RENEWAL DEADLINE
September 30, 2025

Florida Real Estate
Continuing Education Course

Experience the best in Florida real estate education—now stronger than ever! Bert Rodgers Schools and Gold Coast Schools have joined forces—bringing you even more expertise, convenience, and success under one trusted name.

- State Approved. Meet Core Law and Ethics Requirements.
- **FREE** same-day grading and report to the DBPR.
- Simple to navigage and complete.
- **FREE** Certificate of Completion.

Gold Coast Schools
by Colibri Real Estate

VISIT
GoldCoastSchools.com

CALL
800-732-9140

Gold Coast Schools
by Colibri Real Estate

Quick start guide

How to renew your real estate license

Gold Coast Schools makes it easy to renew your Florida real estate sales associate or broker's license by completing the required 14-Hour Continuing Education requirement.

EVERYTHING NEEDED TO COMPLETE YOUR LICENSE RENEWAL REQUIREMENT IS INCLUDED IN THIS BOOK.

STEP 1 Use this book to answer the 30-question exam.

STEP 2 Submit your answers using our instant online grading **GoldCoastSchools.com/grading**, or mail your answer sheet along with payment to: **Gold Coast Schools 2101 Park Center Drive, Suite 190, Orlando, FL 32835**, or bring your answer sheet to any Gold Coast Schools location near you.

STEP 3 Contact the DBPR to pay your state license renewal fees by visiting **myfloridalicense.com** or call **1-850-487-1395**.

IT'S THAT EASY! Upon completion, we report your completion records to the DBPR for you and provide you with a certificate of completion and diploma for your records at no additional charge.

ADDITIONAL INFORMATION

Real Estate license renewal requirements:

The Florida Real Estate Commission requires anyone with a Real Estate license to complete 14 hours of continuing education every two years after their first renewal.

Are you renewing your license for the first time?

If so, STOP! Your first license renewal needs to be a post-license renewal course and not this 14-hour continuing education course. If you have a real estate license and have not completed either a 45-hour sales associate or 60-hour broker post-license course, call us at 1-800-732-9140 for more details about this requirement.

Questions?

If you have any questions about this course and how to renew your license, our helpful Career Counselors are here to assist.

Simply call
1-800-732-9140

Gold Coast Schools
by Colibri Real Estate

(800) 732-9140 • goldcoastschools.com

Florida Real Estate Continuing Education Answer Sheet

EXAM #16-1

Student Information

RE License Number: (SL or BK) _____

Name: _____

Address: _____

City/State/Zip: _____

Phone: _____ Email: _____

Passing this 30-question exam satisfies the 14-hour continuing education requirement.
(Includes Core Law and Business Ethics)

Grading and Payment Options

To use this course for your renewal, simply choose one of the following three methods to grade your exam.

1. For instant results (the quickest method):
   - Visit www.GoldCoastSchools.com/grading
   - Click the “Click Here to Submit Answers” button
   - Click the “Secure Checkout” button to pay the grading fee
   - Follow the online instructions for immediate grading results
2. Bring your completed answer sheet and payment to a Gold Coast location near you to have it graded in person
3. Mail your completed answer sheet and check to: Gold Coast Schools, 2101 Park Center Dr., Suite 190, Orlando, FL 32835

After successfully completing your course, Gold Coast will report your CE hours directly to the DBPR.

Only $25.95

No additional fees. Unlimited retakes to pass. Includes:

1. The state approved 14-hour continuing education course
2. Your CE hours reported directly to the DBPR
3. A certificate of completion for your records

Student Affidavit

I hereby certify that I personally (and without assistance) completed this CE course.

Signature: _____ **Date:** _____

Florida Real Estate 14-Hr Continuing Ed
EXAM #16-1

Example: Ⓐ ● Ⓒ Ⓓ

1.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
2.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
3.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
4.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
5.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
6.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
7.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
8.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
9.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
10.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
11.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
12.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
13.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
14.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
15.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
16.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
17.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
18.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
19.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
20.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
21.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
22.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
23.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
24.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
25.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
26.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
27.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
28.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
29.	Ⓐ	Ⓑ	Ⓒ	Ⓓ
30.	Ⓐ	Ⓑ	Ⓒ	Ⓓ

For office use only: Date Rec’d: _____ Grade: _____ Student ID: _____

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Florida Real Estate Continuing Education Final Exam
EXAM #16-1

1. What is the primary purpose of the Florida Real Estate License Law?
   A. To protect real estate licensees
   B. To protect brokers from the actions of their employees
   C. To provide a code of ethics for licensees
   D. To protect the public

2. A real estate licensee failed to renew their license within the two-year renewal cycle. If their license has been involuntary inactive for only six months, what must they do to renew their license?
   A. Complete the required 14-hour continuing education, pay the renewal fee, and pay a late fee
   B. Complete the 28-hour reactivation course, pay the renewal fee, and pay a late fee
   C. Retake the pre-licensing education, pay an application fee, and retake and pass the state exam
   D. Pay the renewal fee and apply for license reactivation

3. Home seeker Lindsay wants to increase her credit score so she can qualify for a conventional loan at a lower interest rate. To do this, Lindsay needs to focus on several factors that go into calculating a credit score. Which is NOT one of the factors?
   A. Payment history and total amount owed
   B. Income
   C. New credit
   D. Types of credit and length of credit history

4. A business code of ethics would be best described as:
   A. laws establishing illegal actions.
   B. standards or values defining professional conduct.
   C. penalties imposed for unprofessional behavior.
   D. minimum standards for acceptable behavior.

5. Licensee Robert is preparing an advertisement for one of his listings. He must be careful with the words he chooses to avoid violating Fair Housing Laws. An example of a violation would be to say,:
   A. "Conveniently located close to shopping."
   B. "Near a recently constructed golf course."
   C. "Over 55 years of age neighborhood."
   D. "Within walking distance of a temple."

6. Part III of F.S. 475 relates to the sale of commercial properties. If the property owner refuses to pay the negotiated commission rate, the statute allows the broker to place a lien against the net proceeds for:
   A. the owner's interest in the property.
   B. all of the owner's assets.
   C. the owner's personal property.
   D. all of the owner's interest in any real property owned by them.

7. Broker Oliva maintains a registered office in her residence. Where should Olivia position her office sign?
   A. On or about the entrance to her office
   B. At the entrance of her driveway
   C. In her front yard
   D. Nowhere, a sign is not required at her residence

8. Florida has written agreements with the real estate commissions of a few specific states that have similar education and experience requirements. What is this called?
   A. Reciprocity
   B. Mutual recognition
   C. Mutual agreement
   D. State recognition

9. If residential landlords want to find information governing their activities, which statute should they examine?
   A. Chapter 83, F.S., Part I
   B. Chapter 83, F.S., Part II
   C. Chapter 475, F.S., Part I
   D. Chapter 475, F.S., Part II

10. A developer contacted a licensee with questions about building a small housing development in an area that was a former gas station. What environmental topic should the licensee discuss with the developer?
    A. Backfields
    B. Greenfields
    C. Wellfields
    D. Brownfields

11. Sales associate Katie is preparing a promotional ad for her real estate services. What information is she required to include in the ad?
    A. Broker's personal name
    B. Name of the brokerage firm
    C. Name and phone number of the brokerage firm
    D. Sales associate's name, brokerage name, and address

12. All sales associates must work in an office that is registered with the DBPR in:
    A. the principal office of the broker.
    B. a branch office of the broker.
    C. a permanent or temporary location.
    D. the name of the broker.

13. Licensee Matt's open house for his client was quite successful as he received multiple offers. In this situation, Matt should:
    A. present only the highest offer to the seller and discard the rest.
    B. present no more than three offers to the seller and discard the rest.
    C. maintain a written record of the date that each offer was submitted to the seller.
    D. personally counter the highest offer to get the buyer to increase their bid and then present the offer to the seller.

14. Select the TRUE statement regarding earnest money deposits.
    A. On average, a standard earnest money deposit is at least 10% to 12% of the cost of the home.
    B. Buyers who change their mind about the purchase of property will always receive their earnest deposit money back.
    C. Most sellers refuse to accept earnest money deposits as part of a buyer's offer.
    D. An earnest money deposit is proof that the person is a good-faith buyer.

15. Sara who is an unlicensed personal assistant for a brokerage firm can do a variety of tasks. Which is one task that Sara is NOT permitted to do?
    A. Hand out brochures at an open house
    B. Assemble documents for a closing
    C. Prepare a comparative market analysis
    D. Schedule an appointment for a licensee to show a property

16. According to F.S. 475, the sale of which type of property is NOT considered a residential sale?
    A. Single-family home
    B. Ten-unit apartment building
    C. Duplex
    D. Five acres of agricultural property

17. Harry who is a Florida attorney in good standing wants to obtain his initial Florida real estate license. What is he required to do?
    A. Take and pass the 63-Hour Real Estate Sales Associate Pre-License (FREC 1) course and pass the state sales associate licensing exam.
    B. Pass the state sales associate licensing exam only, since he is exempt from taking the 63-Hour Real Estate Sales Associate Pre-License (FREC 1) course.
    C. Pass a 40-question Florida real estate law exam only, since he is exempt from all other pre- licensing requirements.
    D. Simply apply for the license since he is exempt from any other requirements.

18. Which statement is TRUE regarding the National Association of REALTORS® (NAR) Code of Ethics?
    A. All licensees must adhere to the NAR Code of Ethics.
    B. The NAR Code of Ethics is part of Chapter 475, F.S.
    C. The NAR Code of Ethics is part of Chapter 61J2, F.A.C.
    D. All REALTORS agree to abide by the NAR Code of Ethics.

19. A landlord needs to enter a tenant's residence to replace an old electric range. How many hours' notice must the landlord give prior to entry of the residence?
    A. 24 hours
    B. 6 hours
    C. 4 hours
    D. None; no notice is necessary

20. Joan's license expired 14 months ago. If this is her third license cycle, what must she do to practice real estate again?
    A. Take 28 hours of reactivation education and pass a 50-question test.
    B. Take 14 hours of continuing education and pay a late fee
    C. Take the 63-Hour Real Estate Sales Associate Pre-License (FREC I) course and pass another state exam.
    D. Take the 45-Hour Post-License course.

21. A tenant stopped paying rent even though the landlord made all requested repairs. In this situation, the landlord is NOT permitted to:
    A. turn off utilities.
    B. impose a claim on the security deposit when the tenant vacates.
    C. email the tenant to remind them of the past due rent.
    D. evict the tenant if no damages have occurred.

22. Gina is starting her search for a new home, but she isn't sure if a past delinquent loan payment is still showing on her credit report. Under the Fair Credit Reporting Act, Gina may obtain a free copy of her credit report to check for errors:
    A. once a year.
    B. every two years.
    C. every five years.
    D. within six months of being denied credit.

23. Licensee Brian received a notice that a client filed an ethics complaint against him through the local association of REALTORS. In the complaint, Brian should review:
    A. the standards of practice that were violated.
    B. quotes from the NAR Code of Conduct Preamble.
    C. the name of the ombudsman.
    D. the list of articles in the NAR Code of Ethics that were violated.

24. Licensee Joni received two offers on the same listing, this is considered a(n):
    A. violation of license law.
    B. invalid offer situation.
    C. potential conflict of interest.
    D. multiple-offer situation.

25. Which statement best describes the "Pathways to Professionalism"?
    A. Enforceable standards of etiquette that licensees must follow
    B. Rules for obtaining a Florida real estate license
    C. Lists of potential networking opportunities for professional growth
    D. A list of professional courtesies that licensees should follow

26. Broker Darren provides limited representation to the buyer, and he does not represent either the buyer or the seller in the transaction. This is the only brokerage relationship that does not have to be in writing. What type of relationship is this?
    A. Single agency
    B. Designated agency
    C. Transaction broker
    D. No brokerage

27. A seller received multiple offers on their home listed with licensee Nicky. Nicky has a responsibility to obtain the best price and terms for the:
    A. lender.
    B. buyer.
    C. title company.
    D. seller.

28. Britney is a single agent in a real estate transaction. As a fiduciary, who does Britney represent?
    A. Both the seller and buyer
    B. Neither the seller nor the buyer
    C. Either the seller or the buyer
    D. Only a seller; she cannot represent a buyer as a single agent

29. The new CEO of a major brokerage firm wants to create a stronger, more ethical business culture. To accomplish this, which strategy would be best?
    A. Force all staff to take ethics training
    B. Treat all staff the same
    C. Hire ethical employees and fire unethical employees
    D. Investigate only serious ethical complaints

30. The articles of the NAR Code of Ethics do NOT include:
    A. duties to clients and customers.
    B. duties associated with the Brokerage Relationship Disclosure Act.
    C. duties to the public.
    D. duties to other REALTORS.

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WHAT'S INSIDE

Acknowledgements

Gold Coast management thanks our current and former students who have helped us become the largest real estate school in Florida. Some of you may have obtained your licensing education from us back in 1970, while others are coming to us for the first time. You are the reason we are in business. If there is anything that we can do to assist you, please ask.

We also wish to thank our loyal and dedicated staff. Our customer service reps happily help thousands of students each week, and during renewal time may answer the same question dozens of times per day. Their mission is to help you, our student, solve issues and achieve your goals. Our instructional and course development teams work hard every day to ensure that students receive the best education and most up-to-date information possible.

Gold Coast's unique blend of instructors in real estate, appraisal, mortgage, CAM, construction, and insurance all contribute to a well-rounded view and a deep understanding of the many facets of this complicated business we call real estate.

A special thanks to the team of authors, editors, developers, and designers who assembled this book for the Gold Coast students.

Disclaimer

Reicon Publishing, LLC, Gold Coast Schools, its owners, or related companies shall not be liable in any way for failure to receive or grade a student's answer sheet within any specified time period. It is the student's responsibility as a real estate licensee to ensure that their educational and renewal requirements are completed in a timely fashion to ensure successful license renewal.

Gold Coast respects student privacy. Course records are confidential. The company does not sell or rent any student information including addresses, phone numbers, or email addresses to any unaffiliated company or organization.

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1 2 3 4

FREQUENTLY ASKED QUESTIONS

Florida Real Estate License Renewal Requirements

When do Florida Real Estate Licenses Renew?
Florida licenses renew every two years on either March 31 or September 30. Check the renewal/expiration date on your license or visit the DBPR website at myfloridalicense.com.

What if this is my first renewal? STOP!
If this is your first renewal, you are taking the wrong course. Licensees are required to complete post-license education prior to their first renewal. The requirement is 45 hours for sales associates, and 60 hours for brokers. Gold Coast offers these post-license courses. Check our website!

What is the renewal process?
You will receive a renewal notice from the DBPR 60 days before your renewal date. Once you complete the required CE course, Gold Coast will electronically report your completion to the DBPR. Once you have completed the CE course and paid the renewal fee to the DBPR, your license will be renewed.

How long does it take the DBPR to process my renewal and update my online records?
The DBPR typically posts completions to its website within 24 hours of receipt from the school. The best way to avoid problems is to renew early. If your records are not posted within 10 days of your completion, please call Gold Coast at 1-800-732-9140 so that we may assist you with researching the problem.

What happens if I renew late?
If you are late for your first renewal, your sales associate or broker license becomes null and void. Sales associates must qualify by starting over again with pre-license education and the state exam. Brokers have six months to revert to a sales associate license. In order to do this, the broker must complete the 14-hour CE course and submit a fee payment with form #DBPR RE-13, Change from Broker to Broker Sales Associate License to the DBPR. If a broker does not complete this within six months of the expiration date, their license will remain null and void. To operate as a broker, you must requalify by satisfactorily completing the broker's pre-license course and passing the state exam.

If this is not your first renewal, your license will go into involuntary inactive status. You can complete this CE course within one year and pay late fees to renew your license.

When can I start my continuing education?
FREC rules state that you must complete your CE within your renewal cycle. Your renewal cycle runs for two years and ends on the expiration date listed on your license.

When should I complete the CE course?
You can complete your CE course anytime during your two-year renewal cycle. Please do yourself a favor and complete the course early. Thousands of people wait until the last minute, which can cause delays in reporting. Why risk your license going inactive? Complete the course and renew your license at least several weeks prior to the expiration date.

Are the chapter progress checks graded?
No, the progress checks are only there for you to check your understanding of the course material.

Is the CE final exam open book?
Yes, the final exam is open book. FREC rules require that the final exam cannot follow the order of the book, but all answers can be found in the book.

How do I get my CE final exam graded?
Go to GoldCoastSchools.com/grading, and follow the instructions. You will receive instant results. If you prefer, you can mail your exam to Gold Coast or drop it by any of our convenient locations. See the Answer Sheet for specific instructions.

What is a passing score?
The 14-hour CE final exam consists of 30 multiple-choice questions. The passing score is 80%, which means you need to answer 24 out of the 30 questions correctly. If you take the course online and do not pass the exam, you can select a different online exam to complete.

What if I prefer a classroom education?
Gold Coast offers courses in both classroom and livestream formats at all locations. Complete information and course schedules can be found on our website.

GoldCoastSchools.com
(Scan the QR code with a mobile device to open our website.)

Is there any advantage to the classroom education?
Yes! Many students comment that they enjoy the classroom course for several reasons:

- There is no final exam.
- There is a live instructor to teach the material.
- The classroom is a great networking opportunity.

Support Contact Information

Customer Service Assistance
For help with online grading, class/livestream, or licensing:

- Call: 800-732-9140 (M-F 9am-5pm, Sat 9am-12pm)
- Email: info@goldcoastshcools.com

Technical Support
For help with running the online course:

- Call: 954-315-7698 (M-F 9am-5pm)
- Email: onlinesupport@goldcoastschools.com
- Online: Click "Get Help" on the your Classes page

Real Estate Instructor Support
For help with real estate-related issues:

- Call: 954-315-8208 (M-F 9am-5pm)
- Email: instructor@goldcoastschools.com

Licensing Board - DBPR
For help with your license or related issues:

- Call: 850-487-1395 (M-F 8am-5pm)
- Website: myfloridalicense.com

Chapter 1: Core Law

3 CE Hours

14-Hr CE FREC Approval Number: 28640

Learning Objectives

- Define the eight licensing activities that require a real estate license
- Explain licensing renewal requirements including classroom and distance learning
- Understand the late renewal process
- Distinguish the appropriate time to disclose brokerage firm or trade names in advertising
- List the revised duties of unlicensed assistants
- Explain brokerage relationship disclosure requirements
- Understand the rules for the national and state "Do Not Call" laws
- Describe the requirements for reporting criminal convictions
- Explain the new time frame for a records retention

Key Terms

- Blind Advertisement
- Branch Office
- Brokerage Relationship Disclosure Act (BRDA)
- CAN-SPAM
- F.S. 475
- Continuing Education (CE)
- Department of Business and Professional Regulations (DBPR)
- Designated Sales Associate
- Distance Learning
- Do Not Call List
- First Renewal
- Florida Real Estate Commission (FREC)
- Involuntary Inactive
- Mutual Recognition
- No Brokerage Relationship
- Principal Office
- Record Retention
- Single Agency
- Temporary Shelter
- Transaction Broker
- Transition to Transaction Broker
- Unlicensed Assistant
- Voluntary Inactive

LICENSE LAW

History

Florida's first real estate license law was enacted in 1923. At first, violations of the real estate licensing law were pursued through the court system, which was both time-consuming and expensive. In 1925, the Florida Real Estate Commission (FREC) was created to administer and enforce the law, streamlining the process by removing the necessity for court enforcement. In 1941, the Real Estate License Law was designated Chapter 475 of the Florida Statutes. Many revisions to Chapter 475 have taken place over the years. In 1991, Parts I and II were created. In 2005, Chapter 475 was revised to include Parts III and IV. Parts I-IV are summarized below:

- **Part I** is concerned with the licensure and regulation of real estate licensees and schools.
- **Part II** is concerned with the registration, licensure, and certification of appraisers.
- **Part III** is concerned with the sale of commercial property and allows brokers to place a lien against an owner's net proceeds. This is a lien on personal property, attached to the owner's net proceeds only, and does not attach to any interest in real property.
- **Part IV** is concerned with the lease of commercial property, allowing brokers to place liens on the owner's interest in the real estate. The lien attaches to the landlord's interest in the commercial real estate, but not to the tenant's leasehold estate. If the owner is obligated to pay the commission to the tenant, the broker's lien attaches to the tenant's leasehold estate but not to the landlord's interest in the commercial real estate.

Purpose of License Law

The purpose of the Florida Real Estate License Law, F.S. 475, is to protect the public.

Eight Activities that Require a Florida Real Estate License

F.S. 475 clearly identifies those activities that require a real estate license when dealing with the public. A Florida real estate license is required if a person who, for another, and for compensation or valuable consideration directly or indirectly paid or promised, is engaged in the business of advertising, buying, appraising*, renting, selling, auctioning, leasing, or exchanging any Florida business opportunities or real property of others or interest therein, including mineral rights. "A BAR SALE" is a useful memory aid to help remember these eight activities requiring licensure.

It is a third-degree felony punishable by a fine of up to $5,000 and five years in prison for providing real estate services to the public without a current, active, valid real estate license.

* These appraisal practice services performed by a real estate licensee exclude those appraisal services that must be performed by a state-licensed or state-certified appraiser.

A BAR SALE

Advertising	**B**uying	**S**elling
	Appraising*	**A**uctioning
	Renting	**L**easing
		Exchanging

LICENSING AND RENEWAL PROCESS

The licensing process for sales associates and brokers consists of three required phases: pre-licensing, post-licensing (or first renewal), and continuing education.

Obtaining a Sales Associate License: Sales Associate Pre-Licensing

A candidate applying for their initial real estate sales associate license must meet the following criteria:

- Be at least 18 years of age
- Hold a high school diploma or its equivalent
- Be honest, truthful, trustworthy, and of good character
- Have a good reputation for fair dealing

To obtain a Florida real estate sales associate license, candidates must:

- Submit an application form to the Florida DBPR
  - Applicants must disclose if they have ever been convicted, pled guilty, or no contest to any crime.
  - All applicants must provide a Social Security number (SSN).
- Submit to electronic fingerprinting through any approved vendor
- Provide proof of successful completion of the 63-Hour Sales Associate Course (FREC I). A candidate successfully completes the course upon passing the class exam with a score of 70% or higher.
- Pay the required state application and exam fees.
- Pass the state exam with a minimum score of 75%

Sales Associate Pre-Licensing Procedure

State Application (SSN)
Fees
Fingerprinting
63-Hour FREC I Course (Pass: 70% or higher)
State Exam (Pass: 75% or higher)

Obtaining a Broker License: Broker Pre-Licensing

Broker candidates, including graduates with a four-year degree or higher in real estate and Florida attorneys, must have held an active sales associate license for at least 24 months during the preceding five years in:

- The office of one or more real estate brokers licensed in Florida or any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction
- The employ of a governmental agency for a salary and performing real estate licensee duties as described in F.S. 475
- Any other state, territory, or jurisdiction of the U.S. or any foreign national jurisdiction as a licensed broker for 24 months within the last five years

To obtain a Florida broker's license, candidates must:

- Submit an application form to the DBPR
  - Applicants must disclose if they have ever been convicted, plead guilty, or no contest to any crime.
  - All applicants must provide a Social Security number (SSN).
- Submit to electronic fingerprinting through any approved vendor
- Complete the sales associate post-license education requirements prescribed by the FREC
- Provide proof of successful completion of the 72-Hour Broker Pre-License Course (FREC II). A candidate successfully completes the course upon passing the class exam with a score of 70% or higher
- Pay the required state and application fees.
- Pass the state exam with a minimum score of 75%

Broker Pre-Licensing Procedure

State Application (SSN)
Fees
Fingerprinting
72-Hour FREC II Course (Pass: 70% or higher)
State Exam (Pass: 75% or higher)

Post-Licensing: First Renewal

After obtaining a sales associate or broker license, all licensees must complete a post-licensing course prior to the first license renewal. Sales associates must complete 45 hours of instruction and pass the end-of-course exam with a score of 75% or higher. Brokers must complete 60 hours of instruction and pass the end-of-course exam with a score of 75% or higher. Once licensees pass the end-of-course exam, there is no further testing for the first renewal since there is no post-licensing state exam. But, licensees are required to pay a state renewal fee.

Sales Associate Post-Licensing (1st Renewal) Procedure

45-Hour Course (Pass: 75% or higher)
State Renewal Fee
No State Exam

Broker Post-Licensing (1st Renewal) Procedure

60-Hour Course, consisting of two 30-hr courses (Pass: 75% or higher on each 30-hr course)
State Renewal Fee
No State Exam

Continuing Education (Sales Associates and Brokers)

After satisfactory completion of all first renewal requirements, all licensees must complete 14 hours of FREC-approved continuing education (CE) during each and every subsequent two-year renewal period to maintain their license. Renewal dates are assigned on either March 31 or September 30.

The 14-hour CE course must consist of three hours of core law, three hours of business ethics, and eight hours of specialty courses approved by the FREC. These hours may be completed by distance learning, correspondence, or classroom courses. Three hours may be obtained by attending one legal agenda session of the FREC per license renewal period.

Sixty days before the end of the two-year license period, the DBPR sends a renewal notice to each licensee at their last known current mailing address and/or email address. It is imperative that licensees keep their current address up-to-date with the DBPR. It is the licensee's responsibility to pay the renewal fee whether or not they have received a notice.

To renew a license, licensees must satisfactorily complete the 14-hour CE course (or post-license course, if applicable) then send back the renewal form and fee to the DBPR before the end of the license period. Logon to the DBPR website at www.myfloridalicense.com to renew your license.

If licensees do not complete the 14-hour CE course by the end of the required renewal period, their license automatically reverts to involuntary inactive status. Licensees are prohibited from providing real estate services while their license is in this status.

Classroom vs. distance learning: CE can be completed either in a live classroom or through distance learning. Classroom CE requires students to attend 14 hours of classroom instruction with no final exam. Distance learning CE can be accomplished in a variety of ways, including online and correspondence methods. All distance learning includes a course final exam that students must pass with a score of 80% or higher to complete the course successfully. If the student fails the exam, they can take an alternate exam immediately without any waiting period.

Exemptions

Florida attorneys: Sales associate candidates who are actively licensed Florida attorneys in good standing with the Florida Bar:

- Are exempt from the 63-hour (FREC I) pre-license course for sales associates, but
- Must take and pass the state sales associate pre-license examination to obtain a license,
- Must take and pass the 45-hour sales associate post-licensing course for the first license renewal.

Actively licensed Florida attorneys in good standing with the Florida Bar (sales associates or brokers) are also exempt from the 14-hour CE requirements.

Graduates with real estate degrees: Graduates with a four-year degree or higher in real estate are exempt from all pre-licensing and post-licensing requirements; however, they must take and pass the applicable state pre-licensing exam (sales associate or broker) and comply with all continuing education requirements. Before becoming eligible to take the broker's state exam, these graduates must have maintained an active sales associate license in good standing for two of the previous five years.

Broker Responsibility to Verify Licensee Status

It is the broker's responsibility to ensure that all licensees registered with the broker have a valid and current license that includes successfully completing the 14-hour CE course (or post-license course) and timely submission of the renewal form and fee to the DBPR. [F.A.C. 61J2-24.001(3)(y)]

Late License Renewal Procedures

If a licensee does not complete their post-licensing course by the first license expiration date, the licensee's status becomes null and void. Sales associates desiring to regain license status would be required to retake the 63-hour pre-licensing course and meet all of the requirements. A broker who fails to complete the post-licensing requirement by the first expiration date may revert to sales associate status by completing 14 hours of CE within six months of their broker license becoming null and void and submitting Form DBPR RE-15 Revert Broker License to Sales Associate License.

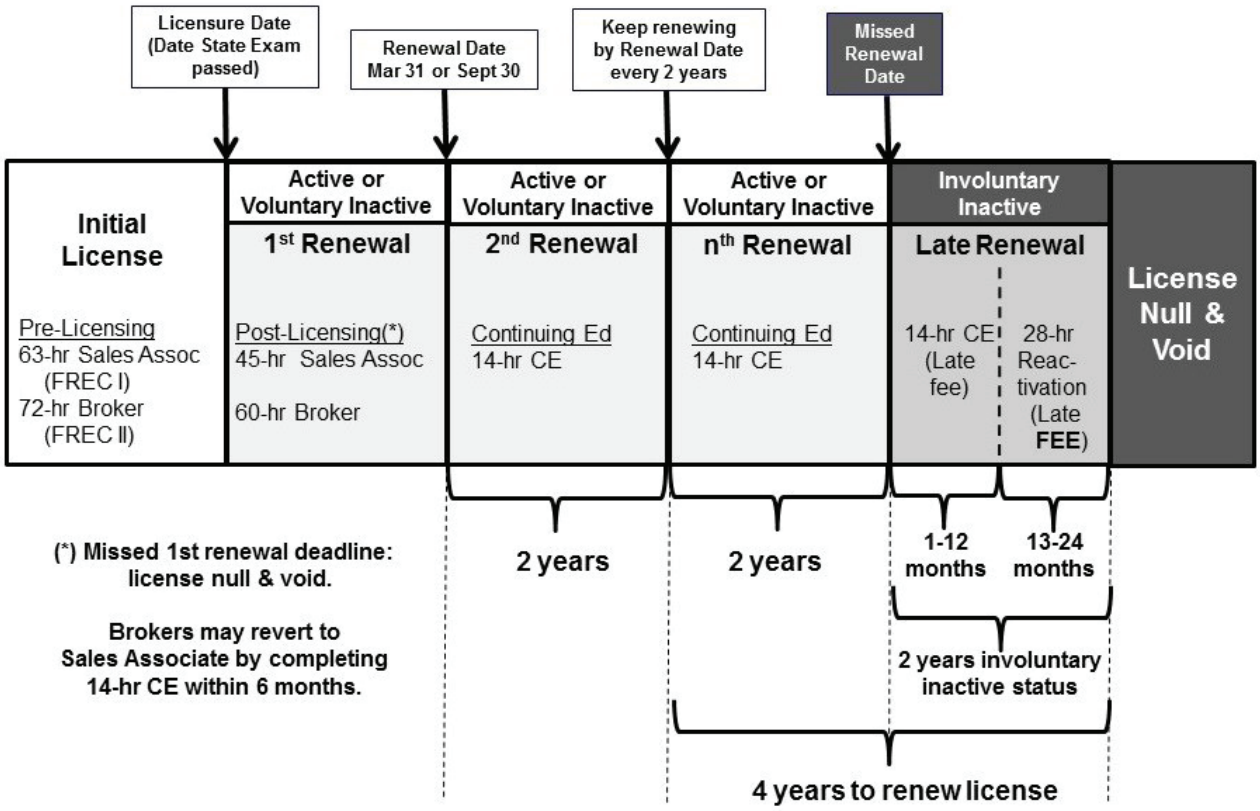
Once licensees have fulfilled their post-licensing requirements, both active and voluntary inactive licensees (sales associates or brokers) must renew their license within the required two-year renewal cycle.

By not completing the required 14-hour CE, their license automatically reverts to involuntarily inactive status. Licensees cannot be engaged in real estate activities during this time. Licensees can remain in involuntary inactive status for a maximum of two years as follows:

- **One to 12 months late:** Licensees must complete the 14-hour CE course, pay the state renewal fee, and pay a required state late fee to renew their license.
- **Thirteen to 24 months late:** Licensees must complete a 28-hour reactivation course, pass a 50-question reactivation course exam with a score of 70% or higher, pay the state renewal fee, and pay a state required late fee. If the licensee does not complete the reactivation course within 24 months of their license becoming involuntary inactive, it becomes null and void.

Involuntary vs. voluntary inactive: Licensees who do not wish to provide real estate services to the public may elect to place their license in voluntary inactive status. Licensees who are not employed by an active broker or developer may remain in this status as long as they complete their CE requirements every two years. In other words, a licensee's license status can remain voluntarily inactive indefinitely. This should not be confused with involuntary inactive status that is outlined above. A licensee's license status can remain involuntarily inactive for a maximum of two years.

LICENSING RENEWAL PERIODS



Check Your Understanding 1.1

Fill in the license status for each license scenario. (Answer Key in the back of the book.)

	License Scenario	License Status
1.	A licensee fails to renew their license within the two-year renewal cycle.	
2.	A licensee elects not to provide real estate services to the public for a period of time.	
3.	A licensee does not complete the required 14-hour CE.	

MUTUAL RECOGNITION

In 1994, the Florida Legislature added F.S. 475.180 titled "Nonresident Licensees." Before this section was added, an out-of-state real estate licensee was required to fully complete the educational, experience, and exam requirements before operating as a licensee in Florida.

With the addition of F.S. 475.180, the FREC is authorized to enter into written agreements, known as mutual recognition, with the real estate commissions of other states. The purpose of such agreements is to recognize the educational and experience requirements of that state when they are comparable to, or superior to, those of Florida. The out-of-state applicant is required to take and pass a Florida real estate law exam consisting of 40 questions prior to becoming a Florida resident. A minimum score of 75% or higher (30 or more correct answers) is required to pass the exam.

The written agreements with the other real estate commissions also offer similar licensure opportunities for Florida licensees in those states.

At the time of this book printing, Florida has mutual recognition agreements with the real estate commissions of the following states: Alabama, Arkansas, Connecticut, Georgia, Illinois, Kentucky, Mississippi, Nebraska, and Rhode Island. Refer to the Department website (myfloridalicense.com) for the most up-to-date list of mutual recognition states and state-specific qualification information.

Contact the appropriate state real estate commission for information regarding fees and examination requirements. Mutual recognition agreements automatically expire every five years unless renewed by the FREC.

ADVERTISING

Any time a real estate licensee advertises their services or a property for sale or lease, the advertisement must contain certain information and conform to specific standards. Advertising includes yard signs, newspaper and magazine ads, mail outs, business cards, billboards, benches, Internet ads, novelty items (key chains, coffee mugs, etc.), or any other medium or vehicle by which services or property are displayed.

All advertising must include the registered name of the brokerage firm as it is registered with the FREC. It must be displayed in such a manner that a reasonable person would know that they are dealing with a real estate licensee. In addition, no real estate advertisement placed or caused to be placed by a licensee shall be fraudulent, false, deceptive, or misleading in form or content.
[F.S. 475.25(1)(c) and F.A.C. 61J2-10.025]

All advertisements must be presented in a manner so that reasonable persons would know they are dealing with a real estate licensee or company.

Blind Advertisements

A "blind ad" is an illegal advertisement in which brokerage services or property for sale or lease is displayed without the name of the brokerage firm.

