

61B-60.001 Definitions and Scope.

(1) For purposes of these rules and the act, the following definitions apply:

(a) “Act” means Chapter 326, F.S.

(b) ~~(a)~~ “Branch Office” means shall mean any and all secondary places of business locations of a yacht and ship broker located in the State of Florida.

~~(b) “Division” shall mean the Division of Florida Land Sales, Condominiums and Mobile Homes, Department of Business and Professional Regulation, which is statutorily authorized to regulate yacht and ship brokers and salespersons.~~

(c) “Department” means the Department of Business and Professional Regulation.

(d) “Employing Broker” means the designated broker of record who is responsible for all other brokers and salespersons within that brokerage affiliation. “The Employing Broker” shall maintain an escrow account that meets the requirements of Section 326.005, F.S.

(e) “Escrow trust account” means a segregated account as required by Section 326.005, F.S., in which only funds received from the sale, exchange, or purchase of a yacht as regulated by the act shall be deposited.

(f) ~~(j)~~ “Foreign brokers or salespersons” means shall mean those yacht brokers or salespersons who primarily conduct business in states other than Florida or in countries other than the United States and do not maintain a valid yacht license from the division.

(g) ~~(d)~~ “Gross Tons” means as it refers to a yacht or ship in accordance with Section 326.002(4), F.S., shall mean the standards of volume measurement calculated by the Tonnage Division of the U.S. Coast Guard in accordance with 46 Code of Federal

Regulations C.F.R. § 69.209 (2007) “Calculation of tonnages,” which rule is incorporated by reference.

(h) (e) “Length” means ~~as it refers to a yacht or ship in accordance with Section 326.002(4), F.S., shall mean~~ the measurement from end to end over the deck parallel to the centerline excluding sheer. The division shall consider the following in determining the length of a yacht or ship:

1. A U.S. Coast Guard certificate of documentation;
2. A state vessel certificate of title; or
3. A manufacturer’s statement of origin.

(i) (e) “Negotiate” means any communication made to a buyer, seller, or agent of a buyer or seller in furtherance of the listing, offer, sale, or exchange of a yacht. This includes communications made orally, verbally, non-verbally, or in writing through any medium at any point in a listing, offer or sale, including, but not limited to, such as during sea trials, showings of vessels, listings of vessels, preparation of transaction documents, and closings.

(j) “New Yacht” means a yacht that has never been titled or previously owned.

(k) (f) “Offer to sell,” “offer to buy,” or “offer” means the solicitation, advertisement, or inducement, or any other method or attempt, to encourage any person to acquire, sell, or exchange any interest in a yacht-, including, but not limited to, This includes: contacting owners to obtain listings, showing yachts vessels to prospective buyers, presenting offers, accepting deposits, and presenting closing statements to buyers and sellers.

(l) (g) “Principal place of business” means ~~shall mean~~ the primary location of the

business of an employing a yacht and ship broker.

(m) ~~(h)~~ “Prominently displayed” means as it refers to a license of a broker or salesperson in accordance with Section 326.004, F.S., shall mean that the license is placed in a conspicuous location on the premises and is readily visible from the entrance of the principal place of business or branch office.

(n) “Reinstatement” means reactivation of an expired, revoked, surrendered, canceled, or suspended license. Reinstatement brings a license into current status.

(o) “Rules” or “rule” means chapter 61B-60, Florida Administrative Code. Where the division intends to limit the application of a rule to a subset of this chapter, it will identify the specific section or subsection of the rule being referenced. Where the division is referring to a different chapter, it will identify the specific rule.

(p) ~~(i)~~ “Sheer” means shall mean longitudinal curvature of the main deck between bow and stern with low point amidships.

(q) “Status” refers to any of the following conditions of a license issued under the act and rules:

1. “Current status” means a license that is active and in good standing with the division.

2. “Canceled status” means a license that has been canceled due to a change in affiliation or a withdrawal from an employing broker. A licensee with a canceled license shall not act as a broker or salesperson under the act.

3. “Expired status” means a license that is past the license expiration date and automatically inactive. A licensee with an expired license shall not act as a broker or salesperson under the act.

4. “Revoked status” means a license that is rendered invalid due to administrative action. A licensee with a revoked license shall not act as a broker or salesperson under the act.

5. “Surrendered status” means a license that has been voluntarily returned to the division. A licensee with a surrendered license shall not act as a broker or salesperson under the act.

6. “Suspended status” means a license that has been suspended due to termination of a surety bond or due to an enforcement action by the division. A licensee with a suspended license shall not act as a broker or salesperson under the act.

(r) ~~(k)~~ “Temporary 90-day license” means shall mean the kind of preliminary license issued by the division to an applicant for a yacht and ship salesperson or broker license in accordance with Section 326.004, F.S. A temporary 90-day Such license expires shall expire without further notice 90 days from the date of issuance of the temporary license, upon issuance of a permanent license, or upon the applicant’s receipt of the division’s notice of intent to deny the application, whichever is earlier.

(2) Scope; Exempt Transactions. No license is required for a secured party, as defined by Section 679.105, F.S., who forecloses his or her security interest in a yacht. However, a license is required for a person who acts as a broker or salesperson as defined by Section 326.002, F.S., on behalf of, or as agent for, such a secured party.

(3) Scope; Selected Non-exempt Transactions.

(a) Licensed yacht brokers ~~Brokers and salespersons who licensed by the division will be deemed to be in violation of Chapter 326, F.S., if they transact business with unlicensed yacht brokers or salespersons~~ commit a violation of this act and rules

~~otherwise subject to jurisdiction of Chapter 326, F.S. However, Yacht brokers and salespersons licensed by the division may transact business with foreign brokers or salespersons so long as those foreign brokers or salespersons do not physically enter the State of Florida to act as brokers or salespersons as defined in the act within Chapter 326, F.S.~~

(b) Auctioneers of vessels over 32 feet in length, when such vessels would otherwise be subject to the jurisdiction of the division, must be licensed under the act, and this rule shall be subject to specific licensing requirements as set forth therein, and in Chapter 61B-60, F.A.C.

