

Ken Lawson, Secretary

Rick Scott, Governor

Florida Real Estate Law Book

Chapter 475, Florida Statutes Real Estate Broker, Sales Associates, and Schools Part I

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Chapter 61J2, Florida Administrative Code Florida Real Estate Commission

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NOTE: This booklet is not a study guide and is in no way intended to replace your study material which is provided by your approved Real Estate Instructor and School. This booklet is intended to provide a direct access to Chapter 475, Florida Statutes, Part I and 61J2, Florida Administrative Code. This booklet is updated continually, but please reference the Florida Statutes and Administrative Code website before reviewing this booklet.

Chapter 475, Florida Statutes

PART I

REAL ESTATE BROKERS, SALES ASSOCIATES, SCHOOLS AND APPRAISERS (ss. 475.001-475.5018)

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475.001 Purpose.—The Legislature deems it necessary in the interest of the public welfare to regulate real estate brokers, sales associates, and schools in this state.

History.—ss. 1, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 1, ch. 93-261; s. 13, ch. 2000-332; s. 21, ch. 2003-164.

475.01 Definitions.—

(1) As used in this part:

(a) “Broker” means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a). Where the term “appraise” or “appraising” appears in the definition of the term “broker,” it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term “broker” also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term “broker” also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

(b) “Broker associate” means a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another.

(c) “Commission” means the Florida Real Estate Commission.

(d) “Customer” means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship.

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

(f) “Fiduciary” means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality,

obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

(g) “Involuntarily inactive status” means the licensure status that results when a license is not renewed at the end of the license period prescribed by the department.

(h) “Principal” means the party with whom a real estate licensee has entered into a single agent relationship.

(i) “Real property” or “real estate” means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

(j) “Sales associate” means a person who performs any act specified in the definition of “broker,” but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(k) “Single agent” means a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.

(l) “Transaction broker” means a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent. In a transaction broker relationship, a buyer or seller is not responsible for the acts of a licensee. Additionally, the parties to a real estate transaction are giving up their rights to the undivided loyalty of a licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

(m) “Voluntarily inactive status” means the licensure status that results when a licensee has applied to the department to be placed on inactive status and has paid the fee prescribed by rule.

(2) The terms “employ,” “employment,” “employer,” and “employee,” when used in this chapter and in rules adopted pursuant thereto to describe the relationship between a broker and a sales associate, include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate. The existence of such relationship shall not relieve either the broker or the sales associate of her or his duties, obligations, or responsibilities under this chapter.

(3) Wherever the word “operate” or “operating” as a broker, broker associate, or sales associate appears in this chapter; in any order, rule, or regulation of the commission; in any pleading, indictment, or information under this chapter; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this chapter as constituting or defining a broker, broker associate, or sales associate, not including, however, any of the exceptions stated therein. A single such act is sufficient to bring a person within the meaning of this chapter, and each act, if prohibited herein, constitutes a separate offense.

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(23).

History.—s. 1, ch. 12223, 1927; CGL 4062; s. 1, ch. 29983, 1955; s. 1, ch. 59-199; s. 1, ch. 59-197; s. 1, ch. 59-438; ss. 30, 35, ch. 69-106; s. 1, ch. 75-112; s. 7, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-239; s. 1, ch. 77-355; s. 1, ch. 77-457; s. 1, ch. 78-215; s. 1, ch. 78-366; ss. 2, 42, 43, ch. 79-239; ss. 2, 3, 5, ch. 80-405; ss. 2, 3, ch. 81-318; ss. 5, 38, ch. 82-1; ss. 18, 45, ch. 82-179; ss. 1, 28, 30, ch. 88-20; s. 1, ch. 89-368; s. 10, ch. 90-228; s. 10, ch. 90-341; s. 13, ch. 90-345; ss. 2, 10, ch. 91-89; s. 1, ch. 91-289; s. 4, ch. 91-429; s. 2, ch. 93-261; s. 134, ch. 94-119; s. 159, ch. 94-218; s. 1, ch. 94-337; s. 1, ch. 97-42; s. 361, ch. 97-103; s. 1, ch. 98-250; s. 1, ch. 99-384; s. 1, ch. 2002-233; ss. 1, 22, ch. 2003-164; s. 78, ch. 2004-5.

475.011 Exemptions.—This part does not apply to:

(1) Any person acting as an attorney in fact for the purpose of the execution of contracts or

conveyances only; as an attorney at law within the scope of her or his duties as such; as a certified public accountant, as defined in chapter 473, within the scope of her or his duties as such; as the personal representative, receiver, trustee, or general or special magistrate under, or by virtue of, an appointment by will or by order of a court of competent jurisdiction; or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and intent whereof is charitable, is philanthropic, or provides for those having a natural right to the bounty of the donor or trustor.

(2) Any individual, corporation, partnership, trust, joint venture, or other entity which sells, exchanges, or leases its own real property; however, this exemption shall not be available if and to the extent that an agent, employee, or independent contractor paid a commission or other compensation strictly on a transactional basis is employed to make sales, exchanges, or leases to or with customers in the ordinary course of an owner's business of selling, exchanging, or leasing real property to the public.

(3) Any employee of a public utility, a rural electric cooperative, a railroad, or a state or local governmental agency who acts within the scope of her or his employment, for which no compensation in addition to the employee's salary is paid, to buy, sell, appraise, exchange, rent, auction, or lease any real property or any interest in real property for the use of her or his employer.

(4) Any salaried employee of an owner, or of a registered broker for an owner, of an apartment community who works in an onsite rental office of the apartment community in a leasing capacity.

(5) Any person employed for a salary as a manager of a condominium or cooperative apartment complex as a result of any activities or duties which the person may have in relation to the renting of individual units within such condominium or cooperative apartment complex if rentals arranged by the person are for periods no greater than 1 year.

(6) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, sells, offers to sell, advertises for sale, buys, offers to buy, or negotiates the sale or purchase of radio, television, or cable enterprises licensed and regulated by the Federal Communications Commission pursuant to the Communications Act of 1934. However, if the sale or purchase of the radio, television, or cable enterprise involves the sale or lease of land, buildings, fixtures, and all other improvements to the land, a broker or sales associate licensed under this chapter shall be retained for the portion of the transaction which includes the land, buildings, fixtures, and all other improvements to the land.

(7) Any full-time graduate student who is enrolled in a commission-approved degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a licensed broker or a licensed or certified appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual.

(8)(a) An owner of one or part of one or more timeshare periods for the owner's own use and occupancy who later offers one or more of such periods for resale.

(b) An exchange company, as that term is defined by s. 721.05(15), but only to the extent that the exchange company is engaged in exchange program activities as described in and is in compliance with s. 721.18.

(9) Any person registered, licensed, or certified by the department under part II as an appraiser or trainee appraiser performing appraisals in accordance with that part.

(10) Any person who appraises under the unit-rule method of valuation a railroad or railroad terminal company assessed for ad valorem tax purposes pursuant to s. 193.085.

(11) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, rents or advertises for rent, for transient occupancy, any public lodging establishment licensed under chapter 509.

(12) Any dealer registered under the Securities and Exchange Act of 1934, as amended, or any federally insured depository institution and any parent, subsidiary, or affiliate thereof, in connection with the sale, exchange, purchase, or rental of a business enterprise to or by a person who is an accredited investor as defined by 15 U.S.C. s. 77b, the Securities Act of 1933, or any regulation adopted

thereunder. This exemption applies whether stock or assets of the business enterprise are purchased or sold. The exemption does not apply to a sale, exchange, purchase, or rental of land, buildings, fixtures or other improvements to the land which is not made in connection with the sale, exchange, purchase, or rental of a business enterprise. Any reference to rental in this subsection includes a lease transaction.

(13) Any property management firm or any owner of an apartment complex for the act of paying a finder's fee or referral fee to an unlicensed person who is a tenant in such apartment complex provided the value of the fee does not exceed \$50 per transaction. Nothing in this subsection authorizes an unlicensed person to advertise or otherwise promote the person's services in procuring or assisting in procuring prospective lessees or tenants of apartment units. For purposes of this subsection, "finder's fee" or "referral fee" means a fee paid, credit towards rent, or some other thing of value provided to a person for introducing or arranging an introduction between parties to a transaction involving the rental or lease of an apartment unit. It is a violation of s. 475.25(1)(h) and punishable under s. 475.42 for a property management firm or any owner of an apartment complex to pay a finder's fee or a referral fee to an unlicensed person unless expressly authorized by this subsection.

History.—ss. 3, 42, ch. 79-239; ss. 1, 5, ch. 80-307; ss. 2, 3, ch. 81-318; ss. 31, 45, ch. 82-179; s. 3, ch. 85-84; ss. 1, 2, ch. 85-215; s. 1, ch. 86-107; s. 1, ch. 87-205; ss. 2, 28, 30, ch. 88-20; s. 2, ch. 89-368; ss. 3, 10, ch. 91-89; s. 2, ch. 91-289; s. 4, ch. 91-429; s. 3, ch. 93-261; s. 135, ch. 94-119; s. 2, ch. 94-337; s. 362, ch. 97-103; s. 2, ch. 98-250; s. 2, ch. 99-384; s. 7, ch. 2001-179; ss. 2, 23, ch. 2003-164; s. 85, ch. 2004-11; s. 33, ch. 2004-279.

475.02 Florida Real Estate Commission.—(1) There is created within the department the Florida Real Estate Commission. The commission shall consist of seven members who shall be appointed by the Governor, subject to confirmation by the Senate. Four members must be licensed brokers, each of whom has held an active license for the 5 years preceding appointment; one member must be a licensed broker or a licensed sales associate who has held an active license for the 2 years preceding appointment; and two members must be persons who are not, and have never been, brokers or sales associates. At least one member of the commission must be 60 years of age or older. The current members may complete their present terms unless removed for cause.

(2) Members shall be appointed for 4-year terms.

(3) Notwithstanding s. 112.313, any member of the commission who is a licensed real estate broker or sales associate and who holds an active real estate school permit, school instructor permit, or any combination of such permits issued by the department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the commission or the department.

History.—ss. 2, 3, ch. 12223, 1927; CGL 4063, 4064; ss. 30, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 6, 38, ch. 82-1; s. 22, ch. 87-172; ss. 3, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 4, ch. 93-261; s. 160, ch. 94-218; s. 24, ch. 2003-164; s. 35, ch. 2010-106; s. 9, ch. 2012-208.

475.021 Division of Real Estate.—(1) All services concerning this chapter, including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in chapter 455 necessary to perform the duties of this chapter shall be provided by the Division of Real Estate. The commission may, by majority vote, delegate a duty or duties to the appropriate division within the department. The commission may, by majority vote, rescind any such delegation of duties at any time.

(2) The Division of Real Estate shall be funded by fees and assessments of the commission, and funds collected by the commission shall be used only to fund real estate regulation.

History.—s. 1, ch. 82-1; s. 2, ch. 87-50; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 121, ch. 98-166; s. 181, ch. 2000-160.

475.03 Delegation of powers and duties; legal services.—(1) Any of the duties and powers of the commission, except disciplinary powers and the power to adopt rules, may be delegated, by resolution, to any member; but the chair may exercise such duties and powers without such resolution.

(2) Subject to the prior approval of the Attorney General, the commission may retain independent legal counsel to provide legal advice to the commission on a specific matter.

(3) No attorney employed or utilized by the commission shall prosecute a matter and provide legal services to the commission with respect to the same matter.

History.—s. 4, ch. 12223, 1927; CGL 4065; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 7, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 363, ch. 97-103.

475.04 Duty of commission to educate members of profession.—(1) The commission shall foster the education of brokers, broker associates, sales associates, and instructors concerning the ethical, legal, and business principles which should govern their conduct.

(2) For the purpose of performing its duty under subsection (1) to educate persons holding a license or permit, the commission may conduct, offer, sponsor, prescribe, or approve real estate educational courses for all persons licensed or permitted by the department as brokers, broker associates, sales associates, or instructors; and the cost and expense of such courses shall be paid as provided in s. 475.125.

(3) The commission may also publish and sell, at a reasonable price intended to cover costs, a handbook on this chapter and other publications intended to be textbooks or guidelines for study and guidance of students, applicants, licensees, certificateholders, and permit holders, and members of the general public, copyright of which shall be the property of the state.

History.—s. 5, ch. 12223, 1927; CGL 4066; s. 1, ch. 59-200; s. 1, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 8, 38, ch. 82-1; ss. 4, 28, 30, ch. 88-20; s. 11, ch. 90-228; s. 11, ch. 90-341; s. 14, ch. 90-345; s. 4, ch. 91-89; s. 4, ch. 91-429; s. 25, ch. 2003-164.

475.045 Florida Real Estate Commission Education and Research Foundation.—(1)(a) There is established a Florida Real Estate Commission Education and Research Foundation, hereinafter referred to as the “foundation,” which shall be administered by the commission.

(b) The purposes, objectives, and duties of the foundation are as follows:

1. To create and promote educational projects to expand the knowledge of the public and real estate licensees in matters pertaining to Florida real estate.

2. To augment the existing real estate programs by increasing the number of teaching personnel and real estate courses in the state in degree-granting programs in universities and colleges in this state.

3. To conduct studies in all areas that relate directly or indirectly to real estate or urban or rural economics and to publish and disseminate the findings and results of the studies.

4. To assist the teaching program in real estate offered by the universities, colleges, and real estate schools registered pursuant to this chapter in the state, when requested to do so.

5. To develop and from time to time revise and update materials for use in the courses in real estate offered by the universities, colleges, and real estate schools registered pursuant to this chapter in the state, when requested to do so.

6. To make studies of, and recommend changes in, state statutes and municipal ordinances; provided, however, that such studies are requested by the Governor or the presiding officers of the Legislature. The foundation shall maintain political nonadvocacy.

7. To periodically review the progress of persons conducting such research and studies. The results of any research project or study shall not be published or disseminated until it has been reviewed and approved in writing by the commission or its designated representative.

8. To prepare information of consumer interest concerning Florida real estate and to make the information available to the public and appropriate state agencies.

(c) The foundation may make a charge for its publications and may receive gifts and grants from foundations, individuals, and other sources for the benefit of the foundation.

(d) A report of the activities and accomplishments of the foundation shall be published annually.

(e) On or before January 1 of each year, the commission shall file with the Governor, the presiding officer of each house of the Legislature, and the secretary of the department a complete and detailed written report accounting for all funds received and disbursed by the foundation during the preceding year.

(2)(a) The commission shall solicit advice and information from real estate licensees, the commission, universities, colleges, real estate schools registered pursuant to this chapter and the general public for the purpose of submitting proposals for carrying out the purposes, objectives, and duties of the foundation.

(b) The commission shall select the proposals that shall be funded and shall give priority to projects with the greatest potential for direct or indirect benefit to the public.

(c) The commission shall select the university or college within the state or qualified full-time faculty member of a university or college within the state with the consent of the institution to perform the education study, research study, or other project in accordance with the purposes, objectives, and duties of the foundation. In those instances where no university or college within the state, or qualified full-time faculty member of a university or college within the state with the consent of the institution, submits an acceptable proposal, a qualified person or persons may be selected in accordance with law to perform the education study, research study, or other project in accordance with the purposes, objectives, and duties of the foundation.

(3)(a) The director of the Division of Real Estate of the department, hereinafter referred to as the "director," or her or his designated representative shall submit to the commission, in advance of each fiscal year, a budget for expenditures of all funds provided for the foundation in a form that is related to the proposed schedule of activities for the review and approval of the commission.

(b) The director shall submit to the commission all proposals received for its review and approval in developing an educational and research agenda at the beginning of each fiscal year and shall continuously inform the commission of changes in its substance and scheduling.

(4) The commission shall have the power and authority to adopt all rules necessary to administer this section.

(5) The foundation may not fund or offer educational courses designed to qualify persons for licensure or the renewal of licenses pursuant to this chapter.

(6) The foundation may not expend any funds for the purpose of employing staff.

(7) The Chief Financial Officer shall invest \$3 million from the portion of the Professional Regulation Trust Fund credited to the real estate profession, under the same limitations as applied to investments of other state funds, and the income earned thereon shall be available to the foundation to fund the activities and projects authorized under this section. However, any balance of such interest in excess of \$1 million shall revert to the portion of the Professional Regulation Trust Fund credited to the real estate profession. In the event the foundation is abolished, the funds in the trust fund shall revert to such portion of the Professional Regulation Trust Fund.

History.—ss. 1, 2, ch. 85-199; ss. 5, 29, 31, ch. 88-20; s. 12, ch. 90-228; s. 12, ch. 90-341; s. 15, ch. 90-345; s. 10, ch. 91-89; s. 3, ch. 91-289; s. 5, ch. 91-429; s. 5, ch. 93-261; s. 161, ch. 94-218; s. 65, ch. 95-144; s. 42, ch. 96-418; s. 1118, ch. 97-103; s. 25, ch. 99-333; s. 52, ch. 2000-356; s. 505, ch. 2003-261.

475.05 Power of commission to enact bylaws and rules and decide questions of practice.—The commission may enact bylaws for its own government and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring powers or duties upon it. The commission may decide questions of practice arising in the proceedings before it, having regard to this chapter and the rules then in force. Printed copies of rules, or written copies under the seal of the commission, shall be prima facie evidence of their existence and substance, and the courts shall judicially

notice such rules.

History.—s. 6, ch. 12223, 1927; CGL 4067; s. 2, ch. 59-199; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 9, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 146, ch. 98-200; s. 4, ch. 2002-9.

475.10 Seal.—The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records, and acts of the commission, and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chair, the custodian of such records, or another person authorized to make such certification and authenticated by such seal, shall be prima facie evidence thereof in all the courts of this state.

History.—s. 11, ch. 12223, 1927; CGL 4072; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 8, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 10, 38, ch. 82-1; ss. 19, 45, ch. 82-179; s. 92, ch. 83-218; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 364, ch. 97-103.

475.125 Fees.—

(1) The commission by rule may establish fees to be paid for application, examination, reexamination, licensing and renewal, certification and recertification, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination may not exceed \$100. The initial license fee and the license renewal fee may not exceed \$50 for each year of the duration of the license. The commission may also establish by rule a late renewal penalty. The commission shall establish fees which are adequate to ensure its continued operation. Fees shall be based on estimates made by the department of the revenue required to implement this chapter and other provisions of law relating to the regulation of real estate practitioners.

(2) Application and license fees shall be refunded upon a determination by the commission that the state is not entitled to the fees or that only a portion of the resources have been expended in the processing of the application, or if for any other reason the application is not completely processed. The commission shall implement this provision by rule.

History.—ss. 9, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 11, 38, ch. 82-1; s. 56, ch. 83-329; ss. 6, 28, 30, ch. 88-20; s. 4, ch. 91-429.

475.15 Registration and licensing of general partners, members, officers, and directors of a firm.—Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker shall register with the commission and shall renew the licenses or registrations of its members, officers, and directors for each license period. However, if the partnership is a limited partnership, only the general partners must be licensed brokers or brokerage corporations registered pursuant to this part. If the license or registration of at least one active broker member is not in force, the registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during that period of time. The commission shall adopt rules that allow a brokerage to register a broker on a temporary, emergency basis if a sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

History.—s. 16, ch. 12223, 1927; CGL 4077; s. 4, ch. 59-199; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 12, 38, ch. 82-1; ss. 7, 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 136, ch. 94-119; s. 3, ch. 98-250; s. 1, ch. 2015-54.

475.161 Licensing of broker associates and sales associates.—The commission shall license a broker associate or sales associate as an individual or, upon the licensee providing the commission with authorization from the Department of State, as a professional corporation, limited liability company, or professional limited liability company. A license shall be issued in the licensee's legal name only and, when appropriate, shall include the entity designation. This section shall not operate to permit a broker associate or sales associate to register or be licensed as a general partner, member, manager,

officer, or director of a brokerage firm under s. 475.15.

History.—s. 26, ch. 2003-164; s. 1, ch. 2006-210.

475.17 Qualifications for practice.—(1)(a) An applicant for licensure who is a natural person must be at least 18 years of age; hold a high school diploma or its equivalent; be honest, truthful, trustworthy, and of good character; and have a good reputation for fair dealing. An applicant for an active broker's license or a sales associate's license must be competent and qualified to make real estate transactions and conduct negotiations therefor with safety to investors and to those with whom the applicant may undertake a relationship of trust and confidence. If the applicant has been denied registration or a license or has been disbarred, or the applicant's registration or license to practice or conduct any regulated profession, business, or vocation has been revoked or suspended, by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this chapter, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revoking or suspending her or his license under this chapter had the applicant then been registered, the applicant shall be deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the commission that the interest of the public and investors will not likely be endangered by the granting of registration. The commission may adopt rules requiring an applicant for licensure to provide written information to the commission regarding the applicant's good character.

(b) An application may be disapproved if the applicant has acted or attempted to act, or has held herself or himself out as entitled to act, during the period of 1 year next prior to the filing of the application, as a real estate broker or sales associate in the state in violation of this chapter. This paragraph may be deemed to bar any person from licensure who has performed any of the acts or services described in s. 475.01(3), unless exempt pursuant to s. 475.011, during a period of 1 year next preceding the filing of the application, or during the pendency of the application, and until a valid current license has been duly issued to the person, regardless of whether the performance of the act or service was done for compensation or valuable consideration.

(2)(a)1. In addition to other requirements under this part, the commission may require the satisfactory completion of one or more of the educational courses or equivalent courses conducted, offered, sponsored, prescribed, or approved pursuant to s. 475.04, taken at an accredited college, university, or community college, at a career center, or at a registered real estate school, as a condition precedent for any person to become licensed or to renew her or his license as a broker, broker associate, or sales associate. The course or courses required for one to become initially licensed shall not exceed a total of 63 classroom hours of 50 minutes each, inclusive of examination, for a sales associate and 72 classroom hours of 50 minutes each, inclusive of examination, for a broker. The satisfactory completion of an examination administered by the accredited college, university, or community college, by a career center, or by the registered real estate school shall be the basis for determining satisfactory completion of the course. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 8 classroom hours.

2. A distance learning course or courses shall be approved by the commission as an option to classroom hours as satisfactory completion of the course or courses as required by this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both. However, satisfactory completion of a distance learning course requires the satisfactory completion of a timed distance learning course examination. Such examination shall not be required to be monitored or given at a centralized location.

3. Such required course or courses must be made available by correspondence or other suitable means to any person who, by reason of hardship, as defined by rule, cannot attend the place or places where the course or courses are regularly conducted or does not have access to the distance learning course or courses.

(b) A person may not be licensed as a real estate broker unless, in addition to the other requirements of law, the person has held:

1. An active real estate sales associate's license for at least 24 months during the preceding 5 years in the office of one or more real estate brokers licensed in this state or any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction;
2. A current and valid real estate sales associate's license for at least 24 months during the preceding 5 years in the employ of a governmental agency for a salary and performing the duties authorized in this part for real estate licensees; or
3. A current and valid real estate broker's license for at least 24 months during the preceding 5 years in any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction.

(c) A person who has been licensed as a real estate sales associate in Florida during the preceding 5 years may not be licensed as a real estate broker unless, in addition to the other requirements of law, she or he has completed the sales associate postlicensure educational requirements, if these requirements have been prescribed by the commission pursuant to paragraph (3)(a).

(3)(a) The commission may prescribe a postlicensure education requirement in order for a person to maintain a valid sales associate's license, which shall not exceed 45 classroom hours of 50 minutes each, inclusive of examination, prior to the first renewal following initial licensure. If prescribed, this shall consist of one or more commission-approved courses which total at least 45 classroom hours on one or more subjects which include, but are not limited to, property management, appraisal, real estate finance, the economics of real estate management, marketing, technology, sales and listing of properties, business office management, courses teaching practical real estate application skills, development of business plans, marketing of property, and time management. Required postlicensure education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.

(b) Satisfactory completion of the postlicensure education requirement is demonstrated by successfully meeting all standards established for the commission-prescribed or commission-approved institution or school. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 10 percent of the required classroom hours or has not satisfactorily completed a timed distance learning course examination.

(c) The license of any sales associate who does not complete the postlicensure education requirement prior to the first renewal following initial licensure shall be considered null and void. Such person wishing to again operate as a real estate sales associate must requalify by satisfactorily completing the sales associate's prelicensure course and passing the state examination for licensure as a sales associate.

(d) A sales associate who is required to complete any postlicensure education requirement must complete any postlicensure education requirement and hold a current and valid license in order to be eligible for licensure as a broker.

(4)(a) The commission may prescribe a postlicensure education requirement in order for a person to maintain a valid broker's license, which shall not exceed 60 classroom hours of 50 minutes each, inclusive of examination, prior to the first renewal following initial licensure. If prescribed, this shall consist of one or more commission-approved courses which total at least 60 classroom hours on one or more subjects which include, but are not limited to, advanced appraisal, advanced property management, real estate marketing, business law, advanced real estate investment analyses, advanced legal aspects, general accounting, real estate economics, syndications, commercial brokerage, feasibility analyses, advanced real estate finance, residential brokerage, advanced marketing, technology, advanced business planning, time management, or real estate brokerage office operations. Required postlicensure education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.

(b) Satisfactory completion of the postlicensure education requirement is demonstrated by success-

fully meeting all standards established for the commission-prescribed or commission-approved institution or school. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 10 percent of the required classroom hours or has not satisfactorily completed a timed distance learning course examination.

(c) The license of any broker who does not complete the postlicensure education requirement prior to the first renewal following initial licensure shall be considered null and void. If the licensee wishes to operate as a sales associate, she or he may be issued a sales associate's license after providing proof that she or he has satisfactorily completed the 14-hour continuing education course within the 6 months following expiration of her or his broker's license. To operate as a broker, the licensee must requalify by satisfactorily completing the broker's prelicensure course and passing the state examination for licensure as a broker.