Name in Advertisements

A licensee is not required to place their personal name in an advertisement. However, when the licensee's name does appear, as a minimum requirement, their last name must appear as registered with the FREC. The licensee may nickname or initials for the first name and is not required to display the first and/or middle name as registered with the FREC. [F.A.C. 61J2-10.025(2)]

License/Registration Information in Advertisements

There is no requirement for a licensee to display their license number or the registration number of the brokerage firm. In addition, there is no requirement that the licensee display their license status. However, if the licensee is a member of a private trade association, that association may enforce a code of ethics that may impose standards and rules over and above FREC requirements.

Phone Numbers in Advertisements

The FREC does not regulate the use of telephone numbers in ads. Therefore, licensees may use either their office or personal telephone numbers without qualifying them as such. The only requirement in all advertising is that the brokerage firm or trade name as registered with the FREC must appear.

Internet Advertising

The FREC has additional guidelines for Internet advertising. The FREC's rule requires that the brokerage firm's name or trade name be placed immediately adjacent to, immediately above, or below the point-of-contact information.

Point-of-contact is defined as any means by which the brokerage firm or individual licensee may be contacted, including mailing address(es), physical street address(es), email address(es), telephone number(s), or fax number(s).

All other FREC advertising requirements apply to Internet advertisements as well. [F.A.C. 61J2-10.025(3)]

Advertisement of Personally Owned Real Estate

If a licensee is selling their own real property and is doing so on a personal basis and not through the licensee's brokerage firm, then there are no disclosure requirements. In such a situation, the licensee may place an advertisement in the same manner that any other private citizen would.

There is a common belief that the license status must be disclosed such as owner/broker or owner/licensee on a yard sign or in a newspaper It is advisable for the licensee to disclose their license status in the Purchase and Sale Contract when an offer is made on the property.

Use of Organization Identification

Pursuant to F.A.C. 61J2-10.027, a licensee is not permitted to use an identification or designation of a trade association or organization unless the licensee is entitled to use such identification or designation.

Unsolicited Fax

Finally, it is a violation of F.S. 365.1657 to send unsolicited advertising material via a facsimile transmission. This includes advertising for any real property, goods, or services. The State, through the attorney general, may bring an action to impose a civil fine and for injunctive relief. The fine is up to $500 per violation of F.S. 365.1657; each transmission counts as a separate violation.

Check Your Understanding 1.2

Select True or False for each advertisement statement. (Answer Key in the back of the book.)

	Advertisement Statement	True	False
1.	All advertising must include the name of the brokerage firm as it is registered with the FREC.		
2.	A "blind ad" is an illegal advertisement in which the licensee does not include the brokerage firm's phone number and address in the ad.		
3.	In all advertising, a licensee may not use a nickname or initials for their first name and is required to display their full name as registered with the FREC.		

BROKERAGE PRINCIPAL OFFICE REQUIREMENTS

Each active broker is required to open and maintain an office, which must be registered with the DBPR. The office must consist of at least one enclosed room in a building of stationary construction where negotiations and the closing of real estate transactions can be conducted with privacy.

Branch Office

When a broker conducts business at some location other than the registered principal office, this location must be registered as a branch office. If, in the judgment of the FREC, the business conducted at a place other than the principal office is of such a nature that public interest requires, the office must be registered as a branch office. If the name or advertising of a broker is displayed in a location other than the principal office in such a manner as to lead the public to reasonably believe that the other location is owned or operated by the broker, that location must be declared a branch office. [F.S. 475.24 and F.A.C. 61J2-10.023]

For instance, a temporary shelter in which no transactions are closed and no sales associates are permanently assigned is not deemed to be a branch office. In general, the permanence, use, and character of activities customarily conducted at a location determine its status as a branch office. [F.A.C. 61J2-10.02(2)]

Sales associates must be registered from and work out of an office maintained and registered in the name of the broker or employer. However, sales associates may be registered from the principal office but work at branch offices. [F.A.C. 61J2-10.022]

A fee is required for the registration of each branch office. If a broker closes a branch office but reopens at the same location within the same license renewal period, then no fee is required. If a broker closes a branch office and simultaneously opens a branch office at a different location, then a new registration fee is required. [F.A.C. 61J2-10.023(3)]

Office Signs

Every broker is required to maintain a sign on or about the entrance of the principal office as well as at all branch offices. Signs must be positioned so that they are easily seen and read by any person entering the office. Signs must be posted on either the exterior or the interior entrance area of the office. [F.S. 475.22]

Each office entrance sign must contain the name of the broker as licensed with the FREC, as well as the trade name, if any. For a partnership or corporation, the sign must also include the name of the partnership or corporation or trade name of such entity. If the partnership or corporation has more than one registered broker, the name of only one broker need appear. In addition, each sign must display the words "Licensed Real Estate Broker." The word "Licensed" may be abbreviated to "Lic.," but no other abbreviations are allowed. There is no minimum size requirement for the letters on the sign.

If the broker maintains a registered office in their residence, the office entrance sign is not required to be posted on the front door or outside the home. The sign may be posted on or about the entrance to the actual office.

Temporary Shelter

Unless transactions are closed or sales associates permanently assigned, a temporary shelter used by a broker as protection from the elements for sales associates and customers is not considered to be a branch office. The permanence and use of a location and the character of activities conducted there determine whether registration is required. [F.S. 475.24 and F.A.C. 61J2-10.023]

Inspections and Audits

The DBPR's goal is to have 100% compliance. To help reach that goal, investigators conduct routine inspections of brokerage offices to ensure compliance with the real estate license law. The investigator usually sends the broker a letter, and then phones to arrange a time to visit the office for an audit. The investigator checks for compliance in the following areas:

- **Office requirements:** There must be at least one enclosed room in a stationary building.
- **Office entrance sign:** The sign must be easily observed and read by anyone entering the office. The sign must have the name of the broker, a partnership or corporate name or trade name, if any, and the words "Licensed (or "Lic.") Real Estate Broker."
- **Brokerage relationship disclosures:** Brokers must retain all required disclosures on contracts for sale and purchase of residential properties for at least five years.
- **Licenses:** Licensees and registration of the firm and all its members are verified to ensure that all persons involved in providing real estate services have current licenses.
- **Escrow accounts:** The investigator reviews monthly reconciliation statements for several months as well as bank deposit receipts, pending sales contracts and property management contracts.
- **Retention of records:** A broker must retain at least one legible copy of all books, accounts, and records pertaining to their real estate brokerage business for at least five years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker. Brokers must also retain all executed (signed by both parties) listing agreements, offers to purchase, rental property management agreements, rental or lease agreements, or any other written or verbal agreements that engages the services of the broker for at least five years. All records must be retained for at least two years after the conclusion of litigation but not less than five years. [F.S. 475.5015]

OTHER LAWS

The National and State Do Not Call Registries

Some people think that the federal government has over stepped its bounds with the Telephone Consumer Protection Act (TCPA), which established a National Do Not Call Registry. While the U.S. Supreme Court decisions have allowed the regulation of interstate commerce, the matter of intrastate commerce is reserved to the individual states to regulate. That notwithstanding, real estate licensees have two laws to contend with; the national and state laws.

National Do Not Call Laws

The Federal Communications Commission (FCC) began exercising authority under the TCPA in 2003 by establishing a national "Do Not Call" (DNC) list of consumers who do not want to be contacted by telemarketers. The list only covers commercial telemarketers, and gives exemptions to political candidates, charities, and people who conduct surveys. Companies with which consumers have existing business relationships are exempt from the Do Not Call rules and registries. Additionally, a company may call a consumer, even if that consumer is on the registry, for:

- Eighteen months after that consumer's last purchase, delivery, or payment
- Three months after that consumer makes an inquiry or submits an application to the company. (Example: signing an open house register)

Brokerage firms must pay for access to the National Do Not Call Registry and may register on the Federal Trade Commission (FTC) website. The Do Not Call Registry may not be used for any purpose other than preventing telemarketing calls to the telephone numbers in the registry.

The only consumer information available from the registry is telephone numbers that are sorted and available by area code. Companies will be able to access any area codes desired.

Licensees covered by the rule must pay for consumer data in any area code before they call any consumer within that area code, even those consumers whose telephone numbers are not on the registry. The only exceptions are calls to consumers with whom they have an existing business relationship or written agreements, and do not access the Do Not Call Registry for any other purpose. The national law makes no exceptions for licensees calling For Sale by Owners (FSBOs), unlike Florida's law.

A real estate brokerage firm with agents doing cold calling could be in violation of the law for placing any calls (even to numbers NOT on the Do Not Call Registry) if the company has not paid the required fee to access the registry. Violations of the National Do Not Call Registry may be subject to a fine of $500 up to $43,792 for each violation.

If a brokerage firm can show that, as part of its routine business practice, it meets all of the following conditions; it will not be subject to civil penalties or sanctions for mistakenly calling a consumer who has asked for no more calls or for calling a person on the Do Not Call Registry.

To successfully avoid penalties ("safe harbor"), the brokerage firm must demonstrate that it:

- Has written procedures to comply with the Do Not Call requirements
- Trains its personnel in those procedures
- Monitors and enforces compliance with these procedures
- Maintains a company-specific list of telephone numbers that may not be called by consumer request
- Accesses the national registry no more than three months before calling consumers, and maintains records documenting this process
- Any call made in violation of the Do Not Call rules was the result of an error

The best source of information about complying with the Do Not Call rules is the FTC's website. It includes business information about the registry. National Do Not Call Registry: www.donotcall.gov

Florida's Do Not Call Law

Florida continues to enforce its own Do Not Call law and accepts new consumer telephone numbers. The national registry goes beyond some portions of the Florida law that are less strict.

Florida's Do Not Call program: www.fldnc.com

If you are going to make cold calls, review all three lists, the National Do Not Call Registry, the Florida Do Not Call list, and your own in-office company-specific list.

Differences Between Federal and Florida Laws

Under federal law, you can call an FSBO listed in the national registry only if you have a buyer who wants to purchase the property but may not use the call to discuss listing the property. Florida's law allows you to call an FSBO on the Florida list (if the FSBO is not on the national registry) and solicit the listing.

The CAN-SPAM Act

The CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) gives consumers the right to ask emailers to stop spamming them by establishing requirements for those who send commercial email, and companies whose products are advertised in spam. The act covers only commercial electronic mail messages and regulates emailers whose primary purpose is to advertise a commercial product or service. It spells out penalties for spammers who violate the law.

The rules define the primary purpose as commercial if the email is exclusively an advertisement for a commercial product or service, or if a reasonable interpretation of the subject line would lead to the conclusion that a message is commercial. The rules also define a "transactional or relationship" message as one that does not appear in whole or in part at the beginning of the message's body text to be commercial.

The law bans false or misleading header information, this means that the "To" and "From" of the routing information must be correct and properly identify the individual who sent the email. It requires that the email give recipients a method to opt-out, and that commercial email be identified as an advertisement, including the sender's valid physical mailing address.

Transactional or relationship messages include those that inform sellers regarding the progress on marketing a listed property or thanking past customers and generally updating the relationship.

As long as these emails don't contain false or misleading routing information, they are exempt from most provisions of the act. General informational messages, such as newsletters that don't contain advertisements, are also exempt.

The CAN-SPAM Act is enforced by the FTC and the Department of Justice (DOJ). Each violation is subject to a fine of up to $43,280. For more information, please access the FTC website at www.ftc.gov/spam.

Permissible Activities of an Unlicensed Assistant

Unlicensed assistant is defined as, "support staff for a real estate corporation or other licensed individuals." Although these items are not defined in the rule, previous Commissions have stated that the following activities do not require a license.

- Answer the phone and forward calls
- Fill out and submit listings and changes to any multiple listing service
- Follow-up on loan commitments after a contract has been negotiated and generally secure the status reports on the loan progress
- Assemble documents for closing
- Secure documents (public information) from courthouse, utility district, etc.
- Have keys made for company listings, order surveys, termite inspections, home inspections and home warranties with the licensed employer's approval
- Write ads for approval of the licensee and the supervising broker, and place advertising (newspaper ads, update websites, etc.); prepare flyers and promotional information for approval by licensee and the supervising broker
- Receive, record and deposit earnest money, security deposits and advance rents
- Only type the contract forms for approval by licensee and supervising broker
- Monitor licenses and personnel files
- Compute commission checks
- Place signs on property
- Order items of repair as directed by licensee
- Prepare flyers and promotional information for approval by licensee and supervising broker
- Act as a courier service to deliver documents, pick-up keys
- Place routine telephone calls on late rent payments
- Schedule appointments for licensee to show a listed property
- Attend an open house for
  - Security purposes
  - Hand out materials (brochures)
  - Answer questions concerning a listing from which the answer must be obtained from the licensed employer-approved printed information and is objective in nature (not subjective comments)
- Gather information for a comparative market analysis
- Gather information for an appraisal
- Hand out objective, written information on a listing or rental

Brokerage Relationship Disclosure Act Disclosure Requirements

Since the passage of Florida's first agency relationship disclosure law in 1988, the law of agency disclosure has been an area that has seen frequent changes. The legislature amended the law effective July 1, 2003, and July 1, 2006. There have been no changes since 2007. This section reviews the current state of agency disclosure in Florida, which includes the 2003 and 2006 changes.

The Florida agency disclosure law is known as the Brokerage Relationship Disclosure Act (BRDA) and is found in F.S. 475.2701 through 475.2801.

While the duties of the authorized brokerage relationships apply in all brokerage activities, the disclosure requirements of BRDA apply only to residential sales.

In F.S. 475.278(5)(a), residential sales are defined as the sale of:

- Improved residential property of four units or fewer
- Unimproved residential property intended for use of four units or fewer, or
- Agricultural property of 10 acres or fewer

Further, the disclosure requirements of BRDA do not apply to the following situations: [F.S. 475.278(5)(b)1 and 2]

- When a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker
- 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
- 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

Authorized Brokerage Relationships

There are four types of authorized brokerage relationships a real estate licensee may have with a customer/principal. Each type of relationship is described in detail in the sections that follow.

- No brokerage relationship
- Transaction broker
- Single agent
- Designated sales associate

Since July 1, 2003, it is presumed all real estate licensees are operating as transaction brokers unless a single agency or a no brokerage relationship is established in writing with a customer. Effective July 1, 2008, the use of the printed Transaction Broker Disclosure form is no longer required. [F.S. 475.278]

A licensee may not operate as a dual agent. Dual agency is not permitted in Florida. Instead, Chapter 475 allows licensees to offer limited representation to both parties in the transaction as a transaction broker.

In order for a real estate licensee to establish a no brokerage, single agent, or designated sales associate relationship, a specific type of written disclosure must be given to the customer on a form prescribed by the legislature and at a designated time in the formation of the relationship. For each of the four authorized relationships, a licensee must also be mindful of the duties and responsibilities that go along with each type of relationship and must act accordingly at all times.

The failure of a licensee to give timely and appropriate disclosure forms will subject the licensee to disciplinary action by the FREC. Further, not only would the sales associate be held responsible, but the broker could be as well.

In addition to disciplinary action by the FREC, the failure to make the disclosure or to abide by the duties of a particular type of relationship may also subject the licensee to civil liability. A seller or buyer who feels that the licensee has not performed the duties and responsibilities as required by law and who has suffered damages as a result may bring a civil suit seeking payment for those damages.

Be mindful of the overriding purpose of the timely disclosure of a brokerage relationship: To place the consumer on notice as to how the licensee is working with the consumer and the minimum duties the consumer can expect as a result of that relationship.

No Brokerage Relationship

It is commonly thought that a party in a transaction must be represented by a licensee either as a single agent or as a transaction broker. Similarly, it is commonly thought that when the licensee is showing their own listing, the relationship between that licensee and the potential buyer is required to be represented by a transaction broker. These assumptions are both untrue. F.S. 475.278(1) specifically states,

> *"... This part does not require a customer to enter into a brokerage relationship with any real estate licensee."*

As such, a licensee may work with one party as either a single agent or a transaction broker and work with another party in a no brokerage relationship. To take it one-step further, the licensee may work with both parties at the same time in no brokerage relationships.

Duties of the licensee in a no brokerage relationship: [F.S. 475.278(4)(c)]

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

According to this statute, to operate with a party without being either a single agent or transaction broker, the No Brokerage Relationship Notice at the end of this chapter is used. These duties must be fully described and disclosed in writing to the buyer or seller and made before showing the property.

Transaction Broker

A transaction broker is a licensee who provides limited representation to a buyer, a seller, or both.

A transaction broker does not represent either party in a fiduciary capacity or as a single agent. [F.S. 475.01(1)(l)]

Duties of a transaction broker:

- Dealing honestly and fairly
- Accounting for all funds
- Disclosing all known facts that materially affect the value of residential real property and that are not readily observable to the buyer
- Using skill, care, and diligence in the transaction
- Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing
- Limited confidentiality, unless waived in writing by a party. This limited confidentiality prevents disclosure of any of the following:
    - That the seller will accept a price less than the asking or listed price, or
    - That the buyer will pay a price greater than the price submitted in a written offer,
    - The motivation of any party for selling or buying property,
    - That a seller or buyer will agree to financing terms other than those offered

    - Of any other information requested by a party to remain confidential
- Any additional duties that are mutually agreed to with a party

Transaction broker duties are required to be verbally disclosed in all transactions, regardless of whether it is a residential or commercial transaction. 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.

As mentioned previously, a transaction broker may represent the buyer or seller or both parties in the same transaction. When representing both, the parties give up their rights to the undivided loyalty of the licensee. The licensee will facilitate the transaction by assisting both parties but may not work to represent one party to the detriment of the other party.

Single Agent

Single agency is when a licensee represents, as a fiduciary, either the buyer or the seller. As a single agent, a licensee may not represent both buyer and seller in the same transaction. Single agency is a fiduciary relationship, one of trust and confidence between the licensee as agent and the seller or buyer as principal. [F.S. 475.01(1)(f) and (k)]

Duties a single agent owes to a buyer or seller:

- Dealing honestly and fairly
- Accounting for all funds
- Disclosing all known facts that materially affect the value of residential real property and are not readily observable
- Using skill, care, and diligence in the transaction
- Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing
- Confidentiality*
- Obedience*
- Loyalty*
- Full disclosure*

* This is a fiduciary duty.

The duties of a single agent must be fully described and disclosed in writing to a buyer or seller in the Single Agent Notice form as required by F.S. 475.278(3)(c). This notice can be found at the end of this chapter.

The disclosure form may be used as a separate document or included as part of another document, such as a listing agreement. 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.

If the form is incorporated into other documents, it must be of the same size type or larger than other provisions of the document and must be conspicuous in its placement. The first sentence of the notice must be printed in uppercase and boldface type.

Transition to Transaction Broker

F.S. 475.278(3)(c)2 allows different licensees within the same real estate firm, or one licensee who is requested or desires to represent both parties in the same transaction, to change from a single agent relationship to a transaction broker in order to continue with the transaction. To accomplish this, a "Consent to Transition to Transaction Broker" form must be signed by both the buyer and seller. As stated previously, both parties in a transaction may be represented by the same licensee as a transaction broker.

To convert or transition from single agent to the role of transaction broker, the licensee must first obtain the written consent of the party represented by the licensee as a single agent. The Consent to Transition to Transaction Broker form must be provided any time before the licensee is to act as a transaction broker.

The form, as with other disclosure forms, may be a separate document or be included as part of another document. If it is part of another document, the form must be of the same size type or larger than the rest of the document and must be conspicuous in its placement. The first sentence on the form must be in uppercase and boldface type. (See end of chapter for the Consent to Transition to Transaction Broker form.)

The transition form is the one disclosure form that must be signed or initialed by the party (or parties). Failure to obtain the proper signature or initials is a violation of the license law, and the relationship may well be viewed in a civil action as a violation of single agency duties or even as an undisclosed dual agency.

As a side note, while it is strongly recommended that the other forms be signed, there is no specific statute that mandates signing.

Designated Sales Associate

In a transaction other than a residential sale as defined in F.S. 475.278(5)(a), in which the seller and buyer each have assets of $1 million or more, customers represented by the same brokerage must request that the broker designate different sales associates to act as single agents for each customer in the same transaction.

The designated sales associate shall have the duties of a single agent as outlined previously and is required to provide to their respective party the Single Agent Notice. The parties themselves are required to disclose that their assets meet the dollar threshold amount in order to take advantage of this section. The broker does not represent either party and is available to each designated sales associate (not the parties) for advice or assistance without discussing this information directly with the parties.

The Designated Sales Associate required disclosure is shown on the next page.

Designated Sales Associate Disclosure

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 whom 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 their 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. [F.S. 475.2755]

OTHER IMPORTANT AREAS OF LAW AND/OR RULE

Reporting Criminal Convictions

All professional licensees are required to report to the DBPR within 30 days of being convicted or found guilty of or having plead nolo contendere or guilty to a crime in any jurisdiction. Licensees who fail to report this information, may be subject to disciplinary action, including fines, suspension, or license revocation. Licensees are to use the "Criminal Self-Reporting Document" when notifying the Department. [F.S. 455.227(1)(t)]

Professional License - Active-Duty Service Members and Spouses

The Department will issue a professional license to applicants who are or were active-duty members of the armed forces of the United States. Former military members must have received an honorable discharge. A professional license will also be issued to a spouse or to one who was married at any time to the member during any period of active duty, or to a surviving spouse who was married to the active-duty member at the time of their death. The applicant must hold a valid professional license issued by another state, the District of Columbia, any possession or territory of the U.S., or any foreign jurisdiction. The initial application fee will be waived. [F.S. 455.02(3)(a)]

Escrow Deposit with Title Company or Attorney

Licensees who prepare or present sales contracts are required to follow specific notifications when placing a deposit with a title company or an attorney. Proof of new escrow responsibilities must be maintained in the office file for five years. DRE field investigators are checking for this during office audits. [F.A.C. 61J2-10.026 and 61J2-14.008]

TEAM OR GROUP ADVERTISING

This rule was enacted so the public would know that a team is not the brokerage. Further, the rule regulates what can appear and what cannot appear in an advertisement. [F.A.C. 61J2-10.026]

- "Team or group advertising" shall mean a name or logo used by one or more real estate licensees who represent themselves to the public as a team or group. The team or group must perform licensed activities under the supervision of the same broker or brokerage.
- Each team or group shall file with the broker a designated licensee to be responsible for ensuring that the advertising is in compliance with F.S. 475 and F.A.C. 61J2. At least once monthly, the registered broker must maintain a current written record of each team's or group's members.
- Team or group names. Real estate team or group names may include the word "team" or "group" as part of the name. Real estate team or group names shall not include the following words:
  a. Agency
  b. Associates
  c. Brokerage
  d. Brokers
  e. Company
  f. Corporation
  g. Corp.
  h. Inc.
  i. LLC
  j. LP, LLP or Partnership
  k. Properties
  l. Property
  m. Real Estate
  n. Realty
  o. Or similar words suggesting the team or group is a separate real estate brokerage or company
- This rule applies to all advertising.
- In advertisements containing the team or group name, the team or group name shall not be in larger print than the name of the registered brokerage. All advertising must be in a manner in which reasonable persons would know they are dealing with a team or group.
- All advertisements must comply with these requirements no later than July 1, 2019.

Nothing in this rule shall relieve the broker of their legal obligations under F.S. 475 and F.A.C. 61J2.

WEBSITE ACCESSIBILITY UNDER AMERICANS WITH DISABILITIES ACT

When the Americans with Disabilities Act (ADA) was developed in 1990, the modern Internet and websites were not yet available. Businesses should be aware that recent rulings direct that websites and mobile apps must be accessible to people with vision, hearing, or other cognitive and physical disabilities. Brokers, sales associates, and anyone else with a website should check with their web developers to ensure that sites are in compliance. Failure to comply can result in lawsuits and judgements.

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)

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)

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 confidentially, 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 they 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]

CHAPTER 1 PROGRESS CHECK

1. Which of the following are licensees NOT required to report?
   A. Any criminal convictions or pleas of nolo contendere
   B. Misdemeanor convictions
   C. Felony convictions
   D. Any arrest

2. Which of the following items must applicants provide when applying for a real estate license?
   A. Proof they are at least 21 years of age
   B. Social Security number
   C. Associate degree or its equivalent
   D. Application form RE 2050

3. Which license status is applicable to a licensee who does not want to actively engage in real estate activities but continues to renew their license?
   A. Voluntary active
   B. Involuntary active
   C. Voluntary inactive
   D. Involuntary inactive

4. When licensees fail to complete their continuing education requirements within the required time period, which of the following applies?
   A. They may continue to sell as long as they complete continuing education within six months.
   B. They may continue to sell as long as they complete continuing education within 60 days.
   C. Their license automatically reverts to involuntary inactive status.
   D. Their license is null and void.

5. What information must be included in all advertising?
   A. Licensee's full name as registered with FREC
   B. Licensed brokerage trade name and phone number
   C. Licensed brokerage trade name and address
   D. Licensed brokerage trade name

Chapter 2: Business Ethics

3 CE Hours

14-Hr CE FREC Approval Number: 28640

Learning Objectives

- Define business ethics
- List examples and causes of unethical behavior
- Describe the strategies for establishing an ethical business culture
- Discuss the history of the Code of Ethics
- Explain the preamble to the Code
- Discuss the Code's articles and standards of practice
- Explain how changes to the Code are made
- Describe the informal ombudsman program of Code enforcement
- Discuss mediation
- Explain how ethics complaints are handled
- Discuss arbitration
- Describe the pathways to professionalism

Key Terms

- Arbitration
- Article
- Business Ethics
- Code of Conduct
- Code of Ethics
- Code of Practice
- Corporate Social Responsibility
- Dispute Resolution
- Ethics Complaint
- Grievance Committee
- Hearing Panel
- Mediation
- Ombudsman Program
- Pathways to Professionalism
- Preamble
- Standards of Practice
- Unethical Behavior
- Whistleblower

PROFESSIONAL BUSINESS ETHICS

Definition

Business ethics deals with the ethical practices that arise in a business environment. It involves the study and examination of moral and social responsibility in relation to business practices and decision-making. It applies to all aspects of business activities and is relevant to the conduct of a few individuals in an organization or the entire organization as a whole. Business ethics is an ever-changing subject because it is rooted in the fluid nature of laws, official guidelines, cultural norms, contemporary standards of behavior, and societal perceptions.

In this chapter, we will first look at business ethics from a broad-brush view point and get a basic understanding of the interaction between business practices and ethics. Then we will focus on ethics as it relates to the real estate industry, and how the concept of ethics is formally enforced in the real estate industry. Keep in mind that ethics is not law; it is simply a code of behavior.

OVERVIEW

Hardly a day goes by without hearing a media announcement regarding unethical business practices uncovered by an investigative reporter. Unethical business practices are certainly not a new or recent phenomenon. If you remember your ancient history class in grade school, your teacher more than likely covered the Code of Hammurabi that was a Babylonian law code of ancient Mesopotamia dating back to about 1754 BC. The code identified a number of topics such as:

- **Slavery - Law #15:** "If anyone takes a male or female slave of the court, or a male or female slave of a freed man, outside the city gates, he shall be put to death."
- **Theft - Law #22:** "If anyone commits a robbery and is caught, then he shall be put to death."
- **Duties of Workers - Law #42:** "If anyone takes over a field to till it, and obtain no harvest therefrom, it must be proved that he did no work on the field, and he must deliver grain, just as his neighbor raised, to the owner of the field."

- **Liability - Law #53:** "If anyone be too lazy to keep his dam in proper condition and does not so keep it; if then the dam break and all the fields be flooded, then shall he in whose dam the break occurred be sold for money, and the money shall replace the corn which he has caused to be ruined."
- **Trade - Law #104:** "If a merchant gives an agent corn, wool, oil, or any other goods to transport, the agent shall give a receipt for the amount, and compensate the merchant therefor. Then he shall obtain a receipt from the merchant for the money that he gives the merchant."
- **Slander - Law #127:** "If anyone points the finger at a sister of a god or the wife of any one and cannot prove it, this man shall be taken before the judge, and his brow shall be marked."
- **Trade - Law #265:** "If a herdsman, to whose care cattle or sheep have been entrusted, be guilty of fraud and make false returns of the natural increase, or sell them for money, then shall he be convicted and pay the owner ten times the loss."

In the Middle Ages, the chivalric code was a code of conduct associated with the medieval institution of knighthood that developed between 1170 and 1220. The code of chivalry emphasized bravery, military skill, generosity in victory, piety, and courtesy to women.

Over the centuries, other rules, guidelines, and laws have influenced modern business practices. Western civilizations have drawn upon a number of sources to develop rules for behavior, such as Roman law, canon law, and the Justinian Code.

The term "business ethics" came into common usage in the 1970s. Colleges and universities nationwide offered at least 500 courses in business ethics by the mid-1980s. At least some 20 textbooks being published at the same time supported this effort.

Firms started highlighting their ethical standing in the late 1980s to try to distance themselves from the current business scandals, such as the savings and loan crisis.

Some individuals equate ethics with conscience or a sense of right from wrong. Others say that ethics is an internal code that governs an individual's conduct, ingrained into each person by family, faith, tradition, community, laws, and personal morals. Most professional organizations have a written "Code of Ethics" that govern standards of professional conduct expected of all in a chosen field.

Legal vs. ethical: It is important to note that "law" and "ethics" are not synonymous, nor are the "legal" and "ethical" courses of action in a given situation necessarily the same. Statutes and regulations passed by legislative bodies and administrative boards set forth the "law" but do not rise to the level of defining specific ethical behaviors. This dichotomy is glaringly apparent in the practice of slavery that was once legal in the U.S., but certainly was not an ethical act.

CORPORATE SOCIAL RESPONSIBILITY

Over the years, the concept of business ethics has expanded to ensure a level of trust between businesses and consumers. Terms, such as corporate accountability and *corporate social responsibility* are used to create a higher level of accountability, trust, and understanding between businesses and consumers. For example, a company who encourages its employees to serve on local environmental protection boards or projects may be perceived as being socially responsible and therefore trusted to be more accountable than an organization that does not provide the same type of volunteer activity. A company that sponsors little league teams may be perceived as caring about children and the community.

To help create a stronger public image and build trust in the community, many companies are actively engaged in corporate social responsibility projects. Some companies, such as Deloitte, offer their employees unlimited time to volunteer in the community. Others, such as PCL Construction, offer their employees up to 50 hours per year in paid time off for volunteering. Many businesses will offer some type of incentive or matching programs for donations that their employees make to the community.

While it is tough to measure the exact impact these types of activities have on a business, the businesses are generally seen as being responsible, trustworthy, and often as great places to work. This in turn should lead to a more secure standing in the community and more revenue.

Codes that Regulate Behavior

- **Code of ethics:** Many companies use the phrases ethical code, code of conduct, and code of practice interchangeably, but there are distinctions. A *code of ethics* sets out the values that establishes the code and describes a company's obligation to its stakeholders. The code is publicly available to anyone with an interest in the company's activities and the way it does business. It will include details of how the company plans to implement its values and vision, as well as guidance to staff on ethical standards and how to achieve them.
- **Code of conduct with fundamentals:** A *code of conduct* is generally addressed to and intended for employees alone. It will emphasize compliance and rules, and usually sets out restrictions on behavior. Many employers have taken the code of conduct and broken it down even further into a series of *fundamentals*. These fundamentals explain exactly how to interpret each section of the code of conduct. For example, what does "treat each other with respect" really mean? A fundamentals document will likely give the topic a paragraph or so of coverage, instead of a

simple bullet point, to clearly define what the topic means in the course of business.

- **Code of practice:** Professions, governmental agencies, or non-governmental organizations adopt a *code of practice* to regulate their operations. A code of practice identifies professional responsibilities in relationship to difficult issues and provides a clear directive as to what behavior is considered ethical or correct. Failure to comply with a code of practice as a group member can result in expulsion from the professional organization.
- **Social contract:** A *social contract* is used by some organizations as a standard way to deal with internal issues in the organization. Typically, all employees will agree to the social contract, which outlines how disputes will be resolved, and generally encourages strong communication to bring issues forward and resolve them in meaningful and ethical ways.

The Ethics Codes Collection

Today, business ethics is an important aspect of all organizations as noted by the creation of the Center for the Study of Ethics in the Professions located in Chicago, Illinois. This organization operates the Ethics Codes Collection (ECC), which is the largest database of codes of ethics and guidelines in the world. It contains over 2,500 individual codes from approximately 1,500 different organizations and collects both current and historical versions of these documents. ECC's goal is to provide practitioners, students, scholars, and the public access to codes of ethics to assist with ethical decision making in professional, entrepreneurial, scientific, and technological fields.

Business Ethics Magazine

In the publishing sector, the study of ethics has its own dedicated magazine called *Business Ethics.* Now an online-only magazine, it discusses current topics in the fields of ethics, governance, corporate responsibility, and socially responsible investing. The mission of *Business Ethics* is, "To promote ethical business practices, to serve that growing community of professionals and individuals striving to work and invest in responsible ways."

Ethics Officers

Another indication of how important ethics has become in business operations is the emphasis placed on the role of ethics officers in large organizations. Ethics officers, sometimes called compliance officers, have been formally appointed to the organizational structure since the mid-1980s. One of the catalysts for the creation of this new role was a series of fraud, corruption, and abuse scandals prevalent in the U.S. defense industry at that time. Another critical factor in the decision of companies to appoint ethics officers was the passing of the Federal Sentencing Guidelines for Organizations in 1991 that set standards for organizations to follow in order to obtain a reduction in sentence if they should be convicted of a federal offense.

As a result of the backlash of numerous corporate scandals between 2001 and 2004 affecting large corporations like Enron, WorldCom, and Tyco, even small and medium-sized companies began to appoint ethics officers. Ethics officers are responsible for assessing the ethical implications of the company's activities, making recommendations regarding policies and training employees in ethical practices. Emphasis on ethical practices is partly due to the Sarbanes–Oxley Act that was a response to the business scandals that took place in the early 2000s.

Check Your Understanding 2.1

Match each ethics description with the appropriate ethics code. (Answer Key in the back of the book.)

	Ethics Description	Ethics Code
1.	Directed to employees and explains exactly how to interpret each section of the code of conduct	
2.	Identifies professional responsibilities related to difficult issues and provides clear directive on ethical behavior	
3.	Sets out values that establishes the code and describes a company's obligation to its stakeholders	

A. Code of Ethics
B. Code of Conduct with Fundamentals
C. Code of Practice

The Sarbanes–Oxley Act of 2002

The Sarbanes–Oxley Act of 2002, enacted July 30, 2002, and also known as Sarbox or SOX, is a federal law that sets new or expanded requirements for all U.S. public company boards, management organizations, and public accounting firms. The Act contains 11 sections, ranging from additional corporate board responsibilities to criminal penalties, and requires the Securities and Exchange Commission (SEC) to implement rulings on requirements to comply with the law.