Specific Authority 326.003(2), 326.004(15) FS. Law Implemented 326.002(~~H~~), 326.004, 326.006 FS. History—New 2-13-90, Amended 11-25-90, 10-11-92, Formerly 7D-60.001, Amended 5-15-03,_____.

61B-60.002 General Provisions; Forms and Fees; Computation of Time.

(1) All forms are available from the division by writing to: referenced in these rules may be obtained by writing to, and when completed shall be filed with, the Section of Yacht and Ship Brokers, Division of Florida Land Sales, Condominiums, Timeshares, and Mobile Homes, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1028. Forms also may be downloaded from the division's website at <http://www.myflorida.com/dbpr/lsc/YachtandShip.html>. All completed forms and correspondence should be mailed to the division at its street address.

(2) The division forms listed here are adopted and incorporated into this rule for the use of yacht employing brokers, brokers, salespersons, licensees, and applicants.

Each form in this rule is listed by department form number and indicates the fees and cost, if any, that must be sent with the form. All license applications, including initial applications, renewal applications, and branch office applications, must be accompanied by the appropriate fee. License application fees and renewal application fees shall be non-refundable upon completion by the division of its review for form and moral character. Branch office application fees and branch office license renewal fees shall be non-refundable upon issuance of the branch office license.

(a) DBPR Form YS 6000-1, APPLICATION FOR A YACHT LICENSE OR REINSTATEMENT OF LICENSE, incorporated herein by reference, effective _____, and available at the address and website given in Rule 61B-60.002(1).

(b) DBPR Form YS 6000-2, APPLICATION FOR A YACHT LICENSE RENEWAL, incorporated herein by reference, effective _____, and available at the address and website given in Rule 61B-60.002(1).

(c) DBPR YS 6000-6, APPLICATION FOR OR RENEWAL OF EMPLOYING BROKER'S BRANCH OFFICE LICENSE, incorporated herein by reference, effective _____, and available at the address and website given in Rule 61B-60.002(1).

(d) DBPR YS 6000-5, CHANGE FORM, incorporated herein by reference, effective _____, and available at the address and website given in Rule 61B-60.002(1).

(3) Fees. Payment of fees shall be by check or money order made payable to Division of Florida Land Sales, Condominiums and Mobile Homes Trust Fund.

(a) The fee for an initial or reinstatement (4) Fees shall be \$500 for application is relating to an initial license and \$500 for biennial renewal of a license. An additional The

~~cost fee for national fingerprint processing is \$46 shall be \$51 and shall apply to the initial application process.~~

~~(b) The fee for each initial employing broker's branch office license application and each renewal is thereof shall be \$100, based upon an effective period of 2 years. The fee for reinstating a license that has been suspended due to termination of the surety, surrendered due to a termination of business at a licensed office address, or cancelled due to a change in affiliation shall be \$100.~~

~~(c) The correct fee must be sent with an application. License application fees and renewal application fees are non-refundable upon completion by the division of its acceptance of the application for filing purposes and good moral character. Branch office application fees and branch office license renewal fees are non-refundable upon issuance of the branch office license.~~

~~(d) Payment of fees shall be made by check, money order, or credit card made payable to Department of Business and Professional Regulation.~~

~~(4)(6) Within Licensees shall, not later than 30 days after a change of business address or affiliation or other change to a license, the licensed broker or salesperson who is making the change shall notify the division in writing of the updated information. The licensee shall file a change form with return the license to the division. Any The division will then reissuance of a reissue the license to reflect the reflecting the change changes indicated and revise the effective date referenced on the license to reflect the date that the division actually records the change. Any reissuance pursuant to this rule shall not result in any extend extension of the expiration date of the license, and the expiration date shall continue to be the date listed on the license prior to its reissuance.~~

(5)(a) Computation of Time. In computing any period of time prescribed or allowed by these rules, or by ~~the act~~ any applicable statute, the day of the action ~~aet~~ from which the designated period of time begins to run is ~~shall~~ not be included. The last day of the period is ~~shall~~ be included unless it is a Saturday, Sunday or legal holiday, as designated in Section 110.117, F.S., in which event the period shall run until the end of the next day, which is not a Saturday, Sunday or legal holiday.

(b) Additional Time After Service by Mail. If the division serves ~~When a person has the right or is required to do some act within a prescribed period after the service of a a notice that gives that person a stated number of days to respond or take some action, then or other paper upon him and the notice or paper is served upon him by mail, five additional days will be added to the number of days for the person to respond or act to allow for the time it takes for the mail to reach the person shall be added to the prescribed period.~~

(c) Under no circumstances shall the effective date and expiration date of a license be extended beyond the 30 days allowed to complete a renewal application under rule 61B-0031.

Specific Authority 215.405, 326.003(2), 326.004(1), (5), (13), (15) FS. Law Implemented 326.004 FS. History—New 2-13-90, Amended 11-25-90, 10-11-92, Formerly 7D-60.002, Amended 3-13-02, 5-15-03, 11-3-03, _____.

61B-60.003 Application for a Yacht and ~~Renewal of Broker or Salesperson License or Reinstatement of License.~~

(1) Application for License or Reinstatement of License.

~~(a)~~ To apply for a yacht license, or to reinstate a license, a person shall complete the All persons desiring to obtain a license to act as a broker or salesperson, shall apply for licensure by filing with the division a completed application on DBPR Form YS 6000-1, APPLICATION FOR A YACHT AND SHIP EMPLOYING BROKER, BROKER OR SALESPERSON LICENSE OR REINSTATEMENT OF LICENSE, incorporated herein by reference and effective _____ 11-3-03, available a copy of which may be obtained at the address and website given referenced in rule subsection 61B-60.002, F.A.C., and file it with:

1. accompanied by the \$500 application fee;
2. the \$46 \$51 fingerprint processing cost fee;
3. a complete set of fingerprints, which comply with the form provided in the application materials; and
4. by the original bond or irrevocable letter of credit required in as provided by Rule 61B-60.004, F.A.C.