(5)(a) The commission may allow an additional 6-month period after the first renewal following initial licensure for completing the postlicensure education courses for sales associates and brokers who cannot, due to individual physical hardship, as defined by rule, complete the courses within the required time.

(b) Except as provided in subsection (4), sales associates and brokers are not required to meet the 14-hour continuing education requirement prior to the first renewal following initial licensure.

(c)1. A distance learning course or courses shall be approved by the commission as an option to classroom hours as satisfactory completion of the postlicensure education course or courses as required by this section. The schools or sponsors authorized by this section have the option of providing classroom courses, distance learning courses, or both. However, satisfactory completion of a distance learning postlicensure education course or courses requires the satisfactory completion of a timed distance learning course examination. Such examination shall not be required to be monitored or given at a centralized location.

2. The commission shall provide for postlicensure education courses to be made available by correspondence or other suitable means to any person who, by reason of hardship, as defined by rule, cannot attend the place or places where courses are regularly conducted or does not have access to the distance learning courses.

(6) The postlicensure education requirements of this section, and the education course requirements for one to become initially licensed, do not apply to any applicant or licensee who has received a 4-year degree, or higher, in real estate from an accredited institution of higher education.

(7) The commission may not approve prelicensure or postlicensure distance learning courses for brokers, broker associates, and sales associates by correspondence methods, except in instances of hardship pursuant to subparagraphs (2)(a)3. and (5)(c)2.

History.—s. 18, ch. 12223, 1927; CGL 4079; s. 1, ch. 24090, 1947; s. 1, ch. 57-244; s. 2, ch. 59-200; ss. 2, 3, ch. 69-378; s. 1, ch. 74-343; s. 1, ch. 75-106; s. 1, ch. 75-117; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-238; s. 1, ch. 77-457; ss. 11, 42, 43, ch. 79-239; s. 206, ch. 79-400; ss. 2, 4, 5, ch. 80-405; ss. 2, 3, ch. 81-318; ss. 13, 38, ch. 82-1; s. 57, ch. 83-329; ss. 8, 28, 30, ch. 88-20; s. 26, ch. 88-392; s. 1, ch. 89-76; s. 13, ch. 90-228; s. 13, ch. 90-341; s. 16, ch. 90-345; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 6, ch. 93-62; s. 6, ch. 93-261; s. 137, ch. 94-119; s. 365, ch. 97-103; s. 1, ch. 98-116; s. 4, ch. 98-250; s. 1, ch. 2002-9; s. 27, ch. 2003-164; s. 51, ch. 2004-357; s. 26, ch. 2008-240; s. 2, ch. 2015-54.

475.175 Examinations.—(1) A person shall be entitled to take the license examination to practice in this state if the person:

(a) Submits to the department the appropriate signed or electronically authenticated application, digital fingerprint data, and fee. The digital fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprints to determine if the applicant has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprints to

determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for examination.

(b) Submits at the time of examination the certificate specified in subsection (2), the examination admissions authorization letter, and proof of identification.

(2) Each accredited college, university, community college, or registered real estate school shall notify the commission of the names of all persons who have satisfactorily completed the educational requirements provided for in s. 475.17(2), (3), and (4) in a manner prescribed by the commission. Furthermore, each such educational institution shall provide to each person satisfactorily completing the educational requirements provided for in s. 475.17(2), (3), and (4) a certificate as proof of such satisfactory completion.

History.—ss. 12, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 14, 38, ch. 82-1; s. 58, ch. 83-329; ss. 9, 28, 30, ch. 88-20; s. 14, ch. 90-228; s. 14, ch. 90-341; s. 17, ch. 90-345; s. 4, ch. 91-429; s. 366, ch. 97-103; s. 141, ch. 99-251; s. 28, ch. 2003-164; s. 16, ch. 2009-195; s. 36, ch. 2010-106.

475.180 Nonresident licenses.—(1) Notwithstanding the prelicensure requirements set forth under ss. 475.17(2) and (6) and 475.175, the commission in its discretion may enter into written agreements with similar licensing authorities of other states, territories, or jurisdictions of the United States or foreign national jurisdictions to ensure for Florida licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this section. Whenever the commission determines that another jurisdiction does not offer nonresident licensure to Florida licensees substantially comparable to those afforded to licensees of that jurisdiction by this section, the commission shall require licensees of that jurisdiction who apply for nonresident licensure to meet education, experience, and examination requirements substantially comparable to those required by that jurisdiction with respect to Florida licensees who seek nonresident licensure, not to exceed such requirements as prescribed in ss. 475.17(2) and (6) and 475.175.

(2)(a) Any resident licensee who becomes a nonresident shall, within 60 days, notify the commission of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.25.

(b) All nonresident applicants and licensees shall comply with all requirements of commission rules and this part. The commission may adopt rules necessary for the regulation of nonresident licensees. History.—s. 138, ch. 94-119; s. 367, ch. 97-103; s. 12, ch. 98-246; s. 10, ch. 2012-208.

475.181 Licensure.—(1) The department shall license any applicant whom the commission certifies, pursuant to subsection (2), to be qualified to practice as a broker or sales associate.

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25. The application shall expire 2 years after the date received if the applicant does not pass the appropriate examination. Additionally, if an applicant does not pass the licensing examination within 2 years after the successful course completion date, the applicant's successful course completion is invalid for licensure.

(3) The department may not issue a license to any applicant who is under investigation in any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction for any act that would constitute a violation of this part or chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.—ss. 13, 42, ch. 79-239; s. 351, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 15, 38, ch. 82-1; s. 59, ch. 83-329; ss. 27, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 7, ch. 93-261; s. 139, ch. 94-119; s. 4, ch. 94-337; s. 122, ch. 98-166; s. 3, ch. 99-384; s. 182, ch. 2000-160; s. 29, ch. 2003-164; s. 2, ch. 2006-210.

475.182 Renewal of license; continuing education.—(1)(a) The department shall renew a license upon receipt of the renewal application and fee. The renewal application for an active license as broker, broker associate, or sales associate shall include proof satisfactory to the commission that the licensee has, since the issuance or renewal of her or his current license, satisfactorily completed at least 14 classroom hours of 50 minutes each of a continuing education course during each biennium of a license period, as prescribed by the commission. Approval or denial of a specialty course must be based on the extent to which the course content focuses on real estate issues relevant to the modern practice of real estate by a real estate licensee, including technology used in the real estate industry. The commission may accept as a substitute for such continuing education course, on a classroom-hour-for-classroom-hour basis, any satisfactorily completed education course that the commission finds is adequate to educate licensees within the intent of this section, including an approved distance learning course. However, the commission may not require, for the purpose of satisfactorily completing an approved correspondence or distance learning course, a written examination that is to be taken at a centralized location and is to be monitored.

(b) The commission may accept as a substitute for 3 classroom hours, one time per renewal cycle, attendance at one legal agenda session of the commission. In order to obtain credit, the licensee must notify the division at least 7 days in advance of his or her intent to attend. A licensee may not earn any continuing education credit for attending a legal agenda session of the commission as a party to a disciplinary action.

(2) The department shall adopt rules establishing a procedure for the renewal of licenses at least every 4 years.

(3) Any license that is not renewed at the end of the license period prescribed by the department shall automatically revert to involuntarily inactive status. Such license may subsequently be renewed only if the licensee meets the other qualifications specified in s. 475.183.

(4) Sixty days before the end of the license period and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

History.—ss. 14, 42, ch. 79-239; ss. 2, 5, ch. 80-307; ss. 2, 3, ch. 81-318; ss. 16, 38, ch. 82-1; ss. 32, 45, ch. 82-179; s. 93, ch. 83-218; ss. 10, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 8, ch. 93-261; s. 140, ch. 94-119; s. 5, ch. 94-337; s. 368, ch. 97-103; s. 2, ch. 2002-9; s. 30, ch. 2003-164; s. 5, ch. 2007-86.

475.183 Inactive status.—(1) A license which has become voluntarily inactive may be renewed pursuant to s. 475.182 upon application to the department. The commission shall prescribe by rule continuing education requirements, not to exceed 12 classroom hours for each year the license was inactive, as a condition of renewing a voluntarily inactive license. The commission shall substitute for such continuing education requirements, on a classroom-hour-for-classroom-hour basis, any satisfactorily completed education course approved in the manner specified in s. 475.182(1). A person whose license is voluntarily inactive and who renews the license may elect to continue her or his voluntarily inactive status.

(2)(a) A licensee may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing at least 14 hours of a commission-prescribed continuing education course. Notwithstanding the provisions of s. 455.271, a licensee may reactivate a license that has been involuntarily inactive for more than 12 months but fewer than 24 months by satisfactorily completing 28 hours of a commission-prescribed education course.

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

(3) The commission shall adopt rules relating to voluntarily inactive and involuntarily inactive licenses, and for the renewal of such licenses.

(4) The commission may reinstate the license of an individual whose license has become void if the commission determines that the individual failed to comply because of illness or economic hardship, as defined by rule. The individual must apply to the commission for reinstatement within 6 months after the date that the license becomes void. Such individual must meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this section.

History.—ss. 15, 42, ch. 79-239; s. 352, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 17, 38, ch. 82-1; ss. 33, 45, ch. 82-179; s. 108, ch. 83-329; ss. 11, 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 369, ch. 97-103; s. 5, ch. 98-250; s. 3, ch. 2006-210; s. 3, ch. 2015-54.

475.215 Multiple licenses.—(1) A licensed broker may be issued upon request additional licenses as a broker, but not as a sales associate or as a broker associate, whenever it is clearly shown that the requested additional licenses are necessary to the conduct of real estate brokerage business and that the additional licenses will not be used in a manner likely to be prejudicial or harmful to any person, including a licensee under this chapter. The commission may also deny a multiple license request pursuant to s. 475.17(1)(a). A final order of discipline rendered against a broker for a violation of this part or s. 455.227(1) applies to the primary license of the broker as well as any multiple licenses held by that broker at the time the final order becomes effective.

(2) A sales associate or broker associate shall have no more than one registered employer at any one time.

History.—ss. 20, 45, ch. 82-179; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 9, ch. 93-261; s. 31, ch. 2003-164; s. 1, ch. 2013-144.

475.22 Broker to maintain office and sign at entrance of office; registered office outside state; broker required to cooperate in investigation.—(1) Each active broker shall maintain an office, which shall consist of at least one enclosed room in a building of stationary construction. Each active broker shall maintain a sign on or about the entrance of her or his principal office and each branch office, which sign may be easily observed and read by any person about to enter such office. Each sign must contain the name of the broker, together with the trade name, if any. For a partnership or corporation, the sign must contain the name of the firm or corporation or trade name of the firm or corporation, together with the name of at least one of the brokers. At a minimum, the words “licensed real estate broker” or “lic. real estate broker” must appear on the office entrance signs.

(2) If a broker’s registered office is located outside the State of Florida, prior to registering such office or branch office, the broker shall agree in writing to cooperate and shall cooperate with any investigation initiated in accordance with this chapter or commission rules including, but not limited to, the broker promptly supplying any documents requested by any authorized representative of the department and by personally appearing at any designated office of the department or other location in the state or elsewhere as reasonably requested by the department. If the department sends, by certified mail to the broker at the broker’s last known business address as registered with the department, a notice or request to produce any documents or to appear for an interview with an authorized representative of the department and the broker fails to substantially comply with that request or notice, then such failure by the broker is a violation of the license law, subject to the penalties of s. 475.25.

History.—s. 23, ch. 12223, 1927; CGL 4084; s. 3, ch. 76-168; s. 2, ch. 77-355; s. 1, ch. 77-457; ss. 16, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 18, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-289; s. 4, ch. 91-429; s. 370, ch. 97-103; s. 32, ch. 2003-164.

475.23 License to expire on change of address.—A license shall cease to be in force whenever a broker changes her or his business address, a real estate school operating under a permit issued pursuant to s. 475.451 changes its business address, or a sales associate working for a broker or an instructor working for a real estate school changes employer. The licensee shall notify the commission of the change no later than 10 days after the change, on a form provided by the commission. When a broker or a real estate school changes business address, the brokerage firm or school permitholder must file with the commission a notice of the change of address, along with the names of any sales associates or instructors who are no longer employed by the brokerage or school. Such notification shall also fulfill the change of address notification requirements for sales associates who remain employed by the brokerage and instructors who remain employed by the school.

History.—s. 24, ch. 12223, 1927; CGL 4085; s. 4, ch. 29983, 1955; s. 2, ch. 74-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-366; ss. 17, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 19, 38, ch. 82-1; s. 60, ch. 83-329; ss. 12, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 10, ch. 93-261; s. 371, ch. 97-103; s. 33, ch. 2003-164.

475.24 Branch office; fees.—Whenever any licensee desires to conduct business at some other location, either in the same or a different municipality or county than that in which she or he is licensed, such other place of business shall be registered as a branch office, and an annual registration fee prescribed by the commission, in an amount not exceeding \$50, shall be paid for each such office. It shall be necessary to maintain and register a branch office whenever, in the judgment of the commission, the business conducted at a place other than the principal office is of such a nature that the public interest requires registration of the branch office. Any office shall be deemed to be a branch office if the name or advertising of a broker having a principal office located elsewhere is displayed in such a manner as to reasonably lead the public to believe that such office is owned or operated by such broker.

History.—s. 25, ch. 12223, 1927; CGL 4086; s. 3, ch. 74-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-366; ss. 18, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 20, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 51, ch. 89-162; s. 4, ch. 91-429; s. 372, ch. 97-103.

475.25 Discipline.—(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(a) Has violated any provision of s. 455.227(1) or s. 475.42. However, licensees under this part are exempt from the provisions of s. 455.227(1)(i).

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

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

this paragraph.

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

- a. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;
- b. With the consent of all parties, submit the matter to arbitration;
- c. By interpleader or otherwise, seek adjudication of the matter by a court; or
- d. With the written consent of all parties, submit the matter to mediation. The department may conduct mediation or may contract with public or private entities for mediation services. However, the mediation process must be successfully completed within 90 days following the last demand or the licensee shall promptly employ one of the other escape procedures contained in this section. Payment for mediation will be as agreed to in writing by the parties. The department may adopt rules to implement this section.

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

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

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

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

(g) Has had a broker's or sales associate's license revoked, suspended, or otherwise acted against, or has had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country. (h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of

this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a). For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state.

- (i) Has become temporarily incapacitated from acting as a broker or sales associate with safety to investors or those in a fiduciary relation with her or him because of drunkenness, use of drugs, or temporary mental derangement; but suspension of a license in such a case shall be only for the period of such incapacity.
- (j) Has rendered an opinion that the title to any property sold is good or merchantable, except when correctly based upon a current opinion of a licensed attorney at law, or has failed to advise a prospective purchaser to consult her or his attorney on the merchantability of the title or to obtain title insurance.
- (k) Has failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as a broker in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in this state, or to deposit such funds in a trust or escrow account maintained by her or him with some bank, credit union, or savings and loan association located and doing business in this state, wherein the funds shall be kept until disbursement thereof is properly authorized; or has failed, if a sales associate, to immediately place with her or his registered employer any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as agent of the registered employer. The commission shall establish rules to provide for records to be maintained by the broker and the manner in which such deposits shall be made. A broker may place and maintain up to \$5,000 of personal or brokerage funds in the broker's property management escrow account and up to \$1,000 of personal or brokerage funds in the broker's sales escrow account. A broker shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. It is the intent of the Legislature that, in the event of legal proceedings concerning a broker's escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.
- (l) Has made or filed a report or record which the licensee knows to be false, has willfully failed to file a report or record required by state or federal law, has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing; but such reports or records shall include only those which are signed in the capacity of a licensed broker or sales associate.
- (m) Has obtained a license by means of fraud, misrepresentation, or concealment.
- (n) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; is under home confinement ordered in lieu of institutional confinement; or, through mental disease or deterioration, can no longer safely be entrusted to competently deal with the public.
- (o) Has been found guilty, for a second time, of any misconduct that warrants her or his suspension or has been found guilty of a course of conduct or practices which show that she or he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom she or he may sustain a confidential relation, may not safely be entrusted to her or him.
- (p) Has failed to inform the commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.
- (q) Has violated any provision of s. 475.2755 or s. 475.278, including the duties owed under those sections.
- (r) Has failed in any written listing agreement to include a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal(s); and has

failed to give the principal(s) a legible, signed, true and correct copy of the listing agreement within 24 hours of obtaining the written listing agreement. The written listing agreement shall contain no provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.

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

(t) Has violated any standard of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in s. 475.611. This paragraph does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

(u) Has failed, if a broker, to direct, control, or manage a broker associate or sales associate employed by such broker. A rebuttable presumption exists that a broker associate or sales associate is employed by a broker if the records of the department establish that the broker associate or sales associate is registered with that broker. A record of licensure which is certified or authenticated in such form as to be admissible in evidence under the laws of the state is admissible as prima facie evidence of such registration.

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

(2) A license may be revoked or canceled if it was issued through the mistake or inadvertence of the commission. Such revocation or cancellation shall not prejudice any subsequent application for licensure filed by the person against whom such action was taken.

(3) The department shall reissue the license of a licensee against whom disciplinary action was taken upon certification by the commission that the licensee has complied with all of the terms and conditions of the final order imposing discipline.

(4) The commission may adopt rules allowing the director of the Division of Real Estate to grant to a licensee placed on probation additional time within which to complete the terms of probation, but the rules must allow the licensee to appeal any denial to the commission.

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

(6) The department or commission shall promptly notify a licensee's broker or employer, as defined in this part, in writing, when a formal complaint is filed against the licensee alleging violations of this chapter or chapter 455. The department shall not issue a notification to the broker or employer until 10 days after a finding of probable cause has been found to exist by the probable cause panel or by the department, or until the licensee waives his or her privilege of confidentiality under s. 455.225, whichever occurs first.

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

History.—s. 26, ch. 12223, 1927; CGL 4087; s. 3, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; s. 5, ch. 29983, 1955; s. 1, ch. 61-108; ss. 1, 2, ch. 70-421; s. 3, ch. 75-112; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-117; s. 9, ch. 78-366; ss. 19, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 21, 38, ch. 82-1; ss. 21, 45, ch. 82-179; s. 61, ch. 83-329; ss. 13, 28, 30, ch. 88-20; s. 2, ch. 89-76; s. 15, ch. 90-228; s. 15, ch. 90-341; s. 18, ch. 90-345; s. 5, ch. 91-89; s. 5, ch. 91-289; s. 4, ch. 91-429; s. 147, ch. 92-149; ss. 10, 141, ch. 94-119; s. 3, ch. 94-337; s. 2, ch. 97-42; s. 373, ch. 97-103; s. 2, ch. 98-116; s. 123, ch. 98-166; s. 6, ch. 98-250; s. 4, ch. 99-384; s. 183, ch. 2000-160; s. 1, ch. 2000-198; s. 1, ch. 2001-274; s. 34, ch. 2003-164; s. 4, ch.

2006-210; s. 56, ch. 2009-195; s. 47, ch. 2010-106; s. 10, ch. 2012-61.

475.255 Determination of agency or transactional brokerage relationship.—Without consideration of the related facts and circumstances, the mere payment or promise to pay compensation to a licensee does not determine whether an agency or transactional brokerage relationship exists between the licensee and a seller, landlord, buyer, or tenant.

History.—s. 142, ch. 94-119.

475.2701 Short title.—Sections 475.2701-475.2801 may be cited as the “Brokerage Relationship Disclosure Act.”

History.—s. 3, ch. 97-42.

475.272 Purpose.—In order to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions, the Legislature finds that the intent of the Brokerage Relationship Disclosure Act is to provide that:

- (1) Disclosed dual agency as an authorized form of representation by a real estate licensee in this state is expressly revoked;
- (2) Disclosure requirements for real estate licensees relating to authorized forms of brokerage representation are established;
- (3) Single agents may represent either a buyer or a seller, but not both, in a real estate transaction; and
- (4) Transaction brokers provide a limited form of nonfiduciary representation to a buyer, a seller, or both in a real estate transaction.

History.—s. 3, ch. 97-42; s. 8, ch. 98-250; s. 5, ch. 99-384.

475.274 Scope of coverage.—The authorized brokerage relationships described in ss. 475.2755 and 475.278 apply in all brokerage activities as defined in s. 475.01(1)(a). The disclosure requirements of s. 475.278 apply only to residential sales as defined in s. 475.278(5)(a).

History.—s. 3, ch. 97-42; s. 9, ch. 98-250; s. 6, ch. 99-384.

475.2755 Designated sales associate.—(1) For purposes of this part, in any real estate transaction other than a residential sale as defined in s. 475.278(5)(a), and where the buyer and seller have assets of \$1 million or more, the broker at the request of the customers may designate sales associates to act as single agents for different customers in the same transaction. Such designated sales associates shall have the duties of a single agent as outlined in s. 475.278(3), including disclosure requirements in s. 475.278(3)(b) and (c). In addition to disclosure requirements in s. 475.278(3)(b) and (c), the buyer and seller as customers shall both sign disclosures stating that their assets meet the threshold described in this subsection and requesting that the broker use the designated sales associate form of representation. In lieu of the transition disclosure requirement in s. 475.278(3)(c)2., the required disclosure notice shall include the following:

FLORIDA LAW PROHIBITS A DESIGNATED SALES ASSOCIATE FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALES ASSOCIATE IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT

USE SUCH INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.

(2) For purposes of this section, the term “buyer” means a transferee or lessee in a real property transaction, and the term “seller” means the transferor or lessor in a real property transaction.

History.—s. 10, ch. 98-250; s. 7, ch. 99-384; s. 35, ch. 2003-164.

475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.—(1) BROKERAGE RELATIONSHIPS.—

(a) *Authorized brokerage relationships.*—A real estate licensee in this state may enter into a brokerage relationship as either a transaction broker or as a single agent with potential buyers and sellers. A real estate licensee may not operate as a disclosed or nondisclosed dual agent. As used in this section, the term “dual agent” means a broker who represents as a fiduciary both the prospective buyer and the prospective seller in a real estate transaction. This part does not prevent a licensee from changing from one brokerage relationship to the other as long as the buyer or the seller, or both, gives consent as required by subparagraph (3)(c)2. before the change and the appropriate disclosure of duties as provided in this part is made to the buyer or seller. This part does not require a customer to enter into a brokerage relationship with any real estate licensee.

(b) *Presumption of transaction brokerage.*—It shall be presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer.

(2) **TRANSACTION BROKER RELATIONSHIP.**—A transaction broker provides a limited form of representation to a buyer, a seller, or both in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent. The duties of the real estate licensee in this limited form of representation include the following:

- (a) Dealing honestly and fairly;
- (b) Accounting for all funds;
- (c) Using skill, care, and diligence in the transaction;
- (d) Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
- (e) Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
- (f) Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
- (g) Any additional duties that are mutually agreed to with a party.

(3) SINGLE AGENT RELATIONSHIP.—

(a) *Single agent—duties.*—The duties of a real estate licensee owed to a buyer or seller who engages the real estate licensee as a single agent include the following:

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

(b) *Disclosure requirements.*—

1. Single agent disclosure.—Duties of a single agent must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a single agent, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type.

2. Transition to transaction broker disclosure.—A single agent relationship may be changed to a transaction broker relationship at any time during the relationship between an agent and principal, provided the agent first obtains the principal's written consent to the change in relationship. This disclosure must be in writing to the principal either as a separate and distinct document or included as part of other documents such as a listing agreement or other agreements for representation. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in subparagraph (c)2. must be printed in uppercase and bold type.

(c) *Contents of disclosure.*—

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

SINGLE AGENT NOTICE

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

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

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

Date

Signature

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

CONSENT TO TRANSITION TO
TRANSACTION BROKER

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

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

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

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

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

(4) NO BROKERAGE RELATIONSHIP.—

(a) *No brokerage relationship—duties.*—A real estate licensee owes to a potential seller or buyer with whom the licensee has no brokerage relationship the following duties:

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

(b) *Disclosure requirements.*—Duties of a licensee who has no brokerage relationship with a buyer or seller must be fully described and disclosed in writing to the buyer or seller. The disclosure must be made before the showing of property. When incorporated into other documents, the required notice

must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a licensee that has no brokerage relationship with a buyer or seller, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase bold type.

(c) *Contents of disclosure.*—The notice required under paragraph (b) must include the following information in the following form:

NO BROKERAGE RELATIONSHIP NOTICE

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

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

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

(Date) (Signature)

(5) APPLICABILITY.—

(a) *Residential sales.*—The real estate licensee disclosure requirements of this section apply to all residential sales. As used in this subsection, the term “residential sale” means the sale of improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or fewer, or the sale of agricultural property of 10 acres or fewer.

(b) *Disclosure limitations.*—

1. The real estate disclosure requirements of this section do not apply when a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker; or when an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential buyer that the owner’s employee or single agent is acting on behalf of the owner, whether because of the location of the sales office or because of office signage or placards or identification badges worn by the owner’s employee or single agent.
2. The real estate licensee disclosure requirements of this section do not apply to: nonresidential transactions; the rental or leasing of real property, unless an option to purchase all or a portion of the property improved with four or fewer residential units is given; a bona fide “open house” or model home showing that does not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; unanticipated casual conversations between a licensee and a seller or buyer which do not involve eliciting confidential information, the execution of a contractual offer or agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; responding to general factual questions from a potential buyer or seller concerning properties that have been advertised for sale; situations in which a licensee’s communications with a potential buyer or seller are limited to providing general factual information, oral or written, about the qualifications, background, and services of the licensee or the licensee’s brokerage firm; auctions; appraisals; and dispositions of any interest in business enterprises or business opportunities, except for property with four or fewer residential units.

History.—s. 3, ch. 97-42; s. 12, ch. 98-250; s. 9, ch. 99-384; s. 2, ch. 2000-198; s. 36, ch. 2003-164; s. 79, ch.