The bill was enacted as a reaction to a number of major corporate and accounting scandals including those affecting Enron, Tyco International, Adelphia, Peregrine Systems, and WorldCom. Investors invested in these companies presuming that the accounting was accurate, and therefore, share prices and profitability were also accurate. It was later discovered that the financial teams in these companies had made false statements or "cooked the books" resulting in much lower profits and valuations. These scandals, which cost investors billions of dollars when the share prices of affected companies collapsed, shook public confidence in the nation's securities markets.

Debate continues over the perceived value of SOX. Opponents say the bill has reduced America's international competitive edge against foreign financial service providers due to overly complex regulatory rules now operating in the U.S. financial markets. Proponents of the measure say that SOX has been a blessing for improving the confidence of fund managers and investors regarding the legitimacy of corporate financial statements.

UNETHICAL BEHAVIOR

Unethical behavior is any action that falls outside of what is considered morally right or proper for a person, a profession, or an industry. Individuals can behave unethically, as can businesses, professionals, and politicians. The following lists identify some behaviors that would be considered as unethical.

Unethical Behavior by Individuals

- Lying to a spouse
- Stealing money from the petty cash drawer
- Misrepresenting skills on a job
- Taking credit for work you didn't do
- Cheating on an exam
- Sexually harassing someone at work
- Selling a house and not disclosing known defects
- Selling a car and lying about the vehicle's history

Unethical Behavior by Businesses

- Polluting the environment
- Keeping two sets of accounting books
- Not properly classifying a worker as an employee but as an independent contractor to avoid payroll taxes
- Failing to properly test products before delivery
- Using false advertising tactics to attract customers
- Rolling back the mileage on a vehicle that is for sale
- Knowingly selling counterfeit goods
- Knowingly releasing products with defects
- Engaging in price fixing to force competitors out of the market

Unethical Behavior by Professionals

- Dating clients or patients
- Receiving a kickback for writing unnecessary brand name drug prescriptions
- Performing unnecessary procedures in order to receive additional insurance payments
- Representing parties on both sides of a transaction without full disclosure and approval
- Receiving insurance premiums and not informing the underwriters of an active policy
- Greatly exaggerating personal experiences in a public forum
- Being untruthful on a resume
- Claiming to possess degrees that were not earned or claiming degrees that were simply purchased

Unethical Behavior by Elected and Government Officials

- Obtaining private tax information about a political opponent and using that information in a campaign
- Accepting contributions that violate campaign finance laws
- Using money that was donated to a campaign for non-approved expenses
- Using a position of power to coerce individuals into a sexual relationship
- Demanding kickbacks for permit approvals and special favors

Causes For Unethical Behavior

There are five basic causes or reasons for breaches in ethical behavior. Unethical behavior may be based on any one or a multiple of the following reasons:

- **Financial advantage:** A financial advantage allows a firm or individual to produce goods and/or services at a lower cost than other firms or individuals. Seeking a financial advantage gives a company the ability to sell goods and services at a lower price than its competitors and realize stronger sales margins. The problem occurs when an organization violates ethical standards to gain an advantage, for example, when a food processor substitutes a less expensive ingredient in a product and fails to inform consumers.

- **Power:** Power is the ability to influence or control the behavior of people. Some organizations and individuals seek power in order to dominate a business activity through unethical means. For example, when an elected official exceeds their authority by implementing an illegal executive order.
- **Hubris:** Hubris indicates a loss of contact with reality and an overestimation of one's own competence, accomplishments, or capabilities. Hubris is usually perceived as a characteristic of an individual, but organizations have been known to practice hubris behavior as well. For example, some lending institutions practiced hubris behavior during the heyday of mortgage lending. These lenders disregarded the consequences of approving a bad risk loan and passed the liability off to the secondary market.
- **Fear:** Fear is a feeling induced by perceived danger or threat. The fear of being fired, banished from the group, or injured may drive an individual to act in an unethical manner. For example, an automobile engineer is pressured to falsify auto emissions test results given to the EPA or they will be fired.
- **Misguided loyalty:** Individuals sometimes lie because they think they are being loyal to the organization or their boss. For example, soldiers at the Abu Ghraib prison camp tortured and abused prisoners for the sake of eliciting military intelligence at any cost and then lied about their involvement.

Whistleblowers

At some point in time in today's society of social media and unprecedented media coverage, most unethical behavior is challenged and exposed. This "outing" is typically the result of the acts of a whistleblower. A whistleblower is a person who exposes any kind of information or activity deemed illegal or unethical. The information of alleged wrongdoing can be classified in many ways, such as:

- A violation of company policy
- A violation of laws and regulations
- A threat to public interest/national security
- An act of fraud
- An indication of corruption

Those who become whistleblowers can choose to bring allegations to the surface either internally or externally. Internally, a whistleblower can bring accusations to the attention of other people within the organization. Externally, a whistleblower can bring allegations to light by contacting a third party outside of an accused organization. Whistleblowers can reach out to the media, government, or law enforcement.

A patchwork of federal and state laws currently protect whistleblowers from retaliation. Whistleblowers must be aware of all the laws and comply with any deadlines when making a proper complaint. Those who report a false claim against the federal government and suffer adverse employment actions as a result, may have up to six years (depending on state law) to file a civil suit for remedies under the False Claims Act.

The following is just a sampling of whistleblowers who have captured the attention of the news and social media:

Adam B. Resnick – Omnicare

Resnick sued the pharmaceutical company Omnicare, a major supplier of drugs to nursing homes. Omnicare allegedly paid kickbacks to nursing home operators in order to secure business, which constitutes Medicare and Medicaid fraud. In 2010, Omnicare settled a False Claims Act suit filed by Resnick and taken up by the U.S. Department of Justice by paying $19.8 million to the federal government, while the two nursing homes involved in the scheme settled for $14 million.

Justin Hopson - New Jersey State Police

During his first few days as a rookie, Hopson witnessed an unlawful arrest and false report made by his training officer. When he refused to testify in support of the illegal arrest, his fellow troopers subjected him to hazing and harassment. He uncovered evidence of a secret society within the state police known as the Lords of Discipline, whose mission was to keep fellow troopers in line. Trooper Hopson blew the whistle on the Lords of Discipline, which sparked the largest internal investigation in state police history. Hopson filed a federal lawsuit alleging that after he refused to support the arrest, Hopson was physically assaulted, received threatening notes, and his car was vandalized while on duty. In 2007, the state of New Jersey agreed to a $400,000 settlement with Hopson. Justin Hopson and his book were featured on ABC News 20/20 "Confessions of a Cop" in 2012 and "Crossing the Line" in 2014.

John Kiriakou - Central Intelligence Agency

In an interview given to ABC News in 2007, CIA Officer Kiriakou disclosed that the agency waterboarded detainees and that this constituted torture. In the months following, Kiriakou passed the identity of a covert CIA operative to a reporter. He was convicted of violating the Intelligence Identities Protection Act and sentenced on January 25, 2013 to 30 months' imprisonment.

Cathy Harris - United States Customs Service

As former United States Customs Service employee, Harris personally observed numerous incidents of Black travelers being stopped, frisked, body-cavity-searched, detained for hours at local hospitals, forced to take laxatives for bowel inspection purposes, and subjected to public and private humiliation. Her book, "Flying While Black: A Whistleblower's Story" contains detail accounts of such treatment.

DEVELOPING AN ETHICAL BUSINESS CULTURE

Ethics starts at the top of the organization by leadership that is keenly aware of the importance of fair and equal treatment of all clients, employees, suppliers, shareholders, and the general public. Establishing an ethical business culture is based on a number of targeted strategies.

1. **Establish clear expectations:** Most organizations have a set of by-laws, slogans, mottos, policy manuals, and some type of written performance standards for all employees to follow. Too often, this information piles on the desk of the new hire on their first day on the job. The new hire is instructed to read the lofty prose but is not provided any additional directions or expected to give any feedback. Within a few weeks on the job, the new hire discovers how the organization truly operates and begins to understand the discrepancies between printed expectations and the realities of the actual work environment. Clear expectations should not only be in the written records of the company, but also must accurately reflect the actual ethical behavior expected.
2. **Model desired behavior:** Employees model their behavior after those in higher positions. Organizational leaders must practice what they preach and demonstrate by their actions the behaviors they expect within the ranks. The statement that actions speak louder than words is a true axiom.
3. **Provide ethics training:** Providing seminars and workshops on ethical topics demonstrates to everyone the importance that the organization places on ethical performance and reinforces the organization's standards of conduct.
4. **Treat all complaints seriously:** Treat employees in a supportive and earnest manner when they are notifying management of ethics violations. Avoiding or ignoring complaints only results in the complaint being submerged, creating problematic friction in the organization.
5. **Hire ethical/fire unethical employees:** Members in the same profession network a lot regardless of which company they actually work for. Consider that when individuals change companies, chances are high that their reputation precedes them. Hiring a top-flight sales representative with a checkered past signals to other employees that behavior takes a back seat when it comes to meeting performance quotas.

   When an employee demonstrates unethical practices, even after corrective counselling has taken place, the organization has to have the courage to terminate the individual. Failure to do so sends a message that rules are just transparent rhetoric and there is no consequence when circumvented.
6. **Reward ethical acts:** Organizations should reward employees who take the high road and make tough decisions while maintaining high ethical standards.
7. **Provide protective mechanisms:** The organization needs to provide formal mechanisms so that employees can discuss ethical dilemmas and report unethical behavior.
8. **Provide corrective feedback:** Organizations need to reinforce desired behavior, but they must also be ready to take corrective action when behavior is unacceptable.
9. **Provide periodic reminders:** The demands of daily business operations oftentimes overshadow the intangible tenet of ethical behavior. Thus, the organization needs to remind all staff members periodically of the importance of conducting day-to-day business operations in an ethical fashion.

ETHICS IN REAL ESTATE

Practicing with high ethical standards in real estate is critical because it involves doing what is right and proper. A broker and their agents must always act in the best interests of both the client and any third parties to a transaction. As discussed earlier, ethics have nothing to do with legality. Laws tend to set minimum standards for acceptable behavior. We have all heard stories about the sales associate that had a party at a house that they had listed, or about the agent that ate steaks out of the client's refrigerator. While these actions are not directly part of real estate license law, most would agree that they are not examples of ethical behavior. Ethics tends to deal with what is right. An act can be legal, but unethical. Good ethical practices have to do with trustworthiness, honesty, and competence.

The next sections of this chapter will discuss in detail the professional code of ethics that members of the National Association of REALTORS® (NAR) must follow. Membership in NAR is not mandatory and many real estate agents are not members. It is important to stress that ALL persons in the real estate profession should follow ethical standards, regardless of whether or not membership in an organization requires them to do so. Performing job duties in an ethical manner is good for business.

Professional Code of Ethics

Many states require licensees to follow a professional code of ethics. Much of the information found in the professional code of ethics in real estate has come from three sources.

- Federal and state laws that focus on anti-discrimination laws and fair-trade practices
- Real estate licensing regulation on the state level dealing primarily with agency issues and disclosures
- Self-regulation by real estate associations that set standards for professional conduct

Members of the NAR, who are known by the REALTOR® designation, follow a very strict code of ethics. Many state real estate commissions have chosen to incorporate this code into the state-level rules and regulations directing the conduct of licensees in their particular states. This code of ethics gives REALTORS a higher standard than the law.

History of the Code of Ethics

The National Association of REALTORS was formed in 1908 as the National Association of Real Estate Exchanges. In 1913, the association adopted the industry's first code of ethical conduct to protect the public and encourage licensee professionalism and honesty. The National Association of Real Estate Exchanges was renamed The National Association of Real Estate Boards (NAREB) in 1916, and then became the National Association of REALTORS (NAR) in 1972.

At the time the Code of Ethics was adopted, there were no state licensing laws and no standards of conduct for the industry. NAR established the Code of Ethics as professional standards of conduct, and through the years, the Code of Ethics became a basis for license laws. REALTORS were among the first professions to adopt a professional code of ethics for their business practices. The Code is a promise of professionalism.

The Code of Ethics improves the professionalism and reliability of the real estate industry. It aids consumers by requesting that licensees be truthful and honest in all communications and always place their client's interests above their own. It requires disclosure of material facts concerning properties and transactions. The Code also encourages competition, but at the same time, it requires competition to be less important than the interests of the client.

REALTORS are subject to disciplinary action and sanctions if they violate the duties imposed by the Code of Ethics.

Structure of the NAR Code of Ethics

The NAR Code of Ethics holds members of local Associations of REALTORS to an even higher standard than the law requires. The Code of Ethics is a detailed document that spells out the professional responsibilities of every REALTOR. The Code consists of seventeen articles and related standards of practice.

The *articles* call for professionals to observe the "Golden Rule" and to conduct themselves and their real estate business in accordance with certain standards. The Code itself is comprised of four sections:

- Preamble
- Duties to Clients and Customers
- Duties to the Public
- Duties to REALTORS

The preamble contains a number of concepts but no specific requirements for a licensee's conduct. The duties sections contain all of the articles dealing with the conduct expected and required of licensees.

Note: You can find a copy of the NAR Code of Ethics on the National Association of REALTORS website at https://www.nar.realtor. Print a PDF copy of the Code from this location and follow along as we discuss the sections.

The Preamble

The *preamble* contains a number of thoughts as to how licensees should conduct themselves. Based on the ideas put forth in the preamble, licensees should:

- Endeavor to become and remain informed on issues affecting the real estate industry.
- Make an effort to identify and take action to aid in the elimination of practices that are damaging to the public or those actions that might discredit the real estate industry. They can do this by enforcing the Code and by assisting regulatory agencies.
- Share their knowledge and experience with others.
- Report to the appropriate board of REALTORS the knowledge of any actions involving misappropriation of client or customer funds or property, willful discrimination, or fraud.
- Refrain from attempting to gain unfair advantage over their competitors.
- Avoid making unfair comments about other licensees.
- Offer an opinion in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.
- Endeavor to represent clients exclusively.

The preamble ends with a statement that REALTORS should pledge to observe the spirit of the Code in all of their activities both personal and professional and to conduct their business in accordance with the tenets presented in the articles.

The Articles

The preamble is followed by seventeen articles divided under the headings of Duties to Clients and Customers, Duties to the Public, and Duties to REALTORS.

Duties to Clients and Customers. **Articles 1-9 deal with these duties:**

- **Article 1** - REALTORS protect and promote their clients' interests while treating all parties honestly.
- **Article 2** - REALTORS refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.
- **Article 3** - REALTORS cooperate with other real estate professionals to advance their clients' best interests.
- **Article 4** - When buying or selling on their own account or for their families or firms, REALTORS make their true position or interest known.
- **Article 5** - REALTORS do not provide professional services where they have any present or contemplated interest in property without disclosing that interest to all affected parties.
- **Article 6** - REALTORS cannot accept any commission, rebate, or profit on expenditures made for a client,

without the client's knowledge and consent and must disclose any fee or financial benefit they may receive from recommending related real estate products or services.

- **Article 7** - REALTORS receive compensation from only one party, except where they make full disclosure and receive informed consent from their client.
- **Article 8** - REALTORS keep entrusted funds of clients and customers in a separate escrow account.
- **Article 9** - REALTORS make sure that contract details are spelled out in writing and that parties receive copies.

***Duties to the Public.* Articles 10–14 deal with the public:**

- **Article 10** - REALTORS give equal professional service to all clients and customers irrespective of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.
- **Article 10.5** - In November 2020, NAR added a new standard of practice 10-5. It is NOT retroactive since it only applies to violations that occur after November 13, 2020. See the complete text in the NAR Code of Ethics.
- **Article 11** - REALTORS are knowledgeable and competent in the fields of practice in which they engage or they get assistance from a knowledgeable professional, or disclose any lack of expertise to their client.
- **Article 12** - REALTORS paint a true picture in their advertising and in other public representations.
- **Article 13** - REALTORS do not engage in the unauthorized practice of law.
- **Article 14** - REALTORS willingly participate in ethics investigations and enforcement actions.

***Duties to REALTORS.* The last three articles deal with duties to colleagues:**

- **Article 15** - REALTORS make only truthful, objective comments about other real estate professionals.
- **Article 16** - Respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS have with their clients.
- **Article 17** - REALTORS must mediate or arbitrate financial disagreements with other REALTORS, provided the clients agree to be bound by any resulting agreement or award.

Standards of Practice

The articles of the Code are very broad statements of conduct. Associated with the articles are one or more *standards of practice*, which are designed to support, interpret, and amplify that article.

When someone files an ethics complaint against a licensee, only Articles may be named, never anything contained in the preamble. Also, REALTORS cannot be found in violation of a standard of practice, only in violation of the associated article. However, standards of practice may be referenced to support an alleged article violation.

Each of the articles has some number of standards of practice associated with it as follows:

- **Article 1** – 16 Standards of Practice
- **Article 2** – 3 Standards of Practice
- **Article 3** – 10 Standards of Practice
- **Article 4** – 1 Standards of Practice
- **Article 5** – 0 Standards of Practice
- **Article 6** – 1 Standards of Practice
- **Article 7** – 0 Standards of Practice
- **Article 8** – 0 Standards of Practice
- **Article 9** – 2 Standards of Practice
- **Article 10** – 5 Standards of Practice
- **Article 11** – 4 Standards of Practice
- **Article 12** – 13 Standards of Practice
- **Article 13** – 0 Standards of Practice
- **Article 14** – 4 Standards of Practice
- **Article 15** – 3 Standards of Practice
- **Article 16** – 20 Standards of Practice
- **Article 17** – 5 Standards of Practice

You can read the standards of practice associated with each article in your printed copy of the Code of Ethics.

Changes to the Code

When needed, amendments to the Code and the standards of practice are made at the NAR midyear meetings and the REALTORS conference and expo.

NAR has a group of members who belong to an interpretations and procedures subcommittee. This body frequently makes recommendations to the professional standards committee about enhancements to professional standards procedures and to the Code of Ethics.

The board of directors must approve all proposals to the Code and to the policies and procedures that enforce the Code. The delegate body must also approve any amendments to the 17 articles.

It is important to note the following:

- The Code must be reasonably and consistently construed with the law.
- The Code imposes duties above and in addition to the duties imposed by law or regulation.
- The Code restates certain fundamental legal principles, for example those principles dealing with contracts, agency, and fair housing.

Enforcing the Code of Ethics

Local Associations of REALTORS are responsible for enforcing the Code of Ethics, both in providing mediation and in holding arbitration hearings.

Only NAR members are subject to the Code of Ethics. Those associations in which REALTORS are members or use the MLS in some capacity have authority over those persons to receive and decide ethics complaints and arbitration requests.

However, associations do not determine whether licensees have violated any laws or real estate regulations. Only the proper regulatory authority or court can make that kind of assessment.

Many times, the difficulties that arise between real estate professionals result from misunderstanding, miscommunication, or lack of satisfactory communication. When those situations arise, they can often be resolved through practical conversation about the matter causing the difficulty, thus reducing or even eliminating the need to take the matter any further.

If it happens that the licensees cannot resolve their difficulties on their own, there are two courses of action available:

- Take advantage of informal dispute resolution.
- File an ethics complaint or an arbitration request.

Informal Dispute Resolution

There are two avenues for informal dispute resolution:

- Using an ombudsman
- Submitting to mediation

Using an Ombudsman

The first form of informal dispute resolution is working with an *ombudsman*. This is a voluntary process. Ombudsmen do not participate in any formal or adjudicative process. They focus on communication and finding mutual, non-coerced agreement between the parties, rather than determining who is right and who is wrong. Ombudsmen do not establish whether ethics violations have taken place. They foresee, recognize, and help settle misunderstandings and differences before they become full-blown disputes that can result in charges of unethical behavior.

Real estate ombudsman programs: *Ombudsman programs* in real estate are available only if the local association of REALTORS offers the service. Since the program is voluntary for both REALTORS and consumers, either one or both parties involved in the dispute may refuse to use ombudsmen services.

Persons who serve as ombudsmen in real estate should be familiar with the Code of Ethics, their state's real estate regulations, and existing real estate practices. An ombudsman could be a REALTOR, a staff member, or any number of other individuals as long as they possess a good knowledge of real estate practices.

An ombudsman can answer questions and research complaints dealing with real estate transactions and issues surrounding ethical practices and the Code of Ethics. Ombudsmen can also reply to inquiries and complaints about members, arrange meetings, and assemble the parties who are having the dispute.

If an ethics complaint is resolved through an ombudsman, the complaint is considered discharged. If a member fails or refuses to comply with the terms of a mutually agreed upon decision, the complaining party can then file or re-file an ethics complaint.

Submitting to Mediation

The second form of informal dispute resolution involves submitting to mediation. *Mediation* is an informal intervention process conducted by a trained third party, called a mediator. The aim of this process is to bring two parties together to sort out misunderstandings, expose concerns, and achieve a resolution. The process is voluntary, although sometimes it may be advised by an entity or agency.

> *Mediation is the preferred dispute resolution method of REALTOR organizations because it's a way to generate a mutually acceptable decision regarding a disagreement without a hearing panel judgement.*

During the mediation, each side will present its evaluation of the issue. The mediator will work with each party in an effort to work out a settlement. At the end of the process, the mediator can present their findings along with a possible solution. The mediation process is non-binding. The mediator does not force a decision on the parties, but instead tries to offer a solution that is acceptable to both parties. Mediation is often used to avoid taking a case to court.

Mediation is the preferred dispute resolution method of REALTOR organizations because it is a way to generate a mutually acceptable decision regarding a disagreement without having a judgment imposed by a hearing panel.

Mediation is also a voluntary process and one that must be available to all REALTORS. Local associations have the option of offering mediation to the disputing parties before or after

a grievance committee's review of any arbitration requests. If the association offers mediation before a grievance review, then they must offer it again after the grievance committee makes its determination on whether the matter is actually appropriate for arbitration.

In the real estate mediation process, the parties meet with a mediator who is appointed by the association. They follow the same process previously described. Then if they reach an agreement, the parties express the terms of the agreement in a signed document and an arbitration hearing becomes unnecessary.

Formal Dispute Resolution

The avenues for formal dispute resolution include:

- Filing an ethics complaint
- Arbitration

Filing an Ethics Complaint

Ethics complaints are based on violations of the Code of Ethics. Anyone can file an ethics complaint – a member of the public or a licensee. Filing an ethics complaint through the local association gives members of the public an alternative to legal action, saving time and money for licensees and consumers.

Since complaints are based on Code violations, the person filing the complaint must list the article or articles of the Code that were violated. Once a complaint is filed, two groups of people are responsible for dealing with them:

- Grievance committee
- Hearing panel

Grievance Committee

Members of the association make up the *grievance committee*. These members conduct a review of the complaint to determine if a possible violation of the Code of Ethics has occurred. This review is not a hearing on the merits, but rather a preliminary analysis to determine if the complaint calls for a hearing.

The grievance committee members will confirm the following information:

- The complaint was filed in the proper format
- The appropriate parties are named in the complaint
- It was filed within 180 days
- Specific relevant articles are cited in the complaint, appropriate standards of practice are included as support if needed, and no inappropriate articles are cited
- There is no reason that the board would be unable to provide an impartial hearing panel.
- The respondent is a member of the local board and was a member at the time of the alleged violation
- If litigation or state government agency investigation is pending:
    - In the case of a criminal case, the committee will end any consideration of the violation and hold the file as pending until legal action is completed.
    - In the case of a civil case, the board will ask its legal counsel to review the complaint and advise whether or not the hearing should proceed given that the alleged facts are taken as true on their face, a possible violation of the Code of Ethics did occur.

If the grievance committee establishes that a potential violation occurred, and if other requirements of the complaint process are met, the committee will submit the complaint to the professional standards committee for a hearing by an ethics hearing panel.

If the grievance committee decides there was no violation and dismisses the complaint, the notice must contain the reasons for the dismissal. The complainant may appeal the dismissal to the board of directors within 20 days of receiving the dismissal notice, explaining in writing why they disagree with the dismissal. The directors will review the same material seen by the grievance committee, along with the complainant's explanation of their disagreement of the dismissal and render a final decision. The involved parties are not present at the appeal.

Hearing Panel

Complaints submitted to the professional standards committee will move on to a hearing. The ethics *hearing panel* is the group that will conduct any full "due process" hearings. A hearing will include sworn testimony, counsel, witnesses, and evidence. A hearing panel is made up of members of an association's professional standards committee.

After a hearing, the panel will decide whether there has been a violation of the Code. Any violation must be supported by clear, strong, and compelling proof. If the panel decides that there was a violation, they must then determine what discipline they will impose on the violator. Discipline could include:

- Letter of warning
- Letter of reprimand
- Requirement to attend the ethics portion of a designated course or other appropriate course or seminar
- Fine not to exceed $15,000
- Probation for not less than 30 days or more than one year
- Membership suspension for not less than 30 days or more than one year, with automatic reinstatement at the end of the suspension period
- Expulsion from membership for one to three years, with reinstatement by application only
- Suspension or termination of MLS rights and privileges

The chief reason for imposing discipline for an ethics violation is to create a keen awareness of and appreciation for the Code.

In addition, the panel may also impose an administrative processing fee of up to $500. However, such processing fee should be the same for all cases, subject to association policy and not based on the specific case itself. Any administrative fee imposed would be in addition to, not part of, any disciplinary fine imposed.

The chief reason for imposing discipline for an ethics violation is to create a keen awareness of and appreciation for the Code. The hearing panel may impose more than one form of discipline. If a person engages in more serious or repeated violations, the panel might choose to impose more severe forms of discipline or multiple forms of discipline.

Note that the forms of discipline available to the hearing panel do not deal with probation, suspension, or revocation of the REALTORS real estate license. The hearing panel does not determine license violations and are not authorized to discipline those types of violations.

Arbitration

While ethics complaints are based on violations of the Code of Ethics, *arbitration* issues are typically monetary disputes among broker members of the Association.

Article 17 of the Code of Ethics reads, "In the event of contractual disputes or specific non-contractual disputes … between REALTORS (principals) associated with different firms, arising out of their relationship as REALTORS, the REALTORS shall mediate the dispute if the board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS shall submit the dispute to arbitration in accordance with the policies of their board rather than litigate the matter."

Standards of Practice 17-4 lists the specific non-contractual disputes covered by this Article. It would be a good idea for all real estate professionals to become familiar with these disputes by reading the content of Article 17 and its associated standards of practice.

Grievance Committee

The *grievance committee* also plays a role in arbitration. The committee will complete an initial screening similar to the type of screening it does when reviewing ethics complaints. It will confirm a lot of the same information it does for ethics complaints, as well as answering these questions:

- If the claims in the request for arbitration are taken as true on their face, is the matter at issue related to a real estate transaction that could be arbitrated properly; in other words, is there some basis on which an arbitration hearing could base an award?
- If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?
- Is the amount of the dispute too small or too large for arbitration?
- Is the matter too complex legally, involving matters that the arbitrators may not be able to address in a knowledgeable manner?
- Are there enough well-informed arbitrators available to address the issue?

Arbitration Hearing Panel

The *arbitration hearing panel* is the group that will conduct any full "due process" hearings. As with an ethics hearing, an arbitration hearing will include sworn testimony, counsel, witnesses, and evidence. The hearing panel is made up of members of an association's professional standards committee.

Procuring Cause

After a hearing, the panel will decide who is entitled to an award, as demonstrated by a preponderance of the evidence. The panel uses the NAR's Arbitration Guidelines in the Code of Ethics and Arbitration Manual as the basis for its decision. The focus of the decision is typically *"procuring cause"* because that is the reason for most disputes between brokers.

There are no predetermined rules for deciding which party should receive the disputed commission, but there are several important considerations. Since procuring cause is the primary factor in making a decision, the panel must consider all pertinent events, testimony, and evidence, including the first showing of the property and the writing of an accepted offer.

Other procuring cause considerations could be:

- Starting a series of events without interruption that result in the sale
- Whether there was a lack of contact and communication of the party to the contract
- The type of contracts and status of the transaction
- The relationship of the parties

No sole consideration establishes procuring cause. The panel must reflect on all relevant conduct of the parties related to the transaction.

After appropriate consideration, the panel will decide which licensee is entitled to the disputed commission. The awards may be judicially enforced when not paid by the non-prevailing party.

Note: Many associations require that when awards are not paid, an equal amount must be deposited with the association until the hearing process can be reviewed or during the time any legal challenge is pending.

Check Your Understanding 2.2

For each statement, select if it is True or False. (Answer Key in the back of the book.)

	Ethics Description	True	False
1.	Ethics is not law; it is simply a code of behavior.		
2.	All real estate licensees must follow the NAR Code of Ethics.		
3.	If licensees are unable to solve a dispute between them, they could use an ombudsman or submit to mediation.		

PATHWAYS TO PROFESSIONALISM

We have discussed the fact that the Code of Ethics establishes enforceable standards of conduct for REALTORS to follow. However, the Code does not address issues surrounding courtesy or etiquette. For that reason, a subgroup of the professional standards committee developed a list of professional courtesies that agents should follow. Following these courtesies is strictly voluntary and cannot form the basis for a professional standards complaint. Also, this list is not comprehensive. It can be supplemented according to local customs and practices.

The list is divided into three sections:

- Respect for the public
- Respect for property
- Respect for peers

The following list is from the 2014 NAR Code of Ethics and Arbitration Manual, Pathways to Professionalism.

Respect for the Public

1. Follow the "Golden Rule": Do unto others as you would have them do unto you.
2. Respond promptly to inquiries and requests for information.
3. Schedule appointments and showings as far in advance as possible.
4. Call if you are delayed or must cancel an appointment or showing.
5. If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.
6. Communicate with all parties in a timely fashion.
7. When entering a property, ensure that unexpected situations, such as pets, are handled appropriately.
8. Leave your business card if not prohibited by local rules.
9. Never criticize property in the presence of the occupant.
10. Inform occupants that you are leaving after showings.
11. When showing an occupied home, always ring the doorbell or knock - and announce yourself loudly - before entering. Knock and announce yourself loudly before entering any closed room.
12. Present a professional appearance at all times; dress appropriately and drive a clean car.
13. If occupants are home during showings, ask their permission before using the telephone or bathroom.
14. Encourage the clients of other brokers to direct questions to their agent or representative.
15. Communicate clearly; don't use jargon or slang that may not be readily understood.
16. Be aware of and respect cultural differences.
17. Show courtesy and respect to everyone.
18. Be aware of - and meet - all deadlines.
19. Promise only what you can deliver - and keep your promises.
20. Identify your REALTOR and your professional status in contacts with the public.
21. Do not tell people what you think - tell them what you know.

Respect for Property

1. Be responsible for everyone you allow to enter listed property.
2. Never allow buyers to enter listed property unaccompanied.
3. When showing property, keep all members of the group together.
4. Never allow unaccompanied access to property without permission.
5. Enter property only with permission even if you have a lockbox key or combination.
6. When the occupant is absent, leave the property as you found it (lights, heating, cooling, drapes, etc.). If you think something is amiss (e.g., vandalism) contact the listing broker immediately.
7. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. Leave the house as you found it unless instructed otherwise.
8. Use sidewalks; if weather is bad, take off your shoes and boots inside property.
9. Respect sellers' instructions about photographing or taking video of their properties' interiors or exteriors.

Respect for Peers

1. Identify your REALTOR and professional status in all contacts with other REALTORS.
2. Respond to other agents' calls, faxes, and e-mails promptly and courteously.
3. Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.
4. Notify the listing broker if there appears to be inaccurate information on the listing.
5. Share important information about a property, including the presence of pets, security systems, and whether sellers will be present during the showing.
6. Show courtesy, trust, and respect to other real estate professionals.
7. Avoid the inappropriate use of endearments or other denigrating language.
8. Do not prospect at other REALTORS' open houses or similar events.
9. Return keys promptly.
10. Carefully replace keys in the lockbox after showings.
11. To be successful in the business, mutual respect is essential.
12. Real estate is a reputation business. What you do today may affect your reputation - and business - for years to come.

Real-Life Scenario Based on the Pathways to Professionalism

Buyer agent Sandy represents Ted and found the first property to show him in the local MLS. The showing instructions mentioned a lockbox on the property, and Sandy learns from another agent in her office that the sellers are out of town. Sandy does not contact the listing broker to show the property because she already has a lockbox access code.

Just before entering the property, Sandy gets a call from her son's school. She gives Ted the access code to the lockbox and tells him to take a look around while she takes the call outside. After she hangs up, Sandy notices a little dog running around the front yard and realizes it's the owner's dog that got out when Ted left the front door open. She manages to get the dog back inside, then sees both she and the dog have tracked mud into the house.

Frustrated by the chaos, Sandy hurried Ted out of the house without turning off the lights or locking the front door. Ted mentioned to her that they should probably clean up the mud that she and the dog had tracked into the house. Sandy, knowing the homeowners, brushed off Ted's comments by making a disparaging remark about how there are so many foreigners in Florida anyway, she doesn't care if the house is owned by one of them. Ted was horrified by Sandy's comments.

As Sandy drove them to the next showing, she talked to Ted about the lovely, family-friendly neighborhood the next house was in and just knew that Ted and his family would love it. While Sandy talked, Ted received a phone call. Listening to the conversation, Sandy discovered that Ted was shopping for a home for him and his life partner, Erik. With that new information, she abruptly turned the car around. Ted asked if something was wrong. Sandy, believing that she knows best, explained that the neighborhood she was going to show him would not be appropriate for people with his sexual orientation so she wants to show him a much more interesting property in the arts district.

SAMPLE CASE INTERPRETATIONS

The following cases, taken from the Case Interpretations section of the NAR website, will give you some idea as to how cases are handled. You can review a number of examples, arranged by article number, at http://www.realtor.org/code-of-ethics-and-arbitration-manual/table-of-contents. Scroll to the bottom of the page under the heading "Interpretations of the Code of Ethics."

Duties to Clients and Customers

Case #2-2: Responsibility for Sales Associate's Error

(Revised Case #9-5 May 1988. Transferred to Article 2, November 1994.)

An owner asked REALTOR A, a REALTOR principal, to list a neglected house that obviously needed a wide range of repairs. REALTOR A strongly advised the owner that it would be to their advantage to put the house in good repair before offering it for sale. However, the owner wanted it sold at once on an "as is" basis. REALTOR A wrote a novel advertisement offering a "clunker" in poor condition as a challenge to an ambitious do-it- yourself hobbyist.

A few days later, Sales Associate B, who was not a Board member, from REALTOR A's office showed the house to a retired couple who liked the location and general features, and who had been attracted by the ad because the husband was looking forward to applying their "fix-up" hobby to improving a home. The sale was made. Shortly thereafter, the buyer charged REALTOR A with having misrepresented the condition of the property.

