

## **Chapter 61B-60 Yacht and Ship Brokers**

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#### **61B-60.001 Definitions and Scope.**

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

(a) "Branch Office" shall mean any and all secondary locations of a yacht and ship broker.

(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) "Length" 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.

(d) "Gross Tons" 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 C.F.R. § 69.209 (2002) "Calculation of tonnages," which rule is incorporated by reference.

(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, such as during sea trials, showings of vessels, listings of vessels, preparation of transaction documents, and closings.

(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. This includes: contacting owners to obtain listings, showing vessels to prospective buyers, presenting offers, accepting deposits, and presenting closing statements to buyers and sellers.

(g) "Principal place of business" shall mean the primary location of the business of a yacht and ship broker.

(h) "Prominently displayed" 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.

(i) "Sheer" shall mean longitudinal curvature of the main deck between bow and stern with low point amidships.

(j) "Foreign brokers or salespersons" shall mean those 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 license from the division.

(k) "Temporary 90-day license" 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. Such license shall expire without further notice 90 days from the 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 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) Brokers and salespersons licensed by the division will be deemed to be in violation of Chapter 326, F.S., if they transact business with unlicensed brokers or salespersons otherwise subject to jurisdiction of Chapter 326, F.S. However, 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 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 Chapter 326, F.S., and shall be subject to specific licensing requirements as set forth therein, and in Chapter 61B-60, F.A.C.

*Specific Authority 326.003(2) FS. Law Implemented 326.002(1), 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.**

(1) All forms 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 and Mobile Homes, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1028.

(2) 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.

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

(4) Fees shall be \$500 for application relating to an initial license and \$500 for biennial renewal of a license. The fee for national fingerprint processing shall be \$51 and shall apply to the initial application process. The fee for each broker's branch office license and renewal 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.

(5)(a) Computation of Time. In computing any period of time prescribed or allowed by these rules, or by any applicable statute, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period 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. When a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or

paper is served upon him by mail, five days shall be added to the prescribed period.

(6) Licensees shall, not later than 30 days after a change of business address or affiliation, notify the division in writing of the updated information. The licensee shall return the license to the division. The division will then reissue the license reflecting the 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 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.

*Specific Authority 215.405, 326.003, 326.004 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 and Renewal of Broker or Salesperson License.**

#### **(1) Application for License.**

(a) 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, incorporated herein by reference and effective 11-3-03, a copy of which may be obtained at the address referenced in subsection 61B-60.002(1), F.A.C., accompanied by the \$500 application fee, the \$51 fingerprint processing fee, a complete set of fingerprints which comply with the form provided in the application materials, and by the bond or irrevocable letter of credit as provided by Rule 61B-60.004, F.A.C.

(b) No application for licensure shall be deemed acceptable for purposes of filing unless all of the aforementioned components are tendered therewith. Furthermore, no application for licensure shall be deemed acceptable unless funds are available upon deposit for any negotiable instrument tendered to the division in order to satisfy the respective application and fingerprint processing fee requirement.

(c) 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.

#### **(2) Review for Form.**

(a) The division shall review the application within 10 days of its receipt to determine if it 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 form, the division shall issue a temporary 90-day license.

(b) If the application is deficient for form in any way and thereby unacceptable, the division shall notify the applicant of the nature of the deficiency, and the applicant shall have 21 days from receipt of the deficiency notice to correct the deficiencies. If an applicant fails to correct the deficiencies within this period of time, the division shall issue a notice of intent to reject license application.

(c) The applicant will subsequently have 10 days from receipt of said notice to correct the referenced deficiencies. If the referenced deficiencies are not corrected within the allotted time frame, the subject application shall be rejected and the applicant shall be so notified by certified mail without requiring any further proceeding.

(d) 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 has been determined to be in acceptable 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. The completion of a criminal history check by the Florida Department of Law Enforcement 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 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 Chapter 326, F.S.; and

4. Tendering to the division a bank or other depository check for payment of any fee, which check lacks sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation, where the applicant, upon notification of same by the bank or division, fails to redeem the check or otherwise pay the fee within 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 Section 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.