(2) Review for Acceptance for Filing Purposes Form.

(a) (b) An No application is for licensure shall be deemed acceptable for filing purposes of filing unless all of the aforementioned components are tendered therewith when all of the items listed in rule 60.003(1)(a) are received, funds are deposited into the division's trust fund, and the forms are filled out completely. An Furthermore, no application for licensure or reinstatement of licensure shall not be deemed acceptable for filing purposes unless funds are available upon deposit for any negotiable instrument tendered to the division in order to satisfy the respective application and fingerprint processing cost fee requirement.

~~(b)(e)~~ Until an application is complete and acceptable for filing purposes, the time that the division has to review the application for good moral character or take final action on it does not begin. Except as to time frames relating to review for form provisions as described within subsection 61B-60.003(2), F.A.C., no operative time frame within which the division would otherwise be required to act shall be commenced until an acceptable filing has been received by the division.

~~(c)(a)~~ The division shall review the application within 10 days of its receipt to determine if it includes all of the items described above in rule 61B-60.003(1) is in acceptable form, meaning that the application form is completed in its entirety and the application fee, the \$43 fingerprint processing fee, a complete set of fingerprints, and bond or letter of credit conforming to the requirements of Rule 61B-60.004, F.A.C., have been received by the division. If the application is in acceptable for filing purposes form, the division shall issue a temporary 90-day license.

~~(d)(b)~~ If the application is not complete deficient for form in any way, it is not acceptable for filing purposes, and thereby unacceptable, ~~The~~ the division shall notify the applicant by certified U.S. mail that the application is incomplete, of the nature of what is missing, what is incorrect, or how the application is incomplete the deficiency, and the applicant shall have 21 days from receipt of the deficiency notice to correct the deficiencies. ~~The~~ If an applicant shall have 10 days fails from receipt of the notice to complete the application. If an applicant fails to complete the application within 10 days correct the deficiencies within this period of time, the division shall issue a Notice notice of Intent intent to Reject reject License license Application application.

~~(e) (4)~~ If an application is rejected, the applicant may reapply on DBPR Form YS 6001-1, along with the \$500 fee and the \$46 fingerprint processing cost. The reapplication will be treated as an initial application filing. Rejection shall not prejudice any prospective reapplication, however, such would then be processed subject to the requirements as set forth for any initial filing.

(3) Review for Good Moral Character.

(a) When the application is acceptable for filing purposes and the division finds it has been determined to be in acceptable for filing purposes form, the division shall evaluate the application and make appropriate inquiry to determine the applicant's moral character. For the purposes of this rule, the following factors bear upon good moral character:

1. Criminal ~~The completion of a criminal~~ history check by the Florida Department of Law Enforcement and the Federal Bureau of Investigation that reveals no convictions of a felony, no convictions of a misdemeanor involving moral turpitude, and no pleas of nolo contendere, pleas of guilty, or verdicts of guilty, regardless of adjudication, to a felony charge or of any non-felonious offense involving moral turpitude, fraud, theft, dishonesty, assault and battery, or false statement; and

2. Civil lawsuits and administrative actions bearing upon moral character (e.g., fraud, misrepresentation, theft, assault and battery); and

3. Applicant's prior history of unlicensed brokering or sales activity in the State of Florida subject to the provisions of the act Chapter 326, F.S.; and

4. ~~A Tendering to the division~~ a bank or other depository check tendered for payment of any fee or cost, ~~when the~~ which check lacks sufficient funds on deposit in or credit with such bank or depository ~~with which~~ to pay the same on presentation, and where the applicant, upon notification of same by the bank or division, fails to redeem the check or otherwise pay the fee or cost within 10 ~~21~~ days of such notification; and

5. Other relevant information ~~generated in the course of the application process~~ that bears upon the applicant's moral character, including ~~but not limited to~~ those acts described by Sections 326.006(2)(e)-(f), F.S.; and

6. Failure of the applicant to provide full and complete disclosure; or to provide accurate information; on the application for licensure.

(b) 7. The foregoing factors shall be considered in determining whether an applicant is of good moral character for purposes of licensure under Chapter 326, F.S., if they comply with the following guidelines:

1. ~~a.~~ The disposition of criminal charges shall be considered if the charges ~~such~~ constitutes a felony, or if the charges ~~such~~ constitutes a misdemeanor involving moral turpitude, fraud, theft, dishonesty, assault and battery, or false statement.

2. ~~b.~~ The disposition of any administrative action or of any civil litigation involving fraud, misrepresentation, theft, assault and battery, or moral turpitude shall be considered if the disposition ~~such~~ results in a determination against the interests of the applicant.

3. ~~c.~~ Except as provided in Rule 61B-60.003(b)(4) ~~sub-sub paragraph 7.d. of this rule~~, no information relating to criminal, administrative or civil actions shall be

considered if more than 5 years has elapsed from the satisfaction of the terms of any order, judgment, restitution agreement, or termination of any administrative or judicially-imposed confinement or supervision of the applicant, whichever is more recent.

4. ~~d.~~ Any action, proceeding, or grievance filed against the applicant, individually or otherwise, which relates to the applicant's prospective duties, responsibilities, and obligations of licensure under Chapter 326, F.S., may be considered with no limitation as to time.

5. ~~e.~~ Other considerations such as termination of probation, compliance with and satisfaction of any judgment or restitution agreement may be considered as evidence of rehabilitation of the applicant's good moral character.

(c) ~~(b)~~ Within 15 days after the division has determined that the application is in acceptable form, the division shall apply for a criminal history check record with the Florida Department of Law Enforcement and the Federal Bureau of Investigation.

