

Committee Substitute for
Committee Substitute for Senate Bill No. 2238

An act relating to real estate appraisers; amending s. 475.611, F.S.; revising and providing definitions applicable to regulation of real estate appraisers; providing that licenses for the category of licensed appraiser shall not be issued after a specified date; redesignating registered assistant appraisers as registered trainee appraisers; amending s. 475.612, F.S.; conforming terminology; authorizing real estate brokers, broker-salespersons, and salespersons to provide valuation services without being regulated as appraisers; authorizing brokers and salespersons to give price opinions without being regulated as appraisers; removing authorization for graduate students in appraising to be supervised by licensed brokers; amending s. 475.613, F.S.; granting the Florida Real Estate Appraisal Board power by rule to establish standards for and regulate supervisory appraisers; removing obsolete language; amending s. 475.6147, F.S.; clarifying applicability of fee provisions to certification and registration; amending s. 475.617, F.S.; clarifying experience requirements for certification of residential and general appraisers; conforming terminology; creating s. 475.6175, F.S.; requiring postlicensure education for registered trainee appraisers to maintain registration; requiring completion of such education prior to the second renewal following initial registration; requiring requalification for subsequent registration as a trainee appraiser; authorizing a physical hardship extension; amending s. 475.618, F.S.; revising continuing education requirements to authorize and provide for certification of distance learning courses by independent certification organizations; conforming terminology; amending s. 475.6221, F.S.; requiring a registered trainee appraiser to perform appraisal services under the direct supervision of a licensed or certified appraiser; providing that a registered trainee appraiser may only receive compensation through or from the primary supervisory appraiser; creating s. 475.6222, F.S.; providing requirements for supervision of registered trainee appraisers; amending s. 475.6295, F.S.; clarifying authority to inspect appraisers and appraisal offices; creating s. 475.631, F.S.; providing for reciprocity for nonresident appraisers; requiring an irrevocable consent to suits and actions and providing for service of process or pleading; requiring resident appraisers who become nonresidents to notify the board and comply with nonresident requirements; providing penalties; authorizing the board to adopt rules for regulation of nonresident appraisers; amending ss. 475.01, 475.011, 475.615, 475.619, 475.620, 475.622, 475.624, 475.626, and 475.627, F.S.; conforming terminology; amending s. 475.001, F.S.; conforming terminology; amending s. 475.01, F.S.; redesignating "broker-salespersons" as "broker associates" and "salespersons" as "sales associates"; expanding the definition of "transaction broker"; amending s. 475.011, F.S.; conforming terminology; amending ss. 475.02 and 475.04, F.S.; conforming terminol-

ogy; creating s. 475.161, F.S.; providing for licensing of broker associates and sales associates; amending s. 475.17, F.S.; revising qualifications for practice; authorizing additional subjects for postlicensure education; restricting approval of distance learning courses to instances of hardship; conforming terminology; amending s. 475.175, F.S.; revising requirements to take the license examination; revising requirements with respect to notice of completion of educational requirements; amending s. 475.181, F.S.; conforming terminology; amending s. 475.182, F.S.; providing guidelines for approving specialty courses; conforming terminology; amending s. 475.215, F.S.; conforming terminology; amending s. 475.22, F.S.; revising requirements with respect to brokers' signs; amending s. 475.23, F.S.; providing for notice of change of address; conforming terminology; amending s. 475.25, F.S.; revising duties of licensees with respect to escrowed property; allowing a broker to place personal or brokerage funds in property management and sales escrow accounts; providing penalties; providing a time limit on filing complaints against a licensee; providing for referral of criminal violations to prosecuting authorities; conforming terminology; amending s. 475.2755, F.S.; conforming terminology; amending s. 475.278, F.S.; revising provisions relating to authorized brokerage relationships; providing a presumption of transaction brokerage; revising disclosure requirements; amending s. 475.31, F.S.; providing effect of revocation or suspension of a broker's license; conforming terminology; amending ss. 475.37 and 475.41, F.S.; conforming terminology; amending s. 475.42, F.S.; providing an additional ground for disciplinary action relating to false or misleading information on real estate located in the state; providing penalties; conforming terminology; amending s. 475.43, F.S.; conforming terminology; amending s. 475.451, F.S.; revising prerequisites for renewal of an instructor permit; removing an exemption from instructor examination requirements; conforming terminology; repealing s. 475.4511(4) and (5), F.S., relating to the prohibition against a school advertising in conjunction with an affiliated broker and publishing a "pass/fail" ratio; amending ss. 475.453 and 475.455, F.S.; conforming terminology; amending s. 475.482, F.S.; increasing the maximum amount that may be in the Real Estate Recovery Fund; conforming terminology; amending s. 475.483, F.S.; revising guidelines for payment of attorney's fees with respect to recovery from the fund; conforming terminology; amending ss. 475.484 and 475.5017, F.S.; increasing maximum amounts payable from the fund; conforming terminology; amending s. 475.612, F.S.; conforming terminology; amending s. 689.25, F.S.; prescribing facts and conditions the existence of which need not be disclosed in a real estate transaction; repealing s. 475.421, F.S., relating to publication of false or misleading information on real estate located in the state; repealing s. 475.422, F.S., relating to disclosure of termite and roof inspection reports; amending ss. 83.49, 440.02, 443.036, 501.604, 687.14, 721.20, and 760.29, F.S.; conforming terminology; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(1) As used in this part:

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

Section 2. Subsection (9) of section 475.011, Florida Statutes, is amended to read:

475.011 Exemptions.—This part does not apply to:

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

Section 3. Subsections (1) and (2) of section 475.611, Florida Statutes, are amended to read:

475.611 Definitions.—

(1) As used in this part, the term:

(a) “Appraisal” or “appraisal services” means the services provided by certified or licensed appraisers or registered trainee assistant appraisers, and includes:

1. “Appraisal assignment” denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

2. “Analysis assignment” denotes appraisal services that relate to the employer’s or client’s individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, ~~or~~ real estate counseling, or real estate consulting.

3. “Appraisal review assignment” denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser’s appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser’s opinion of value.

