CHAPTER 2

Opening a Real Estate Office

Business Structures that can Register as a Brokerage Firm

- Sole proprietorship
- Corporation for profit
- Corporation not for profit
- General partnership
- Limited partnership
- Limited liability company
- Limited liability partnership

Sole Proprietorship

Individually owned business

- Personally liable for their and employees actions
- Liable for debts and liabilities of the business
- May be sued individually
- If real estate brokerage, must be qualified broker

Sole Corporation

One individual

- Sole stockholder
- Sole member of the Board of Directors
- Fills every officer position

Dissolution

- File dissolutions forms with the Florida Department of State
- Cancel licenses and registrations
- Settle outstanding liabilities
- Notify the IRS

Corporation for Profit

Formation

- File a proposed charter with the Florida Department of State
- A certificate of incorporation is received
- Certificate identifies the name, life and powers of the corporation

Corporation

- Viewed as an artificial person by the law
- Corporate veil – may protect individuals from personal liability

Corporation for Profit

Structure

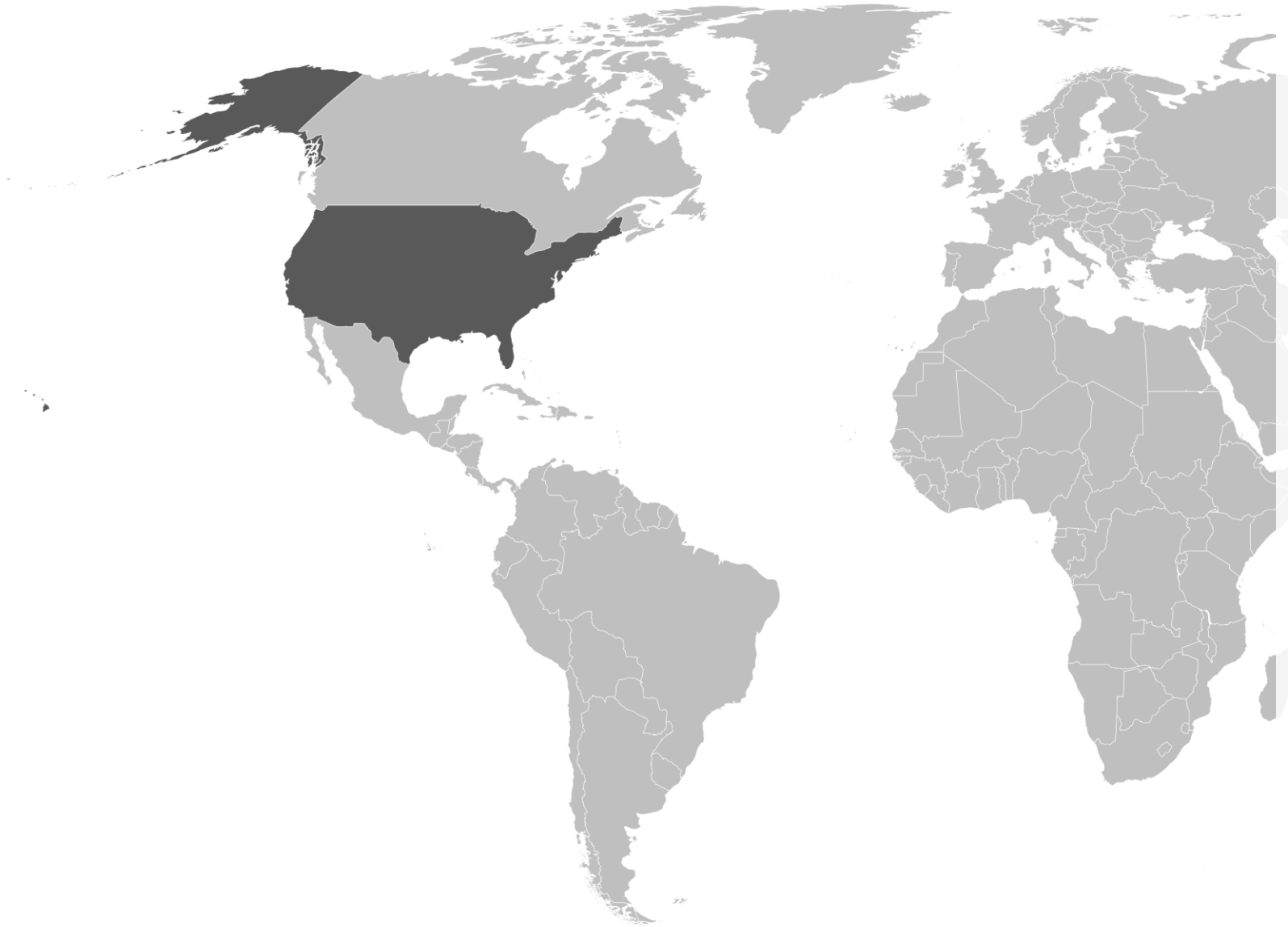
- Stockholders own the corporation
- Board of Directors – manage the business
- Officers - carry out the day-today activities prescribed by the Board of Directors
- Officers include:
  - President
  - Vice-president
  - Secretary
  - Treasurer, etc.