(d) ~~(e)~~ After receipt of the criminal history check, the division shall complete its evaluation of the moral character of the applicant. As used herein, "criminal history check" shall include verification of the nature and disposition of all criminal charges and all civil or administrative actions initiated against the applicant. Specifically, the applicant will assist the division in its investigation and verification of inquiry may include the following:

1. National fingerprint processing;
2. Status as to any supervision of the applicant (e.g., confinement, probation, community service requirements);

3. Status as to any restitution agreements;

4. Status as to any civil judgments or final orders; and

5. Contact with arresting agencies and responses to requests for clarification by the division. ~~The applicant shall assist the division in acquiring the foregoing information.~~

~~(e) (4)~~ Once the application is acceptable for filing purposes and the criminal history check has been verified, If upon completion of its evaluation of the moral character of an applicant, the division concludes that the applicant has established ~~does~~ possess good moral character, the division shall issue the applicant a 2-year license, ~~upon~~ payment of all fees owed to the division, if any.

~~(f) (e)~~ A license is The effective for 2 years beginning with the date the division of the issues a temporary license, or a 2-year permanent license if no will be the date that the temporary license is actually issued by the division. The license automatically expires two years from the issuance expiration date if it is not renewed of the permanent license will be a date 2 years from date of issuance of the temporary license.

~~(g) (f)~~ Once the application is acceptable for filing purposes If upon completion of its evaluation of the moral character of an applicant, and the criminal history check has been verified, if the division concludes that the applicant has ~~does not established~~ possess good moral character, the division shall issue a Notice notice of its Intent intent to Deny deny the License Application application.

~~(4) Notification of License Expiration. The division shall notify all licensees of impending license expiration, not less than 60 days prior to expiration, on a DBPR Form~~

~~YS 6000-6, APPLICATION FOR YACHT AND SHIP LICENSE RENEWAL/
BRANCH OFFICE RENEWAL, effective 3-13-02, incorporated by reference, a copy of
which may be obtained at the address and website referenced in subsection 61B-
60.002(1), F.A.C.~~

~~(5) Submission of Application for License Renewal. Licensees shall apply for
renewal of their license on a DBPR Form YS 6000-6, APPLICATION FOR YACHT
AND SHIP LICENSE RENEWAL/BRANCH OFFICE RENEWAL, incorporated in
subsection (4) above, accompanied both by a \$500 renewal fee and by the bond or letter
of credit or proper continuation certificate, as provided by Rule 61B-60.004, F.A.C.
Completed applications shall be postmarked not less than 30 days prior to the expiration
of the current license.~~

~~(6) Review for Form. The division shall review the application within 10 days of
its receipt to determine if it is in acceptable form. If the application is in acceptable form,
the division shall review moral character as set forth in subsection (7) below. Acceptable
form means that the application is completely filled out, is signed by the licensee, and is
accompanied by the renewal fee, and bond or letter of credit or continuation certificate.
If the application is deficient for form, the division shall notify the applicant of the
deficiency. The deficiency shall be corrected by the applicant within 21 days after
receiving notification of the deficiency. If the applicant fails to correct the deficiency
within this period of time, the division shall reject the application for license renewal by
issuing a notice of intent to reject renewal application by proceeding as set forth in
paragraphs 61B-60.003(2)(b), (c), and (d), F.A.C.~~

~~(7) Review for Moral Character. Upon determining that a renewal application is in acceptable form, the division shall examine the content of the application to verify continued good moral character. Those factors identified in paragraph 61B-60.003(3)(a), F.A.C., and in Section 326.006(2)(e), (f), F.S., bear upon good moral character.~~

~~(8) If upon completion of the evaluation of moral character, the division approves the application for license renewal, the division shall issue a license.~~

~~9) The holder of an expired license who fails to renew his license within 30 days after such expiration and who desires to perform yacht and ship broker services shall be required to make an initial application to the division and proceed as provided in Rule 61B-60.004, F.A.C.~~

Specific Authority 215.405, 326.003(2), 326.004(1), (5) FS. Law Implemented 326.004, 326.006 FS. History—New 2-13-90, Amended 11-25-90, 10-11-92, Formerly 7D-60.003, Amended 2-13-97, 3-13-02, 5-15-03, 11-3-03, _____.

61B-60.0031 Application for Yacht License Renewal.

(1) Notification of License Expiration. The division notify all licensees, at the address of record, that the license is about to expire, at least 60 days before the license expiration date, on DBPR Form YS 6000-6, APPLICATION FOR YACHT LICENSE RENEWAL, effective _____, incorporated by reference, and available at the address and website given in rule 61B-60.002(1).

(2) To apply for a renewal of a yacht license, a person shall complete the renewal application on DBPR Form YS 6000-6, APPLICATION FOR YACHT LICENSE

RENEWAL, incorporated in rule 61B-60.003(4) above, available at the address and website referenced in rule 61B-60.002(1), and file it with:

1. A \$500 renewal fee;

2. The original bond or letter of credit or proper continuation certificate, required in rule 61B-60.004, F.A.C.

(3) A renewal application is acceptable for filing purposes when all of the items listed in subsection (2) of this rule are received, funds are deposited in the division's trust fund, and the renewal application is filled out completely. A renewal application shall not be acceptable unless funds are available upon deposit for any negotiable instrument tendered to the division in order to satisfy the application fee requirement.

(4) Until a renewal application is acceptable for filing purposes, the time that the division has to review the application for good moral character or take final action on it does not begin.

(5) Review for Acceptance for Filing Purposes. The division will review the renewal application within 10 days of its receipt to determine if it is acceptable for filing purposes.

(a) If the application is acceptable for filing purposes, the division will review the applicant's moral character under subsection (5) of this rule.

(b) If the application is not complete it is not accepted for filing purposes. The division will notify the applicant by U.S. certified mail of what is missing, what is incorrect, or how the application is incomplete. The applicant will have 10 days from the

receipt of the notice to file the requested information and to complete the application. If the applicant fails to submit a complete application within 30 days of license expiration, the division shall initiate rejection of the application for license renewal by issuing a Notice of Intent to Reject Renewal Application.

(c) In no event will an applicant's review for acceptance for filing purposes or time to complete the application extend beyond 30 days after expiration of the license.