(b) “Appraisal Foundation” or “foundation” means the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) “Appraisal report” means any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, opinion, or conclusion ~~issued by an appraiser~~ relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property, and includes any a report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

(d) “Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s appraisal, appraisal report, or work.

~~(e)~~(d) “Appraisal subcommittee” means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

~~(f)~~(e) “Appraiser” means any person who is a registered assistant real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

~~(g)~~(f) “Board” means the Florida Real Estate Appraisal Board established under this section.

(h)(g) “Certified general appraiser” means a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

(i)(h) “Certified residential appraiser” means a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

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

(k)(j) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

(l)(k) “Licensed appraiser” means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

(m)(l) “Registered trainee assistant appraiser” means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

(n) “Supervisory appraiser” means a licensed appraiser, a certified residential appraiser, or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the responsibilities of a supervisory appraiser, the geographic proximity required, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

(o)(m) “Uniform Standards of Professional Appraisal Practice” means the most recent standards approved and adopted by the Appraisal Standards Board of the Appraisal Foundation.

(p) “Valuation services” means services pertaining to aspects of property value and includes such services performed by certified appraisers, registered trainee appraisers, and others.

(q) “Work file” means the documentation necessary to support an appraisers analysis, opinions, and conclusions.

(2) Wherever the word “operate” or “operating” appears in this part with respect to a registered trainee assistant appraiser, licensed appraiser, or certified appraiser; in any order, rule, or regulation of the board; in any

pleading, indictment, or information under this part; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this part as constituting or defining a registered ~~trainee assistant~~ appraiser, licensed appraiser, or certified appraiser, not including, however, any of the exceptions stated therein. A single act is sufficient to bring a person within the meaning of this subsection, and each act, if prohibited herein, constitutes a separate offense.

Section 4. Subsections (1), (2), (3), and (5) of section 475.612, Florida Statutes, are amended to read:

475.612 Certification, licensure, or registration required.—

(1) A person may not use the title “certified real estate appraiser,” “licensed real estate appraiser,” or “registered ~~trainee assistant~~ real estate appraiser,” or any abbreviation or words to that effect, or issue an appraisal report in connection with any federally related transaction, unless such person is certified, licensed, or registered by the department under this part. However, the work upon which an appraisal report is based may be performed by a person who is not a certified or licensed appraiser or registered ~~trainee assistant~~ appraiser if the report is approved and signed by a certified or licensed appraiser.

(2) This section does not preclude a broker, salesperson, or broker-salesperson who is not a certified or licensed real estate appraiser or registered ~~trainee assistant~~ real estate appraiser from providing valuation services appraising real estate for compensation. Such persons may continue to provide valuation appraisals and appraisal services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.

(3) This section does not apply to a real estate broker or salesperson who, in the ordinary course of business, performs a comparative market analysis, gives a ~~broker~~ price opinion, or gives an opinion of the value of real estate. However, in no event may this comparative market analysis, ~~broker~~ price opinion, or opinion of value of real estate be referred to or construed as an appraisal.

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified or licensed appraiser ~~or licensed broker~~ and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual.

Section 5. Section 475.613, Florida Statutes, is amended to read:

475.613 Florida Real Estate Appraisal Board.—

(1) There is created the Florida Real Estate Appraisal Board, which shall consist of seven members appointed by the Governor, subject to confirmation by the Senate. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property

in this state for at least 5 years immediately preceding appointment. In appointing real estate appraisers to the board, while not excluding other appraisers, the Governor shall give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Two members of the board shall be representatives of the general public and shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending. The appraiser members shall be as representative of the entire industry as possible, and membership in a nationally recognized or state-recognized appraisal organization shall not be a prerequisite to membership on the board. To the extent possible, no more than two members of the board shall be primarily affiliated with any one particular national or state appraisal association. ~~After July 1, 1992,~~ Two of the members must be licensed or certified residential real estate appraisers and two of the members must be certified general real estate appraisers at the time of their appointment.

(a) ~~Initially, four members of the board shall be appointed for 3-year terms, and three members shall be appointed for 4-year terms. Thereafter, all Members of the board shall be appointed for 4-year terms. Any vacancy occurring in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Upon expiration of her or his or her term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor. A member may not be appointed for more than two consecutive terms. The Governor may remove any member for cause.~~

(b) The headquarters for the board shall be in Orlando.

(c) The board shall meet at least once each calendar quarter to conduct its business.

(d) The members of the board shall elect a chairperson at the first meeting each year.

(e) Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.

(2) The board shall have, through its rules, full power to regulate the issuance of licenses, certifications, registrations, and permits; to discipline appraisers in any manner permitted under this section; to establish qualifications for licenses, certifications, registrations, and permits consistent with this section; to regulate approved courses; and to establish standards for real estate appraisals; and to establish standards for and regulate supervisory appraisers.

Section 6. Section 475.6147, Florida Statutes, is amended to read:

475.6147 Fees.—

(1) The board by rule may establish fees to be paid for application, licensing and renewal, certification and recertification, registration and rereg-

istration, reinstatement, and recordmaking and recordkeeping. The fee for initial application may not exceed \$150, and the combined cost of the application and examination may not exceed \$300. The initial certification, registration, or license fee and the certification, registration, or license renewal fee may not exceed \$150 for each year of the duration of the certification, registration, or license. The board may also establish by rule a late renewal penalty. The board shall establish fees which are adequate to ensure its continued operation. Fees shall be based on estimates made by the department of the revenue required to implement this part and other provisions of law relating to the regulation of real estate appraisers.

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

Section 7. Subsections (1), (4), and (6) of section 475.615, Florida Statutes, are amended to read:

475.615 Qualifications for registration, licensure, or certification.—

(1) Any person desiring to act as a registered trainee assistant appraiser or as a licensed or certified appraiser must make application in writing to the department in such form and detail as the board shall prescribe. Each applicant must be at least 18 years of age and hold a high school diploma or its equivalent. At the time of application, a person must furnish evidence of successful completion of required education and evidence of required experience, if any.