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:

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

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 such results in a determination against the interests of the applicant.

c. Except as provided in 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.

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.

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.

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

(c) 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 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.

(d) If upon completion of its evaluation of the moral character of an applicant, the division concludes that the applicant does possess good moral character, the division shall issue the applicant

a license, upon payment of all fees owed to the division, if any.

(e) The effective date of the permanent license will be the date that the temporary license is actually issued by the division. The expiration date of the permanent license will be a date 2 years from date of issuance of the temporary license.

(f) If upon completion of its evaluation of the moral character of an applicant, the division concludes that the applicant does not possess good moral character, the division shall issue a notice of its intent to deny the 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 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 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-60.004 Bond and Irrevocable Letter of Credit.**

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

(2) Requirements of bonds and letters of credit.

(a) All bonds and letters of credit:

1. Shall provide coverage during each licensing period of 2 years. Upon renewal of a license, a new 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 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 reference by name the 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 a broker and \$10,000 for a salesperson.

5. Shall be conditioned upon compliance by the broker with the conditions of any written contract made by 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 bond shall be delivered to the State of Florida, Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, Section of Yacht and Ship Brokers, at the address given in 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.

3. The bond shall provide that 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 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; Broker's Branch Office License Application and Branch Office License Renewal.**

(1) 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.

(2) 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.

(3) 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.

(4) The branch office shall have a street address which shall be referenced on the license. All records, or copies thereof, of business conducted at a branch office shall be maintained at the branch

office.

(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.

(6) 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.

(7) Upon termination of brokering activities at the principal place of business, the broker shall surrender his or her broker's license to the division by certified mail.

(8) Renewal of Branch Office License. In order to renew a broker's branch office license, the broker shall submit a completed DBPR Form YS 6000-6, effective 3-13-02, incorporated in subsection 61B-60.003(4), F.A.C., accompanied by a renewal fee of \$100. The completed application shall be postmarked not less than 30 days prior to expiration of the branch office license. If the application is deficient for form, the division shall so notify the applicant, and the applicant shall have 10 days after receiving notification of the deficiency in which to correct the deficiency. 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 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) A broker holding the license of a salesperson shall sign the closing statement of any transaction brokered by the salesperson.

(2) A broker holding the license of a salesperson shall make all escrow trust account deposits and withdrawals of monies involved in a transaction brokered by the salesperson. Any salesperson who receives any deposit shall immediately deliver the same to the broker under whom he is licensed as a 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 broker's trust account 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) A broker shall maintain books and records of receipts, deposits and withdrawals of escrow trust account funds in accordance with generally accepted accounting principles.

*Specific Authority 326.003 FS. Law Implemented 326.004, 326.005 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 a broker or salesperson, as applicable, shall be suspended or cancelled where:

(a) Upon termination of a surety bond pursuant to Section 326.004(11), F.S., the licensee fails to simultaneously file a new bond with the division; or

(b) A salesperson withdraws from the employment of a broker. In such a case, the broker shall immediately return the salesperson's license to the division; or

(c) A broker severs his or her professional relationship with a business entity so that the remaining salespersons are no longer employed by a broker licensed as required pursuant to Chapter 326, F.S. In such a case, the broker shall immediately notify the division and the salesperson shall immediately

return his or her license to the division pending installation of a new broker at the respective business entity.

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

(3) Standards of Conduct:

(a) A licensee shall not knowingly misrepresent facts, shall have an affirmative duty to inform the division 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 Sections 326.001 through 326.006, F.S. or Chapter 61B-60, F.A.C.

(b) A broker shall be deemed responsible by the division for the actions of all salespersons who perform brokerage functions under his or her 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.

(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 Chapter 326, F.S., or the rules promulgated thereunder.

*Specific Authority 326.002, 326.003, 326.004 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.*