deemed confirmed by the owner, and the closing agent
23 shall release the reserved proceeds to the broker, if the
24 closing agent is required pursuant to subsection (1) to
25 reserve any or all of the owner's net proceeds, and if all of
26 the following conditions have been met:

- 27 (a) Five days have passed after the closing.
28 (b) The owner has neither confirmed nor disputed the
29 claimed commission to the closing agent.

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

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

6 475.711 Interpleader or other proceedings; deposit of
7 reserved proceeds in court registry; discharge of closing
8 agent from further liability.--

9 (1) The closing agent shall, by interpleader action or
10 other legal proceeding, seek adjudication of the rights of the
11 parties with respect to disputed reserved proceeds by the
12 county court or circuit court, whichever may have jurisdiction
13 of controversies in the amount of the disputed reserved
14 proceeds, in a county where all or a portion of the commercial
15 real estate is located if, after the closing of a transaction
16 for the disposition of the commercial real estate, all of the
17 following conditions are met:

18 (a) The closing agent has reserved all or a portion of
19 the owner's net proceeds pursuant to s. 475.709 and the owner
20 disputes the release to the broker of all or any portion of
21 the reserved proceeds.

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

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

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

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1 475.713 Civil action concerning commission; order to
2 show cause; hearing; release of proceeds; award of costs and
3 attorney's fees.--

4 (5)(a) In a civil action commenced by the owner or the
5 broker under this section or in an interpleader action or
6 other proceeding commenced by the closing agent under s.
7 475.711, the owner or the broker that is not the prevailing
8 party shall be required to pay:

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

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

13 3. The amount of any costs, recording charges, and
14 service charges of the clerk of court that were deducted from
15 the disputed reserved proceeds under s. 475.711(2) in
16 determining the net amount thereof deposited into the registry
17 of the court.

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

22 Section 14. Section 475.715, Florida Statutes, is
23 amended to read:

24 475.715 Priority of recorded commission notice.--All
25 statutory liens, consensual liens, mortgages, deeds of trust,
26 assignments of rents, and other encumbrances, including all
27 advances or charges made or accruing thereunder, whether
28 voluntary or obligatory, and all modifications, extensions,
29 renewals, and replacements thereof, recorded prior to the
30 recording of a commission notice pursuant to the provisions of
31 s. 475.707, have priority over the commission notice. The

1 closing agent shall compute the owner's net proceeds by
2 subtracting from the gross sales proceeds, and the amount
3 required to discharge any such prior recorded lien and the
4 amount of money secured by any such prior recorded lien that
5 ~~liens shall be subtracted from gross sales proceeds in~~
6 ~~computing the owner's net proceeds unless~~ the buyer permits
7 ~~the same~~ to remain a lien against the title to the commercial
8 real estate. A prior recorded lien includes, without
9 limitation, a valid construction lien claim that is recorded
10 after the recording of the broker's commission notice but
11 which relates back to a notice of commencement recorded under
12 s. 713.13 prior to the recording date of the broker's
13 commission notice.

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

16 475.719 Buyer's broker.--As used in this section, the
17 term "buyer's broker" means a broker that is entitled to
18 receive payment from the buyer of commercial real estate of
19 any fee or other compensation for licensed services, as
20 specified in a written contract made between the buyer and the
21 broker on or after the effective date of this act relating to
22 the buyer's purchase of the commercial real estate.

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

29 Section 16. Paragraph (b) of subsection (8) of section
30 475.807, Florida Statutes, is amended, and subsection (9) is
31 added to that section, to read:

1 475.807 Recording lien notice; effectiveness.--
2 (8)
3 (b) To the extent that a lien notice recorded by a
4 broker under this part claims an automatic renewal commission
5 that is earned but not then payable, the lien notice expires
6 10 years after the date of recording, unless within that time
7 the broker commences an action to foreclose the lien under s.
8 475.809 and records a notice of lis pendens in the public
9 records of the county where the lien notice was recorded. If
10 the owner remains obligated to pay a commission to the broker
11 ~~brokerage agreement remains effective~~, the broker may extend
12 the expiration date of a lien notice for an automatic renewal
13 commission by recording an extension notice in the same public
14 records within the last 6 months before such expiration date.
15 An extension notice shall refer to the recording information
16 of the original lien notice, shall state that the owner
17 remains obligated to pay a commission to the broker ~~brokerage~~
18 ~~agreement remains effective~~, and shall include the same
19 information and be executed in the same manner as required by
20 s. 475.805(1) for the original lien notice. A timely recorded
21 extension notice shall extend the expiration date of the
22 original recorded lien notice by 10 additional years.
23 Successive extension notices may be recorded for so long as
24 the owner remains obligated to pay a commission to the broker
25 ~~brokerage agreement remains effective between the broker and~~
26 ~~the owner~~. Within 10 days after recording an extension notice,
27 the broker shall deliver a copy thereof to the owner.
28 (9) Neither the recording of a broker's lien notice or
29 any extension thereof nor the recording of any lis pendens to
30 foreclose a broker's lien thereunder shall constitute notice
31 to any creditor or subsequent purchaser pursuant to s. 695.01

1 or chapter 712 of the existence of any lease described in the
2 lien notice, extension notice, or lis pendens.

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

5 721.20 Licensing requirements; suspension or
6 revocation of license; exceptions to applicability; collection
7 of advance fees for listings unlawful.--

8 (6) ~~Notwithstanding the provisions of s. 475.452,~~ It
9 is unlawful for any real estate broker, broker associate, or
10 sales associate to collect any advance fee for the listing of
11 any timeshare estate or timeshare license.

12 Section 18. Section 475.452, Florida Statutes, is
13 repealed.

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

15
16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 Senate Bill 1816

19 The CS amends s. 475.25(1)(u), F.S., to delete the
20 disciplinary provision for a broker who fails to reasonably
21 manage or supervise any broker or sales associate whose
22 license is affiliated with that broker. It provides a
23 disciplinary provision for a broker who fails to direct,
24 control, or manage a broker or sales associate employed by the
25 broker. It creates a rebuttable presumption for when a broker
26 associate or sales associate is employed by a broker. It also
27 provides for the admissibility of certified and authenticated
28 licensure records.

29 The bill requires that the Florida Real Estate Commission also
30 promptly notify a licensee's broker or employer when a formal
31 complaint is filed. It requires that the complaint allege
violations of ch. 475, F.S., or ch. 455, F.S. It provides
that this notification may not be issued until 10 days after a
finding of probable cause has been found or the licensee
waives his or her privilege of confidentiality, whichever
occurs first.