(4) In the event that the applicant is currently a registered trainee assistant appraiser or a licensed or certified appraiser and is making application to obtain a different status of appraisal licensure, should such application be received by the department within 180 days prior to through 180 days after the applicant's scheduled renewal, the charge for the application shall be established by the rules of the board pursuant to s. 475.6147.

(6) All applicants must be competent and qualified to make real estate appraisals with safety to those with whom they may undertake a relationship of trust and confidence and the general public. If any applicant has been denied registration, licensure, or certification, or has been disbarred, or the applicant's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this part, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee assistant appraiser or a licensed or certified appraiser, the applicant shall be deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed

sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration, licensure, or certification.

Section 8. Subsection (1), paragraph (a) of subsection (3), and paragraph (a) of subsection (4) of section 475.617, Florida Statutes, are amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a ~~trainee an assistant~~ appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 75 hours of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice from a nationally recognized or state-recognized appraisal organization, area technical center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 100 hours. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(3) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(4) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

Section 9. Section 475.6175, Florida Statutes, is created to read:

475.6175 Registered trainee appraiser; postlicensure education required.—

(1) The board shall prescribe postlicensure educational requirements in order for a person to maintain a valid registration as a registered trainee appraiser. If prescribed, the postlicensure educational requirements consist of one or more courses which total no more than the total educational hours required to qualify as a state certified residential appraiser. Such courses must be in subjects related to real estate appraisal and shall include coverage of the Uniform Standards of Professional Appraisal Practice. Such courses are provided by a nationally or state-recognized appraisal organization, area technical center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451.

(2) The registration of any registered trainee appraiser who does not complete the board-prescribed postlicensure educational requirements prior to the second renewal following initial registration is void without further

administrative action. Such person may requalify to practice as a registered trainee appraiser only by retaking the required education and complying with all other requirements of law to be registered as a registered trainee appraiser. Any registered trainee appraiser registered prior to July 1, 2003, shall comply with the board-prescribed postlicensure educational requirements within the next two biennial renewal cycles following July 1, 2003.

(3) The board may allow an additional 6-month period after the second renewal following initial licensure or the effective date of this act for completing the postlicensure education courses for registered trainee appraisers who cannot, due to individual physical hardship, as defined by rule, complete the courses within the required time.

Section 10. Subsections (1) and (4) of section 475.618, Florida Statutes, are amended to read:

475.618 Renewal of registration, license, certification, or instructor permit; continuing education.—

(1)(a) The department shall renew a registration, license, certification, or instructor permit upon receipt of the renewal application and proper fee. Such application shall include proof satisfactory to the board that the individual has satisfactorily completed any continuing education that has been prescribed by the board.

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

(c) The board may authorize independent certification organizations to certify or approve the delivery method of distance learning courses. Certification from such authorized organizations must be provided at the time a distance learning course is submitted to the board by an accredited college, university, community college, area technical center, proprietary real estate school, or board-approved sponsor for content approval.

(4) At least 60 days prior to the end of the registration, license, certification, or instructor permit period, the department shall cause to be mailed a notice of renewal and possible reversion to the last known address of the registered trainee ~~assistant~~, licensee, certificateholder, or permitholder.

Section 11. Subsection (2) of section 475.619, Florida Statutes, is amended to read:

475.619 Inactive status.—

(2) Any registration, license, or certification which has been inactive for more than 4 years shall automatically expire. Once a registration, license,

or certification expires, it becomes null and void without any further action by the board or department. Two years prior to the expiration of the registration, license, or certification, the department shall give notice by mail to the registered trainee assistant, licensee, or certificateholder at her or his last known address. The board shall prescribe by rule a fee not to exceed \$100 for the late renewal of an inactive registration, license, or certification. The department shall collect the current renewal fee for each renewal period in which the registration, license, or certification was inactive, in addition to any applicable late renewal fee.

Section 12. Subsection (2) of section 475.620, Florida Statutes, is amended to read:

475.620 Corporations and partnerships ineligible for licensure or certification.—

(2) The term “state-registered ~~trainee assistant~~ appraiser,” “state-licensed appraiser,” or “state-certified appraiser” may only be used to refer to an individual who is registered, licensed, or certified under this part and may not be used following or immediately in connection with the name or signature of a corporation, partnership, firm, or group, or in such manner that it could be interpreted as implying registration, licensure, or certification under this part of a corporation, partnership, firm, or group, or anyone other than an individual appraiser. Corporations, partnerships, firms, or groups which employ certified or licensed appraisers or registered trainee assistant appraisers who provide appraisal reports, as defined by this part, may represent to the public and advertise that they offer appraisals performed by registered, licensed, or certified appraisers.

Section 13. Section 475.622, Florida Statutes, is amended to read:

475.622 Display and disclosure of licensure, certification, or registration.—

(1) Each appraiser registered, licensed, or certified under this part shall place her or his registration, license, or certification number adjacent to or immediately beneath the designation “state-registered ~~trainee assistant~~ real estate appraiser,” “state-licensed real estate appraiser,” “state-certified residential real estate appraiser,” or “state-certified general real estate appraiser,” or their appropriate abbreviations as defined by rule, as applicable, when such term is used in an appraisal report or in a contract or other instrument used by the appraiser in conducting real property appraisal activities. The applicable designation shall be included in any newspaper, telephone directory, or other advertising medium, as defined by rule, used by the appraiser.

(2) A registered ~~trainee assistant~~ appraiser or licensed or certified appraiser may not sign any appraisal report or certification or communicate same without disclosing in writing that she or he is a state-registered ~~trainee assistant~~ appraiser or state-licensed, state-certified residential, or state-certified general appraiser, as applicable, even if the appraisal performed is outside of the scope of the appraiser’s registration, licensure, or certification as an appraiser.

(3) The primary or secondary supervisory supervising licensed or certified appraiser of a registered trainee assistant real estate appraiser must sign each any appraisal report and certification signed by the registered trainee assistant.

(4) The supervisory supervising appraiser of a registered trainee assistant real estate appraiser must disclose her or his or her appropriate designation and number any time the registered trainee assistant is required to make such disclosures.