REALTOR A accompanied Sales Associate B to the hearing, armed with a copy of their candid advertisement. The hearing established that the buyer fully understood that the house was represented to be generally in poor condition. However, while inspecting the house with a view to needed repairs, Sales Associate B commented that since the house was of concrete block and stucco construction, there would be no termite worries since termites could not enter that type of construction. Sales Associate B confirmed this and their belief that the statement was correct. However,after the sale was made, the buyer ripped out a sill to replace it and found

it swarming with termites, with termite damage to floors in evidence. Further questioning established that there had been no evidence of termite infestation prior to the sale, and that the Sales Associate had volunteered an assurance that he thougth was well grounded.

REALTOR A, prior to the conclusion of the hearing, offered to pay the cost of exterminating the building and the cost of lumber to repair termite damage in view of Sales Associate B's failure to recommend a termite inspection, which was the usual and customary practice in this area. The complainant stated that this would satisfy him completely.

It was the Hearing Panel's view that while REALTOR A's actions were commendable, and would be taken into account by the Hearing Panel, REALTOR A was still responsible for the errors and misstatements of the sales associates affiliated with him. The Hearing Panel concluded that REALTOR A violated Article 2.

Duties to the Public

Related to Article 12: REALTORS must paint a true picture in their advertising and in other public representations.

Case #12-1: Absence of Name on Sign

(Reaffirmed Case #19-3 May 1988. Transferred to Article 12, November 1994. Revised November 2001.)

Prospect A observed a sign on a vacant lot reading: "For Sale - Call 330-5215." Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised and offended that the lot was exclusively listed by REALTOR A, and the telephone number on the sign was the home number of REALTOR-Associate B in REALTOR A's office.

Prospect A filed a complaint against REALTOR A and REALTOR-Associate B. REALTOR A and REALTOR-Associate B alleging a violation of Article 12 of the Code of Ethics.

At the hearing, REALTOR A stated that he permitted REALTOR-Associate B to put up the sign. REALTOR-Associate B's defense was that the sign was not a "formal" advertisement, such as a newspaper advertisement, business card, or billboard, to which he understood Article 12 to apply.

The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR A and REALTOR-Associate B were in violation of Article 12.

Duties to REALTORS

Related to Article 16: REALTORS must respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS have with their clients.

Case #16-1: Confidentiality of Cooperating REALTOR's Participation

(Revised Case #21-5 May 1988. Transferred to Article 16, November 1994.)

When Client A listed their home for sale with REALTOR B, he explained that he wanted the sale handled without advertising and without attracting any more attention than was absolutely necessary. He said he understood that he would have to have some contacts with prospective buyers and possibly with other REALTORS, but that he did not want the property filed with the MLS, advertised, or in any way publicly announced as being on the market. He asked REALTOR B to impress the same restrictions on any other REALTORS who might become involved in the transaction.

REALTOR B, having reason to think that REALTOR C was in touch with prospective buyers to whom the property would appeal, approached REALTOR C to invite their cooperation, and explained fully the Client's instructions. REALTOR B discussed the matter with no other REALTOR and refrained from any kind of advertising of the property.

However, a few days later, REALTOR B learned that REALTOR D was discussing the property with prospective buyers, knew that REALTOR C was working on it, knew the price at which the property had been listed, and other details about it. Questioning revealed that REALTOR C had told REALTOR D that he was working on the sale of the property.

On the basis of the information from REALTOR D, REALTOR B charged REALTOR C with unethical conduct in a complaint to the Board of REALTORS specifying that REALTOR C's breach of confidence under the circumstances was a failure to respect his, REALTOR B's, exclusive agency, and that this action had jeopardized their relationship with their client.

The complaint was referred to the Board's Professional Standards Committee, a hearing was scheduled, and REALTOR C was directed to answer the charge of unethical conduct in violation of Article 16.

At the hearing, REALTOR B detailed the instructions of the client and the manner in which he had conveyed them to REALTOR C in inviting their cooperation. REALTOR D told the Hearing Panel that REALTOR C had discussed the listing with him. REALTOR C defended himself against the charge of violating Article 16 by saying that while he had discussed the matter briefly with REALTOR D, he had not expressly invited their cooperation, and, therefore, had not violated Article 16.

At the conclusion of the hearing, the panel held that REALTOR B's complaint was valid; that proper respect for their exclusive agency and the circumstances under which it existed required REALTOR C to observe the confidence entrusted to him and that REALTOR C's discussion of the matter with REALTOR D was in violation of Article 16.

CHAPTER 2 PROGRESS CHECK

1. All of the following elements influence the formation of business ethics, EXCEPT:
   A. laws and official guidelines.
   B. cultural norms.
   C. financial plans.
   D. standards of behavior.

2. Each of the following would be considered unethical behavior by a business, EXCEPT:
   A. keeping two sets of accounting books.
   B. setting an office policy at a higher standard than the law requires.
   C. using false advertising tactics to attract customers.
   D. knowingly releasing products with defects.

3. What duties are included in the National Association of REALTORS (NAR) Code of Ethics?
   A. Duties to clients and customers
   B. Duties to the public
   C. Duties to REALTORS
   D. All of the above

4. Which of the following actions would be applicable to the resolution of an informal dispute?
   A. Filing an ethics complaint through the local Association of REALTORS
   B. Using an ombudsman
   C. Arbitration
   D. Conducting a "due process" hearing

5. Which statement correctly describes the NAR Pathways to Professionalism?
   A. It is a list of professional courtesies for use by REALTORS on a voluntary basis.
   B. It is an enforceable standard in the NAR Code of Ethics.
   C. It is a list of thoughts in the preamble of the NAR Code of Ethics on how licensees should conduct themselves.
   D. It is a list of articles in the NAR Code of Ethics describing the duties of REALTORS to clients and customers.

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Chapter 3: Case Studies

1 CE Hour

14-Hr CE FREC Approval Number: 28640

Learning Objectives

- Explain failure to account
- Explain advertising requirements
- Explain sales associate advertising requirements
- Discuss activities that can be performed by a sales associate
- Discuss signs of potential loan fraud

Key Terms

- Administrative Complaint
- Charges
- Final Order
- Penalty
- Resolution
- Stipulation

FREC MEETINGS

Every month, the Florida Real Estate Commission (FREC) holds meetings, typically in Orlando. The meetings are open to the public. Every real estate licensee should make it a point to attend at least one FREC meeting. These meetings are fantastic educational experiences and after attending, licensees often comment that they wish they had attended sooner and will attend more often.

Meetings normally consist of legal cases and hearings, rulemaking, escrow disbursement orders, and summary of applicants. Agendas for meetings and minutes from previous meetings can be found online at http://www.myfloridalicense.com/DBPR/real-estate-commission/meetings-and-workshops/

Disciplinary Activity Reports

Disciplinary activity reports can also be found on this website. Licensees should review disciplinary reports to be familiar with the types of violations and frequency of occurrence that the FREC deals with on a regular basis.

The next few pages contain five case studies. These cases were developed from actual administrative complaints and final orders. The names have been changed and locations have been left out to protect those involved, but all charges, penalties, and key details are real.

CASE STUDY 1: FAILURE TO ACCOUNT FOR ESCROW FUNDS PROPERLY

Facts as Outlined in Administrative Complaint

Respondent was licensed and acting as a licensed real estate broker and qualifying broker for ABC Realty Group, Inc.

Respondent negotiated two purchase and sale contracts for condominium units (subject properties one and two) located in Orlando, Florida.

Respondent instructed buyers to deposit $50,000 in a bank account controlled by respondent in the Republic of Venezuela for the purchase of subject properties one and two. Buyers deposited funds as directed by respondent.

Respondent failed to deposit buyer's funds in an escrow account in the state of Florida.

Respondent failed to account and deliver funds to buyer when required.

Charges

Respondent was charged with six counts of violations of F.S. 475 including:

1. 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 violation of F.S. 475.25(1)(b).
2. Failure to account or deliver funds in violation of F.S. 475.25(1)(d)1.
3. Failure to maintain trust funds in violation of F.S. 475.25 (1)(k).
4. ABC Realty Group, Inc. was charged with three additional counts, mirroring the above personal charges.

Questions

1. What should this broker have done to avoid this problem?
2. Do you see how one mistake or issue can turn into multiple charges in the administrative complaint?

Resolution and Penalties

The broker filed an election of rights form disputing facts. The case was scheduled for an administrative hearing. The respondent was not at the hearing and was found guilty by the administrative law judge who recommended revocation of both the broker's personal license and the license of ABC Realty Group, Inc.

FREC revoked both licenses and ordered the respondent(s) to pay a total of $10,000 in fines and $726 in costs.

Lessons Learned

1. Escrow accounts must be located in Florida.
2. Escrow money does not belong to the broker, and it should be handled according to all applicable rules and laws.

CASE STUDY 2: FALSE ADVERTISING

Facts as Outlined in Administrative Complaint

Respondent John Q. Public was a licensed real estate sales associate registered with XYZ Realty Pros. He listed a residential property through XYZ Realty Pros. He also employed an unlicensed assistant.

Respondent advertised subject property and included the brokerage name in the advertisement as XYZ Realty Pros, John Q. Public, Inc. Respondent amended the Brokerage/ Listing Agreement to read XYZ Realty Pros, John Q. Public, Inc. He employed his unlicensed assistant to conduct open houses for him, discussed the neighborhood because he was a resident there, and provided opinions on current market pricing.

In another transaction, John Q. Public acted as a buyer and represented to the seller that a $500 deposit had been placed with a title company when in fact that deposit had never been placed.

Charges

Respondent was charged with the following four counts:

1. Advertised a property or services in a manner which is fraudulent, deceptive, or misleading…in violation of F.S. 475.25(1)(c)
2. Aiding and assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to F.S. 455, or F.S. 475
3. Fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, etc. in violation of F.S. 475.25(1)(b)
4. Failure to deposit escrow funds in violation of F.S. 475.25 (1)(d)2

Questions

1. If you were on the FREC, what penalty would you impose?
2. Is this a case that could be negotiated?

Resolution and Penalties

In exchange for pleading guilty, the petitioner (DBPR) agreed to a stipulation (negotiated settlement) whereby counts 2, 3, and 4 were dismissed. The respondent agreed to pay a $1,500 fine, $346.50 in costs, serve one year of probation, and attend one full (two-day) FREC meeting.

Lessons Learned

1. Sales associates must perform all real estate activities under the name of their licensed employer.
2. Unlicensed assistants must be supervised and are limited as to the tasks they can perform. (See the Permissible Activities of an Unlicensed Assistant section in Chapter 1.)
3. Whether a licensee is acting as a party to a transaction, or in the capacity of a licensee, they are still held to standards prescribed by law.

CASE STUDY 3: SALES ASSOCIATE ADVERTISING IN OWN NAME

Facts as Outlined in Administrative Complaint

The respondent held an active real estate sales associate license. They placed an advertisement on the community bulletin board for the sale of real property located within their condominium complex. They did not list the name of their registered broker in the advertisement.

Charges

The respondent was charged with one count of having advertised property or services in a manner that is fraudulent, false, deceptive, or misleading in form or content in violation of F.S. 475.25(1)(c).

Questions

1. Do you think this is a minor or major violation?
2. Could this charge be settled through a stipulation?

Resolution and Penalties

The respondent agreed by stipulation to pay a fine of $500 and $495 in costs. In addition, the respondent must attend one FREC general meeting (two days).

Lessons Learned

1. All advertisements must include the registered name of the broker.
2. Sales associates cannot advertise in their own name and cannot place blind ads.

CASE STUDY 4: OPERATING AS A BROKER BUT LICENSED AS A SALES ASSOCIATE

Facts as Outlined in Administrative Complaint

The respondent was licensed as a real estate sales associate with Company A, a properly licensed and registered real estate brokerage company. The respondent was a managing member of Company B that was not licensed as a real estate brokerage company. The respondent advertised rental properties and rental services available through Company B.

Charges

The respondent was charged with operating as a broker while licensed as a sales associate in violation of F.S. 475.42(1)(b), having advertised property or services in a manner that is fraudulent, false, deceptive, or misleading … in violation of F.A.C. 61J2-10.025 and F.S. 475.25(1)(c), aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to F.S. 455, F.S. 475, or rules of the Commission.

Questions

1. How could this licensee have accomplished what they were trying to do within the limits of the law?
2. Are media, such as websites and blogs, considered advertising?

Resolution and Penalties

The respondent agreed by stipulation to pay a $2,000 fine, $379.50 in costs, serve one-year probation, attend three two-day FREC meetings, and complete a residential property management course.

Lessons Learned

1. Any form of media can be considered advertising.
2. All advertising must include the name of the brokerage.
3. A sales associate can only operate and perform real estate services within the brokerage with which they are licensed.
4. A sales associate can only have one licensed employer at a time.

CASE STUDY 5: LOAN FRAUD

Facts as Outlined in Administrative Complaint

The respondent was a properly licensed real estate sales associate who entered into two separate listing agreements for properties owned by the seller. The listing price on both properties was $350,000. The seller then entered into purchase and sale agreements for both properties with a buyer, with an agreed upon sales price for each property of $329,000. When the seller arrived at closing, all documents reflected a sales price of $450,000. The respondent admitted to altering the purchase price. The seller's attorney recommended that seller refuse to close.

Charges

The respondent was charged with fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing….in violation of F.S. 475.25(1)(b).

Questions

1. Why would a licensee change a sales price on documents prior to closing?
2. What penalties do you think should be imposed?

Resolution and Penalties

The respondent disputed facts of the case. The case went to the Division of Administrative Hearings (DOAH) for a hearing before an administrative law judge (ALJ). The ALJ found the respondent guilty, and imposed a penalty including a one-year suspension, $1,000 fine, and costs. FREC filed exceptions to the ALJ's findings and imposed a final order including revocation of the respondent's license, a $1,000 fine, and costs of $1,551.

Lessons Learned

1. Licensees should be aware of indications of loan fraud including changed prices, buyers purchasing for above market value, and buyers purchasing multiple properties.
2. This licensee appears to have been involved in some type of fraud. FREC has the ability to override an ALJ's recommendation by doing a complete review of the transcript and filing exceptions to findings of facts and conclusions of law.

THERE IS NO CHAPTER PROGRESS CHECK FOR THIS CHAPTER.

Chapter 4: Florida Landlord and Tenant Act

1 CE Hour

14-Hr CE FREC Approval Number: 28640

Learning Objectives

- List some of the key points found in Part II of the Florida Residential Landlord and Tenant Act
- Describe what factors the credit reporting agencies use when calculating a credit score
- Discuss FICO®, VantageScore® Credit Reporting, and Experian Connect
- Identify lease terms found in the Florida Residential Lease for Single-Family Home or Duplex
- Discuss important sections of the Florida Residential Landlord and Tenant Act
- Explain the transient rental tax

Key Terms

- Chapter 83
- Credit Rating
- FICO Score
- Fair Credit Reporting Act (FCRA)
- Florida Residential Landlord and Tenant Act
- Florida REALTORS® Lease
- Security Deposit
- Sublease
- Transient Rental Tax
- VantageScore

THE FLORIDA RESIDENTIAL LANDLORD AND TENANT ACT OVERVIEW

When an individual pays rent to live in a house, apartment, condominium, or mobile home, that renter becomes a tenant governed by Florida law. That law is known as Chapter 83, Landlord and Tenant.

Act Organization

The Florida Landlord and Tenant Act contains three sections:

- **Part I** - Nonresidential Tenancies (F.S. 83.001-83.251)
- **Part II** - Residential Tenancies (F.S. 83.40-83.683)
- **Part III** - Self-Service Storage Space (F.S. 83.801-83.809)

Part I of the law deals with non-residential tenancies that are tenancies in commercial properties. Both the commercial and residential sections of the law look very similar, but their application is very different. Commercial tenancies are considered arms-length transactions between business entities. As such, each party must look out for its own interests in the marketplace. The difference in residential tenancies is that the law clearly defines the obligations of the landlord and the tenant.

Part III of the law covers self-storage facilities and primarily deals with liens and the withholding of personal property for failure to pay storage fees.

For our purposes, in this chapter we will focus on Part II of the law. Part II of the Act has over 50 different articles of law, so we will look at only the key statutes. If you wish to review the entire law, go to Florida Statute 83.40 to 83.683.

Landlord Disclosures

Landlords must disclose specific information to tenants, such as the identity of anyone authorized to act on the landlord's behalf and information about where the security deposit is being held.

Security Deposits

Florida state law does not limit how much a landlord can charge for a security deposit. It does require the deposit to be returned within 15 days after a tenant moves if the landlord does not intend to impose a claim on the deposit. The landlord has 30 days to give the tenant notice by certified mail of their intention to impose a claim on the deposit along with the reason for imposing the claim.

Small Claims Lawsuits

Tenants can sue landlords in small claims court for the return of their deposit, up to a dollar amount of $8,000.

Rent Rules

State law regulates several rent-related issues, such as a tenant has three days to pay overdue rent or move before a landlord can file for eviction.

Tenant Rights to Withhold Rent

Tenants may withhold rent if a landlord fails to take care of important repairs such as a broken air conditioner, but only after following the procedures outlined in F.S. 83.

Flotation Bedding System

No landlord may prohibit a tenant from using a flotation bedding system, provided the flotation bedding system does not violate applicable building codes. The tenant will be required to carry flotation insurance in an amount that is reasonable to protect the tenant and owner against personal injury and property damage.

LICENSE LAW HISTORY

Prohibited Practices

The following actions are prohibited by the Act:

- A landlord cannot terminate any utility service furnished to the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration.
- A landlord cannot prevent the tenant from gaining reasonable access to the dwelling unit by changing locks or using a bootlock.
- A landlord cannot discriminate against a service member in offering a dwelling unit for rent.
- A landlord may not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 ½ feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement.
- A landlord will not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord will not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender or abandonment.

Landlord Retaliation

It is unlawful for a landlord to increase a tenant's rent discriminatorily, decrease services to a tenant, or bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith.

Termination and Eviction Rules

State laws specify when and how a landlord may terminate a tenancy. For example, a landlord may give a tenant, who has caused intentional destruction, an unconditional quit notice that requires the tenant to move out within seven days before filing for eviction.

Landlord Access to Rental Property

Landlords must provide 24 hours' notice of entry. The landlord may enter the dwelling unit when necessary under any of the following circumstances:

- With the consent of the tenant
- In case of an emergency
- When the tenant unreasonably withholds consent
- If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

As we go further into this chapter, we will cover these topics in more detail and share additional materials regarding lease laws.

Check Your Understanding 4.1

Answer each question by selecting Yes or No. (Answer Key in the back of the book.)

	Landlord and Tenant Questions	Yes	No
1.	If a landlord fails to make an important repair, is the tenant permitted to withhold the rent payment?		
2.	May a landlord enter a tenant's residence for any purpose?		
3.	Does a landlord need to notify a tenant of their intention to impose a claim on the tenant's deposit for damages that the tenant caused to a residence?		

A credit rating agency (CRA), also called a ratings service is a company that assigns credit ratings that rate a debtor's ability to pay back debt by making timely interest payments and the likelihood of default. Credit rating is a highly-concentrated industry with Experian, Transunion, and Equifax controlling approximately 95% of the ratings business. Each of these credit reporting agencies compiles an individual's credit information from various reporting sources, such as lenders, into a credit report. It's important to understand that all credit reporting agencies are for-profit companies and are in no way affiliated with the federal government.

When people apply for credit cards, student loans, auto loans, and mortgage loans, lenders check their credit report to make decisions about whether to grant them credit and to determine the rates and terms for which they would qualify.

Credit Agencies

Every month, creditors send millions of records to the credit reporting agencies updating them about their borrowers. These reports include whether or not the borrowers paid the money they owed that month, if they were late making a payment, or if they defaulted on their balance. The credit reporting agencies then list account information on each individual's credit report.

There are three major credit-reporting agencies in the United States that report, update, and store consumer credit histories. These agencies are Experian, Transunion, and Equifax. While there can be differences in the information collected by the three credit bureaus, there are five main factors evaluated when calculating a credit score.

- **Payment history:** Payment history accounts for 35% of a credit score and shows whether a person pays their obligations on time.
- **Total amount owed:** Total amount owed accounts for 30% and takes into account the percentage of credit available to a person that is currently being used, known as *credit utilization*.
- **Length of credit history:** Length of credit history accounts for 15%, with longer credit histories being considered less risky, as there is more data to determine payment history.
- **Types of credit:** Types of credit used account for 10% of a credit score and show if a person has a mix of installment credit, such as car loans or mortgage loans, and revolving credit, such as credit cards.
- **New credit:** New credit accounts for 10%. It factors in how many new accounts a person has, how many new accounts they have applied for recently (which results in credit inquiries), and when the most recent account was opened.

Credit Report Information Collected

The following types of information are contained in a credit report:

- **Personal information:** The individual's name, including any aliases or misspellings reported by creditors, birth date, Social Security number, current and past home addresses, phone numbers, and current and past employers.
- **Accounts:** A list of the individual's credit accounts, including credit cards, installment loans, mortgage loans, and auto loans. The list includes creditor names, account numbers, balances, payment history, and account status.
- **Public records:** A list of any court judgments, bankruptcies, and tax liens.
- **Recent inquiries:** Who has recently asked to view the credit report and when.

A credit report does not include:

- Marital status
- Income
- Bank account balance
- Level of education

Note that creditors are not required to report information and may not furnish data at all. If they do, it may be given to only one or two of the credit bureaus.

Credit Report Access

The Fair Credit Reporting Act (FCRA) limits who can view a person's credit report and for what reasons. Generally, the following people and organizations can view a credit report:

- **Individuals:** Individuals are entitled to review the information on their credit report. If a person views their own credit report, it does not affect their credit score.
- **Lenders:** When a person applies for credit from a credit card company, mortgage company, or auto lender, that creditor can ask to view their credit report. These are considered *hard inquiries* and can affect the person's credit score. Lenders must have the person's permission to check their credit report for applications on new credit.
- **Landlords:** When a person applies to rent an apartment or home, the landlord must have the person's permission to check their credit report.
- **Insurers:** Insurers can ask to review a credit report when a person applies with them for coverage. Again, insurers must have the person's permission to check their credit report.
- **Employers:** Employers may request to view a person's credit report to make hiring decisions. However, no employer can review a person's credit report without their written consent.

Changes in Credit Ratings

Credit ratings are never static. They change all the time based on the newest data. One negative debt will bring down even the best score. Credit also takes time to build up. A person with good credit but a short credit history is not seen as positively as another person with the same quality of credit but a longer history. Debtors want to know that a borrower can maintain good credit consistently over time. As new information is reported by lenders, older information is gradually removed per federal retention requirements.

Credit Rating Errors

Credit reporting agencies deal with millions of data records every month and they are very prone to making mistakes. According to a report by the FTC, one in five Americans has a mistake on their credit report. Due to the passing of the FCRA, a person can request a free copy of their credit report from each credit reporting agency once a year in order to see if there are any mistakes listed. If the person sees any mistakes, they can file a dispute in order to get the incorrect items removed.

Credit reporting agencies aren't public entities, but the Consumer Financial Protection Bureau conducts examinations to monitor how the agencies screen for accuracy, and they investigate consumer complaints.

Credit Scores

A credit score is a three-digit number that relates to how likely a person is to repay debt. Banks and lenders use it to decide whether they'll approve a credit card or loan. Landlords use it to approve or deny a rental application. Some employers use it to select job applicants.

Credit Score Ranges

Credit score ranges and their corresponding meanings are as follows:

- **800+:** This score is excellent and well above the average credit score. Consumers in this range experience an easy approval process when applying for new credit. Less than 1% of consumers with a credit score of 800+ are likely to become seriously delinquent.
- **740 to 799:** This score is very good and above the average credit score. Consumers in this range may qualify for better interest rates from lenders. Approximately 1% of consumers with a credit score between 740 and 799 are likely to become seriously delinquent in the future.
- **670 to 739:** This score is good and the median credit score range. Consumers in this range are considered acceptable borrowers. Approximately 9% of consumers with a credit score between 670 and 739 are likely to become seriously delinquent in the future.
- **580 to 669:** This score is fair and below the average credit score. Consumers in this range are considered subprime borrowers and getting credit may be difficult with interest rates that are likely to be much higher. Approximately 27% of consumers with a credit score between 580 and 669 are likely to become seriously delinquent in the future.
- **300 - 579:** This is a poor score. Consumers may be rejected for credit. Credit card applicants in this range may require a fee or a deposit. Utilities may also require a deposit. Approximately 62% of consumers with a credit score under 579 are likely to become seriously delinquent in the future. This is the bottom range for scores and has the fewest number of consumers at just 17%. It's highly unlikely for someone to have a credit score under 300. However, those who have been through a messy bankruptcy could easily wind up with 400 or below.

Credit Score Interpretation

The interpretation of a credit score varies by lender, industry, and the economy as a whole. Traditionally, a score of 640 has been the divider between prime and subprime. Fannie Mae and Freddie Mac are now charging extra for loans over 75% of the value that have scores below 740. Private mortgage insurance companies will not even provide mortgage insurance for borrowers with scores below 660. Therefore, the definition of prime is a product of the lender's appetite for the risk profile of the borrower at the time that the borrower is asking for the loan.

FICO and VantageScore Credit Reporting

The Fair Isaac Corporation (FICO) introduced its FICO credit scoring system in 1989, and the phrase, "What is your FICO score?" has become commonplace in our vernacular. FICO scores determine all kinds of lending decisions, such as mortgages, credit cards, auto loans, and rentals.

FICO's market dominance has been challenged by an upstart company called VantageScore. VantageScore uses similar scoring methods to FICO but with slightly different results. Following are the major similarities and differences between the two:

Data Collection

Both agencies use the same basic criteria:

- Payment history
- Length of credit
- Types of credit
- Credit usage
- Recent inquiries

Credit Rating Scores

Both FICO and VantageScore issue scores ranging from 300 to 850.

Scoring Requirements

FICO requires at least six months of credit history and at least one account reported to a CRA within the last six months. VantageScore requires only one month of history and one account reported within the past two years.

Late Payments

Both scores consider these factors:

- How recently the last late payment occurred
- How many of the person's accounts have had late payments
- How many payments the person has missed on an account

FICO treats all late payments the same; VantageScore judges them differently.

VantageScore penalizes late mortgage payments more harshly than other types of credit. A late payment on credit cards has about the same impact on both FICO and VantageScore. A late payment on a mortgage will maintain a higher FICO score than VantageScore.

Credit Inquiries

Every time a person applies for a credit card, the lender does a hard inquiry to check that person's creditworthiness. FICO and VantageScore both penalize borrowers who have multiple hard inquiries in a short period of time. Inquiries aren't a big concern, but they do have an impact.

Low-Balance Collections

FICO and VantageScore both have penalties for accounts that have been sent to collection agencies. However, FICO might be a bit more lenient when it comes to low-amount collection accounts. FICO ignores all collections where the original balance was under $100. It also doesn't count collection accounts that have been paid off. VantageScore ignores only paid collection accounts, regardless of the original balance amount.

Experian Connect Credit

As a real estate agent, it is critical to check a client's credit information to evaluate their financial status. In the past, this was a multistep task that required numerous phone calls and personal contacts. Today however, there are a number of services that can do a lot of the credit checking legwork for a landlord. One such program is called Experian Connect that allows you to review a person's credit score and financial history. To gain access, you must first register for an account and then be given access by your client to their account.

The Experian Connect program has the following features:

- There is no cost to establish an account.
- There is no membership fee and no monthly minimums.
- There is no charge to run a tenant's credit history. The cost is the responsibility of the tenant.
- To run a check, all you need is the tenant's name and email address.
- Information comes directly from a credit bureau and not from a potentially fraudulent printout, fax, or scanned copy.

The Experian Connect services are available to landlords and tenants that:

- Can verify some personal information about themselves
- Have a valid Social Security number
- Are at least 18 years of age
- Do not have a security freeze or fraud alert on their credit

An Exprian Connect report does the following:

- Provides credit rating and credit score
- Verifies that a tenant's identity information matches what is in the rental application
- Provides a history of late payments, collection accounts, charge-offs, or major issues, such as bankruptcies, tax liens, and evictions
- Calculates current debt to ensure that tenants can afford their rent payment
- Provides credit report inquiries (past 24 months) from student loans, store credit cards, and collection agencies
- Provides contact information for the tenant's employer and previous landlords

Experian Connect uses the VantageScore calculation with their credit report.

Credit Report Access

As we mentioned, consumers are entitled to one free credit report in every 12-month period from each of the three major credit bureaus. However, they are not entitled to receive a free credit score. Consumers wishing to obtain their credit scores can in some cases purchase them separately from the credit bureaus or can purchase their FICO score directly from FICO.

Under the Fair Credit Reporting Act, a consumer is also entitled to a free credit report within 60 days of any adverse action taken as a result of their credit score (e.g., being denied credit or receiving substandard credit terms from a lender).

Under the Wall Street reform bill passed on July 22, 2010, consumers are entitled to receive a free credit score if they are denied a loan or insurance due to their credit score.

Check Your Understanding 4.2

Select each factor that is evaluated by credit bureaus when calculating a credit score. (Answer Key in the back of the book.)

Credit Factor	✓
Income	
Length of credit history	
New credit	
Marital status	
Total amount owed	
Payment history	
Bank account balance	
Types of credit	

FLORIDA REALTORS LEASE

A Florida REALTORS Lease is a somewhat lengthy document that contains 18 pages, plus a Nonlawyer Disclosure form. Part of what adds to the heft of the lease is the inclusion of the entire Florida Residential Landlord and Tenant Act.

The two residential lease forms in Florida are:

- Residential Lease for Single-Family Home or Duplex
- Residential Lease For Apartment or Unit in Multi-Family Rental Housing (Other Than a Duplex) Including a Mobile Home, Condominium, or Cooperative

The parts of the lease document include:

- Nonlawyer Disclosure Form – Page 1
- Lease Terms – Pages 2-7
- Early Termination Fee/Liquidated Damages Addendum – Page 8
- Landlord and Tenant Act – Pages 9-19

Let's look at each of these parts individually.

Nonlawyer Disclosure Form - Page 1

The Nonlawyer Disclosure is a one-page document that a licensee uses to inform all parties that the lease is being completed by a nonlawyer. It's important to remember that in a standard lease, the licensee may complete only the blank spaces. The terms of the lease cannot be altered or overwritten.

The top of the disclosure page includes instructions that explain how to complete the form properly. If the licensee is filling in the blanks for both the landlord and tenant, the licensee must complete two Nonlawyer Disclosure forms and give one to each party.

To complete the form, the licensee will:

- Enter their name as the individual aiding with the lease on the five blank "Name" lines and sign in the blank space provided on the lower left of the page.
- Have the tenant or landlord verify their English speaking status by checking the first blank line in the section labeled "Landlord or Tenant." If the landlord or tenant cannot read English and needs to have the document translated, check the second blank line and enter the name of the translator as well as the language in which the lease must be translated.
- Have the landlord or tenant sign in the blank space provided on the lower right of the page.

It is important for licensees to remember the following items when filling out the lease form:

- A licensee can only fill in the blanks on the lease. Any changes are illegal.
- Under penalty of law, a licensee cannot make any correction, strikeouts, or addendums.
- A standard lease form may not exceed one year. If it does, an attorney must write the lease.
- At the bottom of each page of the document, the licensee, landlord, and tenant need to sign their initials.

Lease Terms - Pages 2-7

In this section, we will describe the terms found in the Residential Lease for a Single-Family Home or Duplex. It will be easier for you to understand and follow the directions if you look at an actual hard-copy of the lease document. Note that at the bottom of each lease page, there is space for the parties to initial, acknowledging they have received a copy of that page. The top of the lease explains that every negotiable item requires the parties to check mark a box and/or fill in a space with applicable information.

1. **Parties:** This provision requires the name of the landlord, followed by the name of the tenant. Each party must provide their full name and contact information for this section.
2. **Property rented:** This provision requires the street address of the property being rented, including state and zip code. If there are any furniture/appliances, the licensee will enter them in the space provided. Following is space to enter the names of the person(s) who will occupy the premises.
3. **Term:** This provision is where the licensee will enter the month, day, and year the lease will start, followed by the month, day, and year on which it will terminate.
4. **Rent, Payments, Taxes, and Charges:** This provision defines the amount of money the tenant must pay to enter the lease. First, the licensee will enter the total amount of money that will have been paid by the tenant to the landlord by the end of the lease. The rent may be paid in monthly installments, weekly installments, or in full.
   a. If the rent will be paid in installments, the licensee will check the first box. Then there are boxes to check indicating whether it will be paid in monthly or weekly installments. For either of these choices, there are spaces to write in the day the rent is due and the amount of the payment.
   b. If the lease will be paid in full, the licensee will check the appropriate box, and then enter the date of payment and the amount due in the spaces provided.
   c. If taxes are applicable, the licensee will write in the amount and terms at the top of the next page of the lease.
   d. The next section of this provision is the Payment Summary.
   e. There are check boxes to indicate if the rent is to be paid in installments or in full and to write in the amount due including taxes. This is followed by space to enter the name of the person who receives the rent and the address of that person.

f. There is a check box to indicate if the rent is being prorated due to a mid-month move-in date, with spaces to enter the starting and ending proration dates, the payment amount due, and its due date.
g. There is a series of check boxes to indicate the method of rent payment. The choices are cash, personal check, money order, and cashier's check. If another payment method is preferred, there is a check box for "other" and space to specify the method.
h. If the tenant pays rent with a bad check, the landlord may want to change the payment method. There are several check boxes to indicate how the landlord wants to receive future payments, as well as a place to check if the landlord wants the tenant to pay the bad check fees and in what amount.