Dissolution

- Actions of the stockholders
- The courts
- Failure to file annual report
- Failure to pay taxes
- Failure to appoint and maintain a registered agent
- Failure to file a change of registered office or agent
- Bankruptcy does not dissolve a corporation

Corporation for Profit

Domestic and Foreign Corporations



Domestic

- Created under Florida law

Foreign

- Created under laws of another state

Company –

- Term required to be used by corporations
- Stockholders do not have to be licensed
- Licensees may be stockholders
- Anyone can own stock

Purpose of an S Corporation

- **Avoids double taxation:**

1) Profit taxed at corporate level
2) Profit distributed to shareholders – taxed again

S Corporation Requirements

1) 100 Shareholders maximum
2) Profits and losses passed directly to shareholders
3) One class of stock
4) Shareholders must be U.S. citizen or legal residents of U.S.

S Corporation

Services of Real Estate

Real Estate Corporations may:

- Own real property for the corporation's use
- Develop real estate and sell to others
- Provide real estate services to the public – becomes a Real Estate **Brokerage** Corporation

Registration of Real Estate Brokerage Corporation

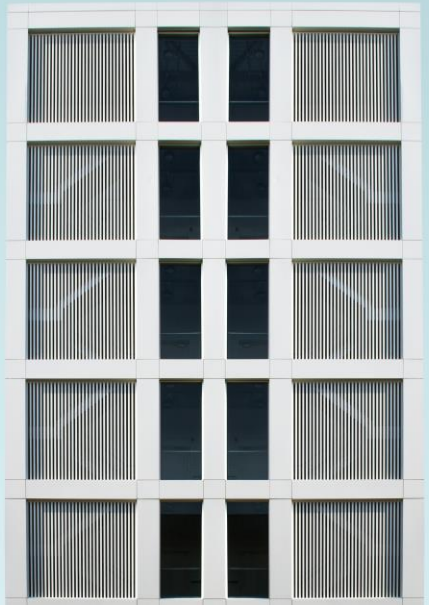
One corporate officer must have active brokers license

- Active broker leaves:
  - Vacancy must be filled within 14 calendar days
  - Finish up old business, not write new
  - Registration cancelled if broker not replaced within 14 calendar days

Registration of Real Estate Brokerage Corporation (cont)

- May have more than one registered broker
- Active broker leaves – appoint another to be designated broker – no effect on business
- Sales/broker associate – may not be an officer or director FREC Rule 61J2 5.016
- Must be registered with DBPR
- Stockholders not required to be licensed

Registration of Real Estate Brokerage Corporation (cont)



- Every officer and director must be registered
- Every ***active*** officer and director must be registered ***and*** licensed
- Sales and broker associates, unlicensed individuals may be stockholders
- Stockholders not required to be licensed

Corporation Not for Profit

- File a proposed charter with the Secretary of State
- May own, buy and sell real estate in limited amounts
- Employees may perform services of real estate without registering with the FREC
- Example: United Fund