Section 14. Section 475.6221, Florida Statutes, is amended to read:

475.6221 Employment of registered trainee assistant real estate appraisers.—

(1) A registered trainee assistant real estate appraiser must perform appraisal services under the direct supervision of a licensed or certified appraiser who is designated as the primary supervisory appraiser supervisor. The primary supervisory appraiser supervisor may also designate additional licensed or certified appraisers as secondary supervisory appraisers supervisors. A secondary supervisory appraiser supervisor must be affiliated with the same firm or business as the primary supervisory appraiser supervisor and the primary or secondary supervisory appraiser supervisor must have the same business address as the registered trainee assistant real estate appraiser. The primary supervisory A registered assistant real estate appraiser must notify the Division of Real Estate of the name and address of any primary and secondary supervisory appraiser supervisor for whom the registered trainee assistant will perform appraisal services, and must also notify the division within 10 days after terminating such relationship. Termination of the relationship with a primary supervisory appraiser supervisor automatically terminates the relationship with the secondary supervisory appraiser supervisor.

(2) A registered trainee assistant real estate appraiser may only not receive compensation through or from payment directly from the recipient of an appraisal report, unless the primary supervisory supervising licensed or certified appraiser agrees to the payment arrangement.

Section 15. Section 475.6222, Florida Statutes, is created to read:

475.6222 Supervision of registered trainee appraisers.—The primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision to the registered trainee appraiser. The role and responsibility of the supervisory appraiser is determined by rule of the board.

Section 16. Section 475.624, Florida Statutes, is amended to read:

475.624 Discipline.—The board may deny an application for registration, licensure, or certification; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to

exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if it finds that the registered trainee assistant, licensee, or certificateholder:

(1) Has violated any provisions of this part or s. 455.227(1); however, certificateholders, registrants, and licensees under this part are exempt from the provisions of s. 455.227(1)(i).

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

(3) Has advertised services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

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

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

(6) Has had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against, or has been disbarred, or has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(7) Has become temporarily incapacitated from acting as an appraiser with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however,

suspension of a license, certification, or registration in such cases shall only be for the period of such incapacity.

(8) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(9) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(10) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice which shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

(11) Has made or filed a report or record, either written or oral, which the registered ~~trainee assistant~~, licensee, or certificateholder knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those which are signed or presented in the capacity of a registered trainee ~~assistant~~ appraiser or licensed or certified appraiser.

(12) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.

(13) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.

(14) Has violated any standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

(15) Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

(16) Has failed to communicate an appraisal without good cause.

(17) Has accepted an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(18) Has failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which she

or he operates as a registered trainee ~~assistant~~ real estate appraiser or licensed or certified real estate appraiser.

Section 17. Paragraph (a) of subsection (1) of section 475.626, Florida Statutes, is amended to read:

475.626 Violations and penalties.—

(1) VIOLATIONS.—

(a) No person shall operate or attempt to operate as a registered trainee ~~assistant~~ appraiser or licensed or certified appraiser without being the holder of a valid and current registration, license, or certification.

Section 18. Subsections (1) and (2) of section 475.627, Florida Statutes, are amended to read:

475.627 Appraisal course instructors.—

(1) Where the course or courses to be taught are prescribed by the board or approved precedent to registration, licensure, certification, or renewal as a registered trainee ~~assistant~~ appraiser, licensed appraiser, or certified residential appraiser, before commencing to instruct noncredit college courses in a college, university, or community college, or courses in an area technical center or proprietary real estate school, a person must certify her or his competency by meeting one of the following requirements:

(a) Hold a valid certification as a residential real estate appraiser in this or any other state.

(b) Pass an appraiser instructor's examination which shall test knowledge of residential appraisal topics.

(2) Where the course or courses to be taught are prescribed by the board or approved precedent to registration, licensure, certification, or renewal as a registered trainee ~~assistant~~ appraiser, licensed appraiser, or certified appraiser, before commencing to instruct noncredit college courses in a college, university, or community college, or courses in an area technical center or proprietary real estate school, a person must certify her or his competency by meeting one of the following requirements:

(a) Hold a valid certification as a general real estate appraiser in this or any other state.

(b) Pass an appraiser instructor's examination which shall test knowledge of residential and nonresidential appraisal topics.

(3) Possession of a permit to teach prescribed or approved appraisal courses does not entitle the permitholder to teach any courses outside the scope of the permit.

Section 19. Section 475.6295, Florida Statutes, is amended to read:

475.6295 Authority to inspect.—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all

reasonable hours any appraiser or appraisal office certified, registered, or licensed under this chapter, for the purpose of determining if any of the provisions of this chapter, chapter 455, or any rule promulgated under authority of either chapter is being violated.

Section 20. Section 475.631, Florida Statutes, is created to read:

475.631 Nonresident licenses and certifications.—

(1) Notwithstanding the requirements for certification set forth in ss. 475.615 and 475.616, the board may enter into written agreements with similar licensing or certification authorities of other states, territories, or jurisdictions of the United States to ensure for state-certified appraisers nonresident licensure or certification opportunities comparable to those afforded to nonresidents by this section. Whenever the board determines that another jurisdiction does not offer nonresident licensure or certification to state-certified appraisers substantially comparable to those afforded to certified appraisers or licensees of that jurisdiction by this section, the board shall require certified appraisers or licensees of that jurisdiction who apply for nonresident certification to meet education, experience, and examination requirements substantially comparable to those required by that jurisdiction with respect to state-certified appraisers who seek nonresident licensure or certification, not to exceed such requirements as are prescribed in ss. 475.615 and 475.616.

(2)(a) An applicant who is not a resident of this state shall file an irrevocable consent that suits and actions may be commenced against her or him in any county of this state in which a plaintiff having a cause of action or suit against her or him resides and that service of any process or pleading in suits or actions against her or him may be made by delivering the process or pleading to the director of the Division of Real Estate by certified mail, return receipt requested, and also to the certified appraiser or licensee by registered mail addressed to the certified appraiser or licensee at her or his designated principal place of business. Service, when so made, must be taken and held in all courts to be as valid and binding upon the certified appraiser or licensee as if made upon her or him in this state within the jurisdiction of the court in which the suit or action is filed. The irrevocable consent must be in a form prescribed by the department and be acknowledged before a notary public.