5. **Money Due Prior to Occupancy:** This section deals with the amount the tenant must pay before they can move in. It provides space to write in the name and address of the landlord. It then lists a number of items that may need to be paid and spaces to write in the amount and due date for each item. The list includes the following items:
   - First week or month's rent plus taxes
   - Prorated rent amount plus applicable taxes
   - Advance rent for a specified week or month plus applicable taxes
   - Last week or month's rent plus applicable taxes
   - Security deposit
   - Additional security deposit
   - Security deposit for homeowner's association
   - Pet deposit
   - Other – reserved to write in items not listed above
6. **Late fees:** This item provides space to write in the amount of late charge a tenant will need to pay if the rent is received a specified number of days after it is due. If left blank, the assessment is 4% of the rent amount and it goes into effect five days after the due date on monthly rentals and one day after the due date on weekly rentals.
7. **Pets and smoking:** This provision deals with pets on the premises and pet deposits. If pets are allowed, the description must be entered in the space provided. This provision also states that if the appropriate box is not checked, smoking is not allowed in the rental unit.
8. **Notices:** This section provides space to enter the name of the landlord's agent, check boxes to indicate whether notices should be sent to the landlord or to the agent, and spaces to list the address for each.
9. **Utilities:** The tenant pays for all utility services, connection charges, and deposits unless the landlord has agreed to pay for some services and it is written in the space provided.
10. **Maintenance:** This provision lists a number of items with check boxes to indicate which party, landlord or tenant, is responsible for its upkeep. The landlord will automatically be responsible for an item if it is left blank. There is a line at the end of the list designated as "Other" to address any maintenance concerns that have not been named. Below this is space to write in the name, address, and phone number of the person to notify with any maintenance or repair requests.
11. **Assignment:** This provision states that unless the box is checked, the tenant may not sublease the unit without the landlord's written permission.
12. **Keys and locks:** This section provides space to write in the number of keys to the dwelling, mailbox keys, and garage door openers the landlord will provide to the tenant. If applicable, the provision also provides space to write in the number of keys, remotes, and electronic cards to common areas that the homeowner's association will provide and the name and address of the person to whom all items will be returned at the end of the lease.
13. **Lead-based paint:** This section provides a box to check if the rental property was built or in construction before January 1, 1978. If the box is checked, the remainder of this provision must be completed.
    - The first section deals with what the lessor knows about the possibility of lead-based paint in the dwelling. In the section marked (a), the lessor will initial and indicate whether they know or do not know about any lead-based paint or paint hazards. In the section labeled (b), the lessor will initial and indicate whether or not they have provided the lessee with any records or reports pertaining to lead-based paint. If so provided, there is space to list the names of the documents.
    - The next section is where the lessee will initial to indicate that they have received copies of the listed documents and have received the pamphlet called Protect Your Family from Lead in Your Home.
    - Below that is a place for the agent to initial that they have fully informed the landlord of their responsibility to comply with 42 U.S.C. 4852d.
    - The last section, "Certificate of Accuracy," requires the signatures and signature dates of all parties to verify that all required information has been reviewed and is accurate.
14. **Servicemember:** This provision states that a member of the active duty military, Florida National Guard, or US Reserves has the right to terminate the lease according to F.S. 83.682.
15. **Landlord's access to the premises:** This provision outlines under what conditions the landlord or landlord's agent may enter the premises.
16. **Homeowner's association:** This provision references HOA tenant approval.
17. **Use of the premises:** This provision states clearly that the premises is for residential use only and must comply with all state, county,

18. **Municipal laws and ordinances, and any applicable HOA covenants and restrictions:** The tenant may not make any improvements to the property without the landlord's written permission; however, the lease permits the hanging of pictures and window treatments by the tenant without consent provided the tenant removes them before the end of the lease term. This provision also states that the tenant agrees not to use, store, or keep hazardous materials on the premises that could cause a fire or increase insurance costs.
19. **Risk of loss/insurance:** This provision deals with insurance responsibilities of the landlord and tenant.
20. **Prohibited acts by landlord:** This provision references landlord prohibited actions that are described in the Florida statutes.
21. **Casualty damage:** This provision deals with the tenant's ability to terminate a lease due to damage or destruction of the unit that was not caused by the tenant.
22. **Defaults/remedies:** This procedure references the part of the Florida Landlord and Tenant Act that explains procedures regarding lease default remedies.
23. **Subordination:** This provision states that the lease is automatically subordinate to the lien of any mortgage encumbering the fee title to the property.
24. **Liens:** This provision states that the landlord's property will not be subject to liens based on work contracted by the tenant.
25. **Renewal/extension:** This provision provides terms of a lease renewal.
26. **Tenant's telephone number:** This provision directs a tenant to record in writing a contact phone number with the landlord.
27. **Attorney's fees:** This provision deals with payment of legal fees in the event of a lawsuit between tenant and landlord.
28. **Miscellaneous:** This provision deals with several other terms, including the landlord's requirement to provide a radon gas disclosure.
29. **Brokers' commission:** If applicable, there is a box to check to indicate whether the landlord or tenant will pay the broker's commission. This is followed by spaces to write in the names of the licensees, the brokerage companies, and the amount of the commission.

    Below provision 29 is space for all involved parties to sign and date the lease. This is followed by spaces to write in the name, business name, address, and telephone number of any individual or business that helped in the completion of the lease.

30. **Tenant's personal property:** This provision provides a check box for the tenant to initial which states that upon surrender, abandonment, or death of the tenant, the landlord is not responsible for storage or disposal of the tenant's personal property.

The last statement on page 6 informs the tenant that a current version of the Florida Residential Landlord and Tenant Act, F.S. 83, is attached.

Early Termination Fee/Liquidated Damages Addendum Page 8

This addendum deals with fees owed by the tenant if a lease is terminated early.

According to this addendum, the landlord is giving the tenant a choice to either:

- Pay a specified amount in liquidated damages or a termination fee amount of up to two months' rent in the event of the tenant's early termination, with the acknowledgement that the landlord waives the right to seek additional rent beyond the month in which they retake possession.
- Not agree to pay a termination fee, with the acknowledgement that the landlord may seek damages.

Beneath the two options are spaces for the landlord(s) and tenant(s) to sign and date the addendum.

Using this addendum is of benefit to both parties. The landlord benefits because if the tenant skips, the landlord can charge the liquidated damages. The tenant benefits because if they give the required notice and pay the termination fee, they can leave without breaching the lease.

Florida Residential Landlord and Tenant Act - Pages 9-19

Licensees should read the entire Part II section of the Florida Residential Landlord and Tenant Act. Due to the comprehensive nature of the Act, we will emphasize some of the more relevant sections here.

- **Section 83.43:** Definition (12) "security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.
- **Section 83.46:** This section, titled "Rent; duration of tenancies," provides that:
    - Rent is due without demand or notice. Periodic rent is payable at the beginning of each rent payment period and rent is uniformly apportionable from day to day.
    - If the lease has no provision regarding duration, the duration is determined by when the rent is due. If the rent is payable weekly, then the tenancy is from week to week. If payable monthly, then the tenancy is from month to month. If payable quarterly, then the tenancy is from quarter to quarter. If payable yearly, then the tenancy is from year to year.
    - If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is reasonable notice to the tenant and at a reasonable

- determined by the periods for which wages are payable.

- **Section 83.49:** This section deals with the disbursement of deposits and advance rental funds. By far, this is the most contentious topic when a lease disagreement occurs. Titled "Deposit money or advance rent; duty of landlord and tenant," paragraph (1) of this section states (in part), "Whenever money is deposited or advanced by a tenant, the landlord will do one of the following:
  - Hold such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant. The landlord must not commingle such moneys with any other funds.
  - Hold such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant and the tenant will receive interest in an amount of at least 75% of the annualized average interest rate payable on the account or interest at the rate of 5% per year, simple interest, whichever the landlord elects.
  - Post a surety bond on behalf of the tenant in the total amount of the security deposits and advanced rents they hold on behalf of the tenants or in the amount of $50,000, whichever is less.

    Paragraph (3) of this section deals with the disbursement of advance rents and states that the landlord or their agent may disburse advance rents for the landlord's benefit when the advance rental period begins and without notice to the tenant. For all other deposits:
  - If a landlord does not plan to keep a security deposit, the landlord has 15 days to return the security deposit with interest.
  - If a landlord does plan to keep a security deposit, the landlord has 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of their intention to claim the deposit and the reason for the claim. The notice must contain a statement in substantially the following form:

> This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____. It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address).

  - If the landlord fails to give the required notice within the 30-day period, they forfeit the right to impose a claim upon the security deposit.
  - Unless the tenant objects to the landlord's claim within 15 days after receipt of the landlord's notice, the landlord may then deduct the amount of their claim and remit the balance to the tenant within 30 days.
  - If either party institutes a court action, the prevailing party will have the right to reasonable attorney fees and court costs.
- **Section 83.51:** This section is titled and covers the "Landlord's obligation to maintain premises." Under the terms of a lease, a landlord is required to:
  - Comply with applicable building, housing, and health codes.
  - Where there are no codes, the landlord must still maintain roofs, windows, doors, floors, steps, porches, exterior walls, foundations, screens, and all other structural components in good repair.
  - Make reasonable provisions for:
    - The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs
    - Locks and keys
    - Clean and safe condition of common areas
    - Garbage removal and outside receptacles
    - Functioning facilities for heat, running water, and hot water
  - Install working smoke detection devices.
- **Section 83.52:** This section is titled and covers the "Tenant's obligation to maintain dwelling unit." The tenant at all times during the tenancy must:
  - Comply with all obligations imposed upon tenants by provisions of building, housing, and health codes
  - Keep that part of the premises that they occupy and use clean and sanitary
  - Remove all garbage from their unit in a clean and sanitary manner
  - Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair
  - Use and operate all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in a reasonable manner
  - Not destroy, deface, damage, impair, or remove any part of the premises or property in the unit belonging to the landlord, nor permit any other person to do so
  - Conduct themselves in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace and require other persons on the premises with their consent to conduct themselves in like manner
- **Section 83.53:** This section is titled and covers the "Landlord's access to the dwelling unit." It states (in part) that:
  - A tenant cannot unreasonably withhold consent to the landlord to enter the dwelling unit from time-to-time in order to inspect the premises, make necessary repairs, supply agreed upon services, or show the unit to prospective buyers, tenants, workers, or contractors.

A landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon time. Reasonable notice is at least 12 hours prior to entry and reasonable time is between the hours of 7:30 a.m. and 8:00 p.m.

- A landlord may enter the dwelling unit under the following circumstances:
  - With the consent of the tenant
  - In case of emergency
  - When the tenant unreasonably withholds consent
  - If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments.
- A landlord cannot abuse the right of access nor use it to harass the tenant.

- **Section 83.5615:** The Protecting Tenants at Foreclosure Act (PTFA) is a federal law that was reinstated as of May 24, 2018. Florida integrated the Act into The Landlord and Tenant Act (F.S. 83) as F.S. 83.5615 thereby repealing F.S. 83.561, Termination of rental agreement upon foreclosure. The purpose of the Act is to protect tenants living in a property that has been foreclosed. The federal law is not meant to override any state or local laws that provide longer time periods or additional protections for tenants.

  It is estimated that during the financial crisis of 2008-2009, approximately 40% of families that faced eviction were renters. Homeowners were given some indication that a foreclosure was coming, while renters were often caught entirely off guard.

  The PTFA addresses tenant evictions due to foreclosure as follows:
  - A tenant who has entered into a bona fide lease before the foreclosure notice is provided to the homeowner may continue to occupy the property until the end of the lease term.
  - If the new property owner of the foreclosed property will occupy the unit as a primary residence, they may give the tenant a 90-day notice to vacate even when the tenant has a lease that extends beyond 90 days after foreclosure.
  - If there is no lease or tenancy at will, then the tenant may be given a 90-day notice to vacate.

  The PTFA considers a lease to be bona fide if:
  - The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant.
  - The lease or tenancy was the result of an arm's-length transaction.
  - The lease requires rent that is not substantially less than fair market rent, or is reduced or subsidized due to a federal, state, or local subsidy.

- **Section 83.57:** This section is titled and covers "Termination of tenancy without specific term." A tenancy without a specific duration may be terminated by either party by written notice in the following manner:
  - When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period.
  - When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period.
  - When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period.
  - When the tenancy is from week to week, by giving not less than seven days' notice prior to the end of any weekly period.
- **Section 83.682:** This section is titled and covers "Termination of rental agreement by a servicemember." It states (in part) that any servicemember may terminate their rental agreement by providing the landlord with a written notice of termination if any of the following criteria are met:
  - The servicemember is ordered to move 35 miles or more from the location of the rental premises.
  - The servicemember is prematurely or involuntarily discharged from active duty.
  - The servicemember is released from duty after signing a lease while on active duty and the rental unit is more than 35 miles from their home of record prior to active duty.
  - The servicemember receives orders to move into government quarters or becomes eligible to do so and chooses that option.
  - The servicemember receives temporary orders to an area more than 35 miles from the rental unit that will last longer than 60 days.
  - The servicemember receives a change of orders to an area more than 35 miles from the rental unit after signing the lease but prior to taking possession of the unit.

  The servicemember must include a copy of the military orders or a signed verification from their commanding officer with the termination notice to the landlord.

  In the event a servicemember dies during active duty, an adult member of their immediate family may terminate the servicemember's rental agreement to be effective at least 30 days after the landlord receives the termination notice. The notice must include a copy of the military orders showing the servicemember was on active duty along with a copy of the death certificate.

When terminating the rental agreement, the servicemember is liable for the rent due prorated to the effective date of the termination.

- **Section 83.683:** This section is titled and covers "Rental application by a servicemember." It states (in part) that:
  - If a landlord or condominium association requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of the rental application submitted by the servicemember within seven days after submission. The landlord must, within that seven-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for the denial.
  - If a timely denial is not given, the lease must be honored.
  - The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

OTHER RESIDENTIAL LEASE FORMS

A licensee should also become familiar with other forms that have been approved by the Supreme Court of Florida. These forms are reviewed and changed periodically, so be sure you are always working with the most updated versions.

As we mentioned earlier, another residential form commonly in use is the Residential Lease for Apartment or Unit in Multi-Family Rental Housing (Other than a Duplex) Including a Mobile Home, Condominium, or Cooperative. Many of the terms in this lease are the same or similar to the terms discussed above in the single-family/duplex lease. However, there are enough differences to warrant taking a close look at the lease terms on the apartment/multi-family lease. A side-by-side comparison of pages 2-7 of the two lease documents may be very helpful.

Landlord Tenant Eviction Forms

It would be helpful for you to examine the forms listed below that can be found at www.floridabar.org.

- **Form 1:** Notice from Landlord to Tenant – Termination for Failure to Pay Rent
- **Form 2:** Notice From Landlord To Tenant Notice Of Noncompliance For Matters Other Than Failure To Pay Rent
- **Form 3:** Notice From Tenant To Landlord – Termination For Failure Of Landlord To Maintain Premises As Required By Florida Statute
- **Form 4:** Notice From Tenant To Landlord – Withholding Rent For Failure Of Landlord To Maintain Premises As Required By Florida Statute 83.51(1) Or Material Provisions Of The Rental Agreement
- **Form 5:** Complaint For Landlord To Evict Tenants
- **Form 5a:** Complaint For Landlord To Evict Tenants For Failure To Pay Rent And To Recover Past Due Rent
- **Form 6:** Complaint For Landlord To Evict Tenants For Failure To Comply With Rental Agreement (Other Than Failure To Pay Rent)
- **Form 7:** Summons – Eviction Claim
- **Form 8:** Summons – Damages Claim
- **Form 9:** Final Judgment – Damages
- **Form 11:** Writ Of Possession
- **Form 12:** Notice Of Intention To Impose Claim On Security Deposit
- **Form 13:** Satisfaction Of Judgment – County Court
- **Form 14:** Satisfaction Of Judgment – Circuit Court
- **Form 66:** Final Judgment – Eviction
- **Form 76:** Motion For Clerk's Default – Residential Eviction
- **Form 77:** Motion For Clerk's Default – Damages (Residential Eviction)
- **Form 78:** Motion For Default Final Judgment (Residential Eviction)
- **Form 79:** Motion For Default Final Judgment – Damages (Residential Eviction)
- **Form 80:** Affidavit Of Damages
- **Form 81:** Nonmilitary Affidavit

Remember, non-lawyers may assist consumers in filling out the forms and may answer general questions, but they cannot give advice as to what to write in the forms or about what decisions consumers should make.

TRANSIENT RENTAL TAX

Individual Florida counties and certain cities may impose a local option tax on the rental or lease of living, sleeping, or housekeeping accommodations for a term of six months or less. These taxes are often called local option transient rental taxes and include the following:

- Tourist development tax
- Convention development tax
- Tourist impact tax
- Municipal resort tax

The local tax imposed is in addition to the 6% state sales tax and any applicable discretionary sales surtax.

Sales tax is due at the rate of 6% on rental charges or room rates paid for the right to use or occupy living or sleeping accommodations. Florida law refers to these living or sleeping accommodations as *transient accommodations*. If you rent or lease any of these types of transient accommodations, you must collect sales tax and pay it to the Department of Revenue:

- Hotel or motel
- Apartment house or any other multiple unit structure (for example, duplex, triplex, quadraplex, condominium)
- Rooming house
- Tourist or mobile home court (for example, trailer court, motor court, recreational vehicle camp, fish camp)
- Single-family dwelling
- Garage apartment
- Beach house or cottage
- Cooperatively-owned apartment
- Condominium parcel
- Timeshare resort
- Mobile home
- Any other house
- Vehicle or other structure, place, or location held out to the public to be a place where living quarters or sleeping or housekeeping accommodations are provided to transient guests in exchange for payment
- Boats with a permanent fixed location at a dock and not operated on the water away from the dock by the tenant

Rental charges include any charge for the use of items or services required to be paid as a condition of the use or possession of the accommodation. Many counties have at least one of the taxes mentioned above on rentals of transient accommodations. Landlords should contact their local county taxing agency to determine whether a county has any of these local taxes and whether the landlord is required to report and pay this amount directly to the county or if they should report it on the sales and use tax return.

Exemptions

Certain leases and rentals are exempt from sales tax. The owner or owner's representative must keep documentation to support the exempt transaction. Exempt transactions include:

- **Rental charges or room rates paid by a person who has a signed, bona fide written lease for a continuous residence longer than six months:** If there is no written lease, and a person has continuously resided at any one location for a period longer than six months, and has paid the tax on the rental charges or room rates due at that location for the first six months, additional charges for continuous residence at that location are tax-exempt.
- **Rental charges or room rates paid by a full-time student enrolled in an institution offering postsecondary education:** A written statement from an official of the student's institution documenting that the student attends the institution full time is proof of the student's full-time enrollment.
- **Rental charges or room rates paid by military personnel who are on active duty and are present in the community under official orders:** The military personnel must provide a copy of the official orders supporting the active duty status of the military personnel and making it necessary to occupy the accommodation.
- **Rental of accommodations in a migrant labor camp, trailer camps, recreational vehicle parks, and mobile home parks:** Rental charges at trailer camps, recreational vehicle parks, and mobile home parks (except mobile home lots regulated by F.S. 723) are taxable unless more than 50% of the total rental units are occupied by tenants who have continuously resided there for more than three months. If this criteria is met, the owner or owner's representative of the camp or park must file a Declaration of Taxable Status - Trailer Camps, Mobile Home Parks, and Recreational Parks (Form DR72-2) with the Florida Department of Revenue in order to treat the rental units as tax exempt. All rental charges for accommodations at a camp or park are taxable until the owner or owner's representative informs the Florida Department of Revenue of exemption changes. This exemption applies only to the rental units. Any retail sales or rentals of tangible personal property (for example, non-grocery items and recreational equipment) or rentals of commercial rental property are taxable.

Registration Requirements

The owner of living or sleeping accommodations must register each taxable accommodation separately. The owner can register to collect and/or report tax through the Florida Department of Revenue website. The site will guide the user through an application interview that will help determine the tax obligations. If a person does not have Internet access, they can complete a paper copy of the Application to Collect and/or Report Tax in Florida (Form DR-1). If the property owner uses a real estate brokerage firm, other entity, or other person (not an employee) to collect or receive rent or license fees on behalf of the owners (lessors), then that firm, entity, or person must register.

Agents who are registering multiple properties for management and rental may complete an Application for Collective Registration for Rental of Living or Sleeping Accommodations (Form DR-1C). The agent must complete a separate application for each county where property is located.

Subleases

Any person who leases a taxable accommodation and then subleases it to a third party must register as a dealer and collect the applicable tax due on the subrents, subleases, sublets, or licenses. The dealer may issue a signed copy of the current Annual Resale Certificate to the property owner or property owner's representative to rent accommodations tax-exempt or take a credit for the tax paid to the owner or owner's representative on the original lease.

Any person who cannot prove sales tax has been paid to the landlord is liable to Florida for any applicable tax, interest, or penalty due on the subleased property.

When Taxes are Due

Taxes are due and payable at the time the rent payment is received by the lessor or other person receiving the rent payment. Returns and payments are due on the 1st and late after the 20th day of the month following the receipt of the rent payment. For example, if the rent payment is received on the 1st of one month, then the return and remittance of sales tax is not due until the 1st of the next month.

Penalties and Interest

If the returns and payments are not postmarked or hand-delivered on or before the due date, the landlord will owe a late penalty of 10% of the amount of tax due. A minimum penalty of $50 is due on late returns, even if no tax is due. A penalty applies if the return and/or payment is submitted on time but is incomplete.

A floating rate of interest applies to underpayments and late payments of tax.

CHAPTER 4 PROGRESS CHECK

1. Complete this statement: Florida State law:
   A. does not limit how much a landlord can charge for a security deposit.
   B. limits the amount the landlord can charge for a security deposit up to one months' rent.
   C. limits the amount of a security deposit to no more than $500.
   D. limits the amount of a security deposit up to two months' rent.

2. What is the state sales tax on transient accommodations?
   A. 5%
   B. 6%
   C. 6.5%
   D. 7%

3. In what section of a lease would you look to determine if a tenant can sublease?
   A. Notices
   B. Money due prior to occupancy
   C. Assignment
   D. References

4. Complete this statement: Casualty damage in a lease agreement deals with:
   A. damage caused by a tenant.
   B. the tenant's ability to terminate the lease because of damage caused by the tenant's other family members not living in the unit.
   C. lease termination after the landlord has failed to make repairs to damages within 60 days of the damage.
   D. the tenant's ability to terminate a lease due to damage or destruction of a unit.

5. What does a credit score of 820 indicate?
   A. Consumers that are considered acceptable borrowers
   B. A well above average credit score
   C. Consumers that are considered subprime borrowers
   D. A poor score

Chapter 5: Florida-Specific Environmental Protection Issues

2 CE Hours

14-Hr CE FREC Approval Number: 28640

Learning Objectives

- Discuss the Florida Department of Environmental Protection, brownfield sites, and the Clean Air Act
- Explain how water and solid waste issues impact Florida's environment
- Describe Florida's wetlands management and Everglades protection initiatives
- Explain shoreline stabilization and the Florida Beach and Shore Preservation Act
- Discuss solar energy development, docks, and permits needed for dredge and fill operations
- Explain what Florida is doing to protect endangered species, mangroves, and archeological sites

Key Terms

- Brownfield Site
- Clean Air Act
- Coastal Construction Control Line (CCCL)
- Conservation Easement
- Florida Beach and Shore Preservation Act
- Florida Department of Environmental Protection (DEP)
- Mangrove
- Onsite Wastewater Treatment Systems (OWTS)
- R-22 Refrigerant
- Rip-Rap
- Riparian Rights
- Shoreline Stabilization
- Superfund Site
- Wetlands

TERMS TO KNOW

Conservation easements: A conservation easement is a legal agreement a property owner makes with a non-profit or government organization to protect a cultural or natural resource on their property.

Mangrove: A mangrove is a shrub or small tree that grows in coastal saline or brackish water. Mangroves play a vital role in the maintenance of a balanced ecosystem.

Onsite wastewater treatment systems (OWTS): An onsite wastewater treatment system is a term referring to any system for the collection, storage, treatment, neutralization, or stabilization of sewage that occurs on a property. A septic system is a typical example of an OWTS.

R-22 refrigerant: R-22 refrigerant is a commonly found, ozone-depleting, gaseous liquid found in air conditioning systems and other refrigeration appliances. As of December 31, 2009, it became required by law that if any system using R-22 refrigerant became faulty, it must be recycled and replaced.

Rip-rap: Rip-rap refers to rock or other material used to armor shorelines, streambeds, bridge abutments, pilings, and other shoreline structures against water erosion. It is made from a variety of rock types, such as granite or limestone, and occasionally concrete rubble from building and paving demolition.

Riparian rights: Riparian rights afford the owner of a property that borders navigable waters the right to ingress, egress, boating, bathing, fishing, and the right to an unobstructed view of the water.

Shoreline stabilization: Shoreline stabilization refers to methods, techniques, and structures designed to protect shorelines from erosion.

Superfund site: A superfund site is any land in the United States that has been contaminated by hazardous waste and identified by the EPA as a candidate for cleanup because it poses a risk to human health and/or the environment. These are also called brownfield sites.

Wetlands: Wetlands include marshes, swamps, bogs, and similar areas that support plant, animal, and marine life.

LICENSE LAW HISTORY

In order to protect the distinctive natural features for the enjoyment of future generations, the Florida Legislature has enacted a number of laws to regulate activities that may potentially pollute or destroy environmentally sensitive lands, waters, and wildlife. As environmental concerns grow across Florida and more state statutes are passed, a licensee needs to be conversant in environmental issues to be better able to advise their clients on such matters.

This chapter deals with those environmental issues that are specific to Floridians and have an impact on residential homeowners. In many other states, the mere act of installing a boat dock or trimming a tree does not even raise an eyebrow. However, Florida has some unique laws that are unknown to new residents and just remotely understood at best by current residents. For example, wild sea oat plants are important in the preservation of sand dunes and protected by state law. It is illegal to pick wild sea oats, even the seeds.

Understanding a particular environmental law in Florida is not always straightforward. For the most part, the federal government passes a law that applies to all states. This law is usually broad in scope and subject to interpretation. Then state laws are passed to strengthen and apply specificity to the law. Over the course of time, local governmental entities also add a layer of regulations to laws to assure that compliance is adhered to by its citizens. As such, laws, rules, regulations, codes, and permits can become a labyrinth to the average homeowner. To avoid violating any laws, it is suggested that homeowners check with local authorities before performing any act that may change or alter the surrounding environment. Also, licensees should be vigilant for possible permit and code violations when conducting a real estate transaction. As always, inform clients to seek professional advice when an issue seems questionable. Keeping clients compliant and happy will result in more referrals for you.

RIPARIAN RIGHTS

Florida has over 2,000 miles of coastline; 11,200 miles of rivers, streams, and waterways; and approximately 7,800 lakes in excess of 10 acres. With this abundant access to waterfront property, owners should have some knowledge of riparian rights.

In general, riparian rights allow the owners of property that borders navigable waters to ingress, egress, boating, bathing, fishing, and the right to an unobstructed view to the water. Riparian rights do not apply to all waters. Under Florida law, only lands that border waters that were navigable at the time of Florida's statehood on March 3, 1845, are allowed full riparian rights. Such rights do not apply to artificially erected waterbodies. The Florida legislature has codified many aspects of the common law regarding riparian rights in F.S. 253.141.

Establishing exact riparian rights in Florida is frequently very difficult. This task is constantly in a state of flux due to the increasing demands of population growth and tourism. It is often difficult to distinguish where private land rights cease and the sovereign land rights begin. To avoid legal matters, property owners and real estate licensees need to be current on all state and local laws that affect riparian rights.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Areas of Responsibility

The Florida Department of Environmental Protection (DEP) is the state's lead agency for environmental management. DEP is divided into three areas of responsibility:

- **Land and recreation area:** This group acquires and protects lands for preservation and recreation. The land and recreation groups oversee 175 state parks, more than 12 million acres of public lands, and 4 million acres of coastal uplands and submerged lands.
- **Regulatory area:** This group safeguards natural resources by overseeing permitting and compliance activities.
- **Ecosystem restoration area:** This group protects and improves water quality and aquatic resources.

The DEP has 28 divisions and six district offices. District offices review permit applications, conduct inspections of permitted facilities, respond to reports of environmental damage, and conduct compliance assistance and enforcement activities. The DEP's annual budget typically exceeds 1.5 billion dollars and employs over 4,200 employees. These numbers underscore the importance that environmental protection issues have with both legislators and the general public.

Brownfield Sites

> *The EPA defines a brownfield site as, real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.*

Brownfields are often closed industrial facilities, such as an abandoned factory, commercial building, or warehouse. Brownfields can be located anywhere and be of any size. For example, many dry-cleaning establishments and gas stations that produce high levels of contaminants during their operation are classified as brownfields. Another term used to identify brownfield sites is superfund sites.

Government Study

A recent U.S. General Accounting Office study found that there are over 500,000 brownfield sites in the United States and estimated that the cleanup costs could exceed $650 billion. On a positive note, the remediation of these sites can help a community breathe life into a blighted area, increase tax revenues, and create jobs. Brownfield initiatives are gaining traction across the country. In Florida, spurred by the shortage of affordable housing, a number of developers have approached the idea of developing brownfield sites for residential use. As a licensee, you should be conversant in the development of brownfield sites for residential use and be able to respond appropriately to questions asked by clients.

Regulatory Initiatives

The following three regulatory initiatives have spurred brownfield development:

- Asset Conservation Act of 1996 gave lenders protection against environmental liability in debt-financing activities.
- Taxpayer Relief Act of 1997 allowed favorable tax relief for environmental remediation costs.
- Brownfields Redevelopment Initiative provided funding for site cleanup loans.

The main issues involving brownfields redevelopment are the concern over legal liability, the uncertainty of rehabilitation costs that scare off investors, and the uncertainty of the "creep" of environmental laws that, over time, expand government oversight.

Brownfield Site Redevelopment

Over 45 states have enacted laws to help alleviate the risks of liability for brownfield site development. The state of Florida has redeveloped a number of brownfield sites. Following are just a few noted successes:

- **Agrico Chemical Co.:** This 35-acre superfund site is located in Pensacola, Florida. It includes an area where agrochemical production operations took place from 1889 to 1975.
- **Alpha Chemical Corp.:** This superfund site is located in Lakeland, Florida. Since 1967, a plant on the site has produced polyester resin for fiberglass manufacturers. From 1967 to 1976, plant operators discharged plant wastewater that contained small amounts of volatile organic compounds (VOCs) into an on-site pond.
- **American Creosote Works, Inc:** This 18-acre superfund site is located in Pensacola, Florida. A wood-treating facility operated at the site from 1902 to 1981, when it filed for bankruptcy. Facility operators sent process wastewaters to four holding ponds on the western portion of the site. The ponds often overflowed after heavy rains.
- **Beulah Landfill:** This 101-acre superfund site is located in Escambia County, Florida. Escambia County operated a landfill on the site from 1966 to 1984. A state investigation in 1987, found that site activities had contaminated soil and groundwater.
- **The Petroleum Products Corp.:** This five-acre superfund site is located in Pembroke Park, Florida. Petroleum Products Corp. operated a used oil refining facility at the site from 1957 to 1971. Improper waste handling practices and oil spills resulted in the contamination of soil and groundwater.

Check Your Understanding 5.1
Select True or False for each statement. (Answer Key in the back of the book.)

	Brownfields	True	False
1.	Brownfields are commonly old factories and warehouses that stored hazardous substances, pollutants, or contiminants.		
2.	A brownfield site should not be developed into residential housing.		
3.	Another term for brownfield sites is superfund sites.		

Clean Air Act

For the most part, federal and state laws regarding clean air regulations are targeted towards industrial operations, such as mining, energy plants, and meeting motor vehicle emissions standards. However, the Clean Air Act also influences homeowners who have air conditioners that were manufactured before January 1, 2010. The refrigerant used in these systems is called hydro chlorofluorocarbon (HCFC)-22 (also known as R-22). R-22 has been found to deplete the earth's protective ozone layer. The EPA has gradually reduced the production of R-22 as a refrigerant. In fact, manufacturers can no longer make air conditioners that use R-22. However, R-22 can still be used to service existing air conditioners, but it has becomes very expensive. R-22 is also used in older refrigerators and freezers.

When it comes time to replace an older AC system or appliance, homeowners must follow some governmental regulations regarding disposal. A homeowner should not cut refrigerant lines or remove compressors prior to discarding. If an owner purchases a new appliance, the retailer will likely remove the old one at no charge. Many governments and private organizations also will arrange for curbside pickup of appliances. The EPA requires the safe disposal of ozone-depleting refrigerants in appliances, so they do not harm the environment.

WATER AND SOLID WASTE ISSUES

These issues are typically well known to the public, but the enormity of their importance in Florida may not be so well known.

Water Needs for a Growing Population

In 2019, the population of Florida was more than 21 million citizens. About 1,000 new residents are added daily. According to U.S. census figures, Florida is now the nation's second fastest-growing state behind Texas. The influx is not expected to slow down with the state's population predicted to rise to 26 million by 2030. Rapid growth could bring a host of issues, such as environmental protection problems, infrastructure development demands, and an increase in home site demands. The demand for fresh water seems to be the biggest challenge over the next decades. Florida faces a projected daily water shortfall of one billion gallons a day by 2030, according to the DEP. The most critical water shortage will be in the Orlando area, where five central Florida counties are predicted to have a shortfall of 250 million gallons per day by 2030.

Florida obtains much of its drinking water from the Floridan and Biscayne aquifers, as well as from surface water from Lake Okeechobee and other lakes, but population increases have begun to strain available resources. The state has built 120 desalination plants, more than three times as many as any other state. Additionally, an electrodialysis reversal plant in Sarasota is the largest of its type in the world, and a nanofiltration plant in Boca Raton is the largest of its type in the western hemisphere. The average Floridian uses about 158 gallons per day. Still, demand has outstripped supply in most areas of the state.

Florida Cities with Unhealthy Drinking Water

The following two cites in Florida have been rated in the top ten of have drinking water with unhealthy levels of chemicals and contaminants as reported by a study conducted by the EPA:

- **Ranked #1:** PENSACOLA
  Analysts say it has the worst water quality in the country. Of the 101 chemicals tested for, over 45 were discovered. Of those 45, 21 were discovered in unhealthy amounts. The worst of these were radium-228, trichloroethylene, tetrachloroethylene, alpha particles, benzene, and lead.
- **Ranked #10:** JACKSONVILLE
  Twenty-three different toxic chemicals were found in Jacksonville's water supply. The chemicals most frequently discovered in high volumes were trihalomethanes that consist of four different cleaning agents, one of which is chloroform. Chemicals like arsenic and lead were also detected at levels exceeding health guidelines.

To protect and provide adequate clean drinking water in Florida, it will take a number of major infrastructure developments that will result in increased water costs.

Wastewater Treatment

As a state, Florida treats 2.5 billion gallons of wastewater on a daily basis in over 2,000 wastewater treatment plants. As Florida's population has grown, its sewage treatment plants have struggled to keep pace. Much of the state's wastewater infrastructure is nearing the end of its useful life. This issue was underscored by the fact that over 100 million gallons of sewage overflowed at utility plants across Florida after Hurricane Irma hit in 2017. In the future, homeowners hooked up to municipal systems can expect to incur higher user fees to pay for infrastructure development. In addition, treatment plants will be required to meet more stringent pre-treatment discharge regulations established by the EPA.

Some homeowners with onsite wastewater treatment systems, commonly referred to as septic tanks, may need to upgrade

their system to what is called a performance based treatment system (PBTS).

