

REAL ESTATE DIVISION

Presents



Breaking Bad (Real Estate Licensees)

2013 Case Law Update

Jennifer Leigh Blakeman

Agenda

- Application for Licensure
- Continuing Duty to Disclose
- Convicted of a Crime & License Discipline
- Hindrance and Obstruction
- Appraisal Cases (Reasonable Diligence)
- Escrow Accounts and Property Management
- Breach of Trust, Culpable Negligence, and Dishonest Dealings
- Assisting Unlicensed Activity





Application for Licensure

Have you ever been convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction, or are you currently under criminal investigation? This question applies to any criminal violation of the laws of any municipality, county, state or nation, including felony, misdemeanor and traffic offenses (but not parking, speeding, inspection, or traffic signal violations), without regard to whether you were placed on probation, had adjudication withheld, were paroled, or pardoned. If you intend to answer "NO" because you believe those records have been expunged or sealed by court order pursuant to Section 943.0585 or 943.059, Florida Statutes, or applicable law of another state, you are responsible for verifying the expungement or sealing prior to answering "NO." **YOUR ANSWER TO THIS QUESTION MAY BE CHECKED AGAINST LOCAL, STATE AND FEDERAL RECORDS. FAILURE TO ANSWER THIS QUESTION ACCURATELY MAY RESULT IN THE DENIAL OR REVOCATION OF YOUR LICENSE. IF YOU DO NOT FULLY UNDERSTAND THIS QUESTION, CONSULT WITH AN ATTORNEY OR CONTACT THE DEPARTMENT.**



Applicant Practice Points

Be Candid

475.25(1)(m), FS

Rule 61J2-2.027, FAC

**Withdraw the application
(Question 3 “license denied”)**

Continuing Duty to Disclose



- 455.227(1)(t): 30 days from finding of guilt for **any** crime
- Why?
- Fine: \$250 – 1,000 & S or R
\$1,000 – 5,000 & S or R

Convicted of a Crime 475.25(1)(f)

- 1) Relates to activity of licensee OR
- 2) Moral Turpitude, fraudulent or dishonest



What is Moral Turpitude?

- Homicide
- Manslaughter
- Possession of drugs w/ intent to sell
- Indecent exposure
- Sexual Abuse
- Auto Theft
- Extortion
- Forgery
- Endangering Welfare of a Child
- Aggravated Assault/Battery
- Stalking
- Kidnapping
- Rape
- Bookmaking
- Acceptance Of/Dealing in Stolen Property