(b) Any resident state-certified appraiser who becomes a nonresident shall, within 60 days, notify the board of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.624.

(c) All nonresident applicants, certified appraisers, and licensees shall comply with all requirements of board rules and this part. The board may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary for the regulation of nonresident certified appraisers and licensees.

Section 21. Section 475.001, Florida Statutes, is amended to read:

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

Section 22. Section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(1) As used in this part:

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

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

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

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

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

(f) “Fiduciary” means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

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

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

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

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

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

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

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

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

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

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

Section 23. Section 475.011, Florida Statutes, is amended to read:

475.011 Exemptions.—This part does not apply to:

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

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

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

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

(5) Any person employed for a salary as a manager of a condominium or cooperative apartment complex as a result of any activities or duties which the person may have in relation to the renting of individual units within

such condominium or cooperative apartment complex if rentals arranged by the person are for periods no greater than 1 year;⁵

(6) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, sells, offers to sell, advertises for sale, buys, offers to buy, or negotiates the sale or purchase of radio, television, or cable enterprises licensed and regulated by the Federal Communications Commission pursuant to the Communications Act of 1934. However, if the sale or purchase of the radio, television, or cable enterprise involves the sale or lease of land, buildings, fixtures, and all other improvements to the land, a broker or sales associate salesperson licensed under this chapter shall be retained for the portion of the transaction which includes the land, buildings, fixtures, and all other improvements to the land;⁵ ~~or~~

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

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

(b) An exchange company, as that term is defined by s. 721.05(14), but only to the extent that the exchange company is engaged in exchange program activities as described in and is in compliance with s. 721.18.

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

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

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

(12) Any dealer registered under the Securities and Exchange Act of 1934, as amended, or any federally insured depository institution and any parent, subsidiary, or affiliate thereof, in connection with the sale, exchange, purchase, or rental of a business enterprise to or by a person who is an accredited investor as defined by 15 U.S.C. s. 77b, the Securities Act of 1933, or any regulation adopted thereunder. This exemption applies whether stock or assets of the business enterprise are purchased or sold. The exemption does not apply to a sale, exchange, purchase, or rental of land, buildings, fixtures or other improvements to the land which is not made in connection

with the sale, exchange, purchase, or rental of a business enterprise. Any reference to rental in this subsection includes a lease transaction.

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

Section 24. Subsection (1) of section 475.02, Florida Statutes, is amended to read:

475.02 Florida Real Estate Commission.—

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

Section 25. Section 475.04, Florida Statutes, is amended to read:

475.04 Duty of commission to educate members of profession.—

(1) The commission shall foster the education of brokers, broker associates ~~broker-salespersons~~, sales associates ~~salespersons~~, and instructors concerning the ethical, legal, and business principles which should govern their conduct.

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

(3) The commission may also publish and sell, at a reasonable price intended to cover costs, a handbook on this chapter and other publications

intended to be textbooks or guidelines for study and guidance of students, applicants, licensees, certificateholders, and permit holders, and members of the general public, copyright of which shall be the property of the state.

Section 26. Section 475.161, Florida Statutes, is created to read:

475.161 Licensing of broker associates and sales associates.—The commission shall license a broker associate or sales associate as an individual or, upon the licensee providing the commission with authorization from the Department of State, as a professional corporation or limited liability company. A license shall be issued in the licensee's legal name only and, when appropriate, shall include the entity designation. This section shall not operate to permit a broker associate or sales associate to register or be licensed as a general partner, member, manager, officer, or director of a brokerage firm under s. 475.15.

Section 27. Section 475.17, Florida Statutes, is amended to read:

475.17 Qualifications for practice.—

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

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

whether the performance of the act or service was done for compensation or valuable consideration.

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

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

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

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

1. An active real estate ~~sales associate's salesperson's~~ license for at least 12 months during the preceding 5 years in the office of one or more real estate brokers licensed in this state or any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction;

2. A current and valid real estate ~~sales associate's salesperson's~~ license for at least 12 months during the preceding 5 years in the employ of a governmental agency for a salary and performing the duties authorized in this part for real estate licensees; or

3. A current and valid real estate broker's license for at least 12 months during the preceding 5 years in any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction.

This paragraph does not apply to a person employed as a real estate investigator by the Division of Real Estate, provided the person has been employed as a real estate investigator for at least 24 months. The person must be currently employed as a real estate investigator to sit for the real estate broker's examination and have held a valid and current sales associate's salesperson's license for at least 12 months.

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

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

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

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

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

(4)(a) The commission may prescribe a postlicensure education requirement in order for a person to maintain a valid broker's license, which shall not exceed 60 classroom hours of 50 minutes each, inclusive of examination, prior to the first renewal following initial licensure. If prescribed, this shall

consist of one or more commission-approved courses which total at least 60 classroom hours on one or more subjects which include, but are not limited to, advanced appraisal, advanced property management, real estate marketing, business law, advanced real estate investment analyses, advanced legal aspects, general accounting, real estate economics, syndications, commercial brokerage, feasibility analyses, advanced real estate finance, residential brokerage, advanced marketing, technology, advanced business planning, time management, or real estate brokerage office operations. Required postlicensure education courses must be provided by an accredited college, university, or community college, by an area technical center, by a registered real estate school, or by a commission-approved sponsor.

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

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

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

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

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

2. The commission shall provide for postlicensure education courses to be made available by correspondence or other suitable means to any person who, by reason of hardship, as defined by rule, cannot attend the place or

places where courses are regularly conducted or does not have access to the distance learning courses.

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

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

Section 28. Section 475.175, Florida Statutes, is amended to read:

475.175 Examinations.—

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

(a) Submits to the department the appropriate notarized or electronically authenticated application and fee, two photographs of herself or himself taken within the preceding year, and a fingerprint card. The fingerprint card shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The fingerprint card shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprint card by the Florida Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for examination. Effective July 1, 2006, an applicant shall provide fingerprints in electronic format.