A PBTS is defined by the Florida Department of Health (FDOH) as, a specialized onsite sewage treatment and disposal system designed by a professional engineer with a background in wastewater engineering, licensed in the state of Florida, using appropriate application of sound engineering principles to achieve specified levels of CBOD5 (carbonaceous biochemical oxygen demand), TSS (total suspended solids), TN (total nitrogen), TP (total phosphorus), and fecal coliform found in domestic sewage waste, to a specific and measurable established performance standard.

Performance Based Treatment Systems

There are three levels of PBTS:

- **Secondary treatment (ST):** An ST refers to a device that cleans the wastewater before it goes to an absorption field. Usually, this treatment device is installed downstream of the septic tank and treats the liquid effluent.
- **Advanced secondary treatment (AST):** AST units percolate effluent down through a medium, such as peat moss or a synthetic material.
- **Advanced wastewater treatment (AWT):** An AWT system increases effluent treatment by introducing chlorinators, UV lights, and/or recirculation pumps.

Homeowners are responsible for maintaining a PBTS in accordance with the laws of Florida. The FDOH requires the following:

- A valid operating permit
- A maintenance contract between the homeowner and an approved maintenance entity for the system
- Lab samples to be submitted by the maintenance entity every six months for residential systems and every three months for commercial systems. Different sample levels are required depending on the performance standards required by the of PBTS

Solid Waste Management

Both federal and state governments have enacted the Resource Conservation and Recovery Act (RCRA) that deals with the disposal of solid waste. The federal rules are administered by the EPA and the state rules are administered by the DEP. Solid waste is defined as any:

- Garbage, refuse, sludge, or other discarded material
- Liquid, semi-solid, or contained gaseous material

On average, each Floridian generates approximately 10 pounds of waste per person per day. The traditional method of solid waste management is to collect and transport waste to bury in landfills or transport to other communities. The term given to this type of operation is removal and disposal. As the population increases, landfills reach capacity and new facilities must be built, which are very costly. This method is not sustainable. Therefore, in Florida, there is a focus on sustainable waste management that deals with waste avoidance, minimization, and recycling. Sustainable waste management aims to address the long-term consequences of traditional waste disposal methods.

WETLAND ISSUES

There are nine million acres of wetlands throughout the state of Florida that help filter dirt and pollutants and provide home to rare wildlife. The wetlands can also store vast amounts of water to protect communities against flooding. Wetlands are the first line of defense against flooding, but they are dwindling.

Wetlands Management

Since Florida became a state, total wetland area has decreased by approximately 44%. From 1985-1996, Florida lost more than 260,000 acres of freshwater wetlands. Wetlands are some of the most productive and diverse ecosystems on the planet, providing home to a variety of plants and animals.

> *Florida wetlands are defined as, those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances, support a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions.*

Wetlands include marshes, swamps, bogs, and similar areas populated with a variety of vegetation. For years, wetlands were viewed as low-valued land that needed to be drained for uses that are more productive. However, today it is understood that wetlands provide many important environmental functions that are lost when they are converted.

Clean Water Act

Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the United States. The goal of this section is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" that include all rivers, streams, lakes, wetlands, and coastal waters.

Florida passed similar legislation in 1984 known as the Warren S. Henderson Wetland Protection Act. In addition, many local governments have developed their own wetland protection programs. The majority of these programs have focused on real estate development activities.

Everglades Protection Initiatives

The Everglades is a tropical wetlands system that begins near Orlando with the Kissimmee River and discharges into Lake Okeechobee. Water leaving the lake flows southward to Florida Bay. Of the original 3,000,000 acres of the Everglades, the northern 1,000,000 acres were designated as the Everglades Agricultural Area (EAA).

Today, most of this land is used to raise sugarcane. The southern 1,500,000 acres were dedicated as the Everglades National Park. The remaining 500,000 acres, located in the middle of the Everglades, became a water conservation area with a system of canals, dams, and dikes used to control the flooding in large Florida cities. One out of every three Floridians (eight million people) rely on the Everglades for their water supply.

The Everglades Forever Act

The Everglades Forever Act is a Florida law passed in 1994 designed to restore the Everglades.

> *The law recognized that the Everglades ecological system is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of flows, and, therefore, must be restored and protected.*

The Everglades Forever Act requires the state to:

- Restore and protect the Everglades ecological system
- Proceed expeditiously with implementation of the Everglades program
- Reduce excessive levels of phosphorus
- Pursue comprehensive and innovative solutions to the issues of water quality, water quantity, hydro period, and invasions of non-native species that affect the Everglades ecosystem
- Expedite plans and programs for improving water quantity reaching the Everglades
- Achieve the water quality goals of the Everglades program through the implementation of storm water treatment areas and best management practices

The Comprehensive Everglades Restoration Plan

The Comprehensive Everglades Restoration Plan (CERP) is the plan enacted by the U.S. Congress for the restoration of the Everglades ecosystem in southern Florida. When originally authorized in 2000, it was estimated that CERP would cost a total of $8.2 billion and take approximately 30 years to complete. Estimates that are more recent indicate that the plan will take approximately 50 years to implement and would cost approximately $1.63 billion more than originally thought, plus additional adjustments for inflation.

The goal of CERP is to capture fresh water that now flows unused to the Atlantic Ocean and the Gulf of Mexico and redirect it to areas that need it most. The majority of the water will be devoted to environmental restoration and reviving dying ecosystems. The remaining water will benefit cities and farmers by enhancing water supplies for the South Florida economy.

COASTAL AND SHORELINE ISSUES

Coastal communities in Florida face constant challenges from shoreline erosion. Although erosion is a natural coastal process, many valuable resources border Florida's coastline. Shorelines need protection from damage caused by intense storms, wave erosion, and sea-level rise.

Shoreline Stabilization

In Florida, seawalls, jetties, and other structures are used to stabilize the shoreline. Also, shoreline structures are built to alter the effects of ocean waves, currents, and sand movement. Some structures are even built to redirect rivers and streams. The common term used to describe these types of structures is coastal armoring.

The DEP regulates the construction of seawalls, rip-rap, and other shoreline stabilization structures in order to protect:

- Surface water quality
- Beach and dune systems
- Upland property along the shoreline

Florida state law requires property owners to obtain a permit for any construction seaward of the coastal construction control line.

> *State law defines the land seaward of the coastal construction line as, land that is subject to 100-year storm surge, storm waves, or other unpredictable weather conditions.*

Florida state law allows coastal armoring under the following conditions:

- If the structure is vulnerable to erosion in accordance with the model described in the "Erosion Due to High Frequency Storm Events" report, published by the University of Florida in November 1995.

- The coastal armoring will not result in complete loss of beach access without providing alternative access. The construction will not result in significant adverse impacts to beach and dune systems.

Homeowners planning to build a shoreline stabilization project should check with the DEP prior to construction to determine if a permit is required. Any activity conducted without a required permit is considered a "public nuisance" and may be required to be removed.

Florida Beach and Shore Preservation Act

Florida's beaches are the primary attraction for the approximately 20 million tourists to the state each year. Both tourists and residents come to the beaches to relax and enjoy the sights and sounds of natural beauty. Others visit the beaches and nearby waters to engage in boating, fishing, diving, and other recreational activities. Florida's beaches are an integral part of the state's economy.

The beach and dune system is the first line of defense against storms because it acts as a buffer between the storm waves and coastal development or infrastructure. During storms, waves encounter the beach and dunes prior to reaching upland property, therefore absorbing wave energy, and reducing the damage suffered to upland structures.

The Coastal Construction Control Line

The purpose of the Florida Beach and Shore Preservation Act is to preserve and protect Florida's beach and dune systems. The Coastal Construction Control Line (CCCL) program, one of three interrelated components of the Act, protects the beach and dune system from imprudent upland construction that could weaken, damage, or destroy the integrity of the system.

The CCCL line defines the landward limit of the DEP's authority to regulate construction. Control lines are not setback lines or lines of prohibition. New construction as well as additions, remodeling, and repairs to existing structures are allowed seaward of the control line; however, such structures and activities, unless exempt by rule or law, require a CCCL permit from the DEP.

The remaining two components contained in the Act are the Beach Erosion Control Program that provides for the restoration and maintenance of critically eroding beaches, and the Joint Coastal Permit Program that protects the shoreline from activities that could contribute to erosion, water pollution, or habitat degradation.

MISCELLANEOUS ISSUES

A number of other issues fall into the category of environmental protection and are being dealt with in Florida in various ways.

Solar Energy Development

Florida has low electricity costs compared with other states, which makes individual solar investment less attractive. However, solar energy is the state's most abundant energy resource and solar power in Florida has been increasing as the cost of solar power systems using photovoltaics (PV) has decreased in recent years. Florida ranks ninth nationally in solar resource strength according to the National Renewable Energy Laboratory.

In 2009, Florida Power & Light (FPL) built the state's first solar power plant, the FPL DeSoto Next Generation Solar Energy Center. At the time, the 25-MW plant was the largest of its kind. The state's largest solar plant is the 75 MW FPL Martin Next Generation Solar Energy Center in Martin County. In 2018, FPL plans to install 2.5 million panels at eight new solar energy centers (solar farms) located around the state. Together, the projects will generate an estimated net lifetime savings of more than $39 million for FPL customers.

Babcock Ranch

Babcock Ranch is a new Florida community that eventually will include 19,500 single-family and multi-family homes on nearly 18,000 acres. Developers claim it will be the world's first solar-powered town and the most sustainable community in the United States. Babcock Ranch is located in Punta Gorda, about 10 miles east of Fort Meyers. Over 350,000 solar panels will be installed at the FPL Babcock Ranch Solar Energy Center to produce enough electricity to power a community of 50,000 people. Babcock Ranch is designed towards sustainability by building its own water system, wastewater facility, and gray-water irrigation system. Half of Babcock Ranch's total footprint will be dedicated to parks, lakes, and hiking trails.

Solar Farms

The installation of solar farms is not without its environmental protection issues. Solar farms require large swaths of land that range from 100 to 500 acres and encroach on wildlife habitation. To prevent any conflicts between Florida's clean energy future and the future of wildlife, solar farm operators, homeowners, and government authorities need to work together to protect important habitats.

Docks

The DEP regulates the construction of docks in order to protect habitats and water quality of surface waterbodies. Therefore, a permit is usually needed from the DEP prior to construction. However, some docks may be permit-exempt due to their size and location.

A permit for the construction of single-family docks may also be required by the U.S. Army Corps of Engineers and county or municipal governments. Local jurisdictions typically impose more stringent requirements on dock construction than the DEP. Local regulations may also impose restrictions on vessel length and vessel draft, particularly in artificially created waterways where such limitations are necessary to maintain safe navigation.

Dredge and Fill Permitting

The DEP regulates dredging and filling operations in order to protect the environment. Most residential dredging and filling by waterfront property owners requires a permit from the DEP. If the proposed activities are located on state-owned submerged lands, written authorization to use these lands may also be required from the DEP. Both the permit and authorization, if required, must be obtained prior to construction.

> *Dredging refers to any type of excavation conducted in wetlands or other surface waters.*

Dredging includes digging, pulling up vegetation by the roots, leaving vehicular ruts, or any other activity that disturbs the soil. The following single-family waterfront property owner projects are classified as dredging:

- Filling a house pad, septic tank drain-field, driveway, or lawn
- Removing trees or other vegetation by pulling out the root ball
- Installing a fence
- Placing sand along the edge of a waterbody for a beach
- Constructing a boat dock
- Placing materials along a shoreline to create a seawall or rip-rap
- Dredging in a waterway to provide new boating access
- Dredging in a wetland to create a pond
- Dredging a ditch to drain property

The following dredge and fill activities are exempt from DEP permitting:

- Installation and repair of mooring pilings at private docks
- Installation of private docks of 1000 square feet or less of surface area over waters 500 square feet or less when conducted in an Outstanding Florida Water
- Construction of seawalls, rip-rap, or docks in man-made waterways
- Replacement or repair of existing docks

Species Protection

Florida's endangered species policy involves the identification and protection of endangered and threatened animal and plant species. Policies are implemented and enforced at the state and federal levels of governments.

Endangered Species Act

Florida has 87 endangered species and 37 threatened species listed under the federal Endangered Species Act (ESA).

Endangered species: Animals or plants in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Threatened species: Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Florida Fish and Wildlife Conservation Commission

The Florida Fish and Wildlife Conservation Commission (FWC) is authorized to post rewards to persons responsible for providing information leading to the arrest and conviction of persons illegally killing, wounding, or wrongfully possessing any endangered or threatened species.

Species Given Special Protection

With the efforts of the FWC, private individuals, environmental groups, and corporate entities, the following species have been given special protection under federal and state regulations:

American alligators: Alligators residing throughout the waters of the South came face-to-face with the threat of extinction in the 1950s. Today, there are over one million alligators roaming the waters of Florida.

Brown pelican: The U.S. Fish and Wildlife Service first placed the brown pelican, the world's smallest pelican species, on the endangered species list in 1970. Due to the use of the insecticide DDT in the 60s and 70s, coupled with the hunting of the birds for their feathers, the brown pelican once faced the threat of extinction. A ban on the use of DDT in 1972 led to a dramatic increase in the bird's population numbers, and by 2009, there were an estimated 650,000 brown pelicans throughout their nesting range.

Eastern indigo snake: The eastern indigo snake is classified as a threatened species by the FWC. "Taking" of eastern indigo snakes is prohibited by the ESA without a permit. "Take" is defined as, an attempt to kill, harm, harass, pursue, hunt, shoot, wound, trap, capture, collect, or engage in any such conduct. Penalties include a maximum fine of $25,000 for civil violations and up to $50,000 and/or imprisonment for criminal offenses, if convicted.

Florida black bear: In 1974, the Florida black bear was classified as being threatened after it was reported that only 300 or so bears still lived throughout the state. In 2012, after decades of hard work by conservationists to increase the population, Florida's largest land mammal was finally removed from the endangered species list. Biologists estimate that the current population of black bears residing in Florida is close to 4,000.

Florida panther: The Florida panther is no longer on the brink of extinction as it was in the 1970s. However, despite gains over the past few decades, biologists estimate there are still only 240 panthers left.

Key deer: The Florida Keys are home to many unique animals, including the world's smallest white-tailed deer, commonly referred to as the key deer. In the 1940's, the key deer population was less than 50. In 1957, the National Key Deer Refuge was established, which helped to nurse the population back to a healthy level. Today, estimates put the number of deer living in the Keys at somewhere between 700 and 800.

Manatee: Manatees were designated as Florida's state marine mammal in 1975 and first listed as federally endangered in 1966. Once numbering just a few hundred, today the manatee's total population is more than 6,600.

Smalltooth sawfish: At one time, the smalltooth sawfish roamed the Atlantic coastline from New York to Florida. Now, these 10 to 18 feet fish are found only in the waters around Florida.

Mangrove Protection

Mangroves are trees or bushes, usually grown between the high-water mark and mean low tide. There are over 555,000 acres of mangroves in Florida. Of this total, over 80% are under some form of government or private ownership and set aside for conservation purposes. Mangroves play important ecological roles as a:

- Habitat for various species of fish, mammals, birds, and reptiles
- Shoreline stabilization and storm protection system
- Filter and protection for water quality

Florida's mangrove forests provide nursery support to sport and commercial fisheries activities. Through a combination of functions, mangroves contribute to the economies of many coastal counties in the state.

Mangrove Trimming and Preservation Act

Mangroves are protected by the state of Florida's Mangrove Trimming and Preservation Act. Homeowners should know the following facts regarding the law:

- No herbicide may be used for the purpose of removing leaves of a mangrove.
- No mangrove may be trimmed below six feet.
- One cannot legally trim below the prop root insertion on the trunk.
- Mangroves over ten feet in height must be trimmed by a licensed professional.
- A maximum of 25% of trees may be trimmed in any given year regardless of tree height.
- Mangrove trimming is best done in late spring just as trees are flowering and fruiting is minimal.
- The state recognizes only certified arborists, certified environmental professionals, and wetland scientists as qualified trimmers.

Trim laws are strictly enforced and any homeowner wishing to prune mangroves should seek professional assistance. A few years ago, a suit filed by the DEP in Charlotte County cost one homeowner $250,000 for reckless trimming.

Check Your Understanding 5.2

For each species, select "Yes" if it is or "No" if it is not a protected species in Florida. (Answer Key in the back of the book.)

	Plant and Animal Species	Yes	No
1.	Wild sea oat plants		
2.	American alligators		
3.	Mangroves		

Archeological Sites

Florida has a rich history of human habitation that dates back thousands of years. The Division of Historical Resources, under the Department of State, is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The direct regulation of activity affecting archaeological sites usually occurs at the local levels of government.

Many cultural resources are held and protected by the state under public ownership. However, private landholders own significantly more resources and are also able to preserve these tangible remains of Florida's past for the future.

Archeological Site Protection Programs

The Division of Historical Resources supports a number of programs that encourage the protection of archeological sites on private lands, such as:

- **State archaeological landmark/landmark zone designation:** Under the provisions of F.S. 267.11, the Division of Historical Resources can designate archaeological resources on private property as an archaeological landmark or landmark zone to recognize the significance and increase legal protection of privately owned archaeological sites under state law. Often without a state archaeological landmark or landmark zone designation, an owner's only legal protection against illegal or unwanted digging is the trespass law. With a state designation, a permit is required from the Division to conduct field investigation legally. An owner may take action against non-permitted, illegal digging. An owner must give written consent to designate their property as a state archaeological landmark or landmark zone. A designation does not convey ownership interest.
- **Land trust:** Land trusts are private nonprofit organizations that protect valuable natural and cultural resources through land acquisition. While there is no one program carried out by all land trusts, the work they do involves private lands. Their objective is to achieve permanent preservation of lands having at least one of the following qualities, natural, historic, cultural, agricultural, recreational, or scenic significance.
- **Registry program:** A registry program recognizes an owner's protection of historic or archaeological sites. Registration is voluntary and nonbonding. It is an agreement that can be canceled by either party at any time. Registration involves neither payment nor receipt of funds. Some registry programs also provide assistance in site management and education. Through a registry program, the owner will usually receive a certificate or plaque that recognizes the importance of the owner's site. There are registry programs at national and state levels. The National Register of Historic Places is the most prominent. The state of Florida has several registry options including a landmarks program and the Florida Site Steward Agreement.
- **Conservation easements:** Broadly applied, a conservation easement is a legal agreement a property owner makes with a non-profit or government organization to protect a cultural or natural resource on their property. Depending on the resource, conservation easements are known by several different names. For example:
    - An agricultural easement would protect a family farm.
    - A conservation easement might be used to protect an historic building or archaeological site.

Along with tax benefits and community benefits, conservation easements are uniquely tailored to meet the needs of the individual property owner. They allow property owners to protect specific resources on their property while retaining ownership. An owner can choose which portions of the property they wish to protect and which to exclude from protective covenants of the easement.

Site Stewardship Programs

The Florida Bureau of Archaeological Research has developed the following three programs:

- **Site stewardship agreements:** By signing the site steward agreement, a property owner agrees to notify the state prior to initiating activities that may have a negative impact on the site or to report destructive acts, such as dumping, unauthorized digging, or environmental degradation. The site stewardship agreement includes a statement of commitment by the state to provide guidance and technical assistance in site preservation. The agreement may allow regular site visits by a state archaeologist for the purpose of evaluating the site for success of the agreement and to offer assistance in site management.
- **Stewardship volunteer programs:** The Bureau of Archaeological Research initiated stewardship volunteer programs for the maintenance and protection of archaeological sites and historic buildings. Volunteers can be used on any site in need of stewarding. The state's role in this initiative is to assist property owners in coordinating site volunteers. Site steward volunteers have the opportunity to assist professional archaeologists in various site maintenance activities. They may commit to a long-term monitoring agreement, involving site visits every few months to record damage or any other management concern.

- **Sitewatch programs:** The sitewatch program is a volunteer-based initiative that establishes site monitors. Monitors agree to regularly visit and maintain a site. Monitors routinely fill out a site monitoring form to alert the site owner and bureau of archaeological research of site management needs. The monitors indicate different types of management concerns, such as looting, tree falls, and trash dumping on the forms. The form is then sent to the owner. Typically, the owner and the site monitors will work together to maintain the site.

ENVIRONMENTAL PROTECTION ISSUES DISCLOSURE

For the past 30 years, conducting environmental due diligence has been a major part of commercial real estate transactions. Presently, however, residential buyers also want to know all they can about potential environmental problems before they buy. Most states have laws in place requiring sellers to disclose known property condition hazards.

In Florida, a seller of residential property is required to disclose all facts known to a seller that materially and adversely affect the value of the property that are not readily observable by a buyer. Typically, a licensee will provide the appropriate form for the seller to complete.

A pre-printed disclosure form may not address every significant issue that is unique to the property. If a seller needs more space to provide additional information, they should complete an addendum.

The following sections on a seller's property disclosure form are of particular importance regarding environmental protection issues.

- **Environmental:** This section deals with the disclosure of lead-based paint, asbestos, mold, urea formaldehyde, radon, methamphetamine, defective drywall, storage tanks, mangroves, and archeological sites located on the property.
- **Plumbing:** This section covers drinking water sources, past problems with water quality, the type of wastewater treatment located on the property, plumbing leaks, and polybutylene pipes on the property.
- **Sinkholes:** When an insurance claim for sinkhole damage has been made by the seller and paid by the insurer, F.S. 627.7073(2)(c) requires the seller to disclose to the buyer that a claim was paid and whether or not the full amount paid was used to repair the sinkhole damage.
- **Water Intrusion:** This section deals with drainage, flooding, coastal construction control lines, and the possession of an elevation certificate.

By law, the disclosure of the physical conditions of a property is squarely placed on the seller. However, when a transaction occurs under fraudulent conditions, everyone involved gets some share of the blame. Over the years, there seems to be an uptick in errors and omissions claims on real estate agents' insurance policies for being complicit in failing to disclose a defect or condition that was judged to be a material item. As a licensee, if you detect something that appears to be defective or a source of a potential problem, you should get the issue resolved prior to the close of the transaction.

CHAPTER 5 PROGRESS CHECK

1. What type of rights allow the landowner of property that borders navigable waters to use and enjoy the water?
   A. Riparian rights
   B. Brownfield rights
   C. Regulatory rights
   D. Asset conservation rights

2. What type of device cleans wastewater before it goes to an absorption field?
   A. Advanced Wastewater Treatment (AWT)
   B. Primary Treatment (PT)
   C. Secondary Treatment (ST)
   D. Chemical Treatment (CT)

3. What law recognizes that the Everglades ecological system is endangered as a result of adverse changes in water quality?
   A. The Everglades Wetlands Act
   B. The Everglades Historical Act
   C. The Everglades Protection Act
   D. The Everglades Forever Act

4. What types of structures are used to stabilize the shoreline?
   A. Bunkers and trenches
   B. Seawalls and jetties
   C. Docks and piers
   D. Long walls and fill

5. Mangroves are trees or bushes that are usually grown between what?
   A. The average water and low tide marks
   B. The riptide and low tide marks
   C. High water mark and mean low tide
   D. Water line and beach end zone

Chapter 6: From Contract to Closing: A Breakdown of the Real Estate Market

2 CE Hours

14-Hr CE FREC Approval Number: 28640

Learning Objectives

Part I: Marketing and Negotiations

- Describe the attributes of good marketing materials
- Identify practices that would be considered professional or appropriate in negotiations
- Explain ways in which to advise buyers and sellers to respond to offers and counteroffers

Part II: Closing the Sale

- Describe typical problems that may arise between contract and closing
- Discuss the licensee's responsibility in resolving conflicts that may arise between contract and closing
- Identify the steps that should be taken if the transaction falls apart at closing

Key Terms

- Advertising
- Authorized Brokerage Relationships in Florida
- How offers become contracts
- How to present offers and counteroffers
- Other Advertising Issues
- Offers and Counteroffers
- Professional Negotiation Practices
- Real Estate Teams
- When you should consult your broker

PART I: MARKETING AND NEGOTIATIONS

ADVERTISING

According to the Fair Housing Act of 1968, and the 1988 Fair Housing Amendment Act, it is illegal to, "Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, or disability. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act."

This law is administered by the Department of Housing and Urban Development (HUD).

Here are a two examples of non-discriminatory advertisements:

> "Beautiful modern home on a large, wooded lot, 4 bedrooms, 3 baths with a huge deck overlooking the Puget Sound. Well-appointed with granite countertops, tile backsplash, and new cabinets in the kitchen. Slate tile in entryway. Newly remodeled baths with new fixtures. Central vacuum cleaner. Just minutes to major arterials. The spacious three-car garage has 220 wiring. New roof in Fall of 2007. $699,990. For further information, please contact Judy Smith, XYZ Realty, #(555)555-5555."

> "Single-story, rambler-style 3-bedroom, 1-bath home with a 2-car attached garage. Beautiful, lush garden with a hot tub. Kitchen has been updated and includes stainless steel appliances, tile floors, and marble countertops. Spacious deck with built-in seating. New composition roof was installed in the spring of 2007. New insulated windows installed in the winter of 2008. Washer and dryer included in the sale. $299,000. For further information, contact Sue Yen of ABC Realty, #(555)555-5555."

Here is an example of discrimination in advertising:

Marc, a broker with ABC Real Estate, had a listing with the Sims. He placed an advertisement in the newspaper for their property saying that it was in a "great Jewish neighborhood" and invited all Jewish people to view the home. This is a violation of discrimination in advertising based on religion.

The above example is directly and obviously discriminatory. However, even most ethical REALTORS® can inadvertently use language that is exclusionary. For example, a property labeled a "handyman's special" or "located in a nice neighborhood, perfect for a quiet couple" excludes women and families with children, which may not be obvious to a new REALTOR®.

Check Your Understanding 6.1
For each statement, select "Yes" if it is considered discriminatory in an advertisement or "No" if it is not. (Answer Key in the back of the book.)

	Discriminatory Statement	Yes	No
1.	This property is a handyman's special.		
2.	This up-and-coming neighborhood is perfect for growing families.		
3.	This is a gorgeous property that's located near restaurants and a shopping mall.		

OTHER ADVERTISING ISSUES

Advertising [61J2-10.025]

In Florida,

(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 as 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), email 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.

Note that advertising includes, but is not limited to, items such as:

- Signage
- Flyers
- Mailed items
- Website
- Newspaper and magazine ads
- Email advertising
- Business cards

Real Estate Teams [61J2-10.026]

In Florida,

(1) "Team or group advertising" shall mean a name or logo used by one or more real estate licensees who represent themselves to the public as a team or group. The team or group must perform licensed activities under the supervision of the same broker or brokerage.
(2) Each team or group shall file with the broker a designated licensee to be responsible for ensuring that the advertising is in compliance with F.S. 475 and Division 61J2, F.A.C.
(3) At least once monthly, the registered broker must maintain a current written record of each team's or group's members.
(4) Team or group names. Real estate team or group names may include the word "team" or "group" as part of the name. Real estate team or group names shall not include the following words:
   a. Agency
   b. Associates
   c. Brokerage
   d. Brokers
   e. Company
   f. Corporation
   g. Corp.
   h. Inc.
   i. LLC
   j. LP, LLP or Partnership
   k. Properties
   l. Property
   m. Real Estate
   n. Realty
   o. Or similar words suggesting the team or group is a separate real estate brokerage or company
(5) This rule applies to all advertising.
(6) In advertisements containing the team or group name, the team or group name shall not be in larger print than the name of the registered brokerage. All advertising must be in a manner in which reasonable persons would know they are dealing with a team or group.
(7) Nothing in this rule shall relieve the broker of their legal obligations under F.S. 475 and Division 61J2, F.A.C.

Professional Negotiation Practices

It is imperative that you have an ethical professional relationship with your competitors, buyers, and sellers. Real estate licensees representing the seller, have the duty to present all offers, unless the seller instructs otherwise in writing. If a seller has multiple offers to view all at once, they will want to compare the desirability of each.

A seller expecting to have multiple offers on a property, may have various options, such as to:

- Choose to look at any and all offers and respond immediately
- Review offers as they come in and choose to respond at some later date in the future
- Look at and responding to the first offer received
- Counteroffer one or more of the offers
- Withhold all offers once seller accepts a sales contract for the property
- Withhold verbal offers

When making a counteroffer in Florida, the seller should pay close attention to Paragraph 3 on the FAR/BAR contract entitled "Time for acceptance of offer and counteroffer effective date."

Your local MLS may have strict rules and regulations regarding one or more of the options stated above. As a real estate professional, you should be familiar with these rules and how to treat each scenario. It is important to remember that all offers should be treated fairly and honestly.

Many consumers and brokers think that the first offer received by the seller should be dealt with and responded to immediately and that it should be given first priority over all other offers. This may not be the case.

When You Should Consult Your Broker

You should consult your broker any time you feel that you or the brokerage is at risk. Here are some specific examples of when you might want to consult with your broker during negotiations.

- There are multiple offers and you are unsure of how to proceed.
- The buyer's broker has attached forms to the offer that are specific to their company, and you are not sure if you understand these forms.
- If, in the case of new construction, there are builder's addenda attached to the contract that you do not understand.
- When an unusual circumstance occurs during negotiations, such as a potential buyer or seller who dies or becomes incapacitated.
- When it is clear that the seller is not disclosing material facts about the property.
- When it is clear that the buyer is not acting in good faith.
- When any party to the transaction is in violation of the law (fair housing, discrimination, steering, redlining, etc.).
- When any party in the transaction is discussing or threatening legal action or a lawsuit.
- When there are any forms that you do not understand.
- When you intend to withdraw a counteroffer prior to it being accepted.
- When you are unsure of how to handle a situation where someone else is representing the seller and there are questions about an authorization to sign (power of attorney, personal representative of the estate, a corporation, or a trust).

Example:
Susan, with ABC Realty, is the listing agent for the Browns and has established a single agency relationship with them in writing. During an open house, the Smiths visit the home and want to buy it.

Because Susan represents the Browns in a single agency relationship, owing them fiduciary duties, she has the Smiths sign a Notice of Non-Representation and writes up an offer stating that she is representing the Browns and not the Smiths. She further advises the Smiths to seek independent legal counsel before signing the contract. While Susan has supplied real estate services to the Smiths by writing up the offer, she does not represent them.

Check Your Understanding 6.2
For each scenario, select "Yes" if it is one in which a sales associate should consult with their broker or "No" if it is not. (Answer Key in the back of the book.)

	Broker Consultation	Yes	No
1.	The seller is in violation of fair housing laws.		
2.	An open-house guest wants to make an offer on the house.		
3.	The seller does not disclose a material fact about the property.		

How Offers Become Contracts

An offer to purchase a property made by a buyer is just that -- an offer. This offer usually contains specific terms and conditions.

The seller may accept, reject, or counter the offer. The definition of a counteroffer is when one of the parties makes a change to the original offer. Legally, it is considered a revocation of the original offer. Only when an offer is fully acknowledged, (all parties have agreed and signed and no other changes have been made) and all parties have initialed and agreed to any prior changes, and delivery to all parties has been made, that an offer becomes a contract.

Case Study

Let's look at a case study that is a great example of offers, counteroffers, and mutual acceptance.

The buyers made an offer through their broker, using a preprinted purchase and sale agreement and delivered it via fax to the seller's broker. The sellers agreed to all of the many terms except the closing date. The sellers initialed the change and the seller's broker delivered it via fax back to the buyer's broker. The sellers submitted a counteroffer. The buyer's broker was not able to receive the fax that evening as he was at a football game. During that evening, the sellers received another offer that was $10,000 higher than the first offer. The sellers withdrew their counteroffer before it was accepted by the buyer. It is legal to withdraw an offer or counteroffer before the other party accepts it. In this case, the contract with the original buyer was never mutually accepted. The sellers were able to accept the second, higher offer.

It is of utmost importance that the sellers have proof that they revoked their counteroffer before the buyer's acceptance in writing. For a fax, they would want to keep the verification of time and date it was sent. For an email, they would retain a copy showing the date and time it was sent.

How to Present Offers and Counteroffers

Firstly, we will discuss the details of offers and counteroffers and then explain the issues associated with multiple offers.

In most circumstances, an offer to purchase real estate is written by a licensee who is working with the buyer. This contract to purchase, called a Residential Contract for Sale and Purchase, MUST be in writing. Verbal offers may be valid, but extremely difficult to enforce. The requirement that to be enforceable all offers must be in writing is known as the statute of frauds. Furthermore, the statute of frauds states that in order for a verbal contract to be enforceable, the buyer must have made a partial payment and either moved into the property or made improvements.

The broker may be representing the buyer or the seller in a single agency relationship, - or both the buyer and seller in a limited capacity as a transaction broker. The broker must disclose which party they are in a brokerage relationship with before the offer is made. Florida law requires that if the broker is not representing either party, then the broker is in a "no brokerage relationship" with the parties and must have that relationship established in writing.

The offer is then signed by the buyer (another name for signed is acknowledged). The buyer, in this circumstance, is known as the offeror. And the seller, who receives this offer, is known as the offeree.

If the seller makes a counteroffer, they become the offeror and the buyer becomes the offeree, etc.

The broker, working with the buyer, will then deliver the purchase and sale agreement to the seller's broker (the listing broker) or, in some circumstances, meet with both the seller and their broker. The buyer is almost never present if the offer is made in person. Please see the following two sections on methods of transmittal for an offer.

The seller has basically three choices:

- Accept the offer
- Reject the offer
- Counter the offer

Let's discuss each scenario.

Accept the Offer

If a seller accepts the offer, they are accepting the offer and all of its terms and conditions in its entirety. The seller would then sign the offer. At this point, offer and acceptance has occurred, and once it's communicated to all parties there is a binding contract.

Reject the Offer

If a seller rejects an offer, they are rejecting the offer and its terms and conditions in its entirety. Usually, the listing broker will draw a line diagonally across all pages of the contract and write in bold letters "REJECTED." It is a good idea to have the seller initial each page beside the term "REJECTED." At this point, all negotiations are terminated. This seldom happens since the seller can always counter the offer with terms they would accept.

Counter the Offer

If the seller wants to make any changes to the buyer's offer, they could counteroffer, make the changes on the contract or a separate addendum, and send it back to the buyers without signing or initialing the changes. (Remember, a counteroffer

is a revocation of the original offer.) This allows the seller to continue to negotiate with other offers should the buyers delay in agreeing to the seller's changes. At this point, the seller is the offeror, and the buyers are the offerees. When the buyers sign and initial the seller's changes, the seller can sign off and return a fully executed contract to the buyers. Once the contract is received by the buyers, it has been communicated to all parties and a binding contract has been generated. Of course, it is always advisable for all parties to include a specific date and time that their offer or counteroffer expires.

The buyer then has the following choices:

- Accept the counteroffer
- Reject the counteroffer
- Counter the counteroffer

If the buyer rejects the counteroffer—the entire contract is rejected, and negotiations are terminated.