Murder for Hire

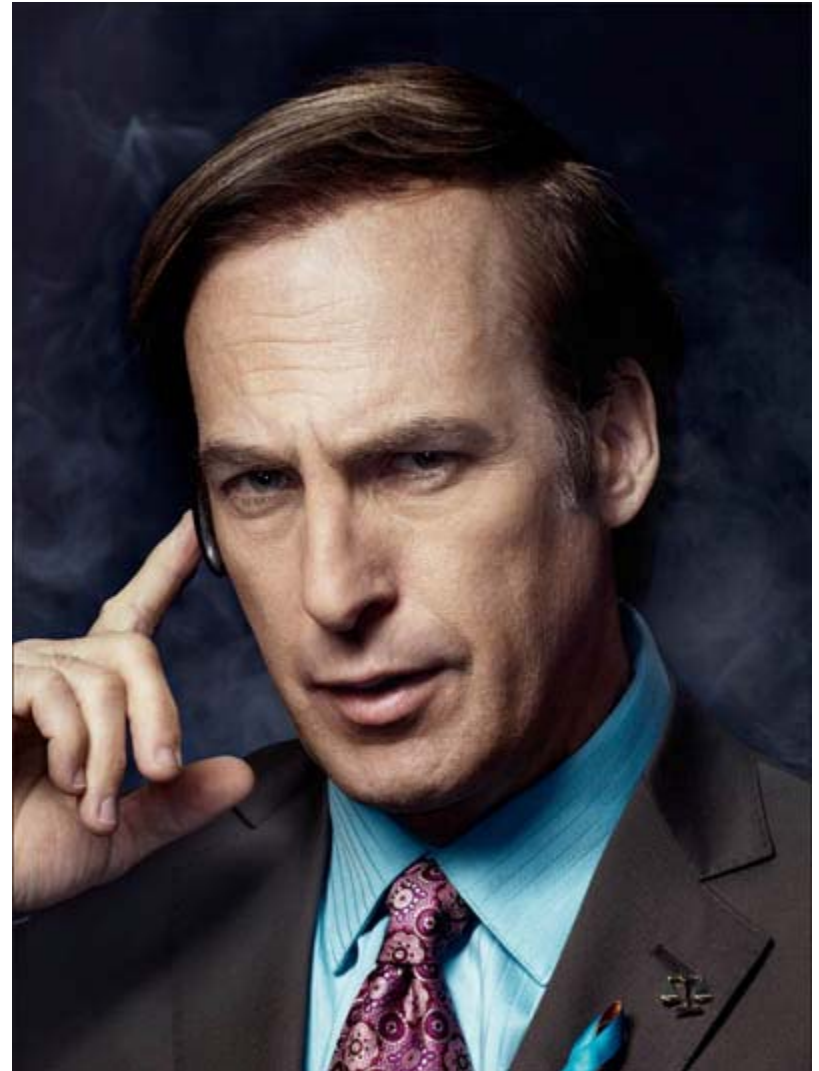


Bad Restaurant



“Criminal Lawyer”

- Attorney suspended by Bar
 - Attorney is a licensed broker
 - Trust deficiency of 700k
 - Suspension related to R.E.
- Department requests records
 - Broker states, “none of the brokerages books were under his control”
 - Broker states, “Business was closed and no longer knows location of records”
- Aggravation (escrow)



Discipline of Other Licenses & Registrations – 475.25(1)(s)

FREAB, CAM, CPA, CILB, Bar, etc...



Hindering/Obstructing

475.42(1)(i)

- 475.5015 Brokerage Business Records
 - Each Broker shall keep and make available legible copies of books, accts, records for at least 5 years
 - 61J2-14.012 must maintain deposit slips and keep an accurate accounting
- 475.5016 Authority to Inspect and Audit
 - The Department has the power to inspect and audit at all reasonable hours
- Required Records Doctrine
 - 379 So. 2d 450; 369 So. 2d 629

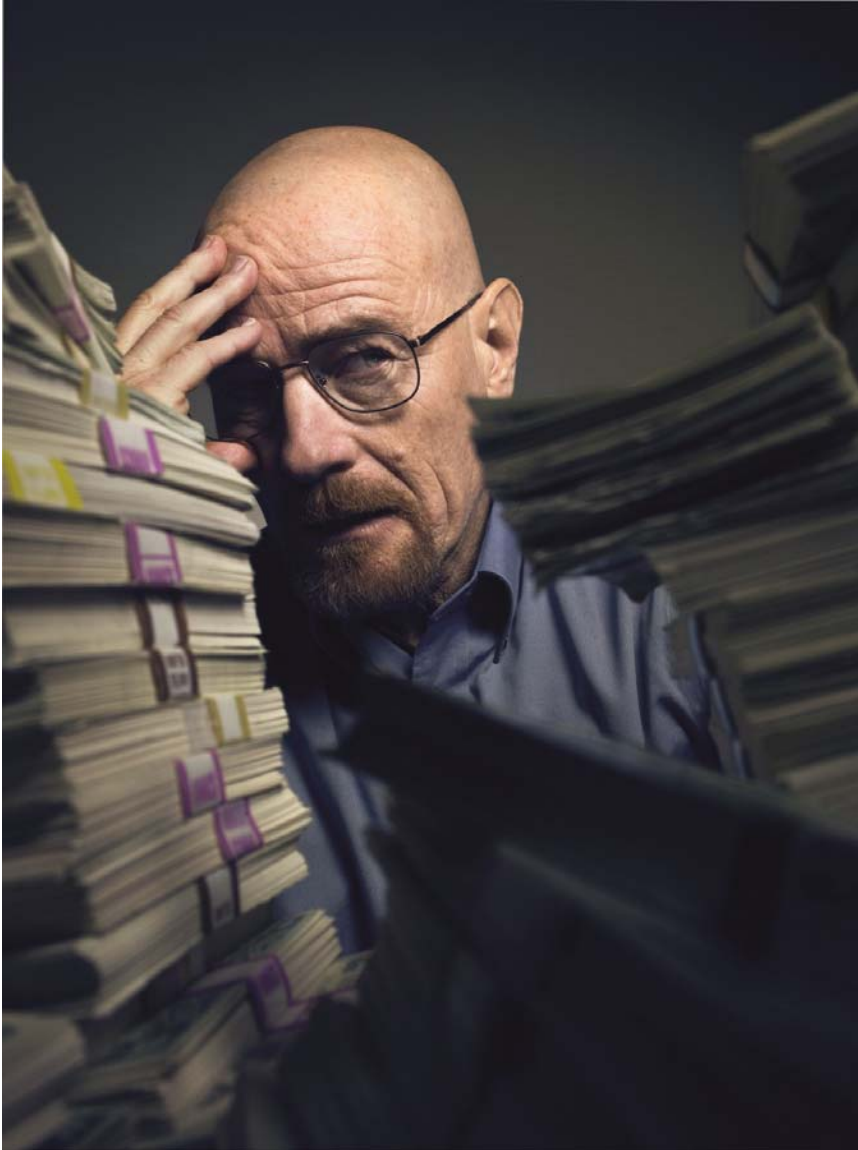
Discipline of Appraisers

- 475.624(15) – An appraiser shall not fail or refuse to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