(d) If an application is rejected, the applicant may reapply on DBPR Form YS 6000-1, APPLICATION FOR A YACHT LICENSE OR REINSTATEMENT OF LICENSE, incorporated by reference and available at the address and website given in Rule 61B-60.002. The reapplication will be processed as a reinstatement under Rule 61B-60.003. A reinstated license retains the original license number.

(6) Review for Moral Character. When a renewal application is acceptable for filing purposes, the division will examine the content of the application to verify continued good moral character. Those factors identified in Rule 61B-60.003(3)(a)-(b), and Sections 326.006(2)(e), (f), F.S., shall be considered by the division in making its determination of good moral character.

(7) If upon completion of the evaluation of moral character the division approves the application for license renewal, the division shall issue a new 2-year license.

(8) The holder of an expired license who fails to submit a complete application for renewal of his or her license within 30 days after the license expires and who desires to perform yacht broker services shall be required to make an application for

reinstatement to the division and proceed as provided in Rule 61B-60.003.

Specific Authority 215.405, 326.003(2), 326.004(1), (5) FS. Law implemented 326.004, 326.006 FS. History-New_____.

61B-60.004 Bond and Irrevocable Letter of Credit.

(1) Applications for licensure ~~as a broker or a salesperson~~ shall be accompanied by an original a good and sufficient surety bond or irrevocable letter of credit.

(2) Requirements of bonds and letters of credit.

(a) All surety bonds and letters of credit:

1. Shall provide coverage during each licensing period of 2 years. The coverage should match the dates of the 2- year licensure period exactly. Upon renewal of a license, a new surety bond or letter of credit or a proper continuation certificate corresponding to the licensing period shall be delivered to the division.

2. Shall remain on deposit 1 year beyond the 2 year coverage period. In the event that a licensee ~~broker or salesperson~~ ceases to be licensed, the bond or letter of credit shall remain on deposit with the division for a period of 1 year after the license expires or is terminated and will remain subject to claims arising out of conduct occurring during the period of licensure.

3. Shall be issued in the ~~reference by name of the licensee~~ broker or salesperson, and shall indicate the complete business address of the broker's principal place of ~~business.~~

4. Shall be written for the aggregate amount of \$25,000 for an employing broker and a broker and \$10,000 for a salesperson.

5. Shall be conditioned upon compliance by the licensee ~~broker~~ with the conditions of any written contract made by the licensee ~~such broker or salesperson~~ in connection with the sale or exchange of any yacht ~~or ship~~.

6. Shall be in favor of any person in a transaction who suffers any loss as a result of any violation of the provisions of Chapter 326, F.S.

(b) Additional requirements of surety bonds.

1. The original surety bond shall be delivered to the State of Florida, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Section of Yacht and Ship Brokers, at the address given in Rule subsection 61B-60.002(1), F.A.C.

~~2. The bond shall be executed by a surety company authorized to do business in the State of Florida.~~

~~2. 3. The surety bond shall provide that the surety company give the division and the licensee thirty days notice ~~shall be given by the surety to the division~~ before termination of the bond. Notice ~~shall be sent by certified mail to the division of the intended termination, and upon receipt of the notice, the division shall in turn notify the licensee.~~~~

~~(c) Additional requirements of letters of credit. The letter of credit shall be executed by an officer of a federal or state chartered financial institution which is authorized to do business in the State of Florida.~~

~~(3) If a surety notifies the division that it is no longer the surety for a licensee, the division shall notify the licensee of such withdrawal by certified mail, return receipt~~

~~requested, addressed to the licensee's principal office. Upon the termination of the surety bond, the licensee's license is automatically suspended until he files a new bond or letter of credit with the division.~~

Specific Authority 326.003(2) FS. Law Implemented 326.004 FS. History—New 2-13-90, Amended 11-25-90, 8-28-91, Formerly 7D-60.004, Amended 3-13-02,_____.

61B-60.005 Principal Place of Business; Employing Broker's Branch Office License Application and Branch Office License Renewal; Business Records.

(1) The principal place of business of an employing broker shall have a street address, which shall be referenced on the employing broker's license, and shall be located within the state of Florida.

(2) An employing broker shall be responsible for maintaining and prominently displaying in each principal place of business, an employing broker's license and the licenses of all brokers and salespersons conducting business in that principal place of business.

(3) All business records for the principal place of business shall be maintained at the employing broker's principal place of business, and shall be subject to routine audit or inspection by the division during reasonable business hours. ~~Prior to conducting business at a branch office, a broker shall apply for and receive a broker's branch office license for that branch office.~~

(4) ~~(2)~~ When an employing broker terminates brokering activities at the principal place of business, the employing broker shall notify the division in writing at the address listed in Rule 61B-60.002. If brokering activities are to continue at the principal place of

business, the new employing broker must immediately notify the division of the change by filing DBPR Form YS 6000-4, CHANGE FORM, incorporated by reference and available at the address and website given in Rule 61B-60.002(1). ~~In order to obtain a broker's branch office license, a broker licensed by the division shall complete DBPR Form YS 6000-4, EMPLOYING BROKER'S BRANCH OFFICE LICENSE APPLICATION, effective 3-13-02, incorporated by reference, a copy of which may be obtained at the address referenced in subsection 61B-60.002(1), F.A.C., and shall file it with the division, accompanied by the appropriate license fee. Since the expiration date for the branch office license will mirror the expiration date of the broker's license, the pro-rata fee structure for the branch office license will be as follows:~~

- ~~(a) For a period up to 6 months—\$25;~~
- ~~(b) For a period between 6 months and 1 year—\$50;~~
- ~~(c) For a period between 1 year and 18 months—\$75; and~~
- ~~(d) For any period exceeding 18 months—\$100.~~

(5) (3) Before conducting business at a branch office, an employing broker shall apply for and receive an employing broker's branch office license for that branch office. ~~A broker shall be responsible for maintaining and prominently displaying in each branch office, a broker's branch office license for the broker, and the licenses of all salespersons conducting business in that branch office. A broker shall prominently display at the principal place of business, the broker's license and the licenses of all salespersons conducting business in the principal place of business.~~

(6) An employing broker must apply for an employing broker's branch office license by completing DBPR Form YS 6000-4, APPLICATION FOR OR RENEWAL

OF EMPLOYING BROKER'S BRANCH OFFICE LICENSE, incorporated by reference, and available at the address and website referenced in Rule 61B-60.002(1), and file it with the division with the appropriate license fee. Since the expiration date for the branch office license will be the same expiration date of the employing broker's license, the pro-rata fee structure for the branch office license will be as follows:

- (a) For a period up to 6 months – \$25;
- (b) For a period between 6 months and 1 year – \$50;
- (c) For a period between 1 year and 18 months – \$75; and
- (d) For any period exceeding 18 months – \$100.