475.28 Rules of evidence.—

(1) In all proceedings before the commission or the courts, civil or criminal, in which the payment, receipt, or expectation of a commission, compensation, or a valuable consideration is a necessary element of the offense, proof of the performance of the act, service, or condition for which such commission, compensation, or valuable consideration is required to be shown shall be prima facie evidence that such act, service, or condition was performed or existed for or in expectation of the payment or receipt of a commission, compensation, or a valuable consideration. If it is material to determine whether or not a party to any action, civil or criminal, is properly licensed, the burden of proof shall be on such party.

(2) Photostatic copies of any papers or documents may be introduced in lieu of the originals in any proceeding or prosecution under this chapter. The books of account and records of any person shall be admissible upon a showing that they were made in the regular course of business, without introducing the person who made the entries, the weight of such evidence to be decided by the court or commission.

History.—s. 30, ch. 12223, 1927; CGL 4091; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 20, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 22, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429.

475.2801 Rules.—The commission may adopt rules establishing disciplinary guidelines, notices of noncompliance, and citations for violations of ss. 475.2755 and 475.278.

History.—s. 3, ch. 97-42; s. 14, ch. 98-250; s. 10, ch. 99-384.

475.31 Final orders.—

(1) An order revoking or suspending the license of a broker shall automatically cause the licenses of all sales associates and broker associates registered with the broker, and, if a partnership or corporation, of all members, officers, and directors thereof to become involuntarily inactive, while the license of the broker is inoperative or until new employment or connection is secured.

(2) The commission may publish and distribute in such manner and form as it may prescribe any of its final orders or decisions made under this chapter, after they become final by lapse of time or upon affirmance on appeal, or opinions of appellate courts for the guidance of registrants and the public; and it may publish or withhold from publication the names and addresses of any parties concerned. This subsection shall not be construed to affect the operation of chapter 119.

History.—s. 33, ch. 12223, 1927; CGL 4094; s. 2, ch. 22861, 1945; s. 8, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 3, ch. 59-197; s. 3, ch. 76-168; s. 3, ch. 77-355; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 21, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 23, 38, ch. 82-1; ss. 14, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 11, ch. 93-261; s. 37, ch. 2003-164.

475.37 Effect of reversal of order of court or commission.—If the order of the court or commission denying a license or taking any disciplinary action against a licensee is finally reversed and set aside, the defendant shall be restored to her or his rights and privileges as a broker or sales associate as of the date of filing the mandate or a copy thereof with the commission. The matters and things alleged in the information shall not thereafter be reexamined in any other proceeding concerning the licensure of the defendant. If the inquiry concerned was in reference to an application for licensure, the application shall stand approved, and such application shall be remanded for further proceedings according to law.

History.—s. 40, ch. 12223, 1927; CGL 4101; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 22, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 24, 38, ch. 82-1; ss. 15, 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 12, ch. 93-261; s. 374, ch. 97-103; s. 38, ch. 2003-164.

475.38 Payment of costs.—The commission shall not be required to advance any fees or costs to any officer or witness, or to execute any bond in any proceeding in the courts, any general statute to the contrary notwithstanding, but in every case in which the commission is liable for any fees or costs, a voucher therefor shall be presented to the commission and, if approved, shall be audited and paid as are other expenses of the commission.

History.—s. 41, ch. 12223, 1927; CGL 4102; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 23, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 25, 38, ch. 82-1; ss. 16, 28, 30, ch. 88-20; s. 4, ch. 91-429.

475.41 Contracts of unlicensed person for commissions invalid.—No contract for a commission or compensation for any act or service enumerated in s. 475.01(3) is valid unless the broker or sales associate has complied with this chapter in regard to issuance and renewal of the license at the time the act or service was performed.

History.—s. 44, ch. 12223, 1927; CGL 4105; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 24, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 13, ch. 93-261; s. 39, ch. 2003-164.

475.42 Violations and penalties.—

(1) VIOLATIONS.—

(a) A person may not operate as a broker or sales associate without being the holder of a valid and current active license therefor. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, as provided in s. 775.083.

(b) A person licensed as a sales associate may not operate as a broker or operate as a sales associate for any person not registered as her or his employer.

(c) A broker may not employ, or continue in employment, any person as a sales associate who is not the holder of a valid and current license as sales associate; but a license as sales associate may be issued to a person licensed as an active broker, upon request and surrender of the license as broker, without a fee in addition to that paid for the issuance of the broker's active license.

(d) A sales associate may not collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer and with the express consent of the employer; and no real estate sales associate, whether the holder of a valid and current license or not, shall commence or maintain any action for a commission or compensation in connection with a real estate brokerage transaction against any person except a person registered as her or his employer at the time the sales associate performed the act or rendered the service for which the commission or compensation is due.

(e) A person may not commit any conduct or practice set forth in s. 475.25(1)(b), (c), (d), or (h).

(f) A person may not make any false affidavit or affirmation intended for use as evidence by or before the commission or a member thereof, or by any of its authorized representatives, nor may any person give false testimony under oath or affirmation to or before the commission or any member thereof in any proceeding authorized by this chapter.

(g) A person may not fail or refuse to appear at the time and place designated in a subpoena issued with respect to a violation of this chapter, unless because of facts that are sufficient to excuse appearance in response to a subpoena from the circuit court; nor may a person who is present before the commission or a member thereof or one of its authorized representatives acting under authority of this chapter refuse to be sworn or to affirm or fail or refuse to answer fully any question propounded by the commission, the member, or such representative, or by any person by the authority of such officer or appointee; nor may any person, so being present, conduct herself or himself in a disorderly, disrespectful, or contumacious manner.

(h) A person may not obstruct or hinder in any manner the enforcement of this chapter or the performance of any lawful duty by any person acting under the authority of this chapter or interfere with, intimidate, or offer any bribe to any member of the commission or any of its employees or any person

who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this chapter.

(i) A broker or sales associate may not place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose. However, nothing in this paragraph shall be construed to prohibit a broker or a sales associate from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.

(j) A person may not operate as a broker under a trade name without causing the trade name to be noted in the records of the commission and placed on the person's license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless such partnership or corporation is the holder of a valid current registration.

(k) A person may not knowingly conceal any information relating to violations of this chapter.

(l) A person may not undertake to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons without first being the holder of a valid and current license as a broker or sales associate pursuant to this chapter, except as provided in s. 475.011 and chapter 721.

(m) A broker or sales associate may not enter into any listing or other agreement regarding her or his services in connection with the resale of a timeshare period unless the broker or sales associate fully and fairly discloses all material aspects of the agreement to the owner of the timeshare period. Further, a broker or sales associate may not use any form of contract or purchase and sale agreement in connection with the resale of a timeshare period unless the contract or purchase and sale agreement fully and fairly discloses all material aspects of the timeshare plan and the rights and obligations of both buyer and seller. The commission is authorized to adopt rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this paragraph.

(n) A person may not disseminate or cause to be disseminated by any means any false or misleading information for the purpose of offering for sale, or for the purpose of causing or inducing any other person to purchase, lease, or rent, real estate located in the state or for the purpose of causing or inducing any other person to acquire an interest in the title to real estate located in the state.

(2) PENALTIES.—Any person who violates any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, it is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except when a different punishment is prescribed by this chapter. Nothing in this chapter shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

History.—s. 45, ch. 12223, 1927; CGL 8134; s. 11, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; s. 22, ch. 63-129; s. 418, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 25, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 26, 38, ch. 82-1; ss. 22, 45, ch. 82-179; s. 1, ch. 85-90; s. 1, ch. 85-101; ss. 17, 28, 30, ch. 88-20; s. 3, ch. 89-76; s. 3, ch. 89-368; s. 16, ch. 90-228; s. 16, ch. 90-341; s. 19, ch. 90-345; ss. 6, 10, ch. 91-89; s. 254, ch. 91-224; s. 7, ch. 91-289; s. 4, ch. 91-429; s. 14, ch. 93-261; s. 375, ch. 97-103; s. 40, ch. 2003-164; s. 3, ch. 2005-275; s. 6, ch. 2006-210; s. 11, ch. 2012-61.

475.43 Presumptions.—In all criminal cases, contempt cases, and other cases filed pursuant to this chapter, if a party has sold, leased, or let real estate, the title to which was not in the party when it was offered for sale, lease, or letting, or such party has maintained an office bearing signs that real estate is for sale, lease, or rental thereat, or has advertised real estate for sale, lease, or rental, generally, or describing property, the title to which was not in such party at the time, it shall be a presumption that such party was acting or attempting to act as a real estate broker, and the burden of proof shall be upon him or her to show that he or she was not acting or attempting to act as a broker or sales associate. All contracts, options, or other devices not based upon a substantial consideration, or that are otherwise employed to permit an unlicensed person to sell, lease, or let real estate, the beneficial title to which has not, in good faith, passed to such party for a substantial consideration, are hereby declared void and ineffective in all cases, suits, or proceedings had or taken under this chapter; however, this section shall not apply to irrevocable gifts, to unconditional contracts to purchase, or to options based upon a substantial consideration actually paid and not subject to any agreements to return or right of return reserved.

History.—s. 3, ch. 22861, 1945; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 27, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 15, ch. 93-261; s. 376, ch. 97-103; s. 41, ch. 2003-164.

475.451 Schools teaching real estate practice.—

(1) Each person, school, or institution, except approved and accredited colleges, universities, community colleges, and career centers in this state, which offers or conducts any course of study in real estate practice, teaches any course prescribed by the commission as a condition precedent to licensure or renewal of licensure as a broker or sales associate, or teaches any course designed or represented to enable or assist applicants for licensure as brokers or sales associates to pass examinations for such licensure shall, before commencing or continuing further to offer or conduct such course or courses, obtain a permit from the department and abide by the regulations imposed upon such person, school, or institution by this chapter and rules of the commission adopted pursuant to this chapter. The exemption for colleges, universities, community colleges, and career centers is limited to transferable college credit courses offered by such institutions.

(2) An applicant for a permit to operate a proprietary real estate school or to be an instructor for a proprietary real estate school or a state institution must meet the qualifications for practice set forth in s. 475.17(1) and the following minimal requirements:

(a) “School permitholder” means the individual who is responsible for directing the overall operation of a proprietary real estate school. A school permitholder must be the holder of a license as a broker, either active or voluntarily inactive, or must have passed an instructor’s examination approved by the commission. A school permitholder must also meet the requirements of a school instructor if actively engaged in teaching.

(b) “School instructor” means an individual who instructs persons in the classroom in noncredit college courses in a college, university, or community college or courses in a career center or proprietary real estate school.

1. Before commencing to provide such instruction, the applicant must certify the applicant’s competency and obtain an instructor permit by meeting one of the following requirements:

a. Hold a bachelor’s degree in a business-related subject, such as real estate, finance, accounting, business administration, or its equivalent and hold a valid broker’s license in this state.

b. Hold a bachelor’s degree, have extensive real estate experience, as defined by rule, and hold a valid broker’s license in this state.

c. Pass an instructor’s examination approved by the commission.

2. Any requirement by the commission for a teaching demonstration or practical examination must apply to all school instructor applicants.

3. The department shall renew an instructor permit upon receipt of a renewal application and fee.

The renewal application shall include proof that the permitholder has, since the issuance or renewal of the current permit, successfully completed a minimum of 7 classroom or distance learning hours of instruction in real estate subjects or instructional techniques, as prescribed by the commission. The commission shall adopt rules providing for the renewal of instructor permits at least every 2 years. A permit that is not renewed at the end of the permit period established by the department automatically reverts to involuntarily inactive status.

The department may require an applicant to submit names of persons having knowledge concerning the applicant and the enterprise; may propound interrogatories to such persons and to the applicant concerning the character of the applicant, including the taking of fingerprints for processing through the Federal Bureau of Investigation; and shall make such investigation of the applicant or the school or institution as it may deem necessary to the granting of the permit. If an objection is filed, it shall be considered in the same manner as objections or administrative complaints against other applicants for licensure by the department.

(3) It is unlawful for any person, school, or institution to offer the courses described in subsection (1) or to conduct classes in such courses, regardless of the number of pupils, whether by correspondence or otherwise, without first procuring a permit, or to guarantee that its pupils will pass any examinations required for licensure, or to represent that the issuance of a permit is any recommendation or endorsement of the person, school, or institution to which it is issued or of any course of instruction given thereunder.

(4) Any person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) The location of classes and frequency of class meetings and the provision of distance learning courses shall be in the discretion of the school offering real estate courses, so long as such courses conform to s. 475.17(2).

(6) Any course prescribed by the commission as a condition precedent to any person's becoming initially licensed as a sales associate may be taught in any real estate school through the use of a video tape of instruction by a currently permitted instructor from any such school or may be taught by distance learning pursuant to s. 475.17(2). The commission may require that any such video tape course have a single session of live instruction by a currently permitted instructor from any such school; however, this requirement shall not exceed 3 classroom hours. All other prescribed courses, except the continuing education course required by s. 475.182, shall be taught by a currently permitted school instructor personally in attendance at such course or by distance learning pursuant to s. 475.17. The continuing education course required by s. 475.182 may be taught by distance learning pursuant to s. 475.17 or by an equivalent correspondence course; however, any such correspondence course shall be required to have a final examination, prepared and administered by the school issuing the correspondence course. The continuing education requirements provided in this chapter do not apply to an attorney who is otherwise qualified under this chapter and who is a member in good standing of The Florida Bar.

(7) A permitholder under this section may be issued additional permits whenever it is clearly shown that the requested additional permits are necessary to the conduct of the business of a real estate school and that the additional permits will not be used in a manner likely to be prejudicial to any person, including a licensee or a permitholder under this chapter.

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

(9) A real estate school may offer any course through distance learning if the course complies with *s. 475.17.

History.—s. 1, ch. 57-817; s. 420, ch. 71-136; s. 3, ch. 76-168; ss. 3, 4, ch. 77-238; s. 1, ch. 77-457; s. 48, ch. 78-95; ss. 1, 3, ch. 78-244; s. 10, ch. 78-366; s. 129, ch. 79-164; ss. 28, 42, 43, ch. 79-239; ss. 1, 3, ch. 80-51; ss. 22, 24, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 27, 38, ch. 82-1; ss. 20, 23, 45, ch. 82-179; s. 95, ch. 83-218; s. 3, ch. 83-265; s. 62, ch. 83-329; ss. 18, 28, 30, ch. 88-20; s. 17, ch. 90-228; s. 17, ch. 90-341; s. 20, ch. 90-345; ss. 7, 10, ch. 91-89; s. 4, ch. 91-429; s. 16, ch. 93-261; s. 377, ch. 97-103; s. 15, ch. 98-250; s. 3, ch. 2002-9; s. 42, ch. 2003-164; s. 52, ch. 2004-357; s. 7, ch. 2006-210; s. 27, ch. 2008-240; s. 17, ch. 2009-195; s. 12, ch. 2012-61; s. 8, ch. 2012-72; s. 11, ch. 2012-208.

*Note.—As amended by s. 12, ch. 2012-61. The amendment by s. 8, ch. 2012-72, cited “s. 475.17(2)” instead of “s. 475.17.”

475.4511 Advertising by real estate schools.—(1) No person representing a real estate school offering and teaching real estate courses under this chapter shall make, cause to be made, or approve any statement, representation, or act, oral, written, or visual, in connection with the operation of the school, its affiliations with individuals or entities of courses offered, or any endorsement of such, if such person knows or believes, or reasonably should know or believe, the statement, representation, or act to be false, inaccurate, misleading, or exaggerated.

(2) A school shall not use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a real estate school, or of its representative, shall be based upon relevant facts and supported by evidence establishing their truth.

(3) No representative of any school or institution coming within the provisions of this chapter shall promise or guarantee employment or placement of any student or prospective student using information, training, or skill purported to be provided, or otherwise enhanced, by a course or school as an inducement to enroll in the school, unless such person offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student.

History.—s. 2, ch. 78-244; ss. 29, 42, 43, ch. 79-239; ss. 2, 3, ch. 80-51; ss. 2, 3, ch. 81-318; ss. 28, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 43, ch. 2003-164.

475.453 Rental information; contract or receipt; refund; penalty.—

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

(2) The commission may adopt a guideline for the form of the contract or receipt required to be provided by brokers or sales associates pursuant to the provisions of subsection (1).

(3)(a) Any person who violates any provision of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) In addition to the penalty prescribed in paragraph (a), the license of any broker or sales associate who participates in any rental information transaction which is in violation of the provisions of subsection (1) shall be subject to suspension or revocation by the commission in the manner prescribed by law.

History.—s. 1, ch. 78-214; ss. 31, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 30, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 108, ch. 91-224; s. 4, ch. 91-429; s. 17, ch. 93-261; s. 44, ch. 2003-164; s. 8, ch. 2006-210.

475.455 Exchange of disciplinary information.—The commission shall inform the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation of any disciplinary action the commission has taken against any of its licensees. The division shall inform the commission of any disciplinary action the division has taken against any broker or sales associate registered with the division.

History.—ss. 33, 42, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 32, 38, ch. 82-1; s. 2, ch. 85-60; ss. 28, 30, ch. 88-20; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 18, ch. 93-261; s. 143, ch. 94-119; s. 162, ch. 94-218; s. 45, ch. 2003-164; s. 28, ch. 2008-240.

475.482 Real Estate Recovery Fund.—There is created the Florida Real Estate Recovery Fund as a separate account in the Professional Regulation Trust Fund.

(1) The Florida Real Estate Recovery Fund shall be disbursed as provided in s. 475.484, on order of the commission, as reimbursement to any person, partnership, or corporation adjudged by a court of competent civil jurisdiction in this state to have suffered monetary damages by reason of any act committed, as a part of any real estate brokerage transaction involving real property in this state, by any broker or sales associate who:

(a) Was, at the time the alleged act was committed, the holder of a current, valid, active real estate license issued under this part;

(b) Was neither the seller, buyer, landlord, or tenant in the transaction nor an officer or a director of a corporation, a member of a partnership, a member of a limited liability company, or a partner of a limited liability partnership which was the seller, buyer, landlord, or tenant in the transaction; and

(c) Was acting solely in the capacity of a real estate licensee in the transaction;

provided the act was a violation proscribed in s. 475.25 or s. 475.42.

(2) The Real Estate Recovery Fund shall also be disbursed as provided in s. 475.484, on order of the commission, as reimbursement to any broker or sales associate who is required by a court of competent civil jurisdiction to pay monetary damages due to a distribution of escrow moneys which is made in compliance with an escrow disbursement order issued by the commission. However, in no case shall the fund be disbursed when the broker or sales associate fails to notify the commission and to diligently defend an action wherein the broker or sales associate may be required by a court of competent civil jurisdiction to pay monetary damages due to a distribution of escrow moneys which is made in compliance with an escrow disbursement order issued by the commission.

(3) A fee of \$3.50 per year shall be added to the license fee for both new licenses and renewals of licenses for brokers, and a fee of \$1.50 per year shall be added for new licenses and renewals of licenses for sales associates. This fee shall be in addition to the regular license fee and shall be deposited in or transferred to the Real Estate Recovery Fund. If the fund at any time exceeds \$1 million, collection of special fees for this fund shall be discontinued at the end of the licensing renewal cycle. Such special fees shall not be reimposed unless the fund is reduced below \$500,000 by disbursement made in accordance with this chapter.

(4) In addition, all moneys collected from fines imposed by the commission and collected by the department shall be transferred into the Real Estate Recovery Fund.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 34, 42, 43, ch. 79-239; ss. 3, 5, ch. 80-307; ss. 23, 24, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 33, 38, ch. 82-1; s. 3, ch. 83-265; ss. 20, 28, 30, ch. 88-20; s. 4, ch. 89-76; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 19, ch. 93-261; s. 144, ch. 94-119; s. 4, ch. 94-337; s. 7, ch. 98-250; s. 11, ch. 99-384; s. 46, ch. 2003-164.

475.483 Conditions for recovery; eligibility.—

(1) Any person is eligible to seek recovery from the Real Estate Recovery Fund if:

(a) Such person has received a final judgment in a court of competent civil jurisdiction in this state against an individual broker or sales associate in any action wherein the cause of action was based on a real estate brokerage transaction. If such person is unable to secure a final judgment against a

licensee due to the death of the licensee, the commission may waive the requirement for a final judgment. The filing of a bankruptcy petition by a broker or sales associate does not relieve a claimant from the obligation to obtain a final judgment against the licensee. In this instance, the claimant must seek to have assets involving the real estate transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent civil jurisdiction in this state. If, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee, the commission may waive the requirement for a final judgment.

(b) At the time the action was commenced, such person gave notice thereof to the commission by certified mail; except that, if no notice has been given to the commission, the claim can still be honored if, in the opinion of the commission, the claim is otherwise valid.

(c) A claim for recovery is made within 2 years from the time of the act giving rise to the claim or within 2 years from the time the act is discovered or should have been discovered with the exercise of due diligence. In no event may a claim for recovery be made more than 4 years after the date of the act giving rise to the claim.

(d)1. Such person has caused to be issued a writ of execution upon such judgment, and the person has executed an affidavit showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment; or

2. If such person is unable to comply with subparagraph 1. for a valid reason to be determined by the commission, such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by her or his search the person has discovered no property or assets or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment.

(e) Any amounts recovered by such person from the judgment debtor, or from any other source, have been applied to the damages awarded by the court.

(f) Such person is not a person who is precluded by this act from making a claim for recovery.

(g) Such person has executed an affidavit showing that the final judgment is not on appeal or, if it was the subject of an appeal, that the appellate proceedings have concluded and the outcome of the appeal.

(2) A person is not qualified to make a claim for recovery from the Real Estate Recovery Fund, if:

(a) Such person is the spouse of the judgment debtor or a personal representative of such spouse;

(b) Such person is a licensed broker or sales associate who acted as a single agent or transaction broker in the transaction that is the subject of the claim;

(c) Such person's claim is based upon a real estate transaction in which the licensed broker or sales associate was the owner of or controlled the property involved in the transaction; in which the licensee was dealing for the licensee's own account; or in which the licensee was not acting as a broker or sales associate;

(d) Such person's claim is based upon a real estate transaction in which the broker or sales associate did not hold a valid, current, and active license at the time of the real estate transaction; or

(e) The judgment is against a real estate brokerage corporation, partnership, limited liability company, or limited liability partnership.

(3) If the claim is of the type described in s. 475.482(2), the commission shall pay the defendant's reasonable attorney's fees and court costs and, if the plaintiff prevails in court, the plaintiff's reasonable attorney's fees and court costs.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 35, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 34, 38, ch. 82-1; s. 63, ch. 83-329; s. 2, ch. 85-90; ss. 21, 28, 30, ch. 88-20; s. 5, ch. 89-76; s.

18, ch. 90-228; s. 21, ch. 90-345; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 20, ch. 93-261; s. 145, ch. 94-119; s. 15, ch. 94-170; s. 4, ch. 94-337; s. 378, ch. 97-103; s. 12, ch. 99-384; s. 47, ch. 2003-164.

475.4835 Commission powers upon notification of commencement of action.—When the commission receives certified notice of any action, as required by s. 475.483(1)(b), the commission may intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review on behalf of the State of Florida.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 36, 42, ch. 79-239; s. 354, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 35, 38, ch. 82-1; ss. 22, 28, 30, ch. 88-20; s. 4, ch. 91-429.

475.484 Payment from the fund.—(1) Any person who meets all of the conditions prescribed in s. 475.482(1) or (2) may apply to the commission to cause payment to be made to such person from the Real Estate Recovery Fund:

(a) Under s. 475.482(1), in an amount equal to the unsatisfied portion of such person's judgment or \$50,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages. Except as provided in s. 475.483, treble damages, court costs, attorney's fees, and interest shall not be recovered from the fund.

(b) Under s. 475.482(2), in an amount equal to the judgment against the broker or sales associate or \$50,000, whichever is less.

(2) Upon receipt by a claimant under paragraph (1)(a) of payment from the Real Estate Recovery Fund, the claimant shall assign her or his additional right, title, and interest in the judgment, to the extent of such payment, to the commission, and thereupon the commission shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment by the commission, to the extent of the right, title, and interest of the commission therein, shall be for the purpose of reimbursing the Real Estate Recovery Fund.

(3) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to \$50,000, regardless of the number of claimants or parcels of real estate involved in the transaction.

(4) Payments for claims based upon judgments against any one broker or sales associate may not exceed, in the aggregate, \$150,000.

(5) If at any time the moneys in the Real Estate Recovery Fund are insufficient to satisfy any valid claim or portion thereof, the commission shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by the commission. However, if the total claims approved at any one commission meeting exceed the aggregate amount established in subsection (4) against any one broker or sales associate, the claims approved on that day shall be prorated.

(6) All payments and disbursements from the Real Estate Recovery Fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department.

(7) Upon the payment of any amount from the Real Estate Recovery Fund in settlement of a claim in satisfaction of a judgment against a broker or sales associate as described in s. 475.482(1), the license of such broker or sales associate shall be automatically suspended upon the date of payment from the fund. The license of such broker or sales associate may not be reinstated until the licensee has repaid in full, plus interest, the amount paid from the fund. No further administrative action is necessary. A discharge of bankruptcy does not relieve a licensee from the penalties and disabilities provided in this section, except to the extent that this subsection conflicts with 11 U.S.C. s. 525, in which case the commission may order the license not to be suspended or otherwise discriminated against.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 37, 42, 43, ch. 79-239; ss. 4, 5, ch. 80-307; ss. 2, 3, ch. 81-318; ss. 36, 38, ch. 82-1; s. 64, ch. 83-329; ss. 23, 28, 30, ch. 88-20; s. 6, ch. 89-76; s. 10, ch. 91-89; s. 4, ch. 91-429; s. 21, ch. 93-261; s. 146, ch. 94-119; s. 379, ch. 97-103; s. 17, ch. 98-250; s. 48, ch. 2003-164; s. 506, ch. 2003-261; s. 55, ch. 2005-152.