If the buyer counters the counteroffer -- another counteroffer would be prepared, signed by the buyer and properly delivered to the seller who would consider the new changes. By using a separate counteroffer document for each iteration of this process, a clear paper trail is created reducing the possibility of confusion or disputes over what was actually agreed upon between the parties. The same process takes place as when the seller made a counteroffer. At this point, the buyer is now the offeror, and the seller is the offeree.

This process can go on repeatedly, until all of the terms and conditions of the contract are mutually accepted.

In situations where there are many counteroffers, real estate brokers must perform more work as the offer is transferred back and forth between buyer and seller.

Tip: When withdrawing an offer or counteroffer before it is accepted, a real estate licensee should keep very accurate documentation of the timeline, so that there is no dispute as to the timing of the withdrawal. Multiple forms of documentation may be used for this withdrawal, such as phoning, faxing, and e-mailing (using all three). It is also a good idea to have a witness as proof of the timing of the withdrawal.

PART II: CLOSING THE SALE

CLOSING ISSUES

Let's discuss the issues that may arise between contract and closing.

You, as a licensee, and your buyers or sellers, may encounter many issues during the escrow process and at closing. Let's look at the following more common events and processes that could delay closing and explore them in more depth.

- The appraisal
- Loan underwriting
- Inspections
- Title insurance commitment
- Loan approval
- Document preparation
- Escrow signing
- Recording the Deed
- Distribution of funds
- Possession of the Property

The Appraisal

A real estate appraiser is a professional who specializes in estimating the value of property. Estimates of value, known as appraisals, are typically made when property is bought, sold, condemned, insured, or mortgaged. An appraisal may also be performed in a pending divorce action and when partnerships are terminated.

A lender will almost always require an appraisal to ensure that the value of the property is sufficient collateral for the loan. The appraisal is ordered by the lender and even though the borrower pays for the appraisal, the lender is the party that owns it. The appraiser works for the lender and not the borrower.

Most appraisals for residential real estate are completed by using the Sales Comparison Approach where comparable properties are used to determine value.

If the appraised value is less than the sales price, the licensee might suggest that:

- The borrower ask their lender about increasing their down payment
- The seller reduce the price of the home to meet the lower appraisal

Loan Underwriting

After the information on a loan application has been verified, the value of the property has been confirmed, and the title search has been completed, the loan is now ready to be underwritten. The underwriter will review all of the information, analyze the creditworthiness of the borrower, and render a decision on whether to grant the loan. The major function of the underwriter is to assess the risk of the borrower. An underwriter will typically analyze the following:

- Monthly housing expense and total debt obligations
- Monthly income
- Funds available to close
- Credit analysis
- Compensating factors

A licensee may want to assist in resolving conflicts by:

- Having regular conversations with the lender and getting updates
- Advising buyers to not spend money on non-essentials during the underwriting process

Inspections

The most typical inspection in a residential real estate transaction is a Structural Inspection performed by a licensed inspector.

The buyer has two options in response to a structural inspection depending on the type of sales contract used in the transaction.

- Residential Contract For Sale and Purchase Contract (Standard)
    - Notify the seller during the inspection period of the items that are not in the condition required to include:
    - General Repair items (up to 1.5%)
    - Wood Destroying Organisms (WDO) (up to 1.5%)
        - If the WDO repair estimates are greater than the 1.5% limit:
            - Within five days of receiving the seller's estimate, the buyer may agree to pay the excess -or-
            - The buyer may designate which repairs the seller should make up to the 1.5%repair limit and will accept the balance of repair items in their "as-is" condition.
            - If the buyer doesn't deliver written notice to the seller within five days, either party may terminate the contract and the buyer will be refunded the deposit
    - Inspection and close-out of unpermitted or expired building permits (up to 1.5%)
        - The seller is responsible to repair items in each of the above three categories up to a maximum up to 1.5% of the purchase price of the property
        - If the seller is unable to make these repairs, up to 125% of the estimated costs to complete them can be escrowed at closing from the seller
        - If 125% of the repair estimates are held in escrow, the amounts cannot exceed the maximum of 1.5% of the purchase price in any category
        - If repair estimates are greater than the 1.5% limit for the general repair items or expired building permits:
            - The seller may pay the excess amount to the buyer, or the buyer may designate which repairs the seller should make up to the 1.5% repair limit and will accept the balance of repair items in their "as-is" condition, - or -
            - If neither buyer nor seller addresses the issue in writing, either party may terminate the contract and the buyer will be refunded the deposit

If the seller makes the repairs or escrows the monies, the buyer is bound by the contract

- 'As-ls" Residential Contract For Sale and Purchase Contract
    - Reject the inspection and cancel the transaction within the contract agreed upon inspection period timeframe
    - Accept the inspection and property "as is"
    - Negotiate with the seller for the repairs

Should this inspection reveal any major problems, there may be additional inspections performed by those professionals who have expertise in a particular area. Below are some examples of when additional experts may perform an inspection.

- Problems detected with the septic system that might require a septic expert
- Major problems with a system in the home, such as electrical, plumbing, heating, or HVAC
- Settling of the home or foundation that might require a structural engineer
- Defective siding on the home or siding that has been recalled by the manufacturer
- Foundation settling that might require a soil engineer
- Pest infestation
- Excessive amounts of mold detected in the home that might require a toxicologist
- Excessive amounts of other hazardous substances, such as:
    - The presence of oil in the surrounding soil
    - Asbestos
    - Lead
    - Radon
    - Pooling water or poor drainage that might require an engineer

It is worthwhile to note here that many major problems found in homes are often caused by deferred maintenance of another item in the home. Let's use defective siding as an example. The defective siding was allowing moisture and rain to seep in behind the siding. This caused damage to the sheathing paper and fungal rot to the wood framing members under the siding. If the defective siding had been replaced sooner, there may not have been further damage to the structure.

A licensee may want to assist in resolving conflicts by:

- Educating buyers and sellers on the inspection process
- Explaining to both buyers and sellers that there is never a "perfect" house

- Assisting the buyers and sellers in the negotiations if repairs are requested

Title Insurance Commitment

Title insurance is purchased on most real estate transactions. There are two types of policies:

- Owner's policy (protects the property owner)
- Lender's policy (protects the lender)

The premium for title insurance is a one-time, non-recurring fee.

The title policy will be subject to certain exclusions and exceptions. Prior to issuing the insurance, the title company will conduct a search of the public records to determine the exceptions to coverage, such as any liens or restrictions, that would affect ownership of the property.

Example:
The seller failed to pay the property taxes and the county placed a tax lien against the property. The property could be seized and sold to pay off the seller's back taxes. If a buyer were to purchase the property without knowing about the unpaid taxes, the buyer may find themselves at risk of having to pay the back taxes or losing the property.

Prior to the closing of a real estate transaction, the title company specifies all outstanding liens so that the buyer can require the seller to satisfy the liens prior to closing.

The title company will issue a commitment for title insurance that will indicate:

- The parties to be insured and the amounts of coverage
- The current owners of the property
- The legal description of the property
- Any requirements that must be met for the insurance to be issued
- All exceptions to coverage, including recorded items affecting the property, such as mortgages, easements, building and use restrictions, and liens

The commitment for title insurance is not the actual policy, but it guarantees that a policy will be issued if the conditions that are specified in the commitment are met. In almost all real estate transactions, separate title policies will be purchased for the lender and the buyer.

In Florida, the buyer typically purchases both policies with the exception of Palm Beach County. In Palm Beach County, the seller customarily pays for title insurance.

Let's look at an example of where there could be issues during an escrow period because of a title.

A preliminary title report on a particular property indicated that there were three owners of the property. The purchase and sale agreement was only signed by two owners. Many years ago, the third owner had relinquished her ownership of the property to the other two. She did not, however, sign or record a quit claim deed, though she was willing to do so. The two owners will either need to get a quit claim deed from her or have her sign the purchase and sale agreement. This may cause delays in the closing date.

Loan Approval

When considering granting a loan, the lender will consider the applicant and the property.

- **Down payment:** The amount of the down payment will be dependent upon which type of loan is being purchased. Those borrowers with a larger down payment will be considered stronger borrowers and pose less risk to the lender. The lender will also verify the source or origin of the down payment.
- **Applicant:** The lender will analyze the borrower's ability to repay the mortgage. Income, debt, and cash reserves will be verified. In this analysis, the lender will be looking at debt-to-income ratios.
- **Credit reputation:** A lender will review the borrower's credit report to determine their credit history. Written explanations will be required for any credit problems, such as a history of late payments, foreclosures, judgments, etc.
    - If there is a loan denial, the lender must furnish the purchaser with a reason for the denial.
    - If the loan will be granted, a firm commitment is issued to the borrower and the lender prepares for closing the loan.
- **Property:** The appraised value of the home. The lender wants to ensure that the value of the home would support the amount of the mortgage. The lender will order a professional appraisal to estimate the value.

> *There are a number of federal laws that protect consumers during this process. Among them are the Equal Credit Opportunity Act, the Real Estate Settlement and Procedures Act (RESPA), and Truth-In-Lending laws.*

Documentation Preparation

Licensees may want to assist their customers by advising them which documents to collect before their loan application appointment to include:

- At least two forms of ID
- W-2s or 1099s
- Recent paystubs
- Federal Tax Returns for at least two years if self-employed or receiving commissions
- Recent bank statements

The lender prepares all of the loan documentation that the buyer will be required to sign. This documentation then gets sent to the closing agent. The closing agent will want to have this documentation in hand prior to setting signing appointments with the buyer and the seller.

Let's explore some of the things that could go wrong during the document preparation process that could delay or prevent closing.

- Documentation (closing package) arrives at the closing agent's office late
- The closing package from the lender is incomplete and additional information is needed
- Some of the documents are incorrect and have to be corrected by the lender
- Services paid outside of closing (POC) may be charged again on the Closing Disclosure.

A licensee may want to assist in resolving conflicts by communicating with the lender and the closing agent to ensure that the documents arrived on time and that there were no mistakes.

Escrow Signing

When all of the terms of the contract have been met and the loan documentation has been received from the lender, then an appointment is set at the closing agent's office (escrow). The signing of the documents is usually scheduled a few days prior to the agreed upon closing date in the contract.

The final signing of documents for closing varies from state to state. Recently, more flexibility has been granted for obtaining e-signatures for many closing documents.

The accounting of the financial items in a federally related residential real estate transaction are recorded on the Closing Disclosure.

Let's look at some issues that could arise at this stage that would affect closing:

One of the buyers or sellers is out of town and cannot make the scheduled appointment. Since most lenders will not accept signed closing documents that have been faxed, the closing agent will need to send these documents to the missing party for their signature.

The closing agent called the buyers at 6:00 pm on a Tuesday night to make an appointment for them to sign documents the next morning, Wednesday at 8:00 am.

The closing agent also informed them of the exact amount of money that they would need to provide at closing. The closing cannot take place until the funds are wired to the title company and verified.

A licensee may want to assist in resolving conflicts by reminding the buyer or seller before of the place and time the closing is to take place, and the amount of money they will need to provide at closing

Recording the Deed

After all of the documents have been signed in escrow by both parties, the closing agent will ensure that the loan is ready to fund. The deed of trust or mortgage is sent from escrow to the county recorder to be recorded. The buyer legally owns the property when the loan is funded and the deed is delivered to the buyer, but the recording of the deed is needed for constructive notice of the sale.

The purpose of recording the deed is to put the public on constructive notice about the information contained in the document. The recording establishes priority of the deed and also establishes ownership.

A licensee may want to assist in resolving conflicts by coordinating with all parties about the closing, transfer of keys, and move-in date.

Distribution of Funds

The final activity at closing involves the distribution of the money generated by the sale. It is usually the closing agent's responsibility to distribute these funds. Funds would typically be distributed to:

- The seller
- The seller's lender if there is an existing mortgage on the property
- The real estate licensees involved in the sale (commissions)

Example:

The seller had the furnace serviced. The bill from the furnace company was to be paid at escrow out of the seller's net proceeds. The bill would be sent to the closing agent and would be disbursed through the closing agent to the HVAC company.

Any delay from the closing agent in disbursing funds could cause an issue at closing.

A licensee may want to assist in resolving conflicts by communicating with the closing agent as to the status of the funds disbursement.

Possession of the Property

Possession of the property typically occurs once the closing is complete, funds have been disbursed, and keys have been delivered to the buyer. Possession can happen immediately but does not necessarily have to. The possession time will be agreed to between the parties as specified in the purchase and sale agreement.

Example:

A seller is using the proceeds from the sale of a property to purchase another home. They are closing with the same closing agent on the same day (closing concurrently). They cannot move into the new home until the transaction closes. Since there is a concurrent closing, this will give them no time in which to move if their buyer desires immediate possession. If possession on the purchase and sale agreement specified closing plus three days, then the seller would have three days in which to accomplish their move.

What might happen when the buyer of their prior property refused to grant them closing plus three days possession in the agreement?

- The seller could move ahead of time and place their belongings in storage.
- The seller could ask for early possession of the new property, prior to closing, if the property is not occupied and the seller of the new property agrees to this.

Regarding the issue of early possession, with any of the above scenarios, there are elements of risk involved. Insurance and liability are of extreme importance and the property should be insured at all times. And in the situation where early possession was taken, there is a risk for that seller that the first property might not close. In this case, the buyer would not be able to purchase the next home. Since she already had possession, there is a possibility that the seller would have to start an eviction proceeding.

A licensee may want to assist in resolving conflicts by:

- Reminding the buyer or seller the day before, of the place and time the closing is to take place
- Initiating a short-term lease between the parties
- Making sure that both parties understand the possession dates
- Communicating with the seller or seller's agent as to the progress of the seller vacating the property

If the Transaction Fails to Close

A transaction can fall apart for a variety of reasons. Some may be a valid legal excuse, and some may not (as in the case of a default or breach). One of the best ways to prevent accusations from either party is to maintain detailed, concise documentation on all aspects of the transaction.

First, the brokers should try to resolve the problem with the opposing party.

Second, the broker should try to determine if the failure had a valid legal excuse. If this is unclear to the broker, the consultation of their managing broker would be important. If neither of them could determine the validity of the failed transaction, the buyer and/or seller should be advised to seek legal counsel.

Third, if the transaction failure had a valid legal excuse and both parties mutually agree to rescind, then both brokers should ensure that a release of deposit is signed by both parties and the earnest money is distributed accordingly. If the parties to the contract are unable to resolve all issues before signing the closing documents, and refuse to close the transaction, the licensees will need to notify the FREC within 15 days.

CHAPTER 6 PROGRESS CHECK

1. The registered broker must maintain a current written record of each team's or group member's at least once each:
   A. month.
   B. six-month period.
   C. quarter.
   D. year.

2. In a standard (not "As-Is") contract, a seller is responsible to expend funds for general repair items up to:
   A. $5,000.
   B. 4.5% of the purchase price.
   C. 1.5% of the purchase price.
   D. 3% of the purchase price.

3. In an "As-Is" contract in Florida, the seller is responsible to expend funds for general repair items up to:
   A. $5,000.
   B. 1.5% of the purchase price.
   C. 3% of the purchase price.
   D. 0%.

4. During the loan approval process, the lender is primarily concerned with the approval of:
   A. the home inspection.
   B. the downpayment.
   C. the homeowners insurance policy.
   D. the applicant and property.

5. If the buyer allows the seller to retain possession of the property after the closing, a best practice would be to:
   A. determine the rent and collect it in advance.
   B. require the seller to keep their homeowner's policy in effect.
   C. initiate a short-term lease.
   D. permit the seller to remain in the property for up to 30 days without a lease.

Chapter 7: Handling Multiple Offers

2 CE Hours

14-Hr CE FREC Approval Number: 28640

Learning Objectives

- Explain the way real estate professionals should handle a multiple-offer situation
- Describe how buyers compete in a seller's market to get their offers accepted
- Explain the way real estate licensees collect and present a buyer's offer to a seller
- Recognize how sellers evaluate multiple offers before accepting one or rejecting them all
- Discuss personal letters from homebuyers
- Explain why personal letters from homebuyers are under scrutiny
- Discuss best practices for real estate professionals when dealing with personal letters from homebuyers

Key Terms

- Backup offer
- Contingencies
- Earnest money deposit (EMD)
- Escalation clause
- Mortgage preapproval
- Mortgage prequalification
- Multiple-offer situation
- Personal letter
- Preemptive offer
- Price ceiling
- Shopping the offer
- Variable commission structure

INTRODUCTION

Other than, "Congratulations, escrow closed," one of the best things a listing broker can tell the seller is, "You have multiple offers." On the other hand, those four words might frustrate the buyers (and their real estate professional) who are competing with other buyers for the same property. A multiple-offer situation is simply one where two or more buyers are making simultaneous offers on the same listing.

Whether dealing with one or multiple offers, the most basic duty of a listing broker is to help the seller get the best price and terms. In addition, the listing broker also owes the seller, (as well as the buyer), the duty to timely present all offers. Because of this, it is clear that withholding any offer while the seller accepts another offer is an unacceptable practice.

Getting the best price and terms means the seller must know of not only all offers made, but all offers that can reasonably be anticipated.

In a single agency relationship, when the licensee represents the seller, the obligation to present all offers in a timely manner is critical. Some licensees still think that offers can, or even should, be presented in the order received.

From an ethical point of view, how to be fair to the seller and each of the buyers is the challenge. Fairness in multiple-offer situations usually means every buyer should have an equal chance to have their offer presented. The seller's expectation (multiple offers or not) is to get the best price possible in the situation.

Handling Multiple Offers

The first step in handling multiple offers is to have an office policy that specifically addresses the subject. The policy should cover multiple offers from both the seller and buyer's perspectives. The company policy should inform licensees of exactly how the company intends to handle multiple offers. In addition, the policy should also reference any disclosures or notices used to inform clients and customers of the policy.

Multiple-offer situations in particular, raise many issues for listing brokers. Listing brokers should have a conversation with their customer or client, and come to a written agreement at the time of the listing about how to handle multiple-offer situations, including protocols for:

- Disclosing the existence or terms of offers to another buyer's agent
- Escalation clauses
- Personal letters from buyers
- Presentation of offers
- Handling rejected offers

Listing brokers should maintain a written record of the date each written offer was submitted, the seller's response, and provide evidence to the offeror of the submittal and response.

When in a multiple-offer situation, it is important to understand how to handle multiple offers from both the seller and buyer's perspectives. Since every transaction is different, handling multiple offers in terms of the best price in the situation places the focus right where it needs to be - on

the situation. Handling multiple offers means explaining the specific situation as it relates to your buyer or seller.

To the seller, the situation includes the:

- Viability of each offer
- Likelihood of getting better offers
- Risk involved in waiting for those offers

To the buyer, the situation includes:

- Formulating the best offer
- Getting it presented in a timely manner
- Having their offer presented fairly

A seller looking at multiple offers has three basic choices:

- Take the best existing offer
- Counter one or more of the offers
- Reject all offers and ask for new offers

Taking the best existing offer means that the seller has an agreement. If one of the offers has terms the seller finds acceptable, rejecting it to seek better offers creates the risk the seller will end up with no contract at all. However, when considering multiple offers, the best offer can be considered the starting, not the ending point.

If none of the offers is acceptable, the seller can choose one of the other two options. If the best offer on the table is acceptable, the seller must calculate the risk of turning down an otherwise acceptable offer in favor of trying to get a better offer.

The seller's evaluation of the multiple offers depends on:

- The strength of the best offer
- How close competing offers are to the best offer
- How hot the real estate market is
- The marketing history of the property (i.e., how long it's been on the market and the level of interest)
- The seller's motivation to sell

Listing brokers should take into consideration what the seller wants out of the home sale. From the seller's perspective, the highest offer is not always the best offer. Although it usually is a priority, it is not necessarily the top priority for every seller. Actually, the best offer is the one that meets the goal of the seller. Sellers need to look at the terms of a contract and buyer qualifications. A high offer is irrelevant if the buyer cannot follow through on it. Sellers need to evaluate the offers based on the likelihood that they will close. The quality or financial strength of one prospective buyer may be worth more than a small dollar differential of another.

When sellers decide to accept one of the existing offers, their listing broker needs to document in their client or customer files the seller's rationale for not seeking better offers from the other buyers. Such documentation may be needed to later prove diligence with respect to the client or customer, or honest and good faith dealing to the disappointed buyers.

The seller makes the rules whether to let buyers know if they are the only bidder or if there are multiple offers. The listing broker must follow the seller's legal instructions in this matter. Either decision can be used as a selling strategy to give the seller leverage. While it is natural to think that telling buyers about multiple offers will create higher offers and more competition, the decision to do so could also backfire and scare away buyers who do not want to get in a bidding war. Some sellers are silent on the topic of multiple offers, whereas others might prefer to let buyers know multiple offers exist so that the buyers' first offer is their best.

The seller also decides whether they reveal the competing terms of other offers to buyers. They do not have to reveal what other offers are on the table in terms of price or contingencies.

The seller can counter more than one buyer's offer at a time IF they use appropriate language when doing so. This language would need to include that all offers are subject to final written approval of the seller.

The seller does not have to accept the highest offer. Sellers only have to accept the offer they want. While sellers obviously care about getting the most money possible for their home, they are also interested in other terms, such as the closing date, need for inspections or appraisals, cash versus government financing, or contingency versus no contingency. For this reason, most real estate professionals will recommend that buyers keep terms as simple as possible in a known multiple-offer situation, so as to increase their chances of becoming the successful bidder.

Multiple Offers vs Bidding War

In a hot market, it is normal to get multiple offers. Sellers who receive multiple offers are in a great negotiating position. However, depending on the demand for the property, they need to be careful so as not to reject a qualified buyer.

Sometimes the seller might counter one buyer's offer to get better terms. If it stops there, it is just a counteroffer and not a bidding war.

When there is a seller's market, bidding wars are common. In fact, not having a bidding war can be unusual in some circumstances. Bidding wars on houses sometimes take on an auction-like feel, whereby buyers make offers that do not even seem realistic in order to buy the property. Although bidding wars are inherently unfair because not every buyer is included in the bidding war negotiations, they are not illegal or unethical.

How Sellers Encourage Bidding Wars

A well-conceived marketing plan and bidding war helps sellers get the price, terms, and conditions out of the sale that they want. Bidding wars are often driven by the seller's pricing strategy and demand. When determining an asking price, there are many strategies a seller can use, such as:

- Pricing above fair market value to give the seller some negotiation room
- Pricing below the market to hopefully attract multiple offers
- Using a bad offer to push up a good offer
- Deferring the showings and setting an offer deadline
- Shopping an offer

SELLER PRICING STRATEGIES

Price the Home Slightly Higher than Market

In a seller's market, the home might be priced slightly higher than market value. Although the right price can attract buyers quickly, the wrong price may mean the house sits on the market too long. Some real estate professionals say the fresh factor wanes after 30 days. When pricing their home, many sellers think their home is worth more than it is because they are emotionally attached to it. As much as possible, sellers need to set aside their emotional attachment to their home in order to objectively price the property.

Price the Home Lower than Market

Sellers can increase the odds of getting a bidding war going on their homes. Sometimes sellers intentionally will price their homes lower than they are worth just to start a bidding war. This can cause the bids to go higher and higher if the market is hot enough. However, pricing the property low to attract multiple offers can backfire. If demand is not as high as expected, the seller may end up selling for less.

Use a Bad Offer to Push up a Good Offer

Sellers are not required to disclose anything about other offers. For example, if there is a "good" offer and one that is less favorable, sellers can counter the "good" offer with the terms they want and also tell the buyer that there is another offer in order to encourage the buyer to accept the seller's counter. Occasionally prospective buyers have alleged that licensees tell them there is another offer on the property in order to secure a higher price for the seller, when in fact there is no competing offer.

Defer the Showings and Set an Offer Deadline

In a strong seller's market, sellers can encourage multiple-offer situations by telling buyers that they will defer showing the property and will look at all offers on a particular date in the future. By delaying showings, they dramatically increase the odds of having multiple offers. In addition, they put an offer deadline on the listing to give every interested party the opportunity to make an offer. Instead of accepting an offer from the first person that sees the house, with deferred showings, sellers increase the opportunity for multiple offers and bidding wars.

Example:

To defer showings, the seller lists the home on a Monday, or a Tuesday. However, it is not shown to anyone until Saturday. Buyers will have several days of seeing the home listed in the MLS but will not be able to schedule a showing before Saturday. The sellers will accept offers through Monday at 9:00 p.m. and will go through them on Tuesday. Even if the first person through the door on Saturday makes an offer, it will not be considered until Tuesday along with any other offers.

When inventory is extremely low and there are more buyers than sellers, receiving an offer on the first day the home is for sale is great, but sellers should wait a few days and not miss out on more offers!

Shopping an Offer: Can the seller tell one buyer about another buyer's offer in order to beat the first buyer's offer? Actually, the seller can disclose the terms of a buyer's offer to other buyers. Disclosing the terms of an offer to other buyers is sometimes called "shopping" the offer. However, shopping the best offer to all other buyers may not be a good practice.

A major risk to sellers in a multiple-offer situation is that the buyers will move on to another property rather than engage in a bidding war. Even if that does not happen, the buyer who discovers that their offer was shopped, is likely to be upset and rescind their offer.

The Listing Broker's Fiduciary Duties

A listing broker owes fiduciary duties to the seller and not to the other parties in the transaction.

A misconception of buyers is that the listing broker has a legal obligation to keep the amount or the terms of any offer confidential. However, a listing broker with the seller's permission, can legally shop an offer and call one buyer's agent after another revealing details along the way in order to get the best offer possible for the seller.

Essentially, if authorized by the seller, terms of offers can be disclosed to competing buyers or their real estate professionals unless there are state laws or confidentiality agreements that specifically prohibit that disclosure. Best practice is to obtain the authorization from the seller in writing.

As you can see, there is no legal or professional obligation to avoid a bidding war. In fact, if the seller instructs the listing broker to create a bidding war, the broker has an obligation to do so. However, bidding wars can be disastrous for the seller. If the listing broker shops the offer but all of the buyers are turned off by the aggressive negotiating, then the seller will have missed the opportunities provided by the multiple-offer situation.

GETTING OFFERS ACCEPTED

Buyers in a Seller's Market

In the current property market, multiple offers on a house are increasingly common, with most regions experiencing record levels of demand. This means that buyers often find themselves in the middle of a bidding war. Many buyers who cannot increase their purchase price get discouraged and just walk away. What many buyers don't think about is that the price, although important, may not be as important as the terms of the sale.

Of course, what makes a good offer depends on what the seller needs from the home sale. Therefore, it is important to find out want the seller wants. Every transaction is unique, and each seller has a different priority and different needs. While it's usually a priority for sellers to make as much money as they can on the sale of their home, it's not necessarily the top priority for every seller. Buyers should try to write their offers to meet the seller's goals.

For example, the seller may need a long closing period or want to include all the furniture in the sale. Sometimes, a seller who has spent five years restoring a property or has mature landscaping just wants a buyer who will take care of the property. Unlike investors, homeowners often become emotionally attached to their homes, so the sale is not just about numbers. An extra $10,000 may not be important if the seller simply wants the home to be preserved and appreciated by the right buyer.

Buyers need to be prepared and ready to make a strong offer on any property they are considering. If a buyer has the money, all-cash offers are by far the strongest. But most buyers are not in the position to pay all cash for a home. Therefore, the most important thing buyers should know is how much house they can afford so they need to get preapproved for a mortgage. They should get preapproved for a mortgage prior to beginning the home search. This not only helps buyers understand how much house they can afford, but it can give them additional credibility with sellers as their offer is compared to other offers on the property.

Unfortunately for buyers who plan to finance the purchase of a home, all-cash buyers have the advantage when a home has multiple offers. Although it can be difficult to beat a cash offer, it can happen if other terms of the buyer's offer are more attractive to the seller. For example, the seller may need extra time in the home after closing, therefore the seller may accept an offer simply because the buyers are flexible and are willing to work with them.

Licensees want to help their buyers get into a home that they want, but they also need to help them avoid getting so caught up in a bidding war that they overpay for a home, agree to unfavorable terms, or take more risk in general. For example, real estate professionals should discuss the pros and cons of waiving some or all of the normal contingencies that are included in real estate purchase contracts. Additionally, buyers need to be prepared to increase their offering price (if possible) to have their offer accepted.

Sellers don't have to negotiate in a seller's market. In a seller's market, even the best offer in the world might be countered or rejected by the seller. Buyers should make their best offer. If asked to submit a best and final offer, buyers should make their offer attractive, and consider increasing the price. However, before increasing the price and entering into a bidding war on a property, buyers should ask themselves: Do they just want to win, or do they really want the house that much? Competitive people can fall into this trap. Before overpaying dramatically for a property, buyers should make the best possible offer that they can reasonably afford.

There is a tendency in multiple-offer situations for buyers to believe there is some "trick" that will give them an advantage other than offering their best price and terms. There is no such trick. There is very little the selling agent can do in multiple-offer situations other than communicate effectively with their buyers and make them aware that if they offer less than they are willing to pay for a property in a hot market, they may never get a chance to offer what they are actually willing to pay.

Often a buyer's full-price offer isn't good enough in a seller's market. For example, in multiple-offer situations, some real estate licensees become fixated on the price. Price is a major factor in any offer, but it is not the only factor. Sellers look for the best offer that is not necessarily the one for the most money. The financing terms, closing date, any need for repairs, and other buyer contingencies are important considerations for the seller. Because there are more buyers competing for available properties, buyers must make their offers as clean as possible.

Offer All-Cash

Sometimes the best way for a buyer to write a strong offer is to think like a real estate investor. Real estate investors often write a "clean offer," that includes paying cash. Cash offers are tough to beat. Sometimes, no matter how attractive the offer is, it cannot beat the strength of cash.

When there are multiple offers on a property, a cash offer has significant advantages. In a competitive seller's market, buying a home with cash can be a smart move. It is usually superior to all other bidding war strategies, except maybe offering the highest bid. Cash makes the offer look more appealing to a seller who wants to quickly finalize the transaction. An all-cash offer is ideal for both parties because it removes many of the hurdles in the buying process. A cash offer avoids the financing and appraisal contingencies that can allow a buyer to be released from the contract. Having a sales contract with fewer contingencies means there are fewer ways for the contract to fall through.

Dealing with cash offers proves that a buyer is serious and has the financial means to expedite the closing. Of course, most buyers don't have the ability to make all-cash offers, so they try an alternative strategy that is waiving the financing contingency discussed later.

Offers Above-Asking

Typically, the easiest way to win a bidding war in real estate is to outbid the competition. Buyers should not make a low offer in a seller's market if they are trying to win in a multiple-offer situation. The offer must be strong enough to show the seller that they are serious about buying the home. They should make the offer aligned to the home's value but still be above the asking price.

However, it is common in many real estate markets for buyers to bid tens of thousands higher than the asking price. If buyers are competing in this kind of market, they need to be prepared for this eventuality. Although offering above asking may secure the property; a higher purchase price means a higher mortgage payment. It may also mean that properties often appraise for less than the winning bid. When this happens, a strong offer will state that the buyer will pay the difference in cash. Additionally, the buyer could owe more than the property is worth, ("be upside down") until the market value catches up with what the buyer paid for the property.

Offer with a Large Earnest Money Deposit

Sellers worry that once they commit to an offer, the winning buyer might back out of the transaction or default on the contract. By then, all of the other buyers may have disappeared. The earnest money deposit is proof that the person is a good-faith buyer.

Having earnest money in escrow ensures that a buyer is committed to purchasing the property. The earnest money deposit (EMD) is the sum of cash the buyer offers the seller when the sales agreement is signed to show the person is serious (i.e., "earnest") about buying their home.

Because the EMD is part of the down payment, buyers are simply offering the seller the money now, rather than later at closing. This money, typically held by a title or escrow company, will go toward the buyer's down payment at closing. On average, a standard EMD is 1 to 3% of the cost of the home. For example, on a $500,000 home, the EMD would be from $5,000 to $15,000.

When buyers make a larger EMD, it may show that they are a serious buyer and that their intentions are genuine. However, the EMD may be in jeopardy if the offer has no contingencies. Buyers must be certain that they intend to buy the home, because if they don't go forward with the transaction, the seller could keep the EMD as compensation for the time wasted.

Offer with a Larger Down Payment

Depending on the type of mortgage, the buyer may be required to make a down payment on the house, and the size of that down payment can affect the strength of the offer. In most cases, the buyer's down payment amount is related to the home loan they are taking out. Making a sizeable down payment is another sign of good faith to the seller. Generally, a larger down payment signals the buyer's financial ability to complete the sale. By putting down a larger down payment, buyers send the message that they are serious about the purchase and capable of meeting all financial obligations.

Get Preapproved by a Lender

Buyers need to be aware of the difference between being prequalified or preapproved for a mortgage.

Prequalified vs Preapproved

A **mortgage prequalification** is an estimate of the person's borrowing power. In effect, it is a statement from the lender putting forth that based on the buyers' current financial circumstances, i.e., income, debt, and credit levels, they will likely be qualified for a mortgage for a certain amount.

The lender may or may not check income or run the credit report to confirm financial details and get a clearer picture of the amount and terms the buyer will qualify for. In reality, a prequalification without verification of financials is almost meaningless.

A **mortgage preapproval** is a written commitment issued by a lender following a comprehensive analysis of their overall creditworthiness. A mortgage preapproval includes such factors as verification of income, verification of employment, available financial resources, and the evaluation of other areas

typical of a credit evaluation process. Mortgage preapproval status for a loan is usually conditional on the following:

- **A suitable property.** The identification by the buyers of a suitable property they wish to purchase.
- **Continued creditworthiness.** Continued creditworthiness means there is no material change in the applicant's creditworthiness or overall financial condition before closing the sale.
- **Additional terms.** Other limitations may or may not be related to the solvency and financial health of the applicant. These added items are ordinarily attached to the traditional mortgage application by the lender. They can include an acceptable title insurance binder, complete a home inspection with some types of loans (VA and FHA), a certification of no termites, or similar again with certain kinds of mortgage products.

Issuance of a mortgage preapproval letter from the lender implies that a credit decision has been made that will more than likely favor the completion of a mortgage commitment letter at some point in the near future. In effect, the mortgage loan has been submitted to underwriting.

Contingencies

Buyer's offers are made up of more elements than just the money being offered. Buyers in a bidding war may look for ways they can make their offer more appealing to a seller. Buyers can make a clean, no-contingency offer in order to make it more competitive and appealing to the seller. One of the riskiest options, however, is submitting a contingency-free offer.

Contingencies are conditions included in an offer that must be satisfied through due diligence before the buyer will move forward with purchasing the home.