General Partnership

- Two or more persons engage in business
- Can be oral, written or implied
- Agree to share profits and losses
- Do not have to register with the State
- Ownership shares may be unequal
- One partner can bind all partners in a transaction

- May own, buy, & sell real estate in the name of the partnership without license
- Partners and employees paid a salary need not be licensed
- Partners and employees paid a commission, transaction fee must be licensed
- Dissolved by agreement, death, legal action or withdrawal of a partner

General

Partnership (cont)

Real Estate Partnerships
vs.
Real Estate Brokerage Partnerships

Real Estate Partnership

- Owns real property
- Salaried employees are exempt from licensing
- Cannot provide real estate services to the public

Real Estate Brokerage Partnership

- Employees receiving commissions, transaction fees & bonuses must be licensed
- Can provide real estate services to the public

- Formed to provide real estate services to others
- May have more than one registered broker
- Active broker leaves – appoint another to be designated broker – no effect on business
- Sales/broker associate – may not be a general partner F.A.C. 61J2-5.016

Real Estate General Brokerage Partnership

- Must be registered with the DBPR
- All active partners must be licensed broker
- Partners not dealing with property owners – registered, not licensed
- Brokerage registration suspended, revoked or cancelled - all licensees are automatically involuntarily inactive

Real Estate General Brokerage Partnership

Ostensible Partnership

- Partnership does not exist – it appears that one does.
- Example:
- Real estate brokerage and a title company share office space. Signage does not indicate they are separate business entities. A real estate brokerage customer uses the services of the title company. The title company makes a mistake costing the buyer thousands of dollars. The buyer sues both companies. Since an ostensible partnership exists, both companies may be liable.
- Brokerage franchisees are not ostensible partners

Limited Partnership

- File with the Florida Department of State:
  - One or more general partners
  - One or more limited partners
- **Dissolution**
  - File a Certificate of Dissolution with the Florida Dept of State
  - Notify others
  - Settle and close out accounts
- **General partners**
  - Have individual and total liability for the actions of the partnership

Limited Brokerage Partnership

Real Estate Limited Brokerage Partnership

- Employees receiving commissions, transaction fees & bonuses must be licensed
- Can provide real estate services to the public

Limited Partnership

- **Limited Partners** are liable:
  - to the extent of investment
  - May invest money or property but not services
  - Name may not appear in the partnership name
  - If name appears in partnership name – limited partner becomes liable as general partner
- Sales or broker associates may be limited partners
- Sales or broker associates may not be general partners

- File with the Florida Department of State:
  - One or more general partners
  - One or more limited partners
- Must include the words Limited Liability Partnership or LLP in the name
- May buy & sell real estate in the name of the partnership
- **Dissolution**
  - File a Certificate of Dissolution with the Florida Dept of State
  - Notify others
  - Settle and close out accounts