(7) ~~(4)~~ The branch office shall have a street address, which shall be referenced on the license. Each branch office location shall operate under the same name as the principal place of business of the employing broker. All branch office business records, or copies thereof, of business conducted at a shall be maintained at the branch office, and shall be subject to routine audit or inspection by the division, during normal business hours.

~~(5) Upon termination of business at a branch office, the broker shall surrender the broker's branch office license to the division by certified mail.~~

(8) ~~(6)~~ The employing broker shall be responsible for maintaining and prominently displaying in each branch office, an employing broker's branch office license, and the licenses of all brokers and salespersons conducting business in that branch office. The principal place of business shall have a street address which shall be referenced on the license, and shall be located within the State of Florida. All records, or

~~copies thereof, pertinent to the broker, or salespersons employed by the broker, shall be maintained at the broker's principal place of business.~~

~~(9) (7) When an employing broker terminates business~~ Upon termination of brokering activities at a branch office, the employing principal place of business, the broker shall notify the division in writing and return surrender his or her the employing broker's branch office license to the division at the address listed in Rule 61B-60.002(1), F.A.C. by certified mail.

~~(10) (8) Renewal of Employing Broker's Branch Office License. In order to renew an employing a broker's branch office license, the employing broker shall submit a completed DBPR Form YS 6000-3 6000-6, APPLICATION FOR AND RENEWAL OF EMPLOYING BROKER'S BRANCH OFFICE LICENSE, effective 3-13-02, incorporated by reference and available at the address and website given in Rule subsection 61B-60.002 003(4), F.A.C., accompanied by a with the renewal fee of \$100. The completed application shall be postmarked not less than 30 days prior to expiration of the branch office license.~~

(a) A branch office renewal application is acceptable for filing purposes when funds are deposited in the division's trust fund, and the renewal application is filled out completely. A branch office renewal application shall not be issued unless funds are available upon deposit for any negotiable instrument tendered to the division in order to satisfy the application fee requirement. If the branch office renewal application is filled out in its entirety and accompanied by the \$100 renewal fee, the division will renew the branch office license.

(b) If the branch office renewal application is incomplete , the division shall notify the applicant of what is missing or how the application is incomplete, and the applicant shall have 10 days after receiving the notice to complete the application. If the applicant fails to correct or complete the application within this time period, the division shall deny the application.

~~The application shall be deemed to be in correct form if it is filled out in its entirety and accompanied by the \$100 renewal fee. If the applicant fails to correct the deficiency within this time period, the division shall deny the application. If the application is in correct form, the division shall issue a branch office license.~~

Specific Authority 326.003(2), 326.004(1, (13) FS. Law Implemented 326.004, 326.006 FS. History–New 2-13-90, Amended 11-25-90, 10-11-92, Formerly 7D-60.005, Amended 1-26-97, 3-13-02,_____.

61B-60.006 Escrow Trust Depository; Closing Transactions.

(1) An employing A broker holding the license of a salesperson shall sign the closing statement of any transaction brokered by a broker or a the salesperson whose license is held by the employing broker.

(2) An employing broker holding the license of a salesperson shall make all escrow trust account deposits and withdrawals of monies involved in a transaction brokered by a broker or a the salesperson. Any broker or salesperson who receives any deposit shall immediately deliver the deposit or funds same to the employing broker under whom he or she is licensed as a broker or salesperson.

(3) Within 3 working days of receipt of funds, all funds received by a broker or salesperson in connection with the sale, exchange, or purchase of a yacht shall be deposited in the employing broker's escrow or trust account. Funds ~~and~~ shall remain in the account until the funds are disbursed pursuant to an agreement of the parties to the transaction or controlling statute. ~~"Escrow trust account" shall mean a segregated account as required by Section 326.005, F.S., in which only funds received pursuant to the sale, exchange, or purchase of a yacht as regulated by Chapter 326, F.S., shall be deposited.~~ No personal or operating funds shall be deposited or intermingled with any funds held in an escrow trust account, and monies deposited into the account shall not be used to pay operating expenses.

(4) An employing ~~A~~ broker shall maintain books and records of receipts, deposits and withdrawals of escrow trust account funds in accordance with generally accepted accounting principles. All escrow trust accounts shall be subject to routine audit or inspection by the division during reasonable business hours.

Specific Authority 326.003(2) FS. Law Implemented 326.004, 326.005, 326.006 FS.

History—New 2-13-90, Amended 11-25-90, Formerly 7D-60.006, Amended 3-13-02, 5-15-03, _____.

61B-60.008 Standards of Conduct; Penalties.

(1) The license of an employing a broker, broker, or salesperson, as applicable, shall be suspended or canceled when cancelled ~~where~~:

(a) Upon termination of a surety bond pursuant to Section 326.004(12 ~~4~~), F.S., the licensee fails to simultaneously file a new surety bond with the division; or

(b) A broker or salesperson withdraws from the employment of an employing broker. In such a case, the employing broker shall immediately notify the division in writing, and the license of the broker or salesperson will be canceled until ~~return the salesperson's license to the division~~ is notified that the licensee is employed with a new employing broker; or

(c) ~~An employing A broker ends~~ A broker ends ~~severs~~ his or her professional relationship with a business entity so that the remaining brokers or salespersons are no longer employed by ~~an a~~ an employing broker licensed as required under the act pursuant to Chapter 326, F.S. In such a case, the employing broker shall immediately notify the division in writing and the broker or salesperson's salesperson license will be canceled until the broker or salesperson becomes affiliated with another employing broker ~~shall immediately return his or her license to the division~~ pending installation of a new broker at the respective business entity.