The purpose of a contingency clause contained in an offer to purchase is to set out a specific condition that must be fulfilled before the sale can go through. Most contingency clauses act as a safeguard for buyers that allow them to break their contract and walk away from the transaction without losing their earnest money. Only when all contingencies have been removed are the buyers obligated to purchase the property.

From the buyer's perspective, making a contingent-free offer could expose them to serious risks such as learning that the pre-approval for financing is not a final approval or discovering serious defects in the property after the transaction closes. Before submitting a contingency-free offer, buyers should understand the risks involved.

Contingencies that are commonly added by buyers include:

- **Inspection contingency:** Protects a buyer against purchasing a home that is revealed to be in poor condition or requires major repairs.
- **Financing contingency:** Covers a buyer if they are ultimately unable to obtain the mortgage and allows the return of their escrow deposit.
- **Appraisal contingency:** Enables a buyer to rescind their offer if the appraised value of the home is lower than the agreed-upon sales price.
- **Home sale contingency:** Used to provide a buyer with time to secure the sale of their current home.

Every contingency in a real estate contract is a potential roadblock to a seller. Remember that when sellers accept an offer that contains a contingency clause, they are effectively taking their home off the market for the period in which the buyers are attempting to meet the conditions. Therefore, sellers should ensure that an agreed upon time for the condition to be met is specified in the offer to purchase. If one of the conditions contained in a contingency clause cannot be met after every reasonable effort has been made to do so, the contract ends and there is no legal obligation to complete the purchase or sale.

All of these contingencies can lead to trouble, particularly if the buyer's current home has to sell first. In fact, it is almost a complete waste of time for sellers to consider a home sale contingency.

One mistake licensees make when they write a home sale contingency clause, is that they make the purchase of the new property contingent on the sale of the current property. When a contract is signed for the buyer's current property it is considered sold. To remove all doubt, the contingency clause should be written as "contingent of the sale and subsequent closing of their current property at…"

From the seller's perspective, the fewer contingencies that buyers have in a real estate contract, the better. All things being equal, if a seller receives a great offer without contingencies, then it may be accepted. Buyers often include a number of stipulations in their offer that can make the transaction harder to close. They may require that the house appraise for a certain amount, or that they must get approved for a loan, or that the home has to pass a home inspection.

Clean, non-contingent offers are more likely to be chosen by sellers because they know that regardless of what happens with the transaction, they will either sell their home or get the buyer's forfeited earnest money if the buyer walks away from the transaction. However, clean non-contingent offers increase the riskiness of the transaction for buyers. Waiving contingencies is risky because when buyers waive contingencies, they still must purchase the home or surrender their earnest money if any problems arise.

Waiving the Inspection Contingency

As you know, a home inspection provides buyers with an understanding of the property's condition. A home inspection can actually be one of the biggest stumbling blocks to closing. Unless the seller's home is in mint condition, most buyers rarely remove their home inspection contingency. However, when buyers agree to waive a home inspection, they must be serious about the house.

Licensees should use a home inspection waiver form, and have it signed by the buyers if they elect not to have a home inspection. That way, if the buyers experience problems with the property after they move in, they are estopped from alleging that they were not told about the benefits of a home inspection.

Waiving a home inspection can be a significant advantage for buyers willing to do this in a bidding war, especially if the seller knows the home inspector will discover some problems. In an as-is real estate purchase agreement, the buyer retains the right to renegotiate the terms of the contract or to back out of it if they find unacceptable property conditions. If the home has some flaws, especially ones that could be significant monetarily for the seller, waiving the inspection could be a big plus. However, by waiving the inspection contingency, buyers are taking a risk and may end up buying a house that has major defects.

Instead of waiving the inspection contingency, buyers could make the home inspection period no longer than one week. When an offer is accepted, the home is off the market. With multiple offers, the last thing a seller wants is to wait an extended period of time for an inspection to take place. This strategy is less risky for the buyer than waiving the home inspection contingency, however, it creates the risk of not being acceptable to the seller. In a seller's market the seller probably will not negotiate any repairs after the inspection and will sell the property "as-is. However, the buyer will be able to make an informed decision of whether or not to proceed with the purchase.

Waiving the Financing and Appraisal Contingencies

- **Waiving the financing contingency.** Having a preapproval letter is no guarantee that a lender will fund the loan needed to purchase a house. The financing contingency is the agreement buyers make with sellers that the buyers will only purchase the property if the financing comes through. By waiving the financing contingency, the buyers are reassuring the seller that they are confident they will get the loan. If the financing falls through, the buyers will not be able to back out of the purchase. Buyers either surrender their earnest money or pay the full purchase price of the home regardless of whether their loan was approved or not.
- **Waiving the appraisal contingency.** It is very risky for buyers to waive the appraisal contingency unless they have enough cash to cover any potential shortfall between offered price and appraised price. An offer indicating the buyer's intention to bring money to the table if the home does not appraise, will definitely increase the buyer's odds of success. When buyers are bidding thousands over the asking price, there is a distinct possibility the house will not appraise for the agreed-upon price. By waiving the appraisal contingency, buyers may be forced to pay the difference between the sales price and the appraised value of the home out of pocket or lose their earnest money.

Waiving the Home Sale Contingency

Buyers will sometimes add a contingency that their current home must sell first before they will buy the seller's home. If buyers need the proceeds from the sale of their current home to be able to afford their next home, waiving a home sale contingency can put them in financial jeopardy. If the sale of the current home falls through, they would be forced to give up their earnest money. When selling a home, listing associates should always do their due diligence, and find out if the buyers have to sell an existing home before buying another.

Clean Offers Do Not Include Extras

When competing against multiple offers, buyers should limit the extras they ask for from the sellers. When buyers are outbidding each other, sellers are not motivated to pay for the buyer's closing costs or give them a paint or carpet allowance. As a twist, buyers might offer to pay one or more of the customary seller's closing costs, such as title policies, escrow fees, and transfer fees.

Even though buyers may want the high-end washer and dryer or unique light fixture that the seller excluded from the sale, they should not ask for them in their offer. Asking for personal items that the seller specifically excluded from the sale could weaken the buyer's offer. Remember, the buyer's goal is to have their offer accepted on the home.

Include an Escalation Clause

A bidding war is a nice position for sellers because multiple offers increase the chance of selling way over asking price. When buyers are willing to outbid other buyers to purchase a property, they may include an escalation clause in the offer. An escalation clause is a clause that allows buyers to increase their offer amount over and above the highest bidder.

However, escalation clauses can place a buyer at risk of paying more than they otherwise would have to or signaling to the seller that the buyer will pay more than they are initially offering. If the offer being presented does not represent the buyer's best offer, then the buyer is gambling that although not their best offer, it will be better than anyone else's offer. The

seller may, at any point (even at the first offer stage), decide to take an offer rather than continue negotiations with multiple buyers.

Buyers who submit an offer that includes an escalation clause are laying all their cards on the table by letting the seller know they are willing to increase their initial purchase offer amount. If the escalation clause contains a maximum price ceiling (or cap), this offer tells the seller the top price that this buyer is willing to pay. The buyer needs to understand this gamble, especially in multiple-offer situations. This could be unfortunate for the buyer who includes an escalation clause with a cap because the buyer's maximum is now the seller's minimum price for competing bids. The seller may counter all competing offers with a request for new offers not less than the new minimum price. This new minimum asking price may force the buyer with the escalation clause out of the game.

Typically, the escalation clause states the escalation amount, a ceiling (or cap), and requires proof of competing offers.

Escalation amount: An escalation clause should outline the amount the buyer wants to exceed any other offers by.

Price ceiling: A price ceiling is the maximum amount that the buyer is willing to pay to purchase that home. Setting the price ceiling is important because buyers should not pay significantly more than the market value of the home. Additionally, unless buyers are paying all cash, the ceiling in the escalation clause should not exceed the buyer's preapproved loan amount on their lender preapproval letter.

Example:

Bob will pay $460,000 for the property and has an escalation of $4,000 with a price ceiling of $470,000. The Seller receives another offer at $467,000. Because of the escalation clause, Bob's offer will increase to their price ceiling amount of$470,000. This new price does not exceed Bob's price ceiling.

Proof of an offer: For the escalation clause to go into effect, the seller must provide proof that a competing offer exists. That way, the seller cannot use the escalation clause as an excuse to make the buyer pay more for the home.

The escalation clause states that if a competing offer is made on the property, the bid will automatically increase by a certain amount of money to surpass the new offer. The clause will state how much more the buyer is willing to pay than the highest offer and their spending limit. For example, the clause might state, "If this is not the highest qualified bid for this property, the Buyer will pay "x" dollars more than the highest bid to a maximum of (x dollars), with proof that there was a qualified bid for more than the buyer's original bid of (x dollars). Buyer is willing to increase the offer to "y" price."

It is easy to see why real estate licensees and their buyers might like escalation clauses. They think they can trick the seller into accepting an offer that will allow them to beat out the competition and still pay less than the maximum price the property might actually bring in a bidding war.

However, it may be in a seller's best interest to issue a counteroffer. A counteroffer is in place of accepting the buyer's escalation clause offer. The seller may also decide to raise the list price instead of providing a counteroffer or accepting an escalation clause. Escalation clauses should only be used if the buyer believes that there will be multiple offers, or when the buyer expects to pay more than their initial offering price.

Escalation clauses are not prohibited by law, but they do create potential problems for contract formation. Escalation clauses, especially escalation clauses with a price ceiling, could undermine the enforceability of the contract. Remember that an enforceable contract is formed when the seller accepts the buyer's offer. However, to be enforceable, the offer must have definite terms. The use of an escalation clause with a price ceiling might not be considered definite terms that are sufficient to form the basis for an enforceable offer. At a later date, either the buyer or the seller could change their mind about the transaction and claim that the inexact language did not create enforceable contract.

Even if an enforceable contract can result from acceptance of an offer with an escalation clause, such clauses do not benefit sellers. An escalation clause is an attempt by a buyer to transfer control of negotiations from the seller to this buyer. The buyer's hope is that the "$4,000 more" offer will not be disclosed to other buyers. That way the other buyers will not compete against this buyer. Good for the buyer with the clause, bad for the seller.

Sellers must respond appropriately to escalation clauses to ensure they do not accept an offer without a definitive price term that could result in an unenforceable agreement. Listing associates and their sellers should respond to escalation clauses by either countering the escalation clause offer at a specific price term, or by rejecting all offers and asking for new offers from all buyers at the buyers' highest and best price and terms.

Use of escalation clauses can create the potential for negligence claims against the listing and selling associates. If something goes wrong, the buyer could claim negligence against their real estate professional for suggesting an offer with an indefinite price term and telegraphing the buyer's maximum price. Negligence claims can also be made against the listing associate if they allow the seller to accept such an offer without explanation.

Proof of Competing Offers

There are many real estate professionals who think that they cannot reveal information about multiple offers that are on the table. However, with authorization from the seller, the licensee can reveal the existence of multiple offers, and

even the bid of other offers along with any other terms. The key phrase is "with the seller's permission." Real estate professionals cannot arbitrarily make this decision on their own. Revealing the most favorable offer on the table is often the best way of getting the highest price for the seller.

Unfortunately, unless the listing associate reveals information about competing offers, licensees working with buyers cannot get absolute proof that there are multiple/competing offers on a property, except when an escalation addendum is used.

If the seller chooses to accept an offer using an escalated price through the Escalation Addendum, they must provide "a complete copy of the other offer used to justify the escalated sales price." This is the only contractual obligation required of the seller and licensee to provide proof of a competing offer, as the requirement is only to provide proof of the offer used to justify the price escalation, not all other offers.

Other than that, there are a few ways to determine the likelihood of multiple offers.

- **Days on the market:** The highest chance for multiple offers is within the first week a property is listed, with the likelihood of it decreasing with each week that passes.
- **Price:** If you think the list price seems below market value, you're probably not the only one. In some cases, homes are priced slightly below market value to encourage multiple offers.
- **Market conditions:** In the current market, nearly every detached home or townhouse that is priced at, below, or just above market value is getting multiple offers.
- **Uniqueness:** A unique home, with uniqueness coming from positive features like lot size/quality, has a much better chance of getting multiple offers than a property that is easier to find.

Make the Offer Stand Out

Of course, all-cash offers are hard to beat, but some sellers have other motivations to sell. When buyers ask how to win a bidding war, some things they can do include waiving or shortening contingencies, agreeing to the seller's closing date, giving the seller extra time to move out after closing, without expectation of compensation, including a personal letter, or adding some unique perk that might interest the sellers.

Closing date: For most sellers, the time for closing on the home is a significant factor in their decision process. If the seller is buying and selling at the same time, the closing date will probably be even more critical. Usually, the seller will want to coordinate the buy and sell so that they occur on the same day or at least the same general time frame. Because the coordination of selling and buying at the same time can be very stressful, agreeing to the seller's closing date could mean the difference between winning the bidding war or not.

- **Write a personal letter.** Sometimes a personal letter from the buyer to the seller can explain why the buyer wants to purchase the home. It is a personal touch that is often a good way to make a positive impression on the seller. However, the current trend is not to include personal letters to sellers from buyers in a bidding war due to the potential for housing discrimination allegations to be made.
- **Sweeten the pot.** Although cash is king in bidding wars, some buyers are including other incentives to make their offers stand out from their competitors. For example, instead of offering extra money, some prospective buyers have offered the sellers other things of value, such as an all-inclusive paid vacation or use of a timeshare. Sometimes allowing the sellers to lease back their home for a few months is the perk that sellers actually need.

Make Sure the Offer is Complete

If a seller receives multiple offers that are complete, they may not give an incomplete offer a second look. To have a chance in the running, buyers should make sure to cross their "t's" and dot their "i's." Although it seems unthinkable, a licensee actually emailed a buyer's unsigned offer to the seller. Of course, the seller didn't consider the offer because real estate contracts must be in writing and signed in order to be enforceable. The licensee tried to explain away the omission by claiming that the offer was signed electronically by emailing it to the seller. However, neither the seller nor the unlucky buyer had agreed to conduct the transaction by electronic means.

Check Your Understanding 7.1

Select True or False for each statement. (Answer Key in the back of the book.)

	Contingencies in Offers	True	False
1.	Every contingency in a real estate contract is a potential roadblock to a seller.		
2.	Buyers who waive the appraisal contingency in an offer are assuming less risk.		
3.	Buyers who refuse to include a home inspection contingency in their offer are required to sign a home inspection waiver.		

Before making an offer, the buyer's associate should know how the listing associate plans to handle the offers as they come in. In a multiple-offer situation, the listing associate might present each offer to the seller as it is received or may hold all the offers until a set date to be presented all together to the seller. Are the listing associates asking that all buyer associates have their buyers write their highest and best offers, or highest, best, and final offers?

Depending on the way the listing associate is handling the offers, buyers may not even get a counteroffer, and may only have one opportunity to convince the seller that theirs is the best offer. Sometimes buyers must make their only offer the strongest offer right off the bat.

When a listing associate gets multiple offers on a listing, the seller generally does not negotiate separately with each buyer. Instead, most listing associates announce to all the buyers that they have a multiple-offer situation and invite the buyers to make their highest and best offer or their highest, best, and final offer by a particular deadline. Then, the seller reviews and compares the offers, accepts the best offer, and instructs the listing associate to notify the buyers accordingly. However, the seller may reject all the offers and ask the buyers to bid again.

The Highest and Best Offer Process

Sellers frequently use the highest and best process due to decreasing inventory and increased buyer demand. The highest and best process is standard in residential real estate sales, with each word having a very specific meaning.

Highest refers to the price that typically is the most important consideration to sellers.

Best refers to the other terms, such as financing, closing date, and contingencies. Highest does not always mean best since sellers will often take a lower price to get better terms. For example, an all-cash offer might not be the highest offer, but it could be the best if the seller is concerned with the house appraising or another buyer securing financing.

In the highest and best offer scenario, a seller who has received more than one offer on a property asks everyone to submit their best offer. In the seller's formal request, the seller gives each buyer a chance to improve their offer, and a date and time all offers must be received by the seller. Once all the bids are in, the seller reviews them, selects the best offer, and then the unsuccessful buyers are notified that they have been out bid.

But rather than ending the process right there, the seller (through the listing associate) asks the unsuccessful buyers to improve their offers through another round of bidding.

Highest and best offer situations can frustrate buyers, but the sellers have a good reason to use it. The biggest reason is that they want to formally give every buyer notice of multiple offers and give them a chance to raise their offer. The seller has created a bidding war. At some point the seller tells the buyers to submit their highest, best, and final offer.

The Highest, Best, and Final Offer Process

Sellers who want to speed up the selling process and save time by not getting into negotiating offers and counteroffers on the house use the highest, best, and final offer process. In this method, buyers are told to submit their highest and best offers, but that it is the only offer because there is only one round of bidding.

When using the highest, best, and final process, the term final refers to the fact that the process is supposed to only include one round of bidding, so that buyers should make their very highest and best offers because they are not going to get a chance to improve their bid. The highest, best, and final offer can be an effective strategy when it is used for a hot property where buyers are willing to make a blind bid.

Many real estate professionals follow the highest, best, and final method because it is simple, quick, and a well-accepted standard in the industry. For example, the listing associate solicits the best offers. Then the seller reviews them and makes a decision that eliminates a long, drawn-out process. Additionally, many licensees think that using the highest, best, and final process drives buyers to put their best foot forward, making the best offer they can, to ensure that they have the best possible chance for their offer to be accepted.

Preemptive Offers Subvert the Submission Date

As discussed, many sellers and listing associates set a date and time for submitting offers. All interested buyers are asked to submit offers at that time and will typically be informed of the number of other buyers they are competing against. But sometimes the property has been sold before the submission date arrives because the seller accepted a preemptive offer, often called a bully offer. Preemptive offers expire before the date and time set by the seller for submitting offers.

As you know, listing associates are required to promptly provide all written offers to their sellers, unless they have been instructed otherwise. When a preemptive offer is received, the listing associate should advise the seller that an offer that expires prior to the offer submission date and time has been submitted and then ask the seller how they wish to proceed.

Sellers in this situation should consider that by accepting an offer in advance of the submission date, they may receive less for their property than they would have received by waiting until the submission date and reviewing other offers.

It is also important for sellers to discuss the risks and benefits of dealing with the preemptive offer so that they can make an informed decision, including whether any other buyers have expressed an interest in submitting an offer on the submission date.

Buyers considering submitting a preemptive offer should keep in mind that attempts to subvert the seller's stated offer process may make the seller less likely to consider their offer. In addition, buyers who submit preemptive offers may feel the need to offer a higher purchase price than they would otherwise, in order to convince a seller to entertain their offer before a submission date, (even though other offers may not have even been submitted by the presentation date set by the seller).

Presenting Buyers' Offers

Many licensees feel confident handling and negotiating a single offer; however, they may feel less certain in a multiple-offer situation. Whether it's one or multiple offers, Florida real estate license law requires that licensees treat all buyers and sellers with honesty and fairness.

Listing associates present all offers immediately unless instructed by the seller to hold them until a specific date. Most real estate commission regulations require licensees to deliver a copy of any written offer or other related transaction documents to the seller as soon as practicable. Oral communication of an offer is not sufficient. If multiple offers arrive at the listing firm's office before the listing associate has the opportunity to present any offer, then the listing associate should try to present all offers at the same time to the seller.

With multiple offers, there is no "first in the door" rule, meaning there is no priority given to one offer over another. A seller is not bound to consider offers in the order in which they were received, whether they are full price or exceed full price without concessions.

The listing associate usually helps the seller in reviewing the different terms, in order to choose the best offer for that particular seller. A seller can reject and counteroffer one offer at a time, or they can reject all offers and ask each buyer to make a new best offer. Neither of these options require telling competing buyers the exact price or terms others are offering. If the seller calls for highest and best offers, the listing associate should advise all buyers that they can submit a new offer or stand by their original offer.

The most straightforward way to proceed from a contract law standpoint is to reject all the offers and ask each buyer to make a new best offer. The seller sends each buyer a rejection that informs the buyer there are multiple offers, all offers have been rejected, and that each buyer has been given an opportunity to make their last best offer. The rejection should state a deadline for new offers and can contain a minimum price to be considered.

Sample Language for Requesting New Offers in a Multiple-Offer Situation

In addition to your offer (sales agreement # _____), Seller has received _____ other offers. All offers, including yours, have been rejected. Seller requests that each buyer submit their final best offer no later than _____ (date) _____(time). Seller retains the right to reject any or all offers made pursuant to this request for new offers. [Offers of less than $ _____ will not be considered.]

Sellers can't make one blanket counter to all multiple offers. Each offer must be countered individually. Counteroffers create the power of acceptance in the offeree. If sellers counter all offers simultaneously, they risk creating more than one contract. The problems associated with using counteroffers in multiple-offer situations have led to the creation of multiple counteroffer clauses and even forms.

Knowing how to handle multiple offers in a bidding war as a seller is vital. Sellers and their agents should treat all buyers with honesty and respect. There are certainly some things sellers should not do when they have multiple offers.

- Don't drag out responding in an attempt to get even more offers.
- Don't get greedy.
- Don't use a BAD offer to try to get more from a good offer.

Check Your Understanding 7.2

Select True or False for each statement. (Answer Key in the back of the book.)

	Bidding War	True	False
1.	In a bidding war, sellers often get the price, terms, and conditions they want from the sale.		
2.	Bidding wars are considered legal but unethical.		
3.	A seller may disclose the terms of a buyer's offer to other buyers.		

EVALUATING THE BUYERS' OFFERS

When sellers receive multiple offers for their home, they need to determine which offer is the best one for them. Before reviewing multiple offers, sellers should clarify what they want, and base their decision on their goals. The seller will look at the merits and faults of each offer. For example, if the most money possible is the main goal, sellers should take the highest offer if it makes sense. However, sometimes a lower offer is preferable because it has no contingencies and a quick closing. Once sellers know their priorities, they need to know how to handle multiple offers.

Sellers also need to know about the offer evaluation process, including the main factors that should go into making the decision whether to accept or reject an offer. Sellers who have received multiple offers on their home may need help sorting through all those offers and figuring out which one is the best overall. Listing associates can help sellers with the process of choosing the best offer, by organizing them in a way that makes it easy for sellers to weigh the pros and cons of each offer easily and efficiently.

In a multiple offer situation, a seller should carefully consider when and how to respond in order to avoid entering into more than one binding contract to sell the property. For example, a seller should generally NOT counter more than one offer at a time, so as to avoid entering into multiple binding contracts to sell the same property to different buyers.

Create a Comparison Chart

Listing associates should prepare a comparison chart or spreadsheet so the relevant differences between offers are clear. The chart will help sellers determine which offers are the best and most competitive. For example, offers can be prioritized by those that are all cash, preapproved for a loan, will give the seller time to move, or are flexible and have few or no contingencies. Once the seller has selected their choices based on objective criteria, they can then go through the selected offers. The spreadsheet should be saved in the licensee's records.

When sellers receive multiple offers, it is usually best to go through each, one by one, and narrow it down by evaluating each offer and responding to the top three or four initially. When sellers receive a strong offer that meets their goals, they should begin negotiations with that buyer and reject the other offers. If none of the preferred offers come to an agreement, then go back to the others.

Common Ways to Handle Multiple Offers

- Go back to all offerees with a "best and final" and ask them to come back with their highest bid along with their best terms.
- Accept one of the offers on the table. Maybe one offer meets the price and terms of the seller.
- Negotiate with one or more of the offerees but exclude some on the table, such as offers that are too low or have unacceptable terms or contingencies.
- Reject all of the offers because none of them are acceptable.

Seller's Goals

The seller's initial impulse may be to pick the highest bid on the table forgetting that the offer price is not the only thing worth considering. Sellers have their own motivations and priorities when deciding which offer to accept or reject. When evaluating buyers' offers, sellers analyze the earnest money deposit, down payment, and contingencies (if any). The time to close is usually a significant consideration for both the buyer and seller. For most sellers a quick closing is ideal. They can get their money and get on with their life.

Remember, the highest price is not necessarily the best offer for a seller. The most important factor is NOT the highest price; it is choosing the buyer most likely to actually complete the purchase. Sellers must do their best to choose the buyer who will follow through. Some sellers choose the highest offer without considering the buyer's desire or ability to close, only to lose the transaction weeks later and realize the other buyers they rejected bought other homes. Sellers need to determine if the buyer can actually afford the final offering bid and close the sale.

The Buyer's Ability to Perform

A buyer's zealous overbidding may cause funding or appraisal problems. Buyers can offer any number they want to offer, and most will offer what they can afford. However, buyers can become irrational when they get competitive, especially in a bidding war over their "dream home." Bidding wars can create a frenzied environment where being rational often goes out the window.

The buyers may be approved for a smaller loan than the offer they end of making, hoping that somehow, they can get the extra money. But what if they can't? Hopefully the buyers have been pre-approved for a loan big enough to cover the cost of the offer they made, but if the buyers haven't, then sellers are better off with a buyer who has a proven ability to pay.

When any property is significantly overpriced, there is an increased potential for the loan not funding because the home does not appraise. When a buyer makes an offer that is higher than the actual value of the home, the seller may run into problems if the buyer struggles to obtain funding from the lender. Anytime a buyer utilizes a loan to purchase a home, the lender will require an appraisal to verify the market value of the home before funding the loan. Lenders do this to protect themselves and to ensure they make good business decisions. It can be quite upsetting for both the buyer and the

seller to get a low appraisal and discover that the loan will not be for the amount the buyer offered.

When bidding wars happen there is an increased likelihood of a home not appraising for the agreed-upon sales price. This can create a problem if the buyer only has a 5% down payment and doesn't have additional down payment funds. If the appraisal comes in low, the buyer will not have the funds to make up the difference between the appraised value and the agreed-upon sale price.

To avoid this problem, sellers should select the offer of a buyer who has put enough money down to satisfy a lender in the event that an appraisal comes in low. Buyers with a higher down payment may be in a better condition financially to cover the "appraisal gap" difference.

Another important consideration when evaluating an offer is the size of the earnest money deposit. If a buyer tries to back out of an offer for no good reason, the seller typically keeps the earnest money deposit. Therefore, the higher the earnest money, the stronger the offer.

Contingencies

Most offers have contingencies that must be met to complete the transaction, or the buyer is entitled to walk away with their earnest money. Contracts with fewer contingencies are more likely to close in a timely fashion. As we reviewed earlier, four of the most common contingencies include the home inspection contingency, financing contingency, appraisal contingency, and the sale of current home contingency.

These contingencies are standard for most real estate sales contracts. The one exception is the sale of current home contingency, which tends to be used more often in a strong buyer's market, when buyers have greater leverage over sellers.

Cash May be King

A cash offer is appealing because the transaction will have fewer contingencies. The sale can close much faster, with no need to worry about the appraisal coming in low or whether the lender will ultimately fund the buyer to make a purchase. Some sellers consider a cash offer to be ideal because of its convenience and are willing to take a lower cash offer over a higher offer where the buyer needs financing.

When the Offer is Not Accepted

Buyers have to understand and except the fact that in multiple-offer situations only one offer will result in a sale, and one (or more) prospective buyers will be disappointed that their offer was not accepted.

However, several online real estate websites provide the final sales price of properties making it easy for buyers to see the actual sales price of the property they bid on. If their offer wasn't accepted, and they find out that the property sold for less than what they offered, it doesn't necessarily mean there was illegal or unethical conduct by the seller or the listing associate. There may have been more ideal terms, or a lack of contingency clauses in the successful offer that were more important to the seller. Maybe the closing date was better aligned with the seller's needs, or the seller felt that the financing terms for the buyer were more realistic.

Just because sellers list their homes, doesn't mean they are required to accept an offer. Quite the opposite is true, sellers are never required to accept an offer, even if it is over the asking price. They can counter the offer, reject it, or simply decline to respond. There are many reasons that an offer is not accepted, but the most common are listed here:

- **Seller received a better offer.** As mentioned earlier, the licensee working with the buyer should contact the listing associate to find out what the seller wants in order to facilitate a transaction. With that information, the buyer may be able to write a stronger offer that the seller will accept. Sellers will accept the offer that they perceive as better than the other contenders. Licensees should help educate buyers on how to write a strong first offer that might stand out above the rest and ultimately be accepted by the seller.
- **Price was too low.** Even though licensees are required to deliver all offers, sellers do not have to respond to any of them, let alone those that are less than the list price. A seller may feel insulted by a low offer and reject the offer outright with no further discussion. Obviously, sellers won't consider low offers if they've received multiple offers.
- **Price was too high.** Unless the offer is all cash or the buyer waives the appraisal contingency, many listing associates will try to dissuade the seller from accepting an offer that is too high, especially if it's not likely that the property will appraise for that much. The offer will fall apart when the lender realizes that the loan terms exceed the property's actual value.
- **Variable commission structure.** Many listing associates agree to reduce the commission to their sellers if they also represent the buyers in the same transaction. For instance, if two offers come in at the same price, and one of those offers is from the listing associate, the seller would pay less commission by accepting their listing associate's offer and net more from the sale.

  In this scenario, the licensee would earn both the listing and selling side of the commission, or double what they would normally earn. Many multi-list systems (MLS), consider this an unfair advantage over other licensees representing buyers in a competitive bidding situation. For that reason, many MLS systems require listing associates to disclose whether there is a variable commission in place.

- **Non-offer related reasons.** The problem might be unrelated to the offer. It may be that the listing and selling associates don't get along. Uncooperative real estate licensees can be offensive, and other real estate professionals will not work with them. In a booming market, some real estate professionals may steer their buyers away from an uncooperative licensee's listings. On the other hand, listing associates may tell their sellers that an offer from the buyer of an uncooperative licensee could create problems.

Success in the real estate sales profession depends on building and maintaining a good reputation, not just with buyers and sellers, but with all real estate professionals you encounter, including your competitors.

Backup Offers

Even if the buyer's offer is not accepted, it could be a backup if the winning offer falls through. A backup offer is simply a contract stating that a buyer will purchase a home from a seller with agreed-upon terms if the primary contract is terminated.

CHAPTER 7 PROGRESS CHECK

1. The first stop in handling multiple offers is to:
   A. let each licensed associate figure it out on their own.
   B. refuse to accept multiple offers.
   C. have an office policy that addresses the subject.
   D. reject all-cash offers.

2. Select the true statement regarding a buyer's offer. The offer should:
   A. be written for more than the appraised value anytime a loan is to be used to fund the purchase.
   B. be written for much less than the listing price.
   C. be structured with the seller's needs in mind.
   D. include as many contingencies as possible.

3. When handling multiple offers, what should licensees do?
   A. Present only the highest offer
   B. Promptly present all offers unless instructed otherwise in writing by the seller
   C. Counter all offers until they meet the seller's requirements
   D. Refuse to accept cash-only offers

4. When applying for a mortgage, an estimate of a person's borrowing power is referred to as mortgage:
   A. prequalification.
   B. contingency.
   C. satisfaction.
   D. preapproval.

5. Which contingency enables a buyer to rescind their offer if the appraised value if the home is lower than the agree-upon sales price?
   A. Inspection contingency
   B. Financing contingency
   C. Appraisal contingency
   D. Home sale contingency

ANSWER KEY

Check Your Understanding Answer Keys

1.1	License Scenario	License Status
1.	A licensee fails to renew their license within the two-year renewal cycle.	Null and void
2.	A licensee elects not to provide real estate services to the public for a period of time.	Voluntary
3.	A licensee does not complete the required 14-hour CE.	Involuntary

1.2	Advertisement Statement	True	False
1.	All advertising must include the name of the brokerage firm as it is registered with the FREC.	✓	
2.	A "blind ad" is an illegal advertisement in which the licensee does not include the rokerage firm's phone number and address in the ad.		✓
3.	In all advertising, a licensee may not use a nickname or initials for their first name and is required to disply their full name as registered with the FREC.		✓

2.1	Ethics Description	Ethics Code
1.	Directed to employees and explains exactly how to interpret each section of the code of conduct	B
2.	Identifies professional responsibilities related to difficult issues and provides clear directive on ethical behavior	C
3.	Sets out values that establishes the code and describes a company's obligation to its stakeholders	A

2.2	Ethics Description	True	False
1.	Ethics is not law; it is simply a code of behavior.	✓	
2.	All real estate licensees must follow the NAR Code of Ethics.		✓
3.	If licensees are unable to solve a dispute between them, they could use an ombudsman or submit to mediation.	✓	

4.1	Landlord and Tenant Questions	Yes	No
1.	If a landlord fails to make an important repair, is the tenant permitted to withhold the rent payment?	✓	
2.	May a landlord enter a tenant's residence for any purpose?		✓
3.	Does a landlord need to notify a tenant of their intention to impose a claim on the tenant's deposit for damages that the tenant caused to a residence?	✓	

4.2	Credit Factor	✓
Income		
Length of credit history		✓
New credit		✓
Marital status		
Total amount owed		✓
Payment history		✓
Bank account balance		
Types of credit		✓

5.1	Brownfields	True	False
1.	Brownfields are commonly old factories and warehouses that stored hazardous substances, pollutants, or contiminants.	✓	
2.	A brownfield site should not be developed into residential housing.		✓
3.	Another term for brownfield sites is superfund sites.	✓	

5.2	Plant and Animal Species	Yes	No
1.	Wild sea oat plants	✓	
2.	American alligators	✓	
3.	Mangroves	✓	

6.1	Discriminatory Statement	Yes	No
1.	This property is a handyman's special.	✓	
2.	This up-and-coming neighborhood is perfect for growing families.	✓	
3.	This is a gorgeous property that's located near restaurants and a shopping mall.		✓

6.2	Broker Consultation	Yes	No
1.	The seller is in violation of fair housing laws.	✓	
2.	An open-house guest wants to make an offer on the house.		✓
3.	The seller does not disclose a material fact about the property.	✓	

7.1	Contingencies in Offers	True	False
1.	Every contingency in a real estate contract is a potential roadblock to a seller.	✓	
2.	Buyers who waive the appraisal contingency in an offer are assuming less risk.		✓
3.	Buyers who refuse to include a home inspection contingency in their offer are required to sign a home inspection waiver.		✓

7.2	Bidding War	True	False
1.	In a bidding war, sellers often get the price, terms, and conditions they want from the sale.	✓	
2.	Bidding wars are considered legal but unethical.		✓
3.	A seller may disclose the terms of a buyer's offer to other buyers.	✓	

Chapter Progress Check Answer Keys

Chapter	Answers
Chapter 1	D, B, C, C, D
Chapter 2	C, B, D, B, A
Chapter 3	No Progress Check
Chapter 4	A, B, C, D, B
Chapter 5	A, C, D, B, C
Chapter 6	A, C, D, D, C
Chapter 7	C, C, B, A, C

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