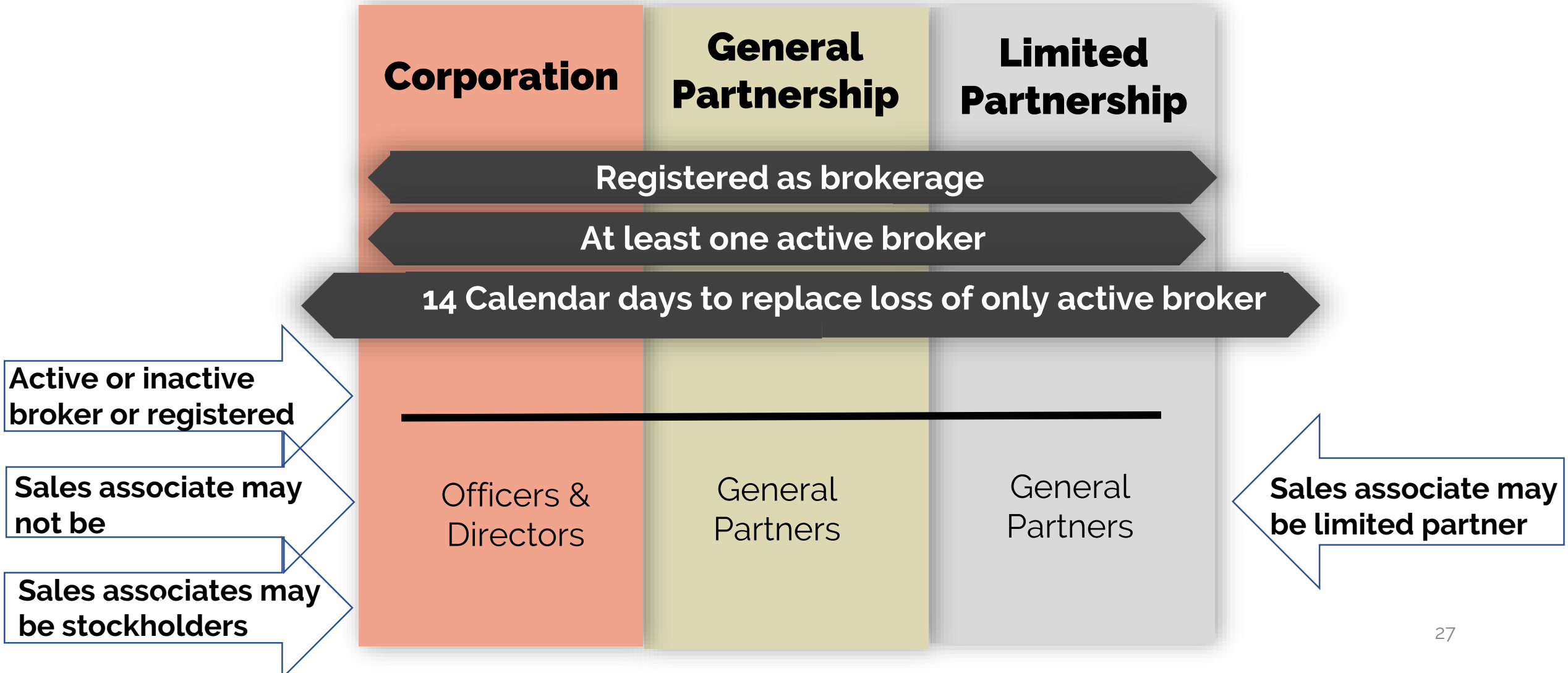
Limited Liability Partnership (LLP)

Limited Liability Company

- Must register with the Department of the State
- Must include the words Limited Liability Company or Limited Company, or L.L.C. or L.C. in the name
- May buy & sell real estate in the name of the company
- **Dissolution**
  - Send Articles of Dissolution to the Department of State
  - Notify others
  - Settle and close out accounts

- **Member Managed LLC**
  - Run by the owners (members)
  - Manager must be licensed broker
  - Sales and broker associates cannot be members
- **Manager Managed LLC**
  - Professional manager hired to run LLC
  - Owners are members of the LLC
  - Member are similar to stockholders
  - Sales and broker associates can be members

Brokerage Entities



Business Structures that Cannot Register as a Brokerage Firm

- Business trust
- Cooperative association
- Unincorporated association
- Corporation sole
- Joint adventure

Joint Venture (Joint Adventure)

- Temporary business relationship
- Can be oral or written
- Similar to partners in a partnership
- Cannot bind each other to new business ventures
- Real estate brokers are individually licensed
- Do not need to register a joint venture
  - Examples: co-brokerage or cooperating on a listing
  - May act as a brokerage, but do not have to register as a brokerage

Business Trust or Syndication

- Can be involved in transactions with its own real estate
- Cannot offer services of real estate to the public
- Trust may own, buy and sell real estate
- Trustees hold title to the real estate
- Only real estate licensees can perform services of real estate for the trust

Cooperative Association

- May not broker real estate
- Usually a group of business people advertising, promoting or marketing their products
- May own, buy and sell real estate for the cooperative
- Employees can perform services of real estate for the cooperative without registering with the FREC

Corporation Sole

- Ecclesiastic or church organization
- Do not have to register with the FREC
- Cannot broker real estate
- One person (bishop) holds title to church property
- Property descends to titleholders successor in business
  - (not their heirs)
- Employees may perform real estates services for the corporation sole without registering with the FREC
- Caution doing business with a corporation sole – doing business with one individual not a corporation