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

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

Section 29. Subsection (1) of section 475.181, Florida Statutes, is amended to read:

475.181 Licensure.—

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

Section 30. Section 475.182, Florida Statutes, is amended to read:

475.182 Renewal of license; continuing education.—

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

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

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

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

Section 31. Section 475.215, Florida Statutes, is amended to read:

475.215 Multiple licenses.—

(1) A licensed broker may be issued upon request additional licenses as a broker, but not as a ~~sales associate salesperson~~ or as a ~~broker associate broker-salesperson~~, whenever it is clearly shown that the requested additional licenses are necessary to the conduct of real estate brokerage business and that the additional licenses will not be used in a manner likely to be prejudicial to any person, including a licensee under this chapter.

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

Section 32. Subsection (1) of section 475.22, Florida Statutes, is amended to read:

475.22 Broker to maintain office and sign at entrance of office; registered office outside state; broker required to cooperate in investigation.—

(1) Each active broker shall maintain an office, which shall consist of at least one enclosed room in a building of stationary construction. Each active broker shall maintain a sign on or about the entrance of her or his principal office and each branch office, which sign may be easily observed and read by any person about to enter such office ~~and shall be of such form and minimum dimensions as shall be prescribed by the commission.~~ Each sign must contain the name of the broker, together with the trade name, if any. For a partnership or corporation, the sign must contain the name of the firm or corporation or trade name of the firm or corporation, together with the name of at least one of the brokers. At a minimum, the words "licensed real estate broker" or "lic. real estate broker" must appear on the office entrance signs.

Section 33. Section 475.23, Florida Statutes, is amended to read:

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

Section 34. Subsection (1) of section 475.25, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

475.25 Discipline.—

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

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

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has

formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

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

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

a. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;

b. With the consent of all parties, submit the matter to arbitration;

c. By interpleader or otherwise, seek adjudication of the matter by a court; or

d. With the written consent of all parties, submit the matter to mediation. The department may conduct mediation or may contract with public or private entities for mediation services. However, the mediation process must be successfully completed within 90 days following the last demand or the licensee shall promptly employ one of the other escape procedures contained in this section. Payment for mediation will be as agreed to in writing by the parties. The department may adopt rules to implement this section.

If the licensee promptly employs one of the escape procedures contained herein, and ~~if she or he~~ abides by the order or judgment resulting therefrom, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property. Under certain circumstances, which the commission shall set forth by rule, a licensee may

disburse property from the licensee's escrow account without notifying the commission or employing one of the procedures listed in sub-subparagraphs a.-d. If the buyer of a residential condominium unit delivers to a licensee written notice of the buyer's intent to cancel the contract for sale and purchase, as authorized by s. 718.503, or if the buyer of real property in good faith fails to satisfy the terms in the financing clause of a contract for sale and purchase, the licensee may return the escrowed property to the purchaser without notifying the commission or initiating any of the procedures listed in sub-subparagraphs a.-d.

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

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

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

(g) Has had a broker's or sales associate's ~~salesperson's~~ license revoked, suspended, or otherwise acted against, or has had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country.

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

(i) Has become temporarily incapacitated from acting as a broker or sales associate ~~salesperson~~ with safety to investors or those in a fiduciary relation with her or him because of drunkenness, use of drugs, or temporary mental derangement; but suspension of a license in such a case shall be only for the period of such incapacity.

(j) Has rendered an opinion that the title to any property sold is good or merchantable, except when correctly based upon a current opinion of a licensed attorney at law, or has failed to advise a prospective purchaser to

consult her or his attorney on the merchantability of the title or to obtain title insurance.

(k) Has failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as a broker in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in this state, or to deposit such funds in a trust or escrow account maintained by her or him with some bank, credit union, or savings and loan association located and doing business in this state, wherein the funds shall be kept until disbursement thereof is properly authorized; or has failed, if a sales associate salesperson, to immediately place with her or his registered employer any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as agent of the registered employer. The commission shall establish rules to provide for records to be maintained by the broker and the manner in which such deposits shall be made. A broker may place and maintain up to \$5,000 of personal or brokerage funds in the broker's property management escrow account and up to \$1,000 of personal or brokerage funds in the broker's sales escrow account. A broker shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. It is the intent of the Legislature that, in the event of legal proceedings concerning a broker's escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.

(l) Has made or filed a report or record which the licensee knows to be false, has willfully failed to file a report or record required by state or federal law, has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing; but such reports or records shall include only those which are signed in the capacity of a licensed broker or sales associate salesperson.

(m) Has obtained a license by means of fraud, misrepresentation, or concealment.

(n) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; is under home confinement ordered in lieu of institutional confinement; or, through mental disease or deterioration, can no longer safely be entrusted to competently deal with the public.

(o) Has been found guilty, for a second time, of any misconduct that warrants her or his suspension or has been found guilty of a course of conduct or practices which show that she or he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom she or he may sustain a confidential relation, may not safely be entrusted to her or him.

(p) Has failed to inform the commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(q) Has violated any provision of s. 475.2755 or s. 475.278, including the duties owed under those sections.

(r) Has failed in any written listing agreement to include a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal(s); and has failed to give the principal(s) a legible, signed, true and correct copy of the listing agreement within 24 hours of obtaining the written listing agreement. The written listing agreement shall contain no provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.

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

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

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

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

Section 35. Section 475.2755, Florida Statutes, is amended to read:

475.2755 Designated sales associate salesperson.—

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

salesperson form of representation. In lieu of the transition disclosure requirement in s. 475.278(3)(c)2., the required disclosure notice shall include the following:

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

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

Section 36. Section 475.278, Florida Statutes, is amended to read:

475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.—

(1) BROKERAGE RELATIONSHIPS.—

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

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

(2) TRANSACTION BROKER RELATIONSHIP.—

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

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

(b) Disclosure requirements.—Duties of a transaction broker must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type. This paragraph expires July 1, 2008.

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

IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or salesperson represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

TRANSACTION BROKER NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

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

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

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

..... Date
 Signature
 Signature

This paragraph expires July 1, 2008.