475.485 Investment of the fund.—The funds in the Real Estate Recovery Fund may be invested by the Chief Financial Officer under the same limitations as apply to investment of other state funds, and the interest earned thereon shall be deposited to the credit of the Real Estate Recovery Fund and shall be available for the same purposes as other moneys deposited in the Real Estate Recovery Fund.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 38, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 507, ch. 2003-261.

475.486 Rules; violations.—

(1) The commission shall adopt such rules as are necessary to effect the efficient administration of ss. 475.482-475.486.

(2) It is unlawful for any person or the person's agent to file with the commission any notice, statement, or other document required under the provisions of ss. 475.482-475.486 which is false or contains any material misstatement of fact. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 76-74; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 39, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 37, 38, ch. 82-1; ss. 28, 30, ch. 88-20; s. 4, ch. 91-429; s. 380, ch. 97-103.

475.5015 Brokerage business records.—Each broker shall keep and make available to the department such books, accounts, and records as will enable the department to determine whether such broker is in compliance with the provisions of this chapter. Each broker shall preserve at least one legible copy of all books, accounts, and records pertaining to her or his real estate brokerage business for at least 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker or, in the event no funds are entrusted to the broker, for at least 5 years from the date of execution by any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker. If any brokerage record has been the subject of or has served as evidence for litigation, relevant books, accounts, and records must be retained for at least 2 years after the conclusion of the civil action or the conclusion of any appellate proceeding, whichever is later, but in no case less than a total of 5 years as set above. Disclosure documents required under ss. 475.2755 and 475.278 shall be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.

History.—s. 20, ch. 90-228; s. 19, ch. 90-341; s. 23, ch. 90-345; s. 9, ch. 91-201; s. 6, ch. 91-289; s. 4, ch. 91-429; s. 4, ch. 97-42; s. 381, ch. 97-103; s. 18, ch. 98-250; s. 13, ch. 99-384.

475.5016 Authority to inspect and audit.—Duly authorized agents and employees of the department shall have the power to inspect and audit in a lawful manner at all reasonable hours any broker or brokerage office licensed under this chapter, for the purpose of determining if any of the provisions of this chapter, chapter 455, or any rule promulgated under authority of either chapter is being violated.

History.—s. 19, ch. 98-250.

475.5017 Injunctive relief; powers.—

(1) Appropriate civil action may be brought by the department in circuit court to enjoin a broker from engaging in, or continuing, a violation of this part or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound and appoint one or more receivers for the property and business of the broker, including books, papers, documents, and records pertaining thereto, or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through, or by means of, the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as is, from time to time, conferred upon her or him by the court. In any such action, the court may issue an order staying all pending civil actions and the court, in its discretion, may require that all civil actions be assigned to the circuit court judge who appointed the receiver.

(2) All expenses of the receiver shall be paid out of the assets of the brokerage firm upon application to and approval by the court. If the assets are not sufficient to pay all the expenses of the receiver, the court may order disbursement from the Real Estate Recovery Fund, which may not exceed \$100,000 per receivership.

History.—s. 21, ch. 90-228; s. 20, ch. 90-341; s. 24, ch. 90-345; s. 9, ch. 91-201; s. 4, ch. 91-429; s. 147, ch. 94-119; s. 382, ch. 97-103; s. 49, ch. 2003-164.

475.5018 Facsimile signatures or writing accepted.—When any act performed under this part must be performed in writing or acknowledged with a signature, the provision of an instrument or writing by electronic means or facsimile, including a signature transmitted by electronic means or facsimile, is binding and sufficient.

History.—s. 13, ch. 98-250.

Chapter 61J2, Florida Administrative Code Florida Real Estate Commission

CHAPTER 61J2-1 REGISTRATION DETAILS AND FEE STRUCTURE

- 61J2-1.011 License Fees and Examination Fees**
- 61J2-1.013 Registration Categories**
- 61J2-1.014 Inactive Renewal**
- 61J2-1.015 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions**
- 61J2-1.016 Review of Fees**

61J2-1.011 License Fees and Examination Fees.

(1) Every person, partnership, limited liability partnership, corporation or limited liability company deemed and held to be a licensee under Chapter 475, F.S., must register with the Florida Real Estate Commission (Commission) and must secure a license for each license period. (2) The application fee for licensure shall be as follows:

| | |
|---------------------|----------|
| Initial application | |
| Broker | \$ 20.00 |
| Sales Associate | \$ 20.00 |

(3) Effective July 1, 2014, the biennial license fee for an active licensee shall be:

| | |
|--------------------------|----------|
| Broker | \$ 72.00 |
| Sales Associate | \$ 64.00 |
| Branch office for Broker | \$ 64.00 |

(4) The fee and the time of payment for inactive license shall be the same as for an active license, as set forth in paragraph (3) of this rule; however, there is no inactive branch office.

(5) The following fees shall be charged for the following purposes:

(a) Change of Individual License to Professional Association or Professional Association to

| | |
|--------------------|----------|
| Individual License | \$ 30.00 |
|--------------------|----------|

(b) Checks returned due to insufficient funds or account closed:

| | |
|---|----------|
| face value does not exceed \$50.00 | \$ 25.00 |
| face value exceeds \$50.00 but does not exceed \$300.00 | \$ 30.00 |
| face value exceeds \$300.00 (Section 68.065, F.S.) | \$ 40.00 |
| or an amount up to 5% of the face amount of the check, whichever is greater | |

(c) Late fee

| | |
|--|----------|
| | \$ 45.00 |
|--|----------|

(6) The license fee for school related categories shall be as follows:

(a) Application for School Instructor

| | |
|--|----------|
| | \$ 20.00 |
|--|----------|

(b) Effective July 1, 2014, the biennial Permit Fees shall be:

| | |
|--------------------------------------|----------|
| School Permitholder | \$104.00 |
| Additional Location for Permitholder | \$ 45.00 |
| School Instructor | \$ 64.00 |

(7) Entity, sponsor, organization and individual equivalent education course offering:

| | |
|---|----------|
| For each application for approval of education offering | \$ 80.00 |
| For each biennial education course offering renewal | \$ 80.00 |

(8) Effective July 1, 2014, the initial application for registration of a corporation, partnership, limited liability company or limited liability partnership is:

| | |
|---|----------|
| Corporation, partnership, limited liability company or limited liability partnership | \$ 72.00 |
| Branch office for a corporation, partnership, limited liability company or limited liability partnership | \$ 64.00 |
| (9) Effective July 1, 2014, the biennial renewal of a corporation, partnership, limited liability company or limited liability partnership registration fee shall be: | |
| Corporation, partnership, limited liability company or limited liability partnership | \$ 72.00 |
| Branch office for a corporation, partnership, limited liability company or limited liability partnership | \$ 64.00 |
| (10) The fee for request for a change of examination date, which must be in writing, shall be: | |
| (a) Requests received by the examination vendor 3 or more days prior to the scheduled date | no fee |
| (b) Requests received by the examination vendor less than 3 days prior to the scheduled date | \$ 45.00 |

Rulemaking Authority 475.05 FS. Law Implemented 455.217, 455.2281, 475.04, 475.125, 475.15, 475.182, 475.24, 475.451 FS. History—New 10-10-79, Amended 1-1-80, 4-14-81, 9-13-82, 10-19-83, 8-12-84, 10-13-85, Formerly 21V-1.11, Amended 2-1-87, 1-1-88, 5-5-88, 10-13-88, 9-10-89, 1-4-90, 2-13-90, 3-27-90, 8-21-90, 10-9-90, 1-13-91, 8-19-91, 7-1-93, Formerly 21V-1.011, Amended 7-18-94, 12-17-95, 12-30-97, 1-19-99, 4-18-99, 2-24-00, 11-17-03, 3-8-05, 12-6-07, 8-18-08, 5-8-13, 6-29-14, 9-16-15.

61J2-1.013 Registration Categories.

(1) Registration in the following categories shall show the name, the business address, effective and expiration date:

- (a) Active broker partnership;
- (b) Active broker corporation;
- (c) Active Limited Liability Company;
- (d) Active Limited Liability Partnership;
- (e) Active Professional Limited Liability Company;
- (f) Active Professional Association; and
- (g) Branch office.

(2) An active real estate broker may serve in a non-brokerage capacity as an officer or director with a real estate corporation(s) or a partner in a real estate partnership(s) while maintaining an active license(s) with another real estate brokerage firm(s).

Rulemaking Authority 475.05 FS. Law Implemented 475.15, 475.183, 475.24 FS. History—New 1-1-80, Amended 7-19-83, Formerly 21V-1.13, Amended 6-28-93, Formerly 21V-1.013, Amended 1-18-00, 11-20-07.

61J2-1.014 Inactive Renewal.

(1) A voluntarily inactive licensee may elect to renew as inactive every two years by submitting a request to the Department of Business and Professional Regulation (DBPR), satisfying the required continuing education, and submitting the fee established in Rule 61J2-1.011, F.A.C.

(2) A renewal notice will be sent to the licensee’s address of record. If a licensee does not elect to renew, the status automatically shall revert to involuntarily inactive.

(3) An involuntarily inactive licensee may renew by submitting a request to the DBPR, complying with Rule 61J2-3.010, F.A.C., and submitting the current renewal fee in addition to any applicable late fee as established in Rule 61J2-1.011, F.A.C. When the total period of involuntary inactivity exceeds 2 years, the license shall automatically expire per Section 475.183(2), Florida Statutes. Ninety days prior to the expiration, the DBPR shall give notice to the involuntarily inactive licensee.

Rulemaking Authority 475.05, 475.183 FS. Law Implemented 475.183 FS. History—New 11-12-81, Formerly 21V-1.14, Amended 10-13-88, 6-28-93, Formerly 21V-1.014, Amended 10-25-98, 8-8-02, 10-8-08.

61J2-1.015 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.

A licensee who is the spouse of a member of the Armed Forces of the United States shall be exempt from all licensure renewal provisions under the Rules of the Commission as long as the member of the Armed Forces of the United States is on active duty and for a period of six months after the member's discharge from active duty with the Armed Forces, provided that said licensee is not engaged in the practice of real estate brokerage activity in the private sector for profit. This exemption shall only apply in cases of the licensee's absence from the state because of the member's duties with the Armed Forces.

Rulemaking Authority 120.53, 475.05, 475.42, 455.02(2) FS. Law Implemented 475.01, 475.25, 475.42, 475.421, 475.4511, 455.02(2) FS. History— New 3-14-85, Formerly 21V-1.15, Amended 6-28-93, Formerly 21V-1.015.

61J2-1.016 Review of Fees.

(1) No later than the end of September of each year the Commission shall review the fees in Rule 61J2-1.011, F.A.C., to ensure the fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance as required in Section 455.219(1), F.S., and defined in Rule 61-5.002, F.A.C.

(2) If it is determined the fees are not adequate to cover all anticipated costs and to maintain a reasonable cash balance then an increase in the appropriate fee(s) will be proposed or, in the alternative, a one-time fee pursuant to Section 455.219(2), F.S., will be assessed.

(3) If it is determined that there will be an amount in excess of the required reasonable cash balance, then the appropriate decrease in the fee(s) will be proposed.

Rulemaking Authority 475.05 FS. Law Implemented 455.219, 475.125 FS. History—New 2-15-96, Amended 1-18-00.

**CHAPTER 61J2-2
INDIVIDUAL APPLICANT'S EXAMINATION RULES**

61J2-2.0261 Refund of Applicant and Registration Fees

61J2-2.027 Applications by Individuals

61J2-2.029 Examination Areas of Competency

61J2-2.030 Notice of Denial

61J2-2.031 Where to Apply

61J2-2.032 Informal Hearings

61J2-2.0261 Refund of Applicant and Registration Fees.

Upon written request, refunds of fees will be made under the following circumstances and in the following amounts:

(1) The Commission shall refund to the applicant, or to the applicant's beneficiary, any portion of the application fee not expended in processing the application. Upon a request for refund, if applicant's license fee is refunded, applicant's application shall be considered null and void.

(2) Any fees accepted or collected in error, or in excess of that required, shall be refunded.

(3) In the event a licensee dies prior to the effective date of a renewal period, the full amount of the fee collected for the renewal of licensee's license shall be refunded to the beneficiary.

Rulemaking Authority 475.125, 475.05 FS. Law Implemented 475.125, 475.175, 475.182 FS. History—New 5-17-84, Formerly 21V-2.261, Amended 10-13-88, 7-20-93, Formerly 21V-2.0261.

61J2-2.027 Applications by Individuals.

The application of a natural person for active licensure, whether the applicant expects to operate alone, or as a partner, or with a corporation, or as a sales associate, is governed by substantially the same rules and forms.

(1) The applicant must meet necessary personal qualifications as follows:

(a) Is 18 years of age or older.

(b) If the application is for broker:

1. Has been registered as an active sales associate for at least 24 months during the preceding 5 years under one or more brokers;

2. Has held a current and valid real estate sales associate's license for at least 24 months during the preceding 5 years in the employ of a governmental agency for a salary and performing the duties authorized in Chapter 475, F.S.; or

3. Has held a current and valid real estate broker's license for at least 24 months during the preceding 5 years in any other state, territory, or jurisdiction of the United States, or in any foreign national jurisdiction.

(c) Hold a high school diploma or its equivalent.

(2) The applicant must make it possible to immediately begin the inquiry as to whether the applicant is honest, truthful, trustworthy, of good character, and bears a good reputation for fair dealings, and will likely make transactions and conduct negotiations with safety to investors and to those with whom the applicant may undertake a relation of trust and confidence. The applicant is required to disclose:

(a) Whether the applicant has ever been convicted or found guilty of, or entered a guilty plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction or if applicant is currently under criminal investigation;

(b) Whether the applicant has ever done business under any other name, or alias, than the name signed on the application, with sufficient information to enable the Commission to investigate the circumstances;

(c) Whether the applicant has had any license, registration or permit to practice any requested profession, occupation, vocation or business revoked, annulled, suspended, relinquished, surrendered or otherwise disciplined in Florida or in any other jurisdiction or if any such proceeding or investigation is now pending; and

(d) Whether the applicant has had an application for a real estate license denied in Florida or in any other jurisdiction or if there is a pending proceeding to deny such application.

(3) Each applicant must submit digital fingerprint data for processing to determine if the applicant has a criminal history record.

(4) All applicants for permits to instruct or be a permitholder for a real estate school must comply with Sections 475.451(2)(a) and (c), F.S.

Rulemaking Authority 475.05 FS. Law Implemented 475.17, 475.175, 475.451 FS., Georgia Association of Realtors, Inc., et al. v. Florida Real Estate Commission, et al., Civil Case No. 87-15-Orl-Civ-18 (M.D. Fla. 1987). History—New 1-1-80, Formerly 21V-2.27, Amended 4-10-88, 5-20-90, 1-13-91, 7-15-92, 7-20-93, Formerly 21V-2.027, Amended 11-10-97, 1-18-00, 11-26-03, 1-16-13.

61J2-2.029 Examination Areas of Competency.

The answers to the Broker, Sales Associate, and Instructor examination shall be graded on the basis of 100 points for a perfect examination. An applicant who receives a grade of 75 points or higher shall be deemed to have successfully completed the licensure examination. The sales associate examination shall be based upon a knowledge, understanding and application of real estate principles and practices, real estate law and real estate mathematics as contained in the Commission prescribed prerequisite education course syllabus for licensure as a real estate sales associate. To the extent these subject areas can reasonably be separated, 45 points shall be based on law, 45 points on

principles and practices and 10 points on real estate mathematics. The broker and instructor examinations shall be based upon a knowledge, understanding and application of real estate law, real estate principles and practices including appraising, finance, investment and brokerage management and real estate mathematics. To the extent these subject areas can reasonably be separated, 45 points shall be based on law, 40 points on principles and practices and 15 points on real estate mathematics.

Rulemaking Authority 475.05 FS. Law Implemented 455.217(1)(b) FS. History—New 1-1-80, Amended 4-13-81, Formerly 21V-2.29, Amended 6-28-93, Formerly 21V-2.029, Amended 1-18-00, 2-4-04, 8-18-08.

61J2-2.030 Notice of Denial.

When an application shall be denied by the Commission, a copy of the order shall be mailed to the applicant by registered or certified mail, or actual service, or constructive service in a manner as provided in Chapter 120, F.S., if service upon the applicant by registered or certified mail, or actual service, is not obtainable, setting forth the reasons for the denial and advising that the applicant has 21 days from date of receipt to request a hearing in accordance with Chapter 120, F.S.

Rulemaking Authority 475.05 FS. Law Implemented 475.181, 120.569, 120.57, 120.60 FS. History—New 1-1-80, Formerly 21V-2.30, Amended 6-28-93, Formerly 21V-2.030, Amended 11-10-97.

61J2-2.031 Where to Apply.

Completed applications for licensure shall be submitted to the Division of Real Estate online or at the address listed on the application.

Rulemaking Authority 475.05 FS. Law Implemented 475.175 FS. History—New 9-16-84, Formerly 21V-2.31, Amended 7-20-93, Formerly 21V-2.031, Amended 1-19-99, 11-26-03.

61J2-2.032 Informal Hearings.

When an applicant for licensure as a real estate sales associate or broker requests a Section 120.57(2), F.S., informal hearing before the Commission, in addition to other requirements of law, before the applicant shall be considered for approval to sit for the real estate examination, the applicant must submit at least 3 letters of reference from persons who know of the applicant's honesty, truthfulness, trustworthiness, good character and good reputation for fair dealing as required in Section 475.17(1)(a), F.S. At least 2 of the letters must be from individuals not related to the applicant.

Rulemaking Authority 475.05 FS. Law Implemented 475.17, 475.25 FS. History—New 5-7-95, Amended 2-4-04.

CHAPTER 61J2-3 MINIMUM EDUCATIONAL REQUIREMENTS

- 61J2-3.008 Pre-licensing Education for Broker and Sales Associate Applicants**
- 61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees**
- 61J2-3.010 License Reactivation Education for Brokers and Sales Associates**
- 61J2-3.011 Continuing Education for School Instructors**
- 61J2-3.012 Equivalency for Prelicensing Education**
- 61J2-3.013 Hardship Cases**
- 61J2-3.015 Notices of Satisfactory Course Completion**
- 61J2-3.016 Video Tape Quality Standards (Repealed)**
- 61J2-3.017 Video Tape Classroom Viewing Conditions (Repealed)**

61J2-3.020 Post-licensing Education for Active and Inactive Broker and Sales Associate Licensees

61J2-3.008 Pre-licensing Education for Broker and Sales Associate Applicants.

(1) Any persons desiring to become licensed as a real estate sales associate must satisfactorily complete the Commission-prescribed course designated as Course I. This course will consist of 63 hours of 50 minutes each, inclusive of examination, in the basic fundamentals of real estate principles and practices, basic real estate, and license law. This rule sets forth the course approval criteria and procedure.

(2) Any licensed sales associate desiring to become licensed as a broker must satisfactorily complete the Commission-prescribed course designated as Course II. This course will consist of 72 hours of 50 minutes each, inclusive of examination, in the fundamentals of real estate appraising, investment, financing, and brokerage and management operations.

(3)(a) Accredited universities, colleges, community colleges and area technical centers in this state that offer transferable college credit courses, or real estate schools registered pursuant to Section 475.451, F.S. ("school"), may offer these Commission-prescribed courses. Satisfactory completion of these courses will not entitle any person to receive a license as a real estate broker or sales associate until such person has met all other requirements of law and has passed the applicable Commission-approved state examination which DBPR administers.

(b) The school permit holder, permitted administrative person, or permitted instructor shall, assure necessary equipment performance and administer and certify student and course compliance.

(4)(a) A grade of 70% or higher on the Commission-prescribed end-of-course examination constitutes satisfactory course completion. The school shall administer the examination upon completion of the instruction, provided the student has not missed in excess of 8 hours of instruction.

(b) The school must submit to the Commission two complete copies of the course materials and end-of-course examinations; one submission must be blind. The school must also submit a copy of the course, and access to the course, in the format in which the student will use it. When delivered by distance education, the course and examination shall comply with the "Course Approval criteria" as follows:

1. Distance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed exams and similar assignments, designed to measure the student's competency relative to the required subject matter objectives. Distance learning study must be offered on a classroom hour per classroom hour basis.

2. Schools must demonstrate that the credit hours awarded for distance learning are appropriate to the course offered. The schools may accomplish this objective by demonstrating that students engaged in distance learning have acquired the knowledge, skills, and/or competencies that are at least equivalent to those acquired by students enrolled in classroom studies. Pre-licensure courses shall not be offered by correspondence methods, except by reason of a hardship as defined by rule.

a. The school must demonstrate that the technical processes used in the delivery of the course operate correctly and the instructional strategies its use supports.

b. The school must have in place alternative plans for the provision of uninterrupted learner services and technical support in the event of primary system failure.

c. The school must have policies and technical processes in place to verify and document student identity for enrollment, course participation and course completion.

d. Course submissions shall include a detailed course time-line, and the school shall make the time-line available to students prior to enrollment.

e. The school must present evidence by means of an objective study that the stated course hours are consistent with actual hours required to complete the course.

f. The school must describe in detail, the objective method used to insure students receive only the allotted time to complete the end-of-course examinations.

- g. The school must demonstrate that permitted instructors and technical staff are available during normal business hours for student assistance. Instructor and technical assistance must be made available to students and posted in a prominent location.
- h. Pre-licensing courses must conform to the Course I and Course II syllabus. Courses must include learning objective for each session of the syllabus. The course school must describe the method of assessment of the student's performance periodically throughout the course of instruction.
- i. End-of-course examinations shall not include aids such as, but not limited to, hint, back, or retry functionalities. The school must demonstrate that there is a reasonable method in place to prevent duplication of the end-of-course examination. Students shall not take the end-of-course examination without satisfactorily completing all sessions of the syllabus.
- j. The school must require the student to submit a statement that includes, "I certify that I personally completed all assignments and have not duplicated any portion of the end-of-course examination prior to the taking of the final examination." Thereafter, it is the responsibility of the school offering the Commission-approved courses to keep the course materials current and accurate, as changing times and laws require, and obtain approval from the Commission at least 60 days before implementing any significant changes to the course during its approval period. Approval or denial of a Commission-required pre-licensing course (Course I or Course II) will be based on the extent to which the course content covers the material set forth in the appropriate Commission-developed course syllabus, effective January 1, 2015 "Sales Associate Course Syllabus (Course I) and effective September 1, 1999 "Broker Course syllabus (Course II)", incorporated herein by reference and available at <http://www.flrules.org/Gateway/Reference.asp?No=Ref-05977> and <http://www.flrules.org/Gateway/Reference.asp?No=Ref-05978>. The institution or school may resubmit a denied course with the mandated changes for reevaluation.
- (c) The Commission will approve pre-licensure courses for a period of 24 months and evaluate the course for renewal, provided the school submits the renewal application no later than 90 days prior to the course expiration date. A school may grade an examination within 15 days after the expiration date of the course, provided it receives the materials prior to or on the date of expiration. Schools shall notify students of course expiration date upon enrollment.
- (d) The school shall develop at least 2 forms of the end-of-course examination, and submit them for approval as provided in paragraph (4)(b) above. Examinations must test the course material. The answer key must be unique for each form of the examination. The answer key must reference the page number(s) containing the information upon which each question and correct answer is based. At least 70% of the questions on each form of the test shall be application oriented. Application level means the ability to use the learned material in a completely new and concrete situation. It usually involves the application of rules, policies, methods, computations, laws, theories, or any other relevant and available information. No more than 10% of the questions on each form of the test shall be at the knowledge level. Knowledge level means the recall of specific facts, patterns, methods, terms, rules, dates, formulas, names, or other information that should be committed to memory. A school offering the Commission-prescribed courses must maintain a sufficient bank of questions to assure examination validity. The sales associate end-of-course examinations shall contain at least 100 items, or 2 items per instruction hour. The broker end-of-course examinations shall contain at least 95 items, of which 5 items are 2 points each, which shall cover closing statements or escrow accounts, or 2 items per instruction hour. All Questions shall be multiple-choice with 4 answer choices each. The order of the examination questions may not follow the sequence of the course content and the item must not refer the student to the course material. The overall time to complete the end-of-course examination must not exceed the equivalent of 1.8 minutes per item.
- (5)(a) The school offering these Commission-prescribed courses shall inform each student of the standards and requirements at the commencement of each course. Notice of course completion shall comply with Rule 61J2-3.015, F.A.C.
- (b) In all Commission-approved courses by distance education, the school and permitholder shall

provide to students an address, email address and telephone number of a permitted instructor registered with such school, who shall be available to assist the students with instruction. The school shall communicate to all students the times in which the permitted instructor will be available to assist the students with instruction.

(6) Students failing the Commission-prescribed end-of-course examination must wait at least 30 days from the date of the original examination to retest. Within one year of the original examination, a student may retest a maximum of one time. Otherwise, students failing the end-of-course examination must repeat the course prior to being eligible to take the end-of-course examination again. Schools shall administer a different form of the end-of-course examination to a student that is retaking the exam or repeating the course.

(7) Make-up classes and examinations to enable a student to take the end-of-course examination due to student or family illness may not extend more than 30 days beyond the scheduled class examination without approval from the Commission. Make-up classes must consist of the original course materials that the student missed.

(8) Any active member in good standing with The Florida Bar who is otherwise qualified under the real estate license law is exempt from the Commission-prescribed prerequisite education course for licensure as a real estate sales associate.

(9) Any applicant for licensure who has received a 4-year degree or higher in real estate from an accredited institution of higher education is exempt from the Commission-prescribed prerequisite education courses for licensure.

Rulemaking Authority 475.05 FS. Law Implemented 475.04, 475.17, 475.182, 475.183, 475.451 FS. History—New 1-1-80, Amended 8-24-80, 9-16-84, Formerly 21V-3.08, Amended 7-16-86, 10-13-88, 5-20-90, 1-13-91, 7-20-93, Formerly 21V-3.008, Amended 12-13-94, 6-14-95, 8-2-95, 12-30-97, 9-1-99, 1-18-00, 11-6-00, 1-12-04, 11-3-15.