Unincorporated Association

- Group of persons informally organized
- Cannot be formed for commercial business
- Cannot form a real estate brokerage
- Can incur debts and liabilities
- All members become liable to creditors
- Association may hold title to real estate through a trustee
- Example:
  - Community improvement association

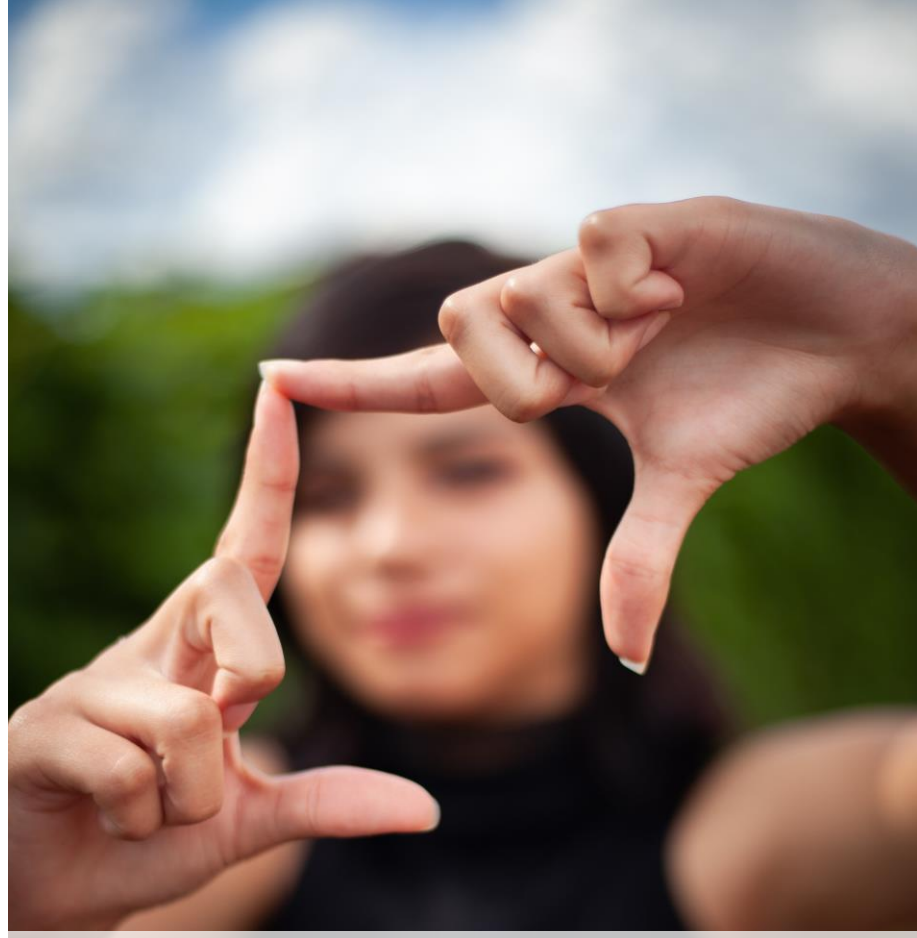
Brokerage Offices

All active brokers must maintain an office

Requirements

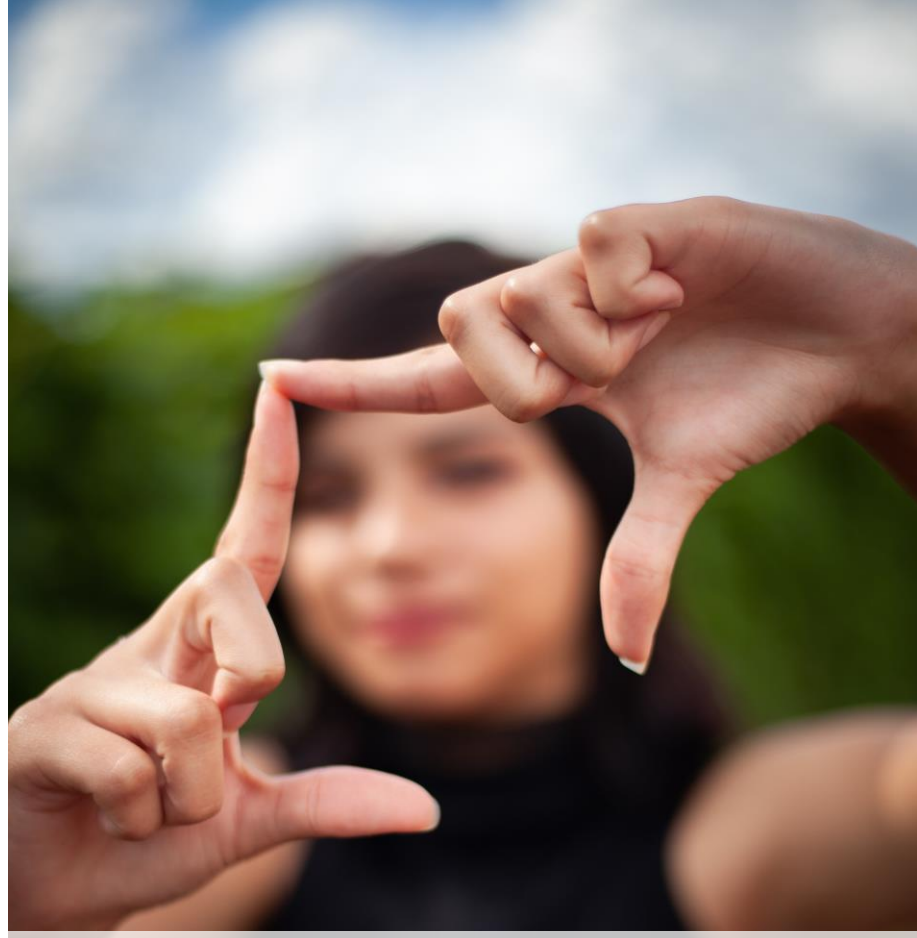
- Registered with the Department of Business and Professional Regulation (DBPR)
- At least one enclosed room in a building of stationary construction
- Negotiations and closings - privacy
- Books, records and files kept there
- May be in another state if broker agrees to cooperate with investigations
- Keep all records for 5 years

- **All active brokers must display**
  - On or about (near) the entrance to the Office
  - Easily observed and read
  - Exterior or interior
  - All Principal and Branch offices
  - Includes residential office
- **Temporary shelters**
  - Are not branch offices
  - Do not require signs
  - Cannot negotiate transactions or assign personal there. If so, must register as a branch office



Signs

- **Office Sign requirements**
  - Name of the broker
  - Licensed Real Estate Broker or Lic. Real Estate Broker
  - Corporate name if applicable
  - Trade name if applicable
  - Partnership name if applicable
- **Fictitious and Trade Names**



Signs

Office Signs

Sunshine Real Estate, Inc.

John Smith

Licensed Real Estate Broker

Jane Smith, Sales Associate
John Doe, Broker Associate

The Real Estate Office

Principal office

- Primary office
- If local zoning allows, may be in the brokers home
- Registration transferable to new location

Branch Offices

- Any additional location where the business is conducted
- Licensees are assigned there
- Advertising uses the office address
- Real estate transactions are conducted there
- Licensees are registered with the principal office but work out of a branch

Branch Offices

- Any additional location where the business is conducted
- Change of location requires a New Registration
- Registration is not Transferable
- May be reopened at the original location with no further action if the registration has not expired

Americans with Disabilities Act

- Real Estate Offices
  - Public accommodations
  - Commercial facilities
  - Must comply with ADA
  - Federal Law designed to remove barriers for disabled individuals
- Disabilities include:
  - Employment
  - Hearing, vision, speech
  - Access requirements
  - Modifications must be made when readily achievable and economically feasible

Advertising

- All advertising must be under the broker's supervision
- Anyone can prepare advertising
- Broker is liable for advertising content
- Address and phone numbers not required
- Only requirement in all ads: **Brokerage trade name**