(2) If an employing broker's license is suspended due to termination of the surety bond, all related brokers and salespersons' licenses will be canceled until the employing broker files a new bond with the division.

(3) (2) The division shall suspend or revoke the license of an employing broker, a broker or salesperson under the provisions of Sections Section 326.006(2)(e), (f), F.S., for cause shown, which includes: including the violation of applicable administrative rules.

(a) A violation of these rules, including any administrative action bearing upon moral character whether in this chapter or other administrative area;

(b) A failure to notify the division in writing of any conviction of or plea of guilty or nolo contendere to, regardless of adjudication, any felony or any crime involving moral turpitude in any jurisdiction, within 30 days of the entry of conviction or plea;

(c) A conviction or adjudication of guilt of or entry of a plea of nolo contendere to, regardless of adjudication, any felony or any crime involving moral turpitude in any jurisdiction;

(d) A failure to maintain good moral character under the act and rules; and

(e) A violation of the standards of conduct as defined in subsection (4) below.

(4) (3) Standards of Conduct:

(a) A licensee shall not knowingly misrepresent facts, shall notify ~~have an affirmative duty to inform~~ the division in writing within 30 days of any changes in status or of any knowledge of any facts that may adversely affect the licensee's fitness for licensure, shall undertake to perform only those brokerage services that he or she can reasonably expect to complete with professional competence, shall exercise due professional care in the performance of brokerage services, and shall not permit others to carry out on his or her behalf, either with or without compensation, acts that, if carried out by the licensee, would place him or her in violation of the act or the rules Sections 326.001 through 326.006, F.S. or Chapter 61B-60, F.A.C.

(b) An employing ~~A broker is shall be deemed~~ responsible ~~by the division~~ for the actions of all brokers and salespersons who perform brokerage functions under his or her license supervision and control.

~~(4) Guidelines for Determining Civil Penalties:~~

~~(a) To assure consistency with respect to the amount of any civil penalty to be assessed in a consent order or final order, the following guidelines have been established. Aggravating or mitigating circumstances, when considered, may increase or decrease the respective amount of any civil penalty.~~

~~(b) Examples of aggravating or mitigating circumstances may include the following:~~

- ~~1. Criminal record of licensee;~~
- ~~2. Civil litigation history bearing upon issues relating to the administration of Chapter 326, F.S.;~~
- ~~3. Administrative action history, either formal or informal, bearing upon issues relating to the administration of Chapter 326, F.S.;~~
- ~~4. Cooperation of respondent relating to the Division's investigation and prosecution of the instant matter;~~
- ~~5. Whether the division required the assistance of external parties in preparation of the division's case;~~
- ~~6. Whether the licensee's conduct was intentional;~~
- ~~7. Whether the licensee, or any agent engaged by the licensee, knew or should have known that the subject misfeasance or malfeasance constituted a violation of Chapter 326, F.S., or the rules promulgated thereunder, or any other law or rule having impact upon the respective proceeding;~~

~~8. Circumstances precipitating the investigation;~~

~~9. Nature of the violation;~~

~~10. History of similar violation; and~~

~~11. Any combination of any of the above factors.~~

~~(e) The imposition of a civil penalty is not intended to preclude the division from imposing any further sanctions that it may be authorized to impose pursuant to Chapter 326, F.S., or the rules promulgated thereunder.~~

Specific Authority ~~326.002~~, ~~326.003(2)~~, ~~326.004(1)~~ FS. Law Implemented ~~326.004~~, ~~326.006~~ FS. History—New 11-25-90, Amended 10-11-92, Formerly 7D-60.008, 7D-60.009, 7D-60.010, Amended 1-26-97, 3-13-02,_____.

61B-60.009 Yacht & Ship Penalty Guidelines

(1) Purpose. The purpose of this rule is to notify licensees and unlicensed persons who act as brokers of the guidelines and aggravating and mitigating factors that will be used by the division to determine penalties for specified violations of Chapter 326, F.S. and Rule 61B-60, F.A.C. No aggravating factor will be applied to increase a penalty for a single count violation above the statutory maximum of \$10,000. These guidelines are based upon a single count violation of each provision listed. Multiple counts of the violated provisions or a combination of the violations will be added together in determining an overall total penalty. The purpose of imposing penalties is to discipline the licensee or person for violations of the applicable statutes and rules, to deter the licensee or person from future violations, and to offer opportunities for rehabilitation when appropriate. Nothing in this rule shall limit the authority of the division to informally dispose of administrative actions or complaints by consent order.

(2) General Provisions.

(a) Violations Not All-Inclusive. This rule contains examples of possible violations. This rule does not, and is not intended to, encompass all possible violations of the applicable statutes and rules that might be committed by licensees and unlicensed persons who act as brokers or salespersons. The absence of any violation from this rule shall in no way be interpreted to indicate that the violation is not subject to a penalty. In any instance where the violation is not listed in this rule, the penalty will be determined by consideration of:

1. The penalty guidelines and aggravating and mitigating factors specified in this rule; and

2. The closest comparable violation, if any, that is listed in this rule.

(b) Violations Included. This rule applies to all violations subject to a penalty authorized by law.

(c) Rule Encourages Settlement. Each penalty guideline listed in this rule is the amount offered to encourage a licensee and an unlicensed person who acts as a broker or salesperson to settle the violation with the division at the initial stage of the investigation. In most cases, the penalty guideline amounts are set well-below the statutorily authorized amount of \$10,000 per violation. As with any offer of settlement, if the broker, salesperson or unlicensed broker rejects the division's settlement offer, the division retains the authority to adjust the penalty based upon the factors listed in rule 61B-60.009(3) arising out of continued investigation and prosecution of the case.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining the penalties for violations listed in this rule and impose any penalty authorized under section 326.006, upon consideration of one or more of the following factors. The factors are not necessarily listed in order of importance and shall be considered either aggravating or mitigating for each separate violation, unless otherwise specified. Each factor may increase or decrease the total amount of the penalty guideline as provided in this rule by an amount up to \$1,000.