61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees.

(1)(a) All persons holding active or inactive licenses as brokers or sales associates must satisfactorily complete a minimum of 14 hours of instruction of 50 minutes each as the Commission has prescribed or approved during each license renewal period excluding the first renewal period of their current license.

(b) The Commission shall approve any specialty course, seminar or conference in the real estate practice area provided by a public or private school, firm, association, organization, person, corporation or sponsor (“provider”). “Specialty” courses on real estate practices shall be approved for no less than 2 hours and for not more than 11 hours of instruction of 50 minutes each. Courses shall not be approved for fractional hours. The Commission will approve the course for 24 months plus the remaining period of the renewal cycle following the end of the 24 month period at which point the course will expire. A provider must submit two complete sets, including one blind copy, of course materials and end-of-course examinations to the Commission for evaluation at least 60 days prior to use and receive approval before it may offer the course examination. Approval or denial of a “specialty” course will be based on its compliance with the criteria established in Section 475.182(1), F.S. Thereafter, it is the responsibility of the provider offering the Commission-approved courses to keep the course materials current and accurate, as changing times and laws require, and obtain approval from the Commission at least 60 days before implementing any significant changes to the course during its approval period.

(2)(a) The Commission-prescribed Core Law course totaling 3 hours of instruction of 50 minutes each will review and update licensees on Florida real estate license law, Commission rules, and agency law, and provide an introduction to other state laws, federal laws, and taxes affecting real estate. Approval or denial of the Commission-required Core Law course will be based on the extent to which

the course content covers the above-referenced subject areas. Examinations, if required, must test the course material. If course approval is denied, the institution or school may resubmit the course, with the mandated changes for re-evaluation.

(b) Excluding the first renewal period of the current license, a licensee must take the 3-hour Core Law course at least once during each licensure renewal period and will receive 3 hours credit toward the 14 hour requirement. In such event, the “specialty” course hours must total at least 11 hours. A licensee who takes the 3-hour Core Law course in each year of the renewal period shall be allowed a total of 6 hours toward the 14-hour requirement. In such event, the “specialty” course hours must total at least 8 hours. The purpose of this paragraph is to encourage licensees to keep abreast of changes in the law by taking the Core Law course in each year of the renewal period.

(3) Successfully meeting standards established for each Commission-prescribed course constitutes satisfactory completion of the Commission-prescribed continuing education course or courses. A provider shall issue notice of satisfactory classroom course completion only to a licensee attending a minimum of 90% of each of the classroom hours of Commission-prescribed course instruction. Notice of course completion shall be as per Rule 61J2-3.015, F.A.C.

(4)(a) A grade of 80% or higher on the Commission-prescribed continuing education course or courses examination constitutes satisfactory course completion. Students failing the Commission-prescribed course examination must repeat the course of study prior to being eligible to retake the course examination, which must be a different examination from the one the student previously failed. No examination shall contain more than 20% duplication of questions.

(b) A copy of the distance education course materials and a copy of each form of the end-of-course examinations that will be distributed to students shall be submitted to the Commission for evaluation and approval at least 60 days prior to use. The provider must submit two complete sets, including one blind copy, of course materials and a minimum of five end-of-course examinations for each course to the Commission for evaluation and approval at least 60 days prior to its use. The Commission will issue an acknowledgement of receipt and status report to the course provider within 30 days after submission of the course and examinations. Thereafter, it is the responsibility of the provider offering the Commission-approved courses to keep the course material current and accurate, and notify the Commission at least 60 days before implementing any significant changes to the course during its approval period. Examinations must test the course material. If the Commission does not approve the course, the provider may resubmit the course, with the mandated changes for re-evaluation. (c) The objective of the distance education course of study end-of-course examination is to test fairly and reliably whether students have learned essential facts and concepts from the course. The examination shall consist of a minimum of 30 items or, if delivered in smaller modules, the examination shall consist of a minimum of 10 items for courses of 5 hours or less. For courses greater than 5 hours, but less than 14 hours, the examination shall consist of a minimum of 2 items per instruction hour. All questions shall be multiple choice with 4 answer choices each. The order of the examination questions may not follow the sequence of the course content. The answer key must be unique for each form of the examination. The answer key must reference the page number(s) containing the information on which each question and correct answer is based. At least 70% of the questions on each form of the test shall be at the application level or higher. No more than 10% of the questions on each form of the test shall be at the knowledge level. The answer key must be unique for each form of the examination. Any school offering the Commission-prescribed continuing education course of study by distance education must maintain a sufficient bank of questions to assure examination validity when administering the examination to licensees from a common source such as a specific business, firm or family.

1. Application level means the ability to use the learned material in a completely new and concrete situation. It usually involves the application of rules, policies, methods, computations, laws, theories, or any other relevant and available information.

2. Knowledge level means recalling specific facts, patterns, methods, terms, rules, dates, formulas,

names, or other information that must be committed to memory.

(d) In all Commission-approved continuing education courses by distance education, the real estate school and school permitholder shall provide to students an address and telephone number of a permitted instructor registered with such school to answer inquiries. The school shall post the schedule of the instructor's availability.

(e) A provider may grade an examination within 15 days after the expiration date of the course, provided it receives the materials prior to or on date of expiration. Providers shall notify students of course expiration date upon receipt of course materials.

(5) Accredited universities, colleges and community colleges in this state, area technical centers, approved providers or real estate schools registered pursuant to Section 475.451, F.S., may offer the Commission-prescribed or approved specialty courses. Accredited universities, colleges and community colleges in this state, area technical centers or real estate schools registered pursuant to Section 475.451, F.S., may offer the Commission-prescribed Core Law course. Satisfactory completion of these courses will not entitle any person to renew a license as a real estate broker or sales associate until such person has met all requirements of law.

(6) Any active member in good standing with The Florida Bar and who is otherwise qualified under the real estate license law is exempt from the continuing education requirements of this rule.

(7) An instructor who teaches a Commission-approved continuing education course may use the course towards the satisfactory completion of the sales associate or broker continuing education requirement on a classroom-hour for classroom-hour basis. However, an instructor may not claim the course more than once in a renewal cycle.

Rulemaking Authority 455.2123, 475.01(1)(d), (e), (2), 475.05, 475.42(1)(c) FS. Law Implemented 455.2123, 475.04, 475.17, 475.182, 475.183, 475.451 FS. History—New 1-1-80, Amended 8-24-80, 10-19-83, 9-16-84, Formerly 21V-3.09, Amended 10-13-88, 6-17-91, 12-29-91, 12-8-92, 6-28-93, Formerly 21V-3.009, Amended 2-2-94, 11-13-94, 5-13-96, 12-30-97, 10-25-98, 3-7-99, 1-18-00, 9-17-00, 1-12-04, 7-10-06, 11-3-15.

61J2-3.010 License Reactivation Education for Brokers and Sales Associates.

(1) Brokers and sales associates holding an involuntarily inactive license may only maintain this status for 2 years. The first day of this allowable 2-year period is the first day the broker or sales associate failed to hold a valid and current active or voluntarily inactive license. After the second year, the broker's or sales associate's right to request an active or voluntarily inactive license automatically expires, by operation of law.

(2) A licensee may reactivate a license that has been involuntarily inactive for more than 12 months but less than 24 months by satisfactorily completing 28 hours of a Commission-prescribed education course derived from the Florida Real Estate Commission Salesperson Course Syllabus (FREC Course I). The course shall contain coverage of the following topics: Real Estate License Law and Qualifications for Licensure (Session 2); Real Estate License Law and Commission Rules (Session 3); Authorized Relationships, Duties and Disclosure (Session 4); Real Estate Brokerage Activities and Procedures (Session 5); Violations of License Law, Penalties and Procedures (Session 6); Federal and State Laws Pertaining to Real Estate (Session 7); Real Estate Contracts (Session 11); Real Estate Related Computations and Closing of Transactions (Session 14); and Real Estate Investments and Business Opportunity Brokerage (Session 17).

(3) Students who fail the Commission-prescribed end-of-course examination must wait at least 30 days from the date of the original examination to retest. Within one year of the original examination, a student may retest a maximum of one time. Otherwise, students who fail the end-of-course examination must repeat the course again to become eligible to take the end-of-course examination. Schools shall administer a different end-of-course examination to a student who retakes the exam or repeats the course.

(4) A licensee may demonstrate satisfactory completion for reactivation by achieving a grade of 70%

or higher on the Commission-prescribed end-of-course examination. The end-of-course examination shall contain 2 items per instructional hour or a minimum of 50 questions. The school must develop at least two forms of the end-of-course examination and submit them to the Department for approval. All courses shall conform to the requirements of Rule 61J2-3.008, F.A.C. The school shall test only students who have completed at least 90% of the required hours of instruction.

(5) The school offering these Commission-prescribed courses shall inform each student of the standards and requirements at the commencement of each course and issue a notice of course completion as prescribed by the Commission in Rule 61J2-3.015, F.A.C.

(6) Accredited universities, colleges, community colleges in this state, area technical centers or real estate schools registered pursuant to Section 475.451, F.S., may offer the Commission-prescribed courses. Satisfactory completion of these courses will not entitle any person to reactivate an involuntary inactive license as a real estate broker or sales associate until such person has met all other requirements of law.

(7) The Commission will allow an additional 6-month period after the expiration of a license for brokers and sales associates who cannot complete the reactivation requirements due to individual hardship. Individual hardship is defined in Rule 61J2-3.013, F.A.C.

(a) Any licensee requesting a hardship shall make the request to the Commission in writing setting forth the basis of the alleged hardship. The Commission may require said request to be supported by additional documentation.

(b) Any licensee who has received a hardship extension will remain null and void until a valid reinstatement application for is received with proof of renewal fees and reactivation education.

Rulemaking Authority 475.05 FS. Law Implemented 475.04, 475.17, 475.182, 475.183, 475.451 FS. History—New 1-1-80, Amended 8-24-80, 9-16-84, Formerly 21V-3.10, Amended 10-13-88, 6-28-93, Formerly 21V-3.010, Amended 12-30-97, 10-25-98, 1-18-00, 3-15-04, 11-8-06, 12-25-07, 8-18-08, 1-17-16.

61J2-3.011 Continuing Education for School Instructors.

(1) Any person holding “school instructor” permits shall recertify competency during each permit period by satisfactorily completing 7 classroom or distance learning hours of instruction and/or instructional techniques as prescribed and conducted by the Commission. A school instructor is not required to complete the 7 hours of recertification education as a condition for initial permit renewal if the time between the effective date on the initial permit as an instructor and the beginning of the initial renewal permit is less than 12 months. Of the required 7 classroom or distance learning hours, up to 3 hours may be applied toward the continuing education core law requirement for licensure pursuant to Rule 61J2-3.009, F.A.C.

(2) Satisfactory completion of these courses will not entitle any person to renew a permit as a school instructor until such person has met all other requirements of law.

(3) The continuing education requirements for school instructors do not apply with respect to any attorney who is otherwise qualified under the provisions of Section 475.451, F.S.

Rulemaking Authority 455.2123, 475.05 FS. Law Implemented 455.2123, 475.451(2)(c) FS. History—New 7-28-80, Amended 8-24-80, 1-3-84, Formerly 21V-3.11, Amended 7-25-90, 7-20-93, Formerly 21V-3.011, Amended 12-30-97, 1-18-00, 9-17-00, 2-4-04, 10-13-10, 12-6-12.

61J2-3.012 Equivalency for Prelicensing Education.

(1) Any person who has attended an accredited college, university, community college, area technical center or a real estate school licensed in Florida pursuant to Section 475.451, F.S., and who, while attending said institutions or real estate school, satisfactorily completed real estate courses covering substantially the same subject matter, classroom hours of attendance, and completion standards as prescribed by the Commission in Rule 61J2-3.008, F.A.C., shall be deemed to have satisfactorily

completed the course.

(2) Any person who has obtained a 4-year degree with a major in real estate from an accredited institution of higher education which substantially covers the Commission prescribed course subject matter at such college or university shall also be deemed to have satisfactorily completed the course. Application for equivalency evaluation shall be accompanied by an official transcript from the college or university or by appropriate certificate issued by a real estate school registered in Florida pursuant to Section 475.451, F.S., showing the real estate subjects taken together with date completed and grade attained. The Commission may request supportive documentation to determine course equivalency.

Rulemaking Authority 475.05 FS. Law Implemented 475.04, 475.17, 475.182, 475.183, 475.451 FS. History—New 1-1-80, Amended 9-16-84, Formerly 21V-3.12, Amended 6-28-93, Formerly 21V-3.012, Amended 12-30-97, 1-18-00, 4-28-04, 7-28-10.

61J2-3.013 Hardship Cases.

(1) A physical hardship case pertaining to post licensing education includes:

- (a) a licensee's long term illness or an illness involving a close relative or person for whom the licensee has care-giving responsibilities;
- (b) the required course is not reasonably available; or
- (c) the licensee has an economic or technological hardship that substantially relates to the ability to complete education requirements.

(2) An illness or economic hardship case pertaining to reactivation education includes:

- (a) A licensee's long term illness or an illness involving a close relative or person for whom the licensee has care-giving responsibilities;
- (b) The required course is not reasonably available; or
- (c) The licensee has an economic or technological hardship that substantially relates to the ability to complete education requirements.

(3) An economic hardship is defined as the inability to meet reasonable basic living expenses.

(4) Any person requesting such hardship as cited above shall make a request to the Commission in writing, setting forth the basis of the alleged hardship. The Commission may require said request to be supported by additional documentation.

Rulemaking Authority 475.05, 475.17(2), 475.183 FS. Law Implemented 475.17(2), (5), (7), 475.183 FS. History—New 1-1-80, Amended 8-24-80, Formerly 21V-3.13, Amended 4-10-88, 10-13-88, 7-20-93, Formerly 21V-3.013, Amended 12-30-97, 9-17-00, 12-6-12, 1-17-16.

61J2-3.015 Notices of Satisfactory Course Completion.

(1) Applicants for initial licensure as a broker or sales associate must provide the course completion report at the individual's scheduled examination as proof that they have satisfactorily completed the applicable Commission prescribed course.

(2) An application for renewal or reactivation of an existing status as a broker, broker-sales associate, sales associate or instructor shall contain an affirmation by the individual of having satisfactorily completed the applicable Commission prescribed, conducted or approved course(s). Each licensee and instructor permitholder shall retain the course completion report as proof of successful completion of continuing education or post-license education requirements for at least 2 years following the end of the renewal period for which the education is claimed. Failing to provide evidence of compliance with continuing education or post-license education requirements or the furnishing of false or misleading information regarding compliance with said requirements shall be grounds for disciplinary action against the licensee or instructor.

(3) Commission approved equivalent courses offered by accredited Florida universities, colleges,

community colleges and area technical centers shall provide students with the applicable course completion report (notice) described below. The course completion report for these equivalent courses must contain the college equivalent course identifying number.

(4) All requests for equivalency for credit courses taken at universities, colleges and community colleges outside of Florida must be accompanied by an official transcript. An official transcript contains the seal of the institution and the signature of the registrar.

(5) The course completion report must be typed or printed in ink and must be completely filled out by the institution, school or sponsor certifying successful course completion.

(6) The course completion reports shall contain the following information for the type of course being completed.

(a) Pre-licensing Course for Sales Associate.

Name of School

Address of School

Course Title: Course I

Start Date

Finish Date

Exam Date

Last 5 digits of Social Security Number

Student Name Student Address

Authorized Signature for the School

(b) Pre-licensing Course for Broker.

Name of School

Address of School

Course Title: Course II

Start Date

Finish Date

Exam Date

Sales Associate License Number

Last 5 digits of Social Security Number

Student Name

Student Address

Authorized Signature for the School

(c) Broker and Sales Associate Continuing Education and Reactivation Education.

Name of School

Address of School

Course Title

Course Hours

Start Date

Finish Date

License Number

Student Name

Student Address Authorized Signature for the School

(d) Post-licensing Education for Broker and Sales Associate.

Name of School

Address of School

Course Title

Course Hours

Start Date

Finish Date License Number

Student Name

Student Address
Authorized Signature for the School
(e) Instructor Continuing Education.
Name of School
Address of School
Course Title
Course Hours
Start Date
Finish Date
Permit Number
Student Name
Student Address
Authorized Signature for the School

(f) Each course completion report shall contain the following information:

The student named in this report has completed the referenced course in accordance with the requirements of the Florida Real Estate Commission. The original course completion report is to be given to the student and a copy retained by the school.

Rulemaking Authority 455.2123, 475.05 FS. Law Implemented 455.2123, 475.04, 475.17, 475.182, 475.183, 475.451 FS. History—New 1-1-80, Amended 8-24-80, 9-16-84, Formerly 21V-3.15, Amended 10-13-88, 12-29-91, 6-7-92, 6-28-93, Formerly 21V-3.015, Amended 9-11-94, 12-30-97, 1-18-00, 10-15-00, 11-16-09, 10-13-10, 12-16-12.

61J2-3.016 Video Tape Quality Standards.

Rulemaking Authority 475.04, 475.05, 474.17, 475.451 FS. Law Implemented 475.04, 475.451 FS. History—New 8-24-80, Formerly 21V-3.16, 21V-3.016, Repealed 5-4-08.

61J2-3.017 Video Tape Classroom Viewing Conditions.

Rulemaking Authority 475.04, 475.05, 475.17, 475.451 FS. Law Implemented 475.04, 475.17, 475.451 FS. History—New 8-24-80, Formerly 21V-3.17, Amended 7-20-93, Formerly 21V-3.017, Amended 11-16-97, Repealed 4-27-08.

61J2-3.020 Post-licensing Education for Active and Inactive Broker and Sales Associate Licensees.

(1) All applicants for licensure who pass a broker or sales associate licensure examination must satisfactorily complete a Commission-prescribed post-licensing course prior to the first renewal following initial licensure. The licensee must take the post-licensing course or courses at an accredited university, college, community college, area technical center in this state, real estate school registered, pursuant to Section 475.451, F.S., or Commission-approved sponsor (“provider”).

(a) For a licensed sales associate, the post-licensing education requirement shall consist of one or more Commission-approved courses which shall not exceed 45 hours of 50 minutes each, inclusive of examination, in subjects as provided for in Section 475.17(3)(a), F.S. Post-licensing courses shall consist of a minimum of 15 hours of instruction of 50 minutes each.

(b) For a broker, the post-licensing education requirement shall consist of one or more Commission-approved courses which shall not exceed 60 hours of 50 minutes each, inclusive of examination, in subjects as provided for in Section 475.17(3)(a), F.S.

(2) Post-licensing education courses shall be training oriented, to the maximum extent possible, and shall build on the academic body of knowledge acquired during the pre-licensing education courses.

All courses shall emphasize development of skills necessary for licensees to operate effectively and provide increased protection to the public.

(3) The provider must submit two complete copies of the course materials and end-of-course examination; one submission must be blind. The provider must also submit a copy of the course, or access to the course, in the format in which the student will use it. The course and examination, when delivered via distance education, shall comply with the "Course Approval Criteria" as follows:

(a) Distance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed-exams and similar assignments, designed to measure the student's competency relative to the required subject matter objectives. Distance learning study must be offered on a classroom-hour for classroom-hour basis.

(b) Providers must demonstrate that the credit hours awarded for distance learning are appropriate to the course offered. The provider may accomplish this objective by demonstrating that students engaged in distance learning have acquired the knowledge, skills, and/or competencies that are at least equivalent to those acquired by students enrolled in classroom studies.

1. The provider must demonstrate that the technical processes used in the delivery of the course operate correctly and the instructional strategies its use supports. 2. The provider must have in place alternative plans for the provision of uninterrupted learner services and technical support in the event of primary system failure.

3. The provider must have policies and technical processes in place to verify and document student identity for enrollment, course participation and course completion.

4. Course submissions shall include a detailed course time-line, and the provider shall make the time-line available to students prior to enrollment.

5. The provider must present evidence by means of an objective study that the stated course hours are consistent with actual hours required to complete the course.

6. The provider must describe in detail, the objective method used to ensure students receive only the allotted time to complete the end-of-course examinations.

7. The provider must demonstrate that instructors and technical staff are available to assist students with instruction. Instructor and technical assistance hours must be made available to students and posted in a prominent location.

8. Post-licensing courses must include learning objectives for each session of the syllabus. The course provider must describe the method of assessment of the student's performance periodically throughout the course of instruction.

9. End-of-course examinations shall not include aids such as, but not limited to, hint, back, or retry functionalities. The provider must demonstrate that there is a reasonable method in place to prevent duplication of the end-of-course examination. Students shall not take the end-of-course examination without satisfactorily completing all sessions of the syllabus.

10. The provider must require the student to submit a statement that includes "I certify that I personally completed all assignments and have not duplicated any portion of the end-of-course examination" prior to the taking of the final examination.

Thereafter, it is the responsibility of the provider offering the Commission-approved courses to keep the course materials current and accurate, as changing times and laws require, and obtain approval from the Commission at least 60 days before implementing any significant changes to the course during its approval period. If the Commission does not approve the course, the provider may resubmit a denied course, with the mandated changes for re-evaluation.

(4) A grade of 75% or higher on the Commission-prescribed end-of-course examination constitutes satisfactory course completion. The provider shall develop at least 2 unique forms of the end-of-course examinations and submit them for approval with a detailed course syllabus. The answer key must be unique for each form of the examination and reference the page number(s) containing the information on which each question and correct answer is based. Examinations must test the material. At least 70% of the questions on each form of the test shall be application oriented. Application level

means the ability to use the learned material in a completely new and concrete situation. It usually involves the application of rules, policies, methods, computations, laws, theories, or any other relevant and available information. No more than 10% of the questions on each form of the test shall be at the knowledge level. Knowledge level means the recall of specific facts, patterns, methods, terms, rules, dates, formulas, names or other information that should be committed to memory. A provider offering the Commission-prescribed courses must maintain a sufficient bank of questions to assure examination validity. End-of-course examinations shall contain at least 100 items. A course that is thirty-hours or less shall contain a minimum of 50 items. All questions shall be multiple choice with 4 answer choices each. The order of the examination questions may not follow the sequence of the course content. The overall time to complete the end-of-course examination must not exceed the equivalent of 1.8 minutes per item.

(5) The Commission shall approve post-licensure courses for a period of 24 months and consider renewals only if the provider submits the renewal application no later than 90 days prior to the course expiration date. A provider may grade an examination within 15 days after the expiration of the course, provided it receives the materials prior to or on date of expiration. (6) The provider shall administer the examination and issue a notice of satisfactory completion, as per Rule 61J2-3.015, F.A.C., provided the student has not missed in excess of 10% of the instruction and has passed the end-of-course examination with a grade of 75% or higher.

(7) The provider offering these Commission-prescribed or approved courses shall inform each student of the standards and requirements at the commencement of each course. Notice of course completion shall comply with Rule 61J2-3.015, F.A.C. In all Commission-approved courses offered by distance education, the provider or permitholder shall provide to students an address, e-mail address and telephone number of a Commission-approved instructor registered with such provider, who shall be available to assist the students with instruction. Instructor and technical assistance hours must be made available to students and posted in a prominent location.

(8)(a) Students failing a Commission-prescribed end-of-course examination must wait at least 30 days from the date of the original examination to retest. Within one year of the original examination, a student may retest a maximum of one time. Otherwise, students failing the Commission-prescribed end-of-course examination must repeat the course prior to being eligible to again take the end-of-course examination. Providers shall administer a different form of the end-of-course examination to a student that is retaking the exam or repeating the course.

(b) Make-up classes and examinations to enable a student to take the prescribed end-of-course examination due to student or family illness may not extend more than 30 days beyond the class scheduled end-of-course examination date without Commission approval. Make-up classes must consist of the original course materials which the student missed.

(9) The Commission will allow an additional 6-month period after the first renewal following initial licensure for brokers and sales associates that cannot, due to individual physical hardship, complete the course or courses within the required time. Individual physical hardship is defined as a case wherein a person desiring to take the Commission-prescribed courses cannot, by reason of a physical hardship, attend the place where the classes are conducted. Any person desiring to complete the education course by means of distance education shall make a request to the Commission in writing, setting forth the basis of the alleged hardship. The Commission shall require said request to be supported by statements of doctors and other persons having knowledge of the facts.

Rulemaking Authority 475.05, 475.17 FS. Law Implemented 475.04, 475.17, 475.182 FS. History—New 1-1-89, Amended 1-4-90, 6-28-93, Formerly 21V-3.020, Amended 8-2-95, 12-30-97, 2-24-00, 7-23-00, 5-12-04, 1-11-11.

CHAPTER 61J2-4 PARTNERSHIP

- 61J2-4.007 Registration Requirements**
- 61J2-4.009 Incorporation by Reference**
- 61J2-4.010 Successor Partnerships**

61J2-4.007 Registration Requirements.

Every partnership shall be registered and at least one of its partners licensed or registered as an active broker. Each partner who expects to deal with the public in the partnership's practice or business as a broker shall hold a valid and current active broker's license or registration.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.15 FS. History—New 1-1-80, Formerly 21V-4.07, Amended 10-13-88, 6-28-93, Formerly 21V-4.007, Amended 3-8-95, 2-4-04.

61J2-4.009 Incorporation by Reference.

All of the provisions and requirements of Rules 61J2-5.014 through Rule 61J2-5.018 shall apply to partnerships and its partners so far as they may be made applicable by reading into them "partnership" for "corporation" and "partners" for "officers" or "directors."

Specific Authority 475.05 FS. Law Implemented 475.01, 475.05, 475.15 FS. History—New 1-1-80, Formerly 21V-4.09, Amended 7-20-93, Formerly 21V-4.009.

61J2-4.010 Successor Partnerships.