Advertising

Sales Associate's name

- Not required
- If used in the advertising
  - Last Name must appear as registered with DBPR
  - E.G. If ABC realty runs the following ad
    - 3 bedroom / 2 bath located on a lake only $289,900. call ABC Realty, Inc.(222) 555-4444 ask for John
  - To make it legal
    - 3 bedroom / 2 bath located on a lake only $289,900. call ABC Realty, Inc. (222) 555-4444 ask for John Brown

Fictitious and Trade Names

- Any name other than a persons legal name
- Name must be registered with the Department of State
- Name must be disclosed on registration to FREC
- Can only use one trade name
- Sales and broker associates may not use a trade name

Advertisement of Licensee-Owned Real Estate

- May sell or buy for own benefit
- Should make licensing status known before:
  - Entering into serious negotiations
  - Disclose status in Purchase & Sale Contract
  - Not required when advertising property

Team Advertising

Team or Group Advertising

- Teams perform licensed activities under the brokers supervision
- Each team designates team member responsible for advertising compliance
- Each month registered broker must maintain current list of all team members
- Teams may include “team” or “group” in name
- Team name cannot be larger than brokerage name in all advertising
- Advertising must be clear that the public is dealing with a team
- Unacceptable words in team names – see FREC Rule 61J2-10.026

Use of Organization Names

- Must be a member in good standing when using a name, emblem or insignia indicating the broker is a member of an organization
- REALTOR®
  - Registered trademark of National Association of Realtors (NAR)
  - Not all licensees are REALTORS®

Blind Ad

- Contains only a phone number or address
- Does not disclose the name of the brokerage firm
- **Illegal**
- E.G. If ABC realty runs the following ad
  - 3 bedroom / 2 bath located on a lake only $289,900. call (222) 555-4444
- To make it legal
  - 3 bedroom / 2 bath located on a lake only $289,900. call ABC Realty, Inc.(222) 555-4444

Advertising

Advertising

- Includes
  - Letterhead stationary
  - Business cards
  - Promotional items – key rings, calendars, coffee mugs, etc.
- Must contain the name of the Brokerage Firm
- Licensees name in ad
  - May appear
  - Last name as registered with Commission

Advertising

Ads placed online

- Firm or trade name must appear:
  - Immediately above, below or adjacent to point of contact information
- Point of Contact Information
  - Brokerage firm or name:
    - Mailing address
    - Phone number
    - Fax number
    - E-mail address