The Match Game

- Appraiser won a bid to do a group of appraisals for government. Government needed appraised value to match listing price of homes for deals to go through
- First few appraisals were too low, appraiser re-did them to come close to listing prices. Did things like change the condition of the comparables to 'inferior'

Escrow Accounts



- Relatively easy to trace
 - Either the \$ was deposited properly, or it wasn't.
- Relatively easy to prove
 - No intent required for brokers or sales associates
- Emerging issue with Property Management

475.25 (1)(k) and 61J2-14.008 - 14.012 Brokers

- 475.25(1)(k) Immediately deposit escrow funds into an escrow account and keep until disbursement is properly authorized
 - 61J2-14.008: Immediate = 3rd business day
 - 61J2-14.012: Monthly reconciliations
 - Date of reconciliation, date used to reconcile, bank names, acct #'s, acct balances, dates, deposits in transit, outstanding checks, itemized liability list

Escrow and Property Management



- Large percentage of cases concern property management
- Brokers placing security and rent in operating accounts and failing to perform reconciliations

Brokers and Property Management



- Late or Non-Payment
- Stolen Funds (475.25(1)(d))
- Returned Checks (Reconcile)
- ESO (S.R.)

475.25 (1)(k) and 475.42(1)(d) Sales Associates

- 475.25(1)(k) Immediately place funds with registered employer
 - 61J2-14.009: Immediate = Next business day
- 475.42(1)(d) SA can't accept funds in own name w/out express consent of broker

Sales Associates and Property Management



- Property Management generally requires broker's involvement (K.S)
- 475.42(1)(b) Acting as broker
- 475.42(1)(d) Accepting \$ in own name
- Assisting ULA

475.25(1)

(B)reaking (B)ad

- Fraud
- Misrepresentation
- Concealment
- False promises
- Dishonest dealing by trick, scheme, or device
- Culpable negligence
- Breach of trust



Concealment

- Sales associate agreed to list two properties in the 300-something range. Soon thereafter two sale and purchase contracts were entered into, also in the 300-something range.
- Without knowledge of sellers, shortly after contracts were entered into sales associate raised listing price on each property to the 400-something range.

Dishonest Dealings

- Subject broker was managing a rental contract.
- Property was a Section 8, and rent was limited to a little over a thousand per month.
- Subject had agreement on the side for 1500 a month.

Fraud/Breach of Trust

- Broker convinced buyers of commercial property to give him over 400,000 in deposits towards property. Buyers took out equity line of credit. Never returned money.
- Case went to DOAH. Broker told conflicting stories.
- Broker also found guilty under 475.25(1)(d)1 and 475.25(1)(k).

475.25 (1)(B)

Breach of Trust (Disclosure)



- Broker lists short sale
- Requires purchaser to pay third party negotiating company
- Fails to disclose that he owns negotiation company

Business Entities



- Register business entity that you operate
- 455.227(1)(j) Assisting ULA
(Associate with property management Co)

Brokerage Officers



- Rule 61J2-5.016: Officers and directors who expect to be active must qualify and become licensed in the same manner and procedure as any other applicant for active license. No registration shall be issued to the corporation or partnership unless every broker licensed with the corporation or partnership is registered as an officer, director or partner of the corporation or partnership. No sales associate or broker associate may be registered as an officer, director of a brokerage corporation or general partner of a brokerage partnership

Rule 61J2-5.016



- Broker charged with:
 - 61J2-5.016 & 475.42(1)(c)
- Sales Associate charged with:
 - 61J2-5.016, 475.42(1)(a) & 475.42(1)(b)

Final Thoughts



- 1) Few licensee's ever appear before FREC & majority of appearances are at application (candid, withdraw)
- 2) Know your duties (disclosure, escrow)
- 3) Personal life can harm professional life
- 4) Reconcile
- 5) Trust but verify

Contact



Jennifer Blakeman, Assistant General Counsel
jennifer.blakeman@myfloridalicense.com