(a) Knowingly violating the act or rules shall be considered solely as an aggravating factor.

(b) Knowingly allowing a licensee or unlicensed person under his or her control to violate the act or rules shall be considered solely as an aggravating factor.

(c) Remaining involved in a transaction with a broker or salesperson or unlicensed person who is violating the act or rules when the licensee or unlicensed person knows or should know of the violation shall be considered solely as an aggravating factor.

(d) Examples of aggravating and mitigating factors may include the following:

1. Criminal record of licensee;
2. Civil litigation history bearing upon issues relating to the act;
3. Administrative action history, either formal or informal, bearing upon issues relating to the act;
4. Whether the division required the assistance of persons outside the agency in preparing the case;
5. Whether the licensee's conduct was intentional;

6. Whether the licensee, or any agent engaged by the licensee, knew or should have known that the subject misfeasance or malfeasance constituted a violation of the act or rules, or any other law or rule relevant to the case;

7. Circumstances giving rise to the investigation;

8. Nature of the violation;

9. History of similar violation;

10. Act of God or other catastrophic event;

11. Yacht brokerage experience of licensee;

12. Cooperation with the division.

(c) The imposition of a civil penalty is not intended to preclude the division from imposing any further sanctions that it may be authorized to impose pursuant to the act or the rules.

(d) Penalty Guidelines. The following penalty guidelines are established for each violation:

<u>STATUTE/RULE</u>	<u>GENERAL DESCRIPTION</u>	<u>PENALTY</u> <u>per violation (factors)</u>
<u>§ 326.004(1)</u>	<u>Unlicensed activity-</u> <u>Never been licensed</u>	<u>\$ 5000 (+)(-)</u>
<u>§ 326.004(1)</u>	<u>Unlicensed activity-</u> <u>Expired or prior license as salesperson</u>	<u>\$ 7500 (+)(-)</u>

§ 326.004(1)	Unlicensed activity- <u>Expired or prior license as broker/ employing broker</u>	\$ 10,000(-)
§ 326.004(2)	Fictitious Business Name	\$1000 (+)(-)
§ 326.004(6)(a)	Moral Character	\$2500 (+)(-)
§ 326.004(10)(12)	Failing to file new bond	Suspension/revocation
§ 326.004(13)	Place of Business Maintenance	\$ 2500 (+)(-)
§ 326.004(14)(a)	Display of Licenses	\$500 (+)(-)
§ 326.004(14)(b)	Failing to remain/cancel licenses	\$2500 (+)(-)
§ 326.005(1)	Escrow/Trust Account	\$10,000 (-)
§ 326.005(2)	Transaction Closing Statement	\$ 5,000 (+)(-)
§ 326.006(2)(e)1	Misrepresentation	\$ 2500 (+)(-)
§ 326.006(2)(e)2	False Warranty	\$ 2500 (+)(-)

§ 326.006(2)(e)3	Misrepresentation or <u>False Warranties</u>	\$ 2500 (+)(-)
§ 326.006(2)(e)4	Acts for Buyer and <u>Seller without written consent</u>	\$ 2500 (+)(-)
§ 326.006(2)(e)5	Commingles Funds	\$10,000 (-)
§ 326.006(2)(e)6	Fraud or Dishonest Acts	\$ 5000 (+)(-)
§ 326.006(2)(e)7	Allows Unlicensed Person <u>To Act</u>	\$ 5000 (+)(-)
§ 326.006(2)(e)8	Violates Law(s)	\$ 5000 (+)(-)
§ 326.006(2)(f)1	Procures a License by Deceit	Suspend/Revocation <u>\$10,000 (-)</u>
§ 326.006(2)(f)2	Felony or crime <u>of moral turpitude</u>	Suspend/Revocation <u>\$10,000 (-)</u>
61B-60.001(3)(a)	Dealing with Unlicensed Persons	\$ 5000 (+)(-)
61B-60.001(3)(b)	Auctioneers Require Licensure	\$ 5000 (+)(-)

<u>61B-60.002(5)</u>	<u>Change of Address or Affiliation</u>	<u>\$ 500 (+)(-)</u>
<u>61B-60.003(3)(a)</u>	<u>Moral Character</u>	<u>Deny License</u>
<u>61B-60.005(2), (6)</u>	<u>Prominent License Display</u>	<u>\$ 500 (+)(-)</u>
<u>61B-60.005(7)</u>	<u>Branch Records Maintenance</u>	<u>\$ 2500 (+)(-)</u>
<u>61B-60.005(3)</u>	<u>Principal Office Records Maint.</u>	<u>\$ 2500 (+)(-)</u>
<u>61B-60.006(1)</u>	<u>Closing Statement Signature</u>	<u>\$ 5000 (+)(-)</u>
<u>61B-60.006(2)</u>	<u>Escrow/Trust Account Deposits</u>	<u>\$ 10,000 (-)</u>
<u>61B-60.006(3)</u>	<u>Escrow/Trust Account Maintenance</u>	<u>\$10,000 (-)</u>
<u>61B-60.006(4)</u>	<u>Books and Records Maintenance</u>	<u>\$10,000 (-)</u>
<u>61B-60.008(3)</u>	<u>Criminal Action</u>	<u>Suspension/revocation;</u> <u>\$10,000 (-)</u>
<u>61B-60.008(3)</u>	<u>Failure to Notify</u>	<u>Suspension/revocation;</u> <u>\$10,000 (-)</u>
<u>61B-60.008(4)(a)</u>	<u>Standards of Conduct</u>	<u>Suspension/revocation;</u>

\$ 5000 (+)(-)

61B-60.008(4)(b) Broker Responsibility \$ 5000 (+)(-)

Specific Authority 326.003(2), F.S. Law Implemented 326.003(3), 326.004, 326.006

FS. History–New .