(3) SINGLE AGENT RELATIONSHIP.—

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

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

(b) Disclosure requirements.—

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

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

(c) Contents of disclosure.—

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

IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or salesperson represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

SINGLE AGENT NOTICE

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

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

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

..... Date
Signature

2. Transition disclosure.—To gain the principal’s written consent to a change in relationship, a licensee must use the following disclosure ~~The notice required under subparagraph (b)2. must include the following information in the following form as well as the information required in paragraph (2)(c):~~

CONSENT TO TRANSITION TO TRANSACTION BROKER

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM

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

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

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

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

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

(4) NO BROKERAGE RELATIONSHIP.—

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

- 1. Dealing honestly and fairly;

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

(b) Disclosure requirements.—Duties of a licensee who has no brokerage relationship with a buyer or seller must be fully described and disclosed in writing to the buyer or seller. The disclosure must be made before the showing of property. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a licensee that has no brokerage relationship with a buyer or seller, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase bold type.

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

IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or salesperson represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you decide on representation.

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)

.... (Date) (Signature)

(5) APPLICABILITY.—

(a) Residential sales.—The real estate licensee disclosure requirements of this section apply to all residential sales. As used in this subsection, the term “residential sale” means the sale of improved residential property of

four units or fewer, the sale of unimproved residential property intended for use of four units or fewer, or the sale of agricultural property of 10 acres or fewer.

(b) Disclosure limitations.—

1. The real estate disclosure requirements of this section do not apply when a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker; or when an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential buyer that the owner's employee or single agent is acting on behalf of the owner, whether because of the location of the sales office or because of office signage or placards or identification badges worn by the owner's employee or single agent.

2. The real estate licensee disclosure requirements of this section do not apply to: nonresidential transactions; the rental or leasing of real property, unless an option to purchase all or a portion of the property improved with four or fewer residential units is given; a bona fide "open house" or model home showing that does not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; unanticipated casual conversations between a licensee and a seller or buyer which do not involve eliciting confidential information, the execution of a contractual offer or agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; responding to general factual questions from a potential buyer or seller concerning properties that have been advertised for sale; situations in which a licensee's communications with a potential buyer or seller are limited to providing general factual information, oral or written, about the qualifications, background, and services of the licensee or the licensee's brokerage firm; auctions; appraisals; and dispositions of any interest in business enterprises or business opportunities, except for property with four or fewer residential units.

Section 37. Subsection (1) of section 475.31, Florida Statutes, is amended to read:

475.31 Final orders.—

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

Section 38. Section 475.37, Florida Statutes, is amended to read:

475.37 Effect of reversal of order of court or commission.—If the order of the court or commission denying a license or taking any disciplinary action against a licensee is finally reversed and set aside, the defendant shall be restored to her or his rights and privileges as a broker or sales associate ~~salesperson~~ as of the date of filing the mandate or a copy thereof with the

commission. The matters and things alleged in the information shall not thereafter be reexamined in any other proceeding concerning the licensure of the defendant. If the inquiry concerned was in reference to an application for licensure, the application shall stand approved, and such application shall be remanded for further proceedings according to law.

Section 39. Section 475.41, Florida Statutes, is amended to read:

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

Section 40. Subsection (1) of section 475.42, Florida Statutes, is amended to read:

475.42 Violations and penalties.—

(1) VIOLATIONS.—

(a) ~~A No person may not shall~~ operate as a broker or ~~sales associate salesperson~~ without being the holder of a valid and current active license therefor. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, as provided in s. 775.083.

(b) ~~A No person licensed as a sales associate may not salesperson shall~~ operate as a broker or operate as a ~~sales associate salesperson~~ for any person not registered as her or his employer.

(c) ~~A No broker may not shall~~ employ, or continue in employment, any person as a ~~sales associate salesperson~~ who is not the holder of a valid and current license as ~~sales associate salesperson~~; but a license as ~~sales associate salesperson~~ may be issued to a person licensed as an active broker, upon request and surrender of the license as broker, without a fee in addition to that paid for the issuance of the broker's active license.

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

(e) ~~A No person may not shall~~ violate any lawful order or rule of the commission which is binding upon her or him.

(f) ~~A No person may not shall~~ commit any conduct or practice set forth in s. 475.25(1)(b), (c), (d), or (h).

(g) ~~A No person may not shall~~ make any false affidavit or affirmation intended for use as evidence by or before the commission or a member thereof, or by any of its authorized representatives, nor may shall any person give false testimony under oath or affirmation to or before the commission or any member thereof in any proceeding authorized by this chapter.

(h) ~~A No person may not shall~~ fail or refuse to appear at the time and place designated in a subpoena issued with respect to a violation of this chapter, unless because of facts that are sufficient to excuse appearance in response to a subpoena from the circuit court; nor may shall a person who is present before the commission or a member thereof or one of its authorized representatives acting under authority of this chapter refuse to be sworn or to affirm or fail or refuse to answer fully any question propounded by the commission, the member, or such representative, or by any person by the authority of such officer or appointee; nor may shall any person, so being present, conduct herself or himself in a disorderly, disrespectful, or contumacious manner.

(i) ~~A No person may not shall~~ obstruct or hinder in any manner the enforcement of this chapter or the performance of any lawful duty by any person acting under the authority of this chapter or interfere with, intimidate, or offer any bribe to any member of the commission or any of its employees or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this chapter.

(j) ~~A No broker or sales associate may not salesperson shall~~ place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate salesperson or other person, or for any unlawful purpose. However, nothing in this paragraph shall be construed to prohibit a broker or a sales associate salesperson from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement.

(k) ~~A No person may not shall~~ operate as a broker under a trade name without causing the trade name to be noted in the records of the commission and placed on the person's license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless such partnership or corporation is the holder of a valid current registration.

(l) ~~A No person may not shall~~ knowingly conceal any information relating to violations of this chapter.

(m) ~~A No person may not shall~~ undertake to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons without first being the holder of a valid and current

license as a broker or sales associate salesperson pursuant to this chapter, except as provided in s. 475.011 and chapter 721.