Ordinarily when a partner dies or withdraws, or a new partner is added, that partnership is dissolved and a new one is created. For Commission purposes, if the business is continued by two or more persons, one of whom is an active broker with the partnership, the partnership will be deemed to be continued. In this latter case, it is only necessary to cancel, issue, or reissue registration and licenses, perfecting the changes in organization, including change of name of the partnership, if any, and including a reissue of licenses to each sales associate if there is a change of name or address. If there is dispute between two former partners, or groups thereof, as to the right to use a trade name or firm name, no registration or licenses shall be issued to either until the dispute is settled by agreement or judicially and the registration and licenses of all, as well as the sales associate(s), shall be involuntary inactive until the dispute is so settled, or a request shall be filed for the issuance of registration and licenses under another name.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.15 FS. History—New 1-1-80, Formerly 21V-4.10, Amended 7-20-93, Formerly 21V-4.010, Amended 2-4-04.

CHAPTER 61J2-5 CORPORATIONS

- 61J2-5.012 Domestic Corporations**
- 61J2-5.013 Foreign Corporation**
- 61J2-5.014 Registration of Corporation**
- 61J2-5.015 License Status of Officers and Directors Required**
- 61J2-5.016 License Status of Active Officers and Directors**
- 61J2-5.017 Registration of Inactive Officers and Directors**
- 61J2-5.018 Vacancies of Office**
- 61J2-5.019 Responsibility for Registration Status**
- 61J2-5.020 Execution of Papers by Corporation**

61J2-5.012 Domestic Corporations.

Before initial registration is granted, proof must be furnished of legal corporate existence. Before renewal registration is granted, the Commission may require proof of legal corporate existence. Proof may be by letter from the Secretary of State or by certification.

Specific Authority 475.05 FS. Law Implemented 475.42(1)(k) FS. History—New 1-1-80, Formerly 21V-5.12, 21V-5.012.

61J2-5.013 Foreign Corporation.

Before registration is granted or, if demanded, renewal registration is issued to a foreign corporation, and licenses to its active officers and directors, proof shall be filed that the corporation is authorized to do business in the State of Florida. A letter from the Secretary of State shall be deemed to be sufficient proof.

Specific Authority 475.05 FS. Law Implemented 475.42(1)(k) FS. History—New 1-1-80, Formerly 21V-5.13, 21V-5.013.

61J2-5.014 Registration of Corporation.

Unless the Commission or BPR shall have information that the corporation has been in violation of Chapters 475 and 455, Florida Statutes, or the rules promulgated under said chapters, it will be assumed to be qualified for registration if its officers and directors are qualified and if the answers to questions in the application, or in supplemental inquiries, are satisfactory. Otherwise, investigation and other proceedings, as in cases of individual applicants, shall commence. No registration shall be granted or renewed for any corporation if it shall appear that the individual(s) having control of the corporation has been denied, revoked, or suspended and not reinstated, or if a person having control of the corporation has been convicted of a felony in any court and has not had civil rights restored for at least 5 years, or if an injunction has been entered against the individual for operating as a real estate licensee without a license. A person shall be deemed to be in control of a corporation where such person or spouse, children, or member of the household shall own or control, directly or indirectly, more than 40 percent of the voting stock of such corporation.

Specific Authority 475.05 FS. Law Implemented 455.227, 475.15, 475.17 FS. History—New 1-1-80, Amended 7-15-84, Formerly 21V-5.14, Amended 7-20-93, Formerly 21V-5.014.

61J2-5.015 License Status of Officers and Directors Required.

All officers and directors of a real estate brokerage corporation, domestic or foreign, shall be registered. No registration shall be issued to the corporation or licenses to any officer or director, unless the corporation shall cause to register, and biennially renew the license of at least one active officer. A foreign corporation shall biennially present proof that at least one active officer, holding a valid and current active license, or for whom such a license is requested, is authorized to transact brokerage business in the State of Florida, and to bind the corporation with respect to such business.

Specific Authority 475.05 FS. Law Implemented 475.01(3), 475.15 FS. History—New 1-1-80, Formerly 21V-5.15, Amended 7-20-93, Formerly 21V-5.015, Amended 2-24-00.

61J2-5.016 License Status of Active Officers and Directors.

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.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.15, 475.161 FS. History—New 1-1-80, Amended 7-15-84, 6-9-85, Formerly 21V-5.16, Amended 6-28-93, Formerly 21V-5.016, Amended 4-15-04.

61J2-5.017 Registration of Inactive Officers and Directors.

Individual applications for renewal shall not be required of inactive officers and directors of a corporation. Registration shall be maintained upon the representations contained in the application or request for renewal by the corporation.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.011, 475.15, 475.183 FS. History—New 1-1-80, Formerly 21V-5.17, Amended 6-28-93, Formerly 21V-5.017.

61J2-5.018 Vacancies of Office.

(1) A corporation shall have at all times registered the name(s) of its officer(s) and director(s). In the event that a corporation has but one active broker, and such broker dies, resigns, or is otherwise removed from the position as the active broker, then, in such event, such vacancy shall be filled within 14 calendar days during which no new brokerage business may be performed by the corporation or a licensee registered with the corporation until a new active broker is appointed and registered with the corporation. It shall be the duty of the corporation to immediately notify the Commission of such vacancy and of the steps taken to fill this vacancy.

(2) Failure to appoint another active broker within 14 calendar days will result in the automatic cancellation of the corporate registration, and the licenses of all its officer(s), director(s) and salesperson(s) will become involuntarily inactive.

(3) If a corporation has more than one active broker and one such broker dies, resigns, or is otherwise removed from the position as an active broker, neither the corporate registration nor licenses of any of its officer(s), director(s) or salesperson(s) is affected by this vacancy.

(4) If an active broker officer or director resigns or is removed from the broker's corporate office, the broker may have a license reissued individually or with a partnership or another corporation. If an active broker officer or director is already licensed as active when the broker takes the corporate office, the broker shall surrender the current license within 7 calendar days, and apply for issuance or reissuance of a license in the corporate capacity. However, surrender of the broker's current license is not required if the broker is holder of multiple licenses.

Specific Authority 475.05 FS. Law Implemented 475.01(3), 475.15, 475.31, 475.42 FS. History—New 1-1-80, Formerly 21V-5.18, Amended 6-28-93, Formerly 21V-5.018.

61J2-5.019 Responsibility for Registration Status.

(1) It shall be the duty of every active corporate officer and director to see that the corporation and each of its officers, directors and salespersons are holders of current registration and licenses. It shall be the duty of every active broker partner of a partnership to see that each partner of a partnership required to hold registration and license does in fact hold registration and license.

(2) No corporate registration or license of any of its officers, directors, and salespersons shall be valid unless and until such corporation has an active broker other than as provided in Rule 61J2-5.018, F.A.C.

(3) The registration of such partnership shall be cancelled automatically during that period of time that at least one partner is not the holder of a current and valid active broker's license.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.15, 475.31, 475.42 FS. History—New 1-1-80, Formerly 21V-5.19, Amended 6-28-93, Formerly 21V-5.019.

61J2-5.020 Execution of Papers by Corporation.

All applications, requests, changes of address and employment for salespersons, or other papers and documents required of corporations, shall be signed in the name of the corporation, by an active broker officer or director. Whenever multiple licenses are requested by a broker and one or more of the licenses are under partnerships or corporations, a statement of disclosure shall be signed by a partner of the partnership, or officer of the corporation, other than the applicant for the license. If more than one person connected with a partnership or corporation requests multiple licenses in other capacities, the statement of disclosure may not be signed by one for the other, but by a majority of the remaining directors or partners.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.15, 475.23, 475.42 FS. History—New 1-1-80, Formerly 21V-5.20, Amended 7-20-93, Formerly 21V-5.020.

CHAPTER 61J2-6 SALESPERSONS

61J2-6.006 Employment by More Than One Entity

61J2-6.006 Employment by More Than One Entity.

(1) A salesperson or broker-salesperson may only be employed by one broker or by one owner-developer. Owner-developers shall be defined as any of those unlicensed entities enumerated in s. 475.011(2), F.S.

(2) One owner-developer may produce proof that various properties are owned in the name of various entities, but all such entities are so connected, subsidiary, interlocking or affiliated, so that such ownership or control, for practical purposes, is substantially in the same individual or individuals, in which case a salesperson or broker-salesperson may have a group license. Each entity shall execute the certificate attached to the request for a group license.

Specific Authority 475.05 FS. Law Implemented 475.01(1)(d), 475.011(2) FS. History—New 1-1-80, Amended 9-17-81, Formerly 21V-6.06, Amended 6-28-93, Formerly 21V-6.006.

CHAPTER 61J2-9 REISSUANCE OF CERTIFICATE

61J2-9.007 Change of Name

61J2-9.007 Change of Name.

If a name or trade name is lawfully changed, a request for the reissuance of the license or registration shall be filed, and the license or registration shall be reissued.

Specific Authority 475.05 FS. Law Implemented 475.15, 475.25, 475.42, 475.125 FS. History—New 1-1-80, Formerly 21V-9.07, Amended 6-28-93, Formerly 21V-9.007.

CHAPTER 61J2-10 OPERATION, BUSINESS AND OFFICES

61J2-10.022 Office

61J2-10.023 Branch Office

61J2-10.025 Advertising

61J2-10.027 Use of Association Names

61J2-10.028 Kickbacks or Rebates

61J2-10.029 Advance Fee Accounting and Reporting Procedures (Repealed)

61J2-10.030 Rental Information

61J2-10.031 Time for Payment of Administrative Fines and Costs

61J2-10.032 Notice Requirements

61J2-10.034 Trade Names

61J2-10.038 Mailing Address

61J2-10.022 Office.

The required office, pursuant to Section 475.22(1), F.S., may be in a residential location, if not contrary to local zoning ordinances, provided the minimum office requirements are met and the required broker's sign is properly displayed, pursuant to Section 475.22(1), F.S. Sales associates must be registered from and work out of an office maintained and registered in the name of the employer.

Rulemaking Authority 475.05 FS. Law Implemented 475.22 FS. History—New 1-1-80, Formerly 21V-10.22, Amended 7-20-93, Formerly 21V-10.022, Amended 12-30-97, 2-4-04, 11-5-12.

61J2-10.023 Branch Office.

(1) If a broker desires to conduct business from more than one office, each additional office must be registered as a branch office, and the fee must be paid for its registration, as provided in subsection 61J2-1.011(3), F.A.C.

(2) A mere temporary shelter, on a subdivision being sold by the broker, for the protection of salespersons and customers and at which transactions are not closed and salespersons are not permanently assigned, is not deemed to be a branch office. The permanence, use, and character of activities customarily conducted at the office or shelter shall determine whether it must be registered.

(3) If a broker closes a branch office and, at about the same time, establishes another at a different location, the registration of the office which was closed may not be transferred. Such new location is a new branch office which must be registered and the fee paid as though the other had not been closed. Upon application to the BPR, the broker may reopen the first office at any time during the license period without payment of an additional fee.

Rulemaking Authority 475.05 FS. Law Implemented 475.23, 475.24 FS. History—New 1-1-80, Formerly 21V-10.23, Amended 6-28-93, Formerly 21V-10.023, Amended 12-30-97.

61J2-10.025 Advertising.

(1) All advertising must be in a manner in which reasonable persons would know they are dealing with a real estate licensee. All real estate advertisements must include the licensed name of the brokerage firm. No real estate advertisement placed or caused to be placed by a licensee shall be fraudulent, false, deceptive or misleading.

(2) When the licensee's personal name appears in the advertisement, at the very least the licensee's last name must be used in the manner in which it is registered with the Commission.

(3)(a) When advertising on a site on the Internet, the brokerage firm name as required in subsection (1) above shall be placed adjacent to or immediately above or below the point of contact information.

“Point of contact information” refers to any means by which to contact the brokerage firm or individual licensee including mailing address(es), physical street address(es), e-mail address(es), telephone number(s) or facsimile telephone number(s).

(b) The remaining requirements of subsections (1) and (2) apply to advertising on a site on the Internet.

Rulemaking Authority 120.53, 475.05, 475.25(1)(c) FS. Law Implemented 475.01, 475.25, 475.42, 475.421, 475.4511 FS. History—New 1-1-80, Amended 2-17-81, 3-14-85, Formerly 21V-10.25, Amended 12-29-91, 7-20-93, Formerly 21V-10.025, Amended 4-18-99, 7-4-06, 2-5-07.

61J2-10.027 Use of Association Names.

No licensee shall use an identification or designation of any association or organization having to do with real estate unless entitled to use such identification or designation.

Rulemaking Authority 475.05 FS. Law Implemented 475.25(1)(b) FS. History—New 1-1-80, Formerly 21V-10.27, Amended 7-20-93, Formerly 21V-10.027.

61J2-10.028 Kickbacks or Rebates.

(1) Any real estate licensee who receives, or makes any arrangement or agreement to receive, directly or indirectly, any kickback or rebate, for the placement of, or favor in, any business transaction which forms a part of, or is incident to, any transaction(s) negotiated or handled by said licensee, is a violation of Section 475.25(1)(b) or (d), F.S., or both of said subsections of the F.S., unless prior to the time of the placement of, or favor in, said business transaction, the licensee shall have fully advised the principal if any and all affected parties in the transaction(s), which the licensee is handling, of all facts pertaining to the arrangement of kickbacks or rebates.

(2) The sharing of brokerage compensation by a licensee with a party to the real estate transaction with full disclosure to all interested parties is not considered a violation of Chapter 475, Part I, F.S.

Rulemaking Authority 475.05 FS. Law Implemented 475.25(1)(b), (d) FS. History—New 1-1-80, Formerly 21V-10.28, Amended 6-28-93, Formerly 21V-10.028, Amended 12-30-97.

61J2-10.029 Advance Fee Accounting and Reporting Procedures.

Rulemaking Authority 475.05 FS. Law Implemented 475.452(1), (2), (3) FS. History—New 1-1-80, Formerly 21V-10.29, Amended 10-28-90, 7-20-93, Formerly 21V-10.029, Amended 11-10-97, 1-18-00, 2-4-04, Repealed 9-6-07.

61J2-10.030 Rental Information.

(1) Each broker or sales associate who furnishes a rental information list to a prospective tenant for a fee paid by the tenant shall provide such prospective tenant with a written contract or receipt agreement containing the following provision in type size 10 point bold or larger:

NOTICE

PURSUANT TO FLORIDA LAW:

If the rental information provided under this contract is not current or accurate in any material aspect, you may demand within 30 days of this contract date a return of your full fee paid. If you do not obtain a rental you are entitled to receive a return of 75% of the fee paid, if you make demand within 30 days of this contract date.

(2) Each contract or receipt agreement shall be contained on one side of one page not larger than 8 1/2 × 11 inches. The type size of the balance of the terms of the contract shall be in a size not smaller than 8 point type.

Each licensee shall furnish to the BPR a copy of the current contract or receipt agreement within 30

days of use of such agreement.

Rulemaking Authority 475.05 FS. Law Implemented 475.453(1), (2) FS. History—New 1-1-80, Formerly 21V-10.30, Amended 6-28-93, Formerly 21V-10.030, Amended 11-20-07.

61J2-10.031 Time for Payment of Administrative Fines and Costs.

In cases where the Commission imposes an administrative fine and costs, if any, for violation of Chapters 455 and 475, F.S., or the rules promulgated thereunder, the fine and costs shall be paid within 30 days of the filing of the final order unless directed otherwise by the Commission.

Rulemaking Authority 455.227(2) FS. Law Implemented 455.227(3), 475.42 FS. History—New 2-25-80, Formerly 21V-10.31, Amended 7-20-93, Formerly 21V-10.031, Amended 12-30-97.

61J2-10.032 Notice Requirements.

(1)(a) A real estate broker, upon receiving conflicting demands for any trust funds being maintained in the broker's escrow account, must provide written notification to the Commission within 15 business days of the last party's demand and the broker must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., F.S., within 30 business days after the last demand.

(b) A broker, who has a good faith doubt as to whom is entitled to any trust funds held in the broker's escrow account, must provide written notification to the Commission within 15 business days after having such doubt and must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., F.S., within 30 business days after having such doubt. The determination of good faith doubt is based upon the facts of each case brought before the Commission.

(c) If one of the parties to a failed real estate sales transaction does not respond to the broker's inquiry as to whether that party is placing a demand on the trust funds or is willing to release them to the other party, the broker may send a certified notice letter, return receipt requested, to the non-responding party. This notice should include the information that a demand has been placed by the other party, that a response must be received by a certain date, and that failure to respond will be construed as authorization for the broker to release the funds to the other party.

(2)(a) If the broker has instituted a settlement procedure other than a request for an Escrow Disbursement Order, the broker shall provide written notification to the Commission within 30 business days of the receipt of the last demand or good faith doubt of the procedure instituted to resolve the matter.

(b) If the broker has requested an Escrow Disbursement Order and the broker is notified in writing that no Escrow Disbursement Order will be issued, then the broker shall institute another settlement procedure and so notify the Commission within 30 business days after the broker's receipt of such notification. (c) If the broker has requested an Escrow Disbursement Order and the dispute is subsequently settled or goes to court before the Order is issued, the broker shall notify the Commission within 10 business days of such event.

(3) For purposes of this rule, where a broker is required to provide written notification within a certain period, the effective date of that notification is deemed to be the date of the postmark or other dispatch of notification. A request for an Escrow Disbursement Order as a settlement procedure is deemed instituted when the completed request form is mailed or otherwise dispatched to the Commission.

(4) Brokers who are entrusted with an earnest money deposit (EMD), pursuant to a residential sales contract utilized by the Department of Housing and Urban Development (HUD) in the sale of property owned by HUD, are not required to follow the notice or settlement procedures of Section 475.25(1)(d)1., F.S., and subsection (1) of this rule. The broker is to follow HUD's Agreement to Abide, Broker Participation Requirements, and 24 C.F.R. s. 291.135 as they pertain to the proper disposition of EMDs.

Rulemaking Authority 475.05, 475.25 FS. Law Implemented 83.49(3)(d), 475.25 FS. History—New 10-13-85, Formerly 21V-10.32, Amended 2-18-92, 12-8-92, 6-28-93, Formerly 21V-10.032, Amended 11-16-93, 6-6-94, 8-6-96, 11-10-97, 1-17-02.

61J2-10.034 Trade Names.

An individual broker, partnership or corporation may use a trade name and, if so, it must be disclosed upon the request for license, and be placed upon the registration or license. The trade name shall not be, and the Commission will refuse to issue a license containing a trade name which is the same as the real or trade name of another registrant or licensee registered or licensed with the Commission. No individual, partnership or corporation may be registered under more than one trade name. The actual name of the individual or an entity is not a trade name.

Rulemaking Authority 475.05 FS. Law Implemented 475.15, 475.181, 475.42(1)(k) FS. History—New 6-28-93, Formerly 21V-10.034.

61J2-10.038 Mailing Address.

(1) Pursuant to Section 455.275(1), F.S., the Commission defines “current mailing address” as the current residential address which is used by a licensee or permit holder to receive mail through the United States Postal Service.

(2) Each licensee and permit holder is required to notify the BPR in writing of the current mailing address and any change in the current mailing address within 10 days after the change.

Rulemaking Authority 475.05 FS. Law Implemented 455.275 FS. History—New 4-9-95.

CHAPTER 61J2-14 FUNDS ENTRUSTED TO BROKERS – DEPOSITS AND ESCROWS

61J2-14.008 Definitions

61J2-14.009 Real Estate Sales Associate

61J2-14.010 Real Estate Broker

61J2-14.011 Rights of Broker in Deposits

61J2-14.012 Broker’s Records

61J2-14.014 Interest-Bearing Escrow Accounts

61J2-14.008 Definitions.

(1)(a) A “deposit” is a sum of money, or its equivalent, delivered to a real estate licensee, as earnest money, or a payment, or a part payment, in connection with any real estate transaction named or described in Section 475.01(1)(a), F.S., or for the purpose of obtaining satisfaction, release, or assignment of mortgages, or quit claim or other deeds deemed necessary or desirable in acquiring or perfecting the title to real estate, or assembling interest therein, or such sum delivered in escrow, trust or on condition, in connection with any transaction conducted, or being conducted, by such licensee within the scope of Chapter 475, F.S.

(b) A deposit, as so defined, shall extend to and include not only cash, or currency, but any medium of exchange, or any securities to be converted into money, delivered for any of the purposes aforesaid, to be held or converted into cash or bank credits. A broker shall not be responsible for the payment of any check or draft, unless the broker, through culpable negligence, fails to deposit the same in the regular course of business, and the check or draft is not paid due to such culpable negligence, and damage results to some party entitled to complain of said culpable negligence.

(2)(a) “Trust” or “escrow” account means an account in a bank or trust company, title company having trust powers, credit union, or a savings and loan association within the State of Florida. Only funds

described in this rule shall be deposited in trust or escrow accounts. No personal funds of any licensee shall be deposited or intermingled with any funds being held in escrow, trust or on condition except as provided in subsection 61J2-14.010(2), F.A.C.

(b) When a deposit is placed or to be placed with a title company or an attorney, the licensee who prepared or presented the sales contract ("Licensee"), shall indicate on that contract the name, address, and telephone number of such title company or attorney. Within ten (10) business days after each deposit is due under the sales contract, the Licensee's broker shall make written request to the title company or attorney to provide written verification of receipt of the deposit, unless the deposit is held by a title company or by an attorney nominated in writing by a seller or seller's agent. Within ten (10) business days of the date the Licensee's broker made the written request for verification of the deposit, the Licensee's broker shall provide Seller's broker with either a copy of the written verification, or, if no verification is received by Licensee's broker, written notice that Licensee's broker did not receive verification of the deposit. If Seller is not represented by a broker, then Licensee's broker shall notify the Seller directly in the same manner indicated herein.

(3) "Immediately" means the placement of a deposit in an escrow account no later than the end of the third business day following receipt of the item to be deposited. Saturdays, Sundays and legal holidays shall not be considered as business days.

Rulemaking Authority 475.05, 475.25(1)(k) FS. Law Implemented 475.25(1)(k) FS. History—New 1-1-80, Formerly 21V-14.08, Amended 10-13-88, 12-29-91, 7-20-93, Formerly 21V-14.008, Amended 7-5-95, 7-4-06, 12-6-07, 6-21-10.

61J2-14.009 Real Estate Sales Associate.

Every sales associate who receives any deposit, as defined in Rule 61J2-14.008, F.A.C., shall deliver the same to the broker or employer no later than the end of the next business day following receipt of the item to be deposited. Saturday, Sundays and legal holidays shall not be construed as business days. Receipt by a sales associate or any other representative of the brokerage firm constitutes receipt by the broker for purposes of paragraph 61J2-14.008(3), F.A.C.

Rulemaking Authority 475.05 FS. Law Implemented 475.25(1)(k) FS. History—New 1-1-80, Formerly 21V-14.09, Amended 7-20-93, Formerly 21V-14.009, Amended 7-5-95, 11-10-97, 2-5-04.

61J2-14.010 Real Estate Broker.

(1) Every broker who receives from sales associates, principals, prospects, or other persons interested in any real estate transaction, any deposit, fund, money, check, draft, personal property, or item of value shall immediately place the same in a bank, savings and loan association, trust company, credit union or title company having trust powers, in an insured escrow or trust account. The broker must be a signatory on all escrow accounts. If the brokerage entity has more than one broker licensee, then one broker licensee may be designated as the signatory. If the deposit is in securities, intended by the depositor to be converted into cash, the conversion shall be made at the earliest practical time, and the proceeds shall be immediately deposited in said account.

(2) A broker may place and maintain up to \$1,000 of personal or brokerage funds per each sales escrow account. A broker may place and maintain up to \$5,000 of personal or brokerage funds per each property management escrow account. Personal or brokerage funds in any escrow account shall not exceed \$5,000 per account. A broker shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. For purposes of this subsection, reasonable amount of time shall be defined as 30 days from the date the last reconciliation statement was performed or should have been performed.

Rulemaking Authority 475.05 FS. Law Implemented 475.25(1)(d)1., (k), 475.452 FS. History—New 1-1-80, Formerly 21V-14.10, Amended 2-17-86, 10-13-88, 12-29-91, 6-28-93, Formerly 21V-14.010, Amended 2-5-04.

61J2-14.011 Rights of Broker in Deposits.

A broker who receives a deposit shall not have any right to or lien upon said deposit, except upon the written agreement or order of the depositor so long as the depositor or depositor's legal representative has sole control of said deposit, until the transaction involved has been closed, and no person has any claim except the party ultimately to receive the same, in which case the broker may deduct the agreed commission unless the amount or time of payment is disputed. In case of a dispute as to the amount of the commission, or the time of payment, the broker may retain only the amount of the claim in said account and in trust, until the dispute is settled by agreement, arbitration, mediation or court proceedings, as provided in Section 475.25(1)(d)1., F.S. A depositor has the right to demand return of a deposit until such time as another party has acquired some interest or equity, subject to the right to make an express agreement to compensate the broker for time and expense incurred prior to a demand for the return of the deposit; and such right to demand return of the deposit shall again accrue upon a breach by the other party to the contract or agreement under which it is held, or the expiration of the time fixed or a reasonable time, for performance of the things necessary to establish the exclusive right of such other party to said deposit. A broker shall not deliver the deposit to the other party to the transaction until such transaction is closed, except as otherwise directed or agreed to specifically by the depositor. The interested parties involved, other than the broker, may by express agreement, alter the disposal of the deposit, but the burden shall be on the broker to establish good faith in the matter if such agreement is to the broker's advantage. The broker shall recognize and comply with the joint directions of said parties in such cases, except where the parties act in bad faith with intent to deprive the broker of a commission, in which case the broker shall proceed as provided in Section 475.25(1)(d)1., F.S.

Rulemaking Authority 475.05 FS. Law Implemented 475.25(1)(d)1., (k) FS. History—New 1-1-80, Formerly 21V-14.11, Amended 6-28-93, Formerly 21V-14.011, Amended 2-5-04.

61J2-14.012 Broker's Records.