Two Types of Advertising

Institutional

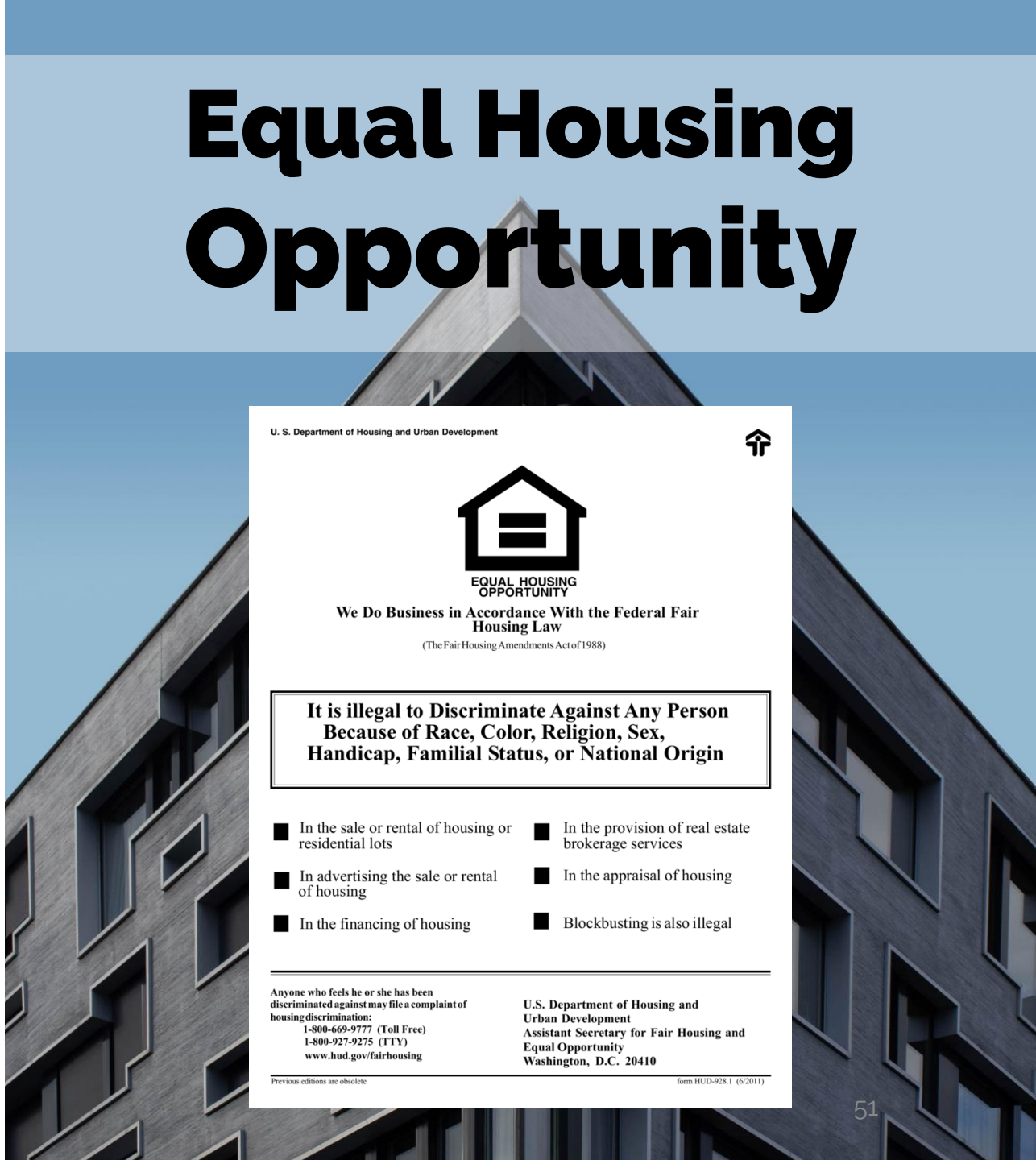
- Creates image
- Not for selling a product
- Business cards

Specific

- Sells the product
- Features a particular home

All brokerage offices must display

HUD's Equal Housing Opportunity poster



Rental Information

- Must receive written contract or receipt
- Request for refund within 30 days
  - 75% if rental is not obtained
  - 100% if not current or is inaccurate

Rental Information

Violation Would be a First Degree Misdemeanor

1) $1,000 fine maximum

2) 1 year in jail maximum

Telephone
Solicitation Laws

- **Florida violation** - $10,000 fine
- **Federal violation** - $40,000 fine
- Federal list
  - May call for-sale-by-owners (FSBO) if buyers are interested in purchasing
  - May not solicit the listing
  - Florida – ok to solicit the listing
- Exception – political candidates, charities, persons conducting surveys

Telephone
Solicitation Laws

Federal Communication Commission

- "Do Not Call" list
  - Calls can only be made with prior written consent
- **Exceptions**
  - Prior business relationship (18 months)
  - Personal relationship
  - Respond to inquiry (3 months)

Hours for calling: 8:00am – 9:00pm

Caller must give identifying information

Telephone Solicitation Laws

Broker compliance

- Establish written procedures
- Train licensees and employees
- Maintain a company-specific do-not-call list
- Update national do-not-call list every 30 days
- Monitor and enforce compliance within company do-not-call policy

CAN-SPAM Act

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003

Sets requirements for commercial e-mailers

- “From” and “To” and routing info must be correct
- Sender must be identified
- Must give recipients an “Opt out”

Junk Fax Protection Act

Prohibits unsolicited ads to fax machines

Applies if sent by:

- Telephone fax machine
- Computer
- Other devices
- Fines begin at $5,000

Coffee Break

15 Minutes