(n) ~~A No broker or sales associate may not salesperson shall~~ enter into any listing or other agreement regarding her or his services in connection with the resale of a timeshare period unless the broker or sales associate salesperson fully and fairly discloses all material aspects of the agreement to the owner of the timeshare period and fully complies with the provisions of s. 475.452. Further, ~~a no broker or sales associate may not use salesperson shall utilize~~ any form of contract or purchase and sale agreement in connection with the resale of a timeshare period unless the contract or purchase and sale agreement fully and fairly discloses all material aspects of the timeshare plan and the rights and obligations of both buyer and seller. The commission is authorized to adopt promulgate rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this paragraph.

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

Section 41. Section 475.43, Florida Statutes, is amended to read:

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

Section 42. Section 475.451, Florida Statutes, is amended to read:

475.451 Schools teaching real estate practice.—

(1) Each person, school, or institution, except approved and accredited colleges, universities, community colleges, and area technical centers in this state, which offers or conducts any course of study in real estate practice, teaches any course prescribed by the commission as a condition precedent

to licensure or renewal of licensure as a broker or sales associate salesperson, or teaches any course designed or represented to enable or assist applicants for licensure as brokers or sales associates salespersons to pass examinations for such licensure shall, before commencing or continuing further to offer or conduct such course or courses, obtain a permit from the department and abide by the regulations imposed upon such person, school, or institution by this chapter and rules of the commission adopted pursuant to this chapter. The exemption for colleges, universities, community colleges, and area technical centers is limited to transferable college credit courses offered by such institutions.

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

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

(b) “Chief administrative person” means the individual who is responsible for the administration of the overall policies and practices of the institution or proprietary real estate school. A chief administrative person must also meet the requirements of a school instructor if actively engaged in teaching.

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

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

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

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

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

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

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

that the permitholder has, since the issuance or renewal of the current permit, successfully completed a minimum of ~~7~~ 15 classroom hours of instruction in real estate subjects or instructional techniques, as prescribed by the commission. The commission shall adopt rules providing for the renewal of instructor permits at least every 2 years. Any permit which is not renewed at the end of the permit period established by the department shall automatically revert to involuntarily inactive status.

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

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

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

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

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

~~(7) Any person holding a school instructor permit on October 1, 1983, is exempt from the instructor examination requirements of paragraph (2)(c) as long as the person continuously holds such a permit and complies with all other requirements of this chapter.~~

~~(7)(8)~~ A permitholder under this section may be issued additional permits whenever it is clearly shown that the requested additional permits are necessary to the conduct of the business of a real estate school and that the additional permits will not be used in a manner likely to be prejudicial to any person, including a licensee or a permitholder under this chapter.

Section 43. Subsections (4) and (5) of section 475.4511, Florida Statutes, are repealed.

Section 44. Section 475.453, Florida Statutes, is amended to read:

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

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

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

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

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

Section 45. Section 475.455, Florida Statutes, is amended to read:

475.455 Exchange of disciplinary information.—The commission shall inform the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation of any

disciplinary action the commission has taken against any of its licensees. The division shall inform the commission of any disciplinary action the division has taken against any broker or sales associate ~~salesperson~~ registered with the division.

Section 46. Section 475.482, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

(3) A fee of \$3.50 per year shall be added to the license fee for both new licenses and renewals of licenses for brokers, and a fee of \$1.50 per year shall be added for new licenses and renewals of licenses for sales associates ~~salespersons~~. This fee shall be in addition to the regular license fee and shall be deposited in or transferred to the Real Estate Recovery Fund. If the fund at any time exceeds \$1 million ~~\$750,000~~, collection of special fees for this fund shall be discontinued at the end of the licensing renewal cycle. Such special

fees shall not be reimposed unless the fund is reduced below \$500,000 by disbursement made in accordance with this chapter.

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

Section 47. Paragraph (a) of subsection (1) and subsections (2) and (3) of section 475.483, Florida Statutes, are amended to read:

475.483 Conditions for recovery; eligibility.—

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

(a) Such person has received a final judgment in a court of competent civil jurisdiction in this state against an individual broker or sales associate salesperson in any action wherein the cause of action was based on a real estate brokerage transaction. If such person is unable to secure a final judgment against a licensee due to the death of the licensee, the commission may waive the requirement for a final judgment. The filing of a bankruptcy petition by a broker or sales associate salesperson does not relieve a claimant from the obligation to obtain a final judgment against the licensee. In this instance, the claimant must seek to have assets involving the real estate transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent civil jurisdiction in this state. If, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee, the commission may waive the requirement for a final judgment.

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

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

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

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

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

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

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

Section 48. Subsections (1), (3), (4), (5), and (7) of section 475.484, Florida Statutes, are amended to read:

475.484 Payment from the fund.—

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

(a) Under s. 475.482(1), in an amount equal to the unsatisfied portion of such person's judgment or ~~\$50,000~~ \$25,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages. Except as provided in s. 475.483, treble damages, court costs, attorney's fees, and interest shall not be recovered from the fund.

(b) Under s. 475.482(2), in an amount equal to the judgment against the broker or ~~sales associate salesperson~~ or \$50,000 \$25,000, whichever is less.

(3) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to ~~\$50,000~~ \$25,000, regardless of the number of claimants or parcels of real estate involved in the transaction.

(4) Payments for claims based upon judgments against any one broker or ~~sales associate salesperson~~ may not exceed, in the aggregate, \$150,000 \$75,000.

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

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

Section 49. Subsection (2) of section 475.5017, Florida Statutes, is amended to read:

475.5017 Injunctive relief; powers.—

(2) All expenses of the receiver shall be paid out of the assets of the brokerage firm upon application to and approval by the court. If the assets are not sufficient to pay all the expenses of the receiver, the court may order disbursement from the Real Estate Recovery Fund, which may not exceed \$100,000 ~~\$75,000~~ per receivership.

Section 50. Subsections (2) and (3) of section 475.612, Florida Statutes, are amended to read:

475.612 Certification, licensure, or registration required.—

(2) This section does not preclude a broker, sales associate ~~salesperson~~, or