(1) A broker who receives a deposit as previously defined shall preserve and make available to the BPR, or its authorized representative, all deposit slips and statements of account rendered by the depository in which said deposit is placed, together with all agreements between the parties to the transaction. In addition, the broker shall keep an accurate account of each deposit transaction and each separate bank account wherein such funds have been deposited. All such books and accounts shall be subject to inspection by the DBPR or its authorized representatives at all reasonable times during regular business hours.

(2) Once monthly, a broker shall cause to be made a written statement comparing the broker's total liability with the reconciled bank balance(s) of all trust accounts. The broker's trust liability is defined as the sum total of all deposits received, pending and being held by the broker at any point in time. The minimum information to be included in the monthly statement-reconciliation shall be the date the reconciliation was undertaken, the date used to reconcile the balances, the name of the bank(s), the name(s) of the account(s), the account number(s), the account balance(s) and date(s), deposits in transit, outstanding checks identified by date and check number, an itemized list of the broker's trust liability, and any other items necessary to reconcile the bank account balance(s) with the balance per the broker's checkbook(s) and other trust account books and records disclosing the date of receipt and the source of the funds. The broker shall review, sign and date the monthly statement-reconciliation.

(3) Whenever the trust liability and the bank balances do not agree, the reconciliation shall contain a description or explanation for the difference(s) and any corrective action taken in reference to shortages or overages of funds in the account(s). Whenever a trust bank account record reflects a service charge or fee for a non-sufficient check being returned or whenever an account has a negative balance, the reconciliation shall disclose the cause(s) of the returned check or negative balance and the

corrective action taken.

Rulemaking Authority 475.05 FS. Law Implemented 475.25(1)(d)1., (k), 475.5015 FS. History–New 1-1-80, Formerly 21V-14.12, Amended 10-13-88, 7-19-89, 1-13-91, 6-28-93, Formerly 21V-14.012, Amended 11-10-97.

61J2-14.014 Interest-Bearing Escrow Accounts.

(1) A broker is allowed to place escrow funds in an interest-bearing account. The placement of escrow monies in an interest-bearing account, designation of the party who is to receive the interest, and the time the earned interest must be disbursed, must be done with the written permission of all the parties to the transaction. Said escrow account must be in an insured account in a depository located and doing business in Florida.

(2) In order to disburse principal and interest to the designated party at the time agreed, the broker must first transfer said principal and interest to a non-interest-bearing escrow account before disbursement. In the event the broker is designated by all parties to receive the interest, only the principal is to be transferred to the non-interest-bearing escrow account for further disbursement. The interest is to be transferred directly to the broker's operating account.

(3) As an alternative to subsection (2) above, the broker may establish an individual interest-bearing escrow account for a specific transaction or sum of money. On the date agreed upon for disbursement of the principal and interest, the broker shall close the account with checks issued to the appropriate person(s) or business entity(ies) for the principal and interest.

Rulemaking Authority 475.05 FS. Law Implemented 475.25(1)(k) FS. History–New 9-17-81, Formerly 21V-14.14, Amended 10-13-88, 4-16-91, 2-18-92, 11-8-92, 6-28-93, Formerly 21V-14.014.

CHAPTER 61J2-17

REAL ESTATE SCHOOL ADMINISTRATIVE PROCEDURES AND REGULATIONS

61J2-17.009 Minimum Standard for Prelicense Course of Study

61J2-17.011 School Instructor Requirements and Qualifications

61J2-17.013 Interpretation of Particular Phrases

61J2-17.014 Guest Lecturers

61J2-17.015 Required Communication by School Permit Holders

61J2-17.016 Renewal of Instructor Permits

61J2-17.009 Minimum Standard for Prelicense Course of Study.

A permit shall be issued to a real estate school when the course of study to be offered is designed to enable or assist individuals to pass a licensure examination administered by the BPR and that: (1) covers the material contained in the applicable Commission prescribed course; (2) consists of not less than 15 hours of classroom, or individual instruction; and (3) is not comprised solely of a study of questions and answers.

Specific Authority 475.04, 475.05 FS. Law Implemented 475.451 FS. History–New 1-1-80, Formerly 21V-17.09, Amended 6-28-93, Formerly 21V-17.009, Amended 11-24-97.

61J2-17.011 School Instructor Requirements and Qualifications.

A person shall qualify for an instructor's permit by meeting the qualifications for practice set forth in Section 475.451(2)(c), Florida Statutes. "Extensive real estate experience" shall be defined as a minimum of three years of full-time experience as a broker. This experience must include having

participated in closing at least five real estate transactions as a licensee, or as the employing broker of licensees, for either party to the transaction, within the 12-month period immediately preceding the filing of an instructor's application.

Specific Authority 475.05 FS. Law Implemented 475.04, 475.451 FS. History—New 10-13-88, Amended 1-13-91, 8-19-91, 6-28-93, Formerly 21V-17.011, Amended 11-24-97.

61J2-17.013 Interpretation of Particular Phrases.

Whenever used, the phrases set forth shall be construed as follows:

(1) "To guarantee that its pupils will pass any examinations given by the department" as prohibited by Section 475.451(3), Florida Statutes, and shall be construed to include, but without limitation, any representation, agreement, promise or understanding whereby a person enrolled in any school or course is to receive any refund of money or other thing of value if such person should fail the examination offered by the Division.

(2) "Each person, school, or institution" used in Section 475.451(1), Florida Statutes, is construed to include only one address or location; and a person, school or institution, offering or conducting a course at more than one address or location, must obtain a permit for each address or location.

Specific Authority 475.05 FS. Law Implemented 475.04, 475.451 FS. History—New 6-28-93, Formerly 21V-17.013.

61J2-17.014 Guest Lecturers.

Guest lecturers may be used by a real estate school offering Commission prescribed or approved equivalent courses so long as:

- (1) Guest lecturers provide no more than 20% of the total course;
- (2) Guest lecturers have prior written approval of the Commission; and
- (3) An instructor licensed with such school is available on the premises.

Specific Authority 475.05 FS. Law Implemented 475.04(1), 475.451(1),(2)(a),(c) FS. History—New 6-28-93, Formerly 21V-17.014.

61J2-17.015 Required Communication by School Permit Holders.

No real estate school, permit holder or instructor shall recruit for employment opportunities for any real estate brokerage firm during classroom instructional time. Each school permit holder must post in every classroom and administrative area, and read at the beginning of each course, the following statement: "Recruiting for employment opportunities for any real estate brokerage firm must be accomplished outside the prescribed classroom instructional time. Noncompliance should be reported to the Commission."

Specific Authority 475.05 FS. Law Implemented 475.451(1),(2)(a),(c) FS. History—New 6-28-93, Formerly 21V-17.015.

61J2-17.016 Renewal of Instructor Permits.

(1) An instructor permit shall be renewed on a biennial basis. The schedule for biennial renewal shall be as established in Rule 61-6.001, Florida Administrative Code.

(2) Any permit which is not renewed at the end of the permit period established in Rule 61-6.001, Florida Administrative Code, shall automatically revert to involuntarily inactive status pursuant to Section 475.451(2)(c)3., Florida Statutes.

(3) An involuntarily inactive instructor permit holder must complete the following in order to obtain an active permit:

(a) Successfully complete the continuing education requirements of Rule 61J2-3.011, Florida Admin-

istrative Code.(b) File a renewal application.

(c) Pay the required fee pursuant to paragraph 61J2-1.011(7)(d), Florida Administrative Code.

(d) Pay the late fee pursuant to paragraph 61J2-1.011(5)(c), Florida Administrative Code.

(4) Any permit which has been involuntarily inactive for 2 years shall automatically expire pursuant to Section 475.183(2), Florida Statutes. Once a permit expires, it becomes null and void without any further action by the Commission or Department of Business and Professional Regulation.

Specific Authority 475.05, 475.451 FS. Law Implemented 475.451 FS. History—New 10-25-98.

CHAPTER 61J2-20

RULES GOVERNING INTERNAL ORGANIZATION AND OPERATION

61J2-20.009 Probable Cause Panel

61J2-20.040 Membership

61J2-20.042 Chairperson (Repealed)

61J2-20.047 Official Records (Repealed)

61J2-20.048 Principal Office

61J2-20.049 Commission Member Compensation

61J2-20.051 Authorized Signatures on Final Orders

61J2-20.052 Designation of Official Reporter

61J2-20.054 Public Comment

61J2-20.009 Probable Cause Panel.

A probable cause panel shall determine if probable cause exists that a licensee, registrant, a permit holder, or the subject of the investigation violated Chapter 475, Part I, F.S., or any of the Commission's rules. A probable cause panel shall consist of at least one present member of the Commission. As provided in Section 455.225(4), F.S., one of the panel members may be a former member of the Commission.

Rulemaking Authority 475.05 FS. Law Implemented 455.225 FS. History—New 11-21-79, Amended 3-15-82, 11-16-83, Formerly 21V-20.09, Amended 6-28-93, Formerly 21V-20.009, Amended 11-8-12.

61J2-20.040 Membership.

(1) The Florida Real Estate Commission, created by Chapter 475, Part I, F.S., is a regulatory agency and performs its functions pursuant to Chapter 475, Part I, F.S., and such other functions as may be delegated by law. The Commission's membership as set forth in Chapter 475, Part I, F.S., shall consist of 7 members who shall elect from the members a chairperson and vice chairperson.

(2) Three consecutive unexcused absences or absences constituting 50 percent or more of the Commission's meetings within any 12-month period shall cause the membership in question to become void, and the position shall be considered vacant. An unexcused absence is one where no advance notice of an absence is given to the chairperson, vice chairperson or Director of the Division or, if there is advance notice of an absence, no explanation of the absence is given.

Rulemaking Authority 475.05 FS. Law Implemented 455.207(3), 475.02 FS. History—New 1-1-80, Formerly 21V-20.40, Amended 11-8-92, 7-20-93, Formerly 21V-20.040.

61J2-20.042 Chairperson.

Rulemaking Authority 475.05 FS. Law Implemented 120.53, 455.207 FS. History—New 1-1-80, Formerly 21V-20.42, Amended 6-28-93, Formerly 21V-20.042, Repealed 9-6-07.

61J2-20.047 Official Records.

Rulemaking Authority 475.05 FS. Law Implemented 120.53, 475.021 FS. History—New 1-1-80, Formerly 21V-20.47, Amended 6-28-93, Formerly 21V-20.047, Amended 11-10-97, Repealed 10-7-12.

61J2-20.048 Principal Office.

The principal office of the Commission shall be located at 400 West Robinson Street, Orlando, Florida 32801-1757. The Commission may also be contacted through the Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0750.

Rulemaking Authority 475.05 FS. Law Implemented 120.53, 455.205 FS. History—New 1-1-80, Formerly 21V-20.48, Amended 7-20-93, Formerly 21V-20.048.

61J2-20.049 Commission Member Compensation.

Unless otherwise provided by law, a Commission member shall be compensated \$50.00 for each day in attendance at an official meeting of the Commission, including Probable Cause Panel Meetings, and for each day the member participates in any other business involving the Commission. "Other business involving the Commission" shall be defined as:

- (1) Attendance at instructors' seminars sponsored by the Commission.
- (2) Appearances before a legislative committee, upon direction of the chairperson of the Commission or the chairperson of the Committee.
- (3) Attendance at a meeting with the staff or contractors of the BPR at the request of the Secretary of the BPR or the Division Director.
- (4) Attendance at a conference or trade association meeting in the capacity of a member of the Commission.
- (5) Attendance at the Florida Association of Realtor's Legislative Days in Tallahassee in the capacity of a member of the Commission regarding legislation being promoted by the Commission.

Rulemaking Authority 475.05 FS. Law Implemented 455.207(4) FS. History—New 9-17-81, Amended 10-19-83, Formerly 21V-20.49, Amended 10-15-91, 7-20-93, Formerly 21V-20.049, Amended 6-5-96.

61J2-20.051 Authorized Signatures on Final Orders.

A Final Order of the Commission may be signed by either the chairperson or vice chairperson of the Commission or the Division Director. Serving on a probable cause panel does not preclude the chairperson or the vice chairperson from signing a Final Order of the Commission.

Rulemaking Authority 120.53(1)(a),(b), 475.05 FS. Law Implemented 455.225(6), 475.03(1), 475.10 FS. History—New 5-22-83, Formerly 21V-20.51, Amended 6-28-93, Formerly 21V-20.051.

61J2-20.052 Designation of Official Reporter.

(1) The Commission designates the Department of Business and Professional Regulation (BPR) as its official reporter for the purpose of publishing and indexing by subject matter, after a proceeding has been held, all orders rendered which affect substantial interests.

(2) The BPR maintains and stores such orders in the offices of the agency clerk at the Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0750. The agency clerk's office is open to the public between the hours of 9:00 a.m. and 4:00 p.m., excluding holidays and weekends. For further information regarding the indexing of orders by the BPR, refer to Rule Chapter 61-14, F.A.C.

Rulemaking Authority 475.05 FS. Law Implemented 120.53(2) FS. History—New 8-23-93, Amended 4-19-94.

61J2-20.054 Public Comment.

The Florida Real Estate Commission invites and encourages all members of the public to provide comment on matters or propositions before the Commission or a committee of the Commission. The opportunity to provide comment shall be subject to the following:

(1) Members of the public will be given an opportunity to provide comment on subject matters before the Commission after an agenda item is introduced at a properly noticed Commission meeting.

(2) Members of the public shall be limited to three (3) minutes to provide comment. This time shall not include time spent by the presenter responding to questions posed by Commission members, staff or Commission counsel. The chair of the Commission may extend the time to provide comment if time permits.

(3) Members of the public shall notify Commission staff in writing of their interest to be heard on a proposition or matter before the Commission. The notification shall identify the person or entity, indicate its support, opposition, or neutrality, and identify who will speak on behalf of a group or faction of persons.

Rulemaking Authority 286.0114 FS. Law Implemented 286.0114 FS. History—New 8-3-14.

CHAPTER 61J2-23 TIME-SHARE SALES

61J2-23.001 Time-share Resale Listing Agreement Disclosures

61J2-23.002 Time-share Resale Contract Disclosures

61J2-23.001 Time-share Resale Listing Agreement Disclosures.

Pursuant to Section 475.42(1)(n), F.S., it shall be a violation of Chapter 475, F.S., for any broker or salesperson to enter into any agreement with any person engaging the services of the broker in connection with the resale of a time-share period unless the agreement complies in all respects with the following provisions.

(1) In addition to all other requirements of and obligations under Chapter 475, F.S., all agreements engaging the services of a broker in connection with the resale of a time-share period shall contain all of the following:

(a) The following statement in conspicuous type located immediately prior to the space in the agreement reserved for the signature of the owner of the time-share period: **THERE IS NO GUARANTEE THAT YOUR TIME-SHARE PERIOD CAN BE SOLD AT ANY PARTICULAR PRICE OR WITHIN ANY PARTICULAR PERIOD OF TIME.** Any written advertising material utilized by a broker or salesperson in connection with the solicitation of a listing agreement for the resale of a time-share period must also contain this statement in conspicuous type.

(b) A complete and clear disclosure of any fees, commissions, and other costs or compensation payable to or received by the broker under the agreement, whether directly or indirectly.

(c) The term of the agreement; a statement regarding the ability of any party to extend the term of the agreement; and a description of the conditions under which the agreement may be extended and all related costs.

(d) A description of the services to be provided by the broker under the agreement, and a description of the obligations of each party regarding a resale purchase, including any costs to be borne and any obligations regarding notification of the managing entity of the time-share plan and any exchange company.

(e) A statement disclosing whether the agreement grants exclusive rights to the broker to locate a purchaser during the term of the agreement; a statement disclosing to whom and when any proceeds from a sale of the time-share period will be disbursed; a statement whether any party may terminate

the agreement and under what conditions; and a statement disclosing the amount of any commission or other compensation due to the broker from any party upon a termination of the agreement prior to the closing of the resale.

(f) A statement disclosing whether the agreement permits the broker or any other person to make any use whatsoever of the time-share period in question and a detailed description of any such permitted use rights, including a disclosure of to whom any rents or profits generated from such use of the time-share period will be paid.

(g) A statement disclosing the existence of any judgments or pending litigation against the broker resulting from or alleging a violation by the broker of Chapters 475, 498, 718 or 721, F.S., or resulting from or alleging consumer fraud on the part of the broker.

(2) All agreements described in subsection (1) must be reduced to writing, and the person engaging the services of the broker must receive a fully executed copy of the written agreement on the day he signs it. If the agreement is initially entered into by telephone or by any other oral means, the broker must make all of the disclosures required by subsection (1) to the person engaging his services prior to accepting anything of value from such person. In any event, a written agreement executed by the broker must be presented for signature to the person engaging his services within 10 days after the date the agreement was initially orally entered into.

Rulemaking Authority 475.05, 475.42 FS. Law Implemented 475.42 FS. History—New 10-25-89, Formerly 21V-23.001, Amended 2-21-10.

61J2-23.002 Time-share Resale Contract Disclosures.

Pursuant to Section 475.42(1)(n), Florida Statutes, it shall be a violation of Chapter 475, Florida Statutes, for any broker or salesperson to utilize any form of contract or purchase and sale agreement in connection with the resale of a time-share period unless the contract or purchase and sale agreement complies in all respects with the following provisions.

(1) All forms of contract or purchase and sale agreement utilized by a broker or salesperson in connection with the resale of a time-share period shall contain all of the following:

(a) An explanation of the form of time-share ownership being purchased and a legally sufficient description of the time-share period being purchased.

(b) The name and address of the managing entity of the time-share plan.

(c) The following statement in at least 10-point, capitalized type located immediately prior to the space in the contract reserved for the signature of the purchaser: THE CURRENT YEAR'S ASSESSMENT FOR COMMON EXPENSES ALLOCABLE TO THE TIME-SHARE PERIOD YOU ARE PURCHASING IS _____. THIS ASSESSMENT, WHICH MAY BE INCREASED FROM TIME TO TIME BY THE MANAGING ENTITY OF THE TIME-SHARE PLAN, IS PAYABLE IN FULL EACH YEAR ON OR BEFORE _____. THIS ASSESSMENT (INCLUDES/DOES NOT INCLUDE) YEARLY AD VALOREM REAL ESTATE TAXES, WHICH (ARE/ARE NOT) BILLED AND COLLECTED SEPARATELY. (If ad valorem real property taxes are not included in the current year's assessment for common expenses, the following statement must be included: THE MOST RECENT ANNUAL ASSESSMENT FOR AD VALOREM REAL ESTATE TAXES FOR THE TIME-SHARE PERIOD YOU ARE PURCHASING IS _____.) EACH OWNER IS PERSONALLY LIABLE FOR THE PAYMENT OF HIS ASSESSMENTS FOR COMMON EXPENSES, AND FAILURE TO TIMELY PAY THESE ASSESSMENTS MAY RESULT IN RESTRICTION OR LOSS OF YOUR USE AND/OR OWNERSHIP RIGHTS. In making the disclosures required by this paragraph, the broker may rely upon information provided in writing by the managing entity of the time-share plan.

(d) The disclosure required by Section 721.06(1)(h), Florida Statutes, if applicable.

(e) A complete and accurate disclosure of the terms and conditions of the purchase and closing, including the obligations of the seller and/or the purchaser for closing costs and title insurance.

(f) A statement disclosing the existence of any mandatory exchange program membership included in

the time-share plan.

Specific Authority 475.05, 475.42 FS. Law Implemented 475.42 FS. History—New 10-25-89, Formerly 21V-23.002.

CHAPTER 61J2-24 DISCIPLINARY MATTERS

61J2-24.001 Disciplinary Guidelines

61J2-24.002 Citation Authority

61J2-24.003 Notification of Noncompliance

61J2-24.004 Mediation

61J2-24.005 Revocation (Repealed)

61J2-24.006 Probation

61J2-24.001 Disciplinary Guidelines.

(1) Pursuant to Section 455.2273, F.S., the Commission sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon licensees guilty of violating Chapter 455 or 475, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which normally will be imposed for each count during a formal or an informal hearing. For purposes of this rule, the order of penalties, ranging from lowest to highest, is: reprimand, fine, probation, suspension, and revocation or denial. Pursuant to Section 475.25(1), F.S., combinations of these penalties are permissible by law. Nothing in this rule shall preclude any discipline imposed upon a licensee pursuant to a stipulation or settlement agreement, nor shall the range of penalties set forth in this rule preclude the Probable Cause Panel from issuing a letter of guidance.

(2) As provided in Section 475.25(1), F.S., the Commission may, in addition to other disciplinary penalties, place a licensee on probation. The placement of the licensee on probation shall be for such a period of time and subject to such conditions as the Commission may specify. Standard probationary conditions may include, but are not limited to, requiring the licensee: to attend pre-licensure courses; to satisfactorily complete a pre-licensure course; to attend post-licensure courses; to satisfactorily complete a post-licensure course; to attend continuing education courses; to submit to and successfully complete the state-administered examination; to be subject to periodic inspections and interviews by a DBPR investigator; if a broker, to place the license on a broker associate status; or, if a broker, to file escrow account status reports with the Commission or with a DBPR investigator at such intervals as may be prescribed.

(3) The penalties are as listed unless aggravating or mitigating circumstances apply pursuant to subsection (4). The verbal identification of offenses is descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

| | Penalty Range | |
|--|--|--|
| Violation | First Violation | Second and Subsequent Violations |
| (a) Section 475.22, F.S. Broker fails to maintain office or sign at entrance of office | (a) Reprimand to \$500 administrative fine | (a) 90-day suspension and \$1,000 administrative fine |
| | | |
| b) Section 475.24, F.S. Failure to register a branch office | (b) Reprimand to \$500 administrative fine | (b) 90-day suspension and \$1,000 administrative fine |
| | | |
| c) Section 475.25(1)(b), F.S. Fraud, misrepresentation, and dishonest dealing | (c) \$1,000 to \$2,500 administrative fine and 30-day suspension to revocation | (c) \$2,500 to \$5,000 administrative fine and 6 month suspension to revocation |
| Concealment, false promises, false pretenses by trick, scheme or device | \$1,000 to \$2,500 administrative fine and 30-day suspension to revocation | \$2,500 to \$5,000 administrative fine and 6 month suspension to revocation |
| Culpable negligence or breach of trust | \$1,000 to \$2,500 administrative fine and 30-day suspension to revocation | \$2,500 to \$5,000 administrative fine and 6 month suspension to revocation |
| Violating a duty imposed by law or by the terms of a listing agreement; aided, assisted or conspired with another; or formed an intent, design or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design or scheme | \$1,000 to \$2,500 administrative fine and 30-day suspension to revocation | \$2,500 to \$5,000 administrative fine and 6 month suspension to revocation \$2,500 to \$5,000 administrative fine and 6 month suspension to revocation |
| | | |
| (d) Section 475.25(1)(c), F.S. False, deceptive or misleading advertising | (d) \$250 to \$1,000 administrative fine and 30 to 90 day suspension | (d) \$1,000 to \$5,000 administrative fine and 90 day suspension to revocation |
| | | |
| (e) Section 475.25(1)(d), F.S. Failed to account or deliver to any person as required by agreement or law, escrowed property | (e) \$250 to \$1,000 administrative fine and suspension to revocation | (e) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| | | |
| (f) Section 475.25(1)(e), F.S. Violated any rule or order or provision under Chapters 475 and 455, F.S. | (f) \$250 to \$1,000 administrative fine and suspension to revocation | (f) \$1,000 to \$5,000 administrative fine and suspension to revocation |

| | | |
|--|--|---|
| (g) Section 475.25(1)(f), F.S. Convicted or found guilty of a crime related to real estate or involving moral turpitude or fraudulent or dishonest dealing | (g) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (g) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (h) Section 475.25(1)(g), F.S. Has license disciplined or acted against or an application denied by another jurisdiction | (h) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (h) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (i) Section 475.25(1)(h), F.S. Has shared a commission with or paid a fee to a person not properly licensed under Chapter 475, F.S. | (i) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (i) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (j) Section 475.25(1)(i), F.S. Impairment by drunkenness, or use of drugs or temporary mental derangement | (j) Suspension for the period of incapacity | (j) Suspension for the period of incapacity |
| (k) Section 475.25(1)(j), F.S. Rendered an opinion that the title to property sold is good or merchantable when not based on opinion of a licensed attorney or has failed to advise prospective buyer to consult an attorney on the merchantability of title or to obtain title insurance | (k) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (k) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (l) Section 475.25(1)(k), F.S. Has failed, if a broker, to deposit any money in an escrow account immediately upon receipt until disbursement is properly authorized. Has failed, if a sales associate, to place any money to be escrowed with his registered employer | (l) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (l) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (m) Section 475.25(1)(l), F.S. Has made or filed a report or record which the licensee knows to be false or willfully failed to file a report or record or willfully impeded such filing as required by State or Federal Law | (m) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (m) \$1,000 to \$5,000 administrative fine and suspension to revocation |

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| (n) Section 475.25(1)(m), F.S. Obtained a license by fraud, misrepresentation or concealment | (n) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (n) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (o) Section 475.25(1)(n), F.S. Confined in jail, prison or mental institution; or through mental disease can no longer practice with skill and safety | (o) \$250 to \$1,000 administrative fine and suspension to revocation | (o) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (p) Section 475.25(1)(o), F.S. Guilty for the second time of misconduct in the practice of real estate that demonstrates incompetent, dishonest or negligent dealings with investors | (p) \$1,000 to \$5,000 administrative fine and a 1 year suspension to revocation | |
| (q) Section 475.25(1)(p), F.S. Failed to give Commission 30 day written notice after a guilty or nolo contendere plea or convicted of any felony | (q) \$500 to \$1,000 administrative fine and suspension to revocation | (q) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (r) Section 475.25(1)(r), F.S. Failed to follow the requirements of a written listing agreement | (r) \$250 to \$1,000 administrative fine and suspension to revocation | (r) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (s) Section 475.25(1)(s), F.S. Has had a registration suspended, revoked or otherwise acted against in any jurisdiction | (s) \$250 to \$1,000 administrative fine and 60-day suspension to revocation | (s) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (t) Section 475.25(1)(t), F.S. Violated the Uniform Standards of Professional Appraisal Practice as defined in Section 475.611, F.S. | (t) \$250 to \$1,000 administrative fine and 30-day suspension to revocation | (t) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (u) Section 475.25(1)(u), F.S. Has failed, if a broker, to direct, control, or manage a broker associate or sales associate employed by such broker | (u) \$250 to \$1,000 administrative fine and suspension to revocation | (u) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (v) Section 475.25(1)(v), F.S. Has failed, if a broker, to review the brokerage's trust accounting procedures in order to ensure compliance with this chapter | (v) \$250 to \$2,500 administrative fine and suspension to revocation | (v) \$1,000 to \$5,000 administrative fine and suspension to revocation |

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| (w) Section 475.42(1)(a), F.S. Practice without a valid and current license | (w) \$250 to \$2,500 administrative fine and suspension to revocation | (w) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (x) Section 475.42(1)(b), F.S. Practicing beyond scope as a sales associate | (x) \$250 to \$1,000 administrative fine and suspension to revocation | (x) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (y) Section 475.42(1)(c), F.S. Broker employs a sales associate who is not the holder of a valid and current license | (y) \$250 to \$1,000 administrative fine and suspension to revocation | (y) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (z) Section 475.42(1)(d), F.S. A sales associate shall not collect any money in connection with any real estate brokerage transaction except in the name of the employer | (z) \$250 to \$1,000 administrative fine and suspension to revocation | (z) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (aa) Section 475.42(1)(f), F.S. Makes false affidavit or affirmation or false testimony before the Commission | (aa) \$250 to \$1,000 administrative fine and suspension to revocation | (aa) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (bb) Section 475.42(1)(g), F.S. Fails to comply with subpoena | (bb) \$250 to \$1,000 administrative fine and suspension | (bb) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (cc) Section 475.42(1)(h), F.S. Obstructs or hinders the enforcement of Chapter 475, F.S. | (cc) \$250 to \$1,000 administrative fine and suspension to revocation | (cc) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (dd) Section 475.42(1)(i), F.S. No broker or sales associate shall place upon the public records any false, void or unauthorized information that affects the title or encumbers any real property | (dd) \$250 to \$2,500 administrative fine and suspension to revocation | (dd) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (ee) Section 475.42(1)(j), F.S. Failed to register trade name with the Commission | (ee) \$250 to \$1,000 administrative fine | (ee) \$1,000 to \$5,000 administrative fine and suspension to revocation |

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| (ff) Section 475.42(1)(k), F.S. No person shall knowingly conceal information relating to violations of Chapter 475, F.S. | (ff) \$250 to \$1,000 administrative fine and suspension | (ff) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (gg) Section 475.42(1)(l), F.S. Fails to have a current license as a broker or sales associate while listing or selling one or more timeshare periods per year | (gg) \$250 to \$1,000 administrative fine and suspension | (gg) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (hh) Section 475.42(1)(m), F.S. Licensee fails to disclose all material aspects of the resale of timeshare period or timeshare plan and the rights and obligations of both buyer or seller | (hh) \$250 to \$1,000 administrative fine and suspension | (hh) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (ii) Section 475.42(1)(n), F.S. Publication of false or misleading information; promotion of sales, leases and rentals | (ii) \$250 to \$1,000 administrative fine and suspension to revocation | (ii) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (jj) Section 475.451, F.S. School teaching real estate practice fails to obtain a permit from the department and does not abide by regulations of Chapter 475, F.S., and rules adopted by the Commission | (jj) \$250 to \$1,000 administrative fine and suspension | (jj) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (kk) Section 475.453, F.S. Broker or sales associate participates in any rental information transaction that fails to follow the guidelines adopted by the Commission and Chapter 475, F.S. | (kk) \$250 to \$1,000 administrative fine and suspension | (kk) \$1,000 to \$5,000 administrative fine and 90-day suspension to revocation |
| (ll) Section 475.5015, F.S. Failure to keep and make available to the department such books, accounts, and records as will enable the department to determine whether the broker is in compliance with the provisions of Chapter 475, F.S. | (ll) \$250 to \$1,000 administrative fine and suspension to revocation | (ll) \$1,000 to \$5,000 administrative fine and 90-day suspension to revocation |

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| (mm) Section 455.227(1)(s), F.S. Failing to comply with the educational course requirements for domestic violence | (mm) \$250 to \$1,000 administrative fine and suspension to revocation | (mm) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (nn) Section 455.227(1)(t), F.S. Failing to report in writing to the Commission within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction. | (nn) \$250 to \$1,000 administrative fine and suspension to revocation | (nn) \$1,000 to \$5,000 administrative fine and suspension to revocation |
| (oo) Section 455.227(1)(u), F.S. Termination from a treatment program for impaired practitioners as described in Section 456.076 for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program | (oo) \$250 to \$1,000 administrative fine and suspension to revocation | (oo) \$1,000 to \$5,000 administrative fine and suspension to revocation |

(4)(a) When either the Petitioner or Respondent is able to demonstrate aggravating or mitigating circumstances to the Commission in a Section 120.57(2), F.S., hearing or to a Division of Administrative Hearings hearing officer in a Section 120.57(1), F.S., hearing by clear and convincing evidence, the Commission or hearing officer shall be entitled to deviate from the above guidelines in imposing or recommending discipline, respectively, upon a licensee.

Whenever the Petitioner or Respondent intends to introduce such evidence to the Commission in a Section 120.57(2), F.S., hearing, advance notice of no less than seven (7) days shall be given to the other party or else the evidence can be properly excluded by the Commission.

(b) Aggravating or mitigating circumstances may include, but are not limited to, the following:

1. The degree of harm to the consumer or public.
2. The number of counts in the Administrative Complaint.
3. The disciplinary history of the licensee.
4. The status of the licensee at the time the offense was committed.
5. The degree of financial hardship incurred by a licensee as a result of the imposition of a fine or suspension of the license.
6. Violation of the provision of Chapter 475, F.S., wherein a letter of guidance as provided in Section 455.225(4), F.S., previously has been issued to the licensee.

Rulemaking Authority 455.2273, 475.05 FS. Law Implemented 455.227, 455.2273, 475.22, 475.24, 475.25, 475.42, 475.453 FS. History—New 11-24-86, Amended 10-13-88, 4-20-89, 5-20-90, 12-29-91, 11-8-92, 6-28-93, Formerly 21V-24.001, Amended 11-16-93, 2-29-96, 12-30-97, 11-29-98, 1-18-00, 2-5-04, 1-30-06, 12-25-07, 7-21-10, 11-15-12.

61J2-24.002 Citation Authority.

(1) Pursuant to Section 455.224, F.S., the Commission sets forth violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a violation for which there is no substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the fine or other conditions to be imposed.

(2) The following violations with accompanying fine or other conditions may be disposed of by citation:

| VIOLATION | FINE |
|---|----------|
| (a) Section 475.180(2)(a), F.S. – a nonresident failed to file the required irrevocable consent form; a resident licensee who failed to notify the Commission of becoming a nonresident as prescribed | \$300.00 |
| (b) Sections 475.17(2)(a), 475.17(3)(a), 475.17(4)(a), F.S., Rule 61J2-3.008 and 61J2-3.009, F.A.C. failed to provide the required number of classroom hours for an approved or prescribed course | \$500.00 |
| (c) Section 475.175(2), F.S. and Rule 61J2-3.015, F.A.C. – failed to provide a course completion report to a student | \$100.00 |
| (d) Section 475.22(1), F.S. and Rule 61J2-10.022, F.A.C. – failed to maintain the required office as prescribed | \$500.00 |
| (e) Section 475.22(1), F.S. – failed to maintain the required office entrance sign | \$100.00 |
| (f) Section 475.22(2), F.S. – failed to register an out of state Florida broker's office | \$500.00 |
| (g) Section 475.24, F.S., and 61J2-10.023, F.A.C. – failed to register a location as a branch office | \$200.00 |
| (h) Section 475.25(1)(k), F.S. and subsection 61J2-14.010(1), F.A.C. – failed to immediately deposit trust funds provided the deposit is not more than 3 days late | \$200.00 |
| (i) Section 475.25(1)(q), F.S. – failed to give the appropriate disclosure or notice at the appropriate time under the provisions of Section 475.2755 or 475.278, F.S. (A citation may only be given for a first time violation.) | \$300.00 |
| (j) Section 475.25(1)(r), F.S. – failed to include the required information in a listing agreement; failed to give a copy to a principal within 24 hours; contains a self renewal clause | \$200.00 |
| (k) Section 475.42(1)(b), F.S. – sales associate operating as a sales associate without a registered employer due to failure to renew or properly register | \$500.00 |
| (l) Section 475.42(1)(i), F.S. – having a lis pendens placed by an attorney (Citation may be issued only if no other violation is present) | \$500.00 |
| (m) Section 475.42(1)(j), F.S. and Rule 61J2-10.034, F.A.C. – operated as a broker under a tradename without causing the trade name to be noted in the records of the Commission | \$500.00 |
| (n) Section 475.451(3), F.S. – failed to obtain a multiple permit | \$500.00 |
| (o) Section 475.451(2), F.S. – advertised false, inaccurate, misleading, or exaggerated information | \$500.00 |
| (p) Paragraph 61J2-3.009(4)(d), F.A.C. – failed to have a distance education course instructor available per published schedule | \$300.00 |
| (q) Subsection 61J2-3.008(5)(a), F.A.C. – failed to inform students of course standards and requirements | \$100.00 |
| (r) Subsection 61J2-3.015(2), F.A.C. – failed to provide a course completion report to a student; if a licensee, as the result of an audit/inspection, failed to provide a course completion report to the DBPR | \$200.00 |
| (s) Rule 61J2-5.016, F.A.C. – sales associate or broker associate serving as an officer or director of a registered brokerage corporation | \$200.00 |
| (t) Subsection 61J2-5.019(1), F.A.C. – failed to ensure that the corporation or partnership is properly registered; failed to ensure each officer, director and sales associate is properly licensed | \$500.00 |
| (u) Rule 61J2-10.025, F.A.C. – advertised in a manner in which a reasonable person would not know one is dealing with a real estate licensee or brokerage; failed to include the registered name of the brokerage firm in the advertisement; failed to use the licensee's last name as registered with the Commission in an advertisement | \$500.00 |
| (v) Rule 61J2-10.027, F.A.C. – used the name or identification of an association or organization when the licensee was not in good standing or otherwise not entitled to use same | \$300.00 |
| (w) Subsection 61J2-10.032(1), F.A.C. – broker failed to notify the Commission within the prescribed 15 business days but does so within 25 business days; or, if a Notice of Noncompliance has been issued pursuant to Rule 61J2-24.003, F.A.C., and not timely complied with, failed to notify the Commission within 45 days but does so within 55 days | \$100.00 |

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| (x) Subsection 61J2-10.032(1) and (2), F.A.C. – broker failed to institute a settlement procedure within the prescribed 30 business days but does so within 40 business days; or, if a Notice of Noncompliance has been issued pursuant to Rule 61J2-24.003, F.A.C., and not timely complied with, failed to institute a settlement procedure within 60 days but does so within 70 days | \$100.00 |
| (y) Subsection 61J2-10.032(2), F.A.C. – broker failed to notify the Commission that the dispute settled or went to court, or of the final accounting and disbursement within the prescribed 10 business days but broker does so within 20 business days; or, if a Notice of Noncompliance has been issued pursuant to Rule 61J2-24.003, F.A.C., and not timely complied with, failed to notify the Commission that the dispute settled or went to court, or of the final accounting and disbursement within 40 days but does so within 50 days | \$100.00 |
| (z) Rule 61J2-10.038, F.A.C. – failed to timely notify the DBPR of the current mailing address or any change in the current mailing address | \$500.00 |
| (aa) Paragraph 61J2-14.008(2)(b), F.A.C. – Second offense failure to indicate the name, address and telephone number of the title company or attorney on the contract | \$200.00 |
| (bb) Paragraph 61J2-14.008(2)(b), F.A.C. – Second offense failure to provide Seller’s broker, or Seller if not presented by a broker, within ten (10) business days of the date the Licensee’s broker made the written request for verification of the deposit with either a copy of the written verification, or if no verification is received by Licensee’s broker, written notice that Licensee’s broker did not receive verification of the deposit | \$500.00 |
| (cc) Subsection 61J2-14.012(2), F.A.C. – failed to properly reconcile an escrow account when the account balances | \$500.00 |
| (dd) Subsection 61J2-14.014(1), F.A.C. – failed to secure the written permission of all interested parties prior to placing trust funds in an interest bearing escrow account | \$300.00 |
| (ee) Subsection 61J2-14.014(2), F.A.C. – failed to stop interest from accruing prior to disbursement | \$100.00 |
| (ff) Subsection 61J2-17.013(1), F.A.C. – guaranteed that a pupil would pass an examination | \$500.00 |
| (gg) Failure to register a school location | \$500.00 |
| (hh) Rule 61J2-17.014, F.A.C. – improper use of a guest lecturer | \$100.00 |
| (ii) Rule 61J2-17.015, F.A.C. – failed to post the required language regarding recruitment for employment; recruiting for employment opportunities during class time | \$300.00 |

(3) Citations may be issued to real estate licensees, permit holders, and registrants by the Division of Real Estate.

(4) Citations are to be served upon the subject either by personal service or certified mail, restricted delivery, to the subject’s last known address.

(5) The subject has 30 days from the date the citation becomes a final order to pay the fine. All fines are to be made payable to the “Department of Business and Professional Regulation – R. E. Citations” and sent to the Division of Real Estate in Orlando. A copy of the citation shall accompany the payment of the fine.

Rulemaking Authority 475.05 FS. Law Implemented 455.224, 475.25(1) FS. History–New 12-29-91, Amended 4-16-92, 1-20-93, 6-28-93, Formerly 21V-24.002, Amended 8-23-93, 4-7-94, 4-12-95, 7-5-95, 2-13-96, 6-5-96, 7-23-96, 1-22-97, 3-30-97, 11-10-97, 3-24-98, 7-1-98, 10-25-98, 1-19-99, 1-18-00, 10-15-00, 2-21-02, 2-5-04, 1-30-06, 7-20-09, 11-15-12.

61J2-24.003 Notification of Noncompliance.

(1) Pursuant to Sections 455.225(3) and 120.695, F.S., the Commission sets forth below those statutes and rules which are considered minor violations for which the DBPR shall provide a licensee, registrant or permitholder with a notice of noncompliance. A violation is considered a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. The notice of noncompliance shall only be issued for an initial offense of a listed minor violation.

(a) Paragraph 61J2-3.009(5)(e), F.A.C. – failure to have a distance education instructor available.

(b) Subsection 61J2-3.009(6), F.A.C. – failure to inform students of course standards and requirements.

- (c) Subsection 61J2-3.015(2), F.A.C. – failure to provide a course completion report to a student.
 - (d) Rule 61J2-5.016, F.A.C. – sales associate or broker associate serving as officer or director of a registered brokerage corporation.
 - (e) Section 475.22(1), F.S. – failure to maintain the office entrance sign as required.
 - (f) Subsections 61J2-10.032(1) and (2), F.A.C. – failure to perform the required act within the stated time frame but does so no later than 30 days after the stated time frame.
 - (g) Rule 61J2-10.034, F.A.C. – failure to register a trade name with the Division of Real Estate.
 - (h) Subsection 61J2-14.008(2)(b), F.A.C. – initial offense of failure to indicate the name, address and telephone number of the title company or attorney on the contract will receive a notice of non-compliance without citation for a period of twelve months after the effective date of this rule.
 - (i) Subsection 61J2-14.008(2)(b), F.A.C. – initial offense of failure to provide Seller’s broker, or Seller if not presented by a broker, within ten (10) business days of the date the Licensee’s broker made the written request for verification of the deposit with either a copy of the written verification, or if no verification is received by Licensee’s broker, written notice that Licensee’s broker did not receive verification of the deposit, will receive a notice of non-compliance without citation for a period of twelve months after the effective date of this rule.
 - (j) Rule 61J2-14.012, F.A.C. – failure to sign the escrow account reconciliation if the account balances.
 - (k) Subsection 61J2-14.014(2), F.A.C. – failure to stop interest from accruing prior to disbursement.
 - (l) Section 475.451(8), F.S. – failure to keep registration records, course, rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years subsequent to the beginning of each course and make them available to the department for inspection and copying upon request.
 - (m) Rule 61J2-17.014, F.A.C. – improper use of a guest lecturer.
 - (n) Rule 61J2-17.015, F.A.C. – improper recruiting; failure to post the required statement.
- (2) The DBPR shall issue a notice of noncompliance to the licensee, registrant or permitholder subject to the statute and rule that the statute and rule have been violated. The notice of noncompliance shall identify the statute and rule being violated and shall provide information on how to comply with the statute and rule. The DBPR shall allow 15 days for compliance with the statute and rule and shall so notify the licensee, registrant or permitholder. The time for compliance shall begin to run from the time the licensee, registrant or permitholder receives the notice of noncompliance. The failure of a licensee, registrant or permitholder to comply with the notice of noncompliance within the time allowed shall thereafter result in the issuance of a citation pursuant to Rule 61J2-24.002, F.A.C., and, if there is no citation for the violation, then the institution of regular disciplinary proceeding pursuant to Section 455.225, F.S.
- (3) The notice of noncompliance may be delivered to the licensee, registrant or permit holder’s current mailing address by certified mail, by restricted delivery or by personal service. The notice of noncompliance may be issued by the Division of Real Estate.

Rulemaking Authority 475.05 FS. Law Implemented 120.695, 455.225(3) FS. History—New 1-9-94, Amended 1-1-96, 11-10-97, 6-30-98, 10-25-98, 9-17-00, 7-4-06, 6-15-09.

61J2-24.004 Mediation.

- (1) “Mediation” means a process, pursuant to Section 455.2235, F.S., whereby a mediator appointed by the DBPR acts to encourage and facilitate resolution of a legally sufficient complaint. It is an informal process with the objective of assisting the complainant and subject of the complaint to reach a mutually acceptable resolution.
- (2) The Commission finds that mediation is an acceptable method of dispute resolution for the following violations as they are economic in nature or can be remedied by the subject of the complaint:
 - (a) Failure to maintain office or sign at entrance of office pursuant to Section 475.22, F.S.

(b) Failure to register a branch office pursuant to Section 475.24, F.S.

(c) Failed to deliver to a licensee a share of a real estate commission if the licensee has obtained a civil judgment and the judgment has not been satisfied pursuant to Section 475.25(1)(d), F.S.

Rulemaking Authority 455.2235, 475.05 FS. Law Implemented 455.2235 FS. History—New 12-13-94, Amended 1-11-11.

61J2-24.005 Revocation.

Rulemaking Authority 455.227, 475.05 FS. Law Implemented 455.227 FS. History—New 2-13-96, Amended 4-28-98, 2-5-04, Repealed 12-21-14.

61J2-24.006 Probation.

(1) Unless otherwise stated in the final order a term of probation shall be ninety (90) days, to commence thirty (30) days after the filing of the final order.

(2) If a respondent is unable to complete the requirements of probation within the ninety (90) days or such other time specified in the final order, the Division Director is authorized to grant a one-time 180 days extension for the following reasons:

(a) Illness;

(b) Unavailability of a required course.

(c) Economic hardship. This means that the respondent has completed all requirements of probation except for the payment of fines or costs and is presently unable to pay.

(3) In the event the Division Director denies a request for extension or the request for extension involves a reason other than stated in subsection (2), then the request shall be heard by the Commission.

(4) It is the responsibility of the respondent to submit to the Division Director or the Commission written documentation to substantiate the request for extension. Such request must be made prior to the expiration of the initial term of probation. Failure to request an extension either of the Division Director or the Commission within the initial term of probation will result in the automatic denial of the request for extension and any penalty or penalties associated with the failure to timely complete probation will become effective.

(5) The respondent will be released early from probation upon the successful completion of the terms of probation and the required information being submitted to the Division of Real Estate Legal Section.

(6) When as a term of probation, the Commission orders a respondent to attend one or more meetings of the Commission, the respondent shall comply with the following in order to obtain credit for attending the meeting:

(a) The respondent shall arrive not less than 5 minutes prior to the published starting time and date on the meeting agenda, absent good cause. Inability to find a parking space shall not constitute good cause. The respondent is responsible for arriving early enough to obtain suitable parking;

(b) Appropriate dress is required. Appropriate dress includes casual business attire. Respondents may choose to wear coat, tie or other business attire at their option. Items of prohibited clothing include denim, shorts, flip-flops, sneakers, sandals, t-shirts, hats, caps or other leisure attire;

(c) The respondent shall pay attention. Engaging in disruptive behavior is prohibited. Disruptive behavior includes, but is not limited to, sleeping, excessive conversation, or the reading of newspapers, magazines, or other outside materials;

(d) The demeanor and behavior of all respondents shall be consistent with an orderly public meeting and consistent with judicial or quasi-judicial proceedings;

(e) The respondent is permitted short absences from the meeting for not more than 5 minutes each hour. Failure to remain in the meeting at least 55 minutes per hour without prior permission of Division

staff or the Chair of the Commission will result in a Commission decision to not award credit for attendance at a Commission meeting;

(f) Except as otherwise allowed by this section, the respondent is required to attend the meeting in its entirety;

(g) All electronic devices must be turned off; and

(h) Failure to comply with this subsection or any other direction of the Commission consistent with an orderly public meeting will result in loss of credit for attendance at the entire meeting of the Commission.

(i) Any respondent requiring special accommodations to attend the meeting, because of a disability, must contact the Division of Real Estate staff at 400 West Robinson Street, Suite N801, Orlando, Florida 32801-1757, Call.Center@dbpr.state.fl.us, (850)487-1395 at least two weeks prior to the meeting date. The Commission will make a reasonable accommodation for those respondents who demonstrate they require special accommodations because they are a person who has a mental or physical impairment that substantially limits one or more of the major life activities of such individual.

Rulemaking Authority 475.05 FS. Law Implemented 455.227, 475.25(4) FS. History—New 2-13-96, Amended 11-10-97, 12-8-02, 7-10-06, 1-11-11.

CHAPTER 61J2-26 NONRESIDENT LICENSURE

61J2-26.001 Examination Requirements

61J2-26.002 Residency

61J2-26.003 Post-License and Continuing Education

61J2-26.001 Examination Requirements.

(1) The Florida Real Estate Commission has determined that it is in the best interest of the public's welfare to ensure a nonresident seeking licensure in this State, pursuant to s. 475.180, Florida Statutes, is knowledgeable in Florida law, statutes and administrative rules. To properly ensure such applicant has this knowledge, a written examination will be mandatory. This examination will consist of 40 questions, with each question being worth one (1) point. An applicant who receives a grade of 30 points or higher shall be deemed to have successfully completed the examination requirement for nonresident licensure.

(2) The subject area of the examination shall consist of general real estate license law. While knowledge of all subject areas is required, particular emphasis will be placed on Chapters 455 and 475, Florida Statutes, and on the rules of the Florida Real Estate Commission found in Chapter 61J2 of the Florida Administrative Code.

(3) This examination will be required of all applicants for nonresident licensure, regardless of jurisdiction, and shall become a part of each written agreement implementing the provisions of s. 475.180, Florida Statutes.

Specific Authority 475.05, 475.180 FS. Law Implemented 475.180 FS. History—New 11-6-94.

61J2-26.002 Residency.

The Florida Real Estate Commission recognizes that nonresidents of Florida may have a lesser opportunity than Florida residents to avail themselves of the education, experience, and examination requirements necessary for Florida licensure, and that such nonresidents may therefore apply for licensure under s. 475.180(1), Florida Statutes, as implemented in Rule Chapter 61J2-2, Florida Administrative Code. For purposes of s. 475.180(1), Florida Statutes, a "resident" of Florida is defined as:

- (1) a person who has resided (regardless of whether the place or base of residence is a recreational vehicle, hotel, rental unit, or any other temporary or permanent situs) in Florida, continuously for a period of 4 calendar months or more, within the preceding one year; or
- (2) a person who presently resides (regardless of whether the place or base of residence is a recreational vehicle, hotel, rental unit, or any other temporary or permanent situs) in Florida, with the intention to reside continuously in Florida for a period of 4 months or more, commencing on the date that the person began the current period of residence in Florida.

Specific Authority 475.05, 475.180 FS. Law Implemented 475.180 FS. History—New 11-6-94.

61J2-26.003 Post-License and Continuing Education.

(1) The Florida Real Estate Commission has determined that it is in the best interest of the public welfare that a non-resident securing licensure pursuant to s. 475.180, Florida Statutes, keep abreast of current Florida law. To properly ensure such knowledge subsequent to securing licensure through s. 475.180, Florida Statutes, the non-resident licensee must satisfy post-license and continuing education requirements as follows:

(a) All applicants for non-resident licensure must satisfactorily complete a Commission prescribed or approved post-license educational course prior to the first renewal following licensure. The standards and requirements for the post-license education course will be in accordance with Rule 61J2-3.020, Florida Administrative Code.

(b) Subsequent to the first renewal period, all non-resident licensees are required to satisfactorily complete the continuing education requirements pursuant to Rule 61J2-3.009, Florida Administrative Code. The standards and requirements for continuing education will be in accordance with Rule 61J2-3.009, Florida Administrative Code.

(2) Failure of a non-resident licensee to satisfactorily complete the post-license education requirement shall result in the penalties prescribed in s. 475.17(3) or (4), as applicable.

(3) Hardship cases for post-license education shall be governed by and as defined in Rule 61J2-3.013, Florida Administrative Code.

Specific Authority 475.05, 475.180 FS. Law Implemented 475.180 FS. History—New 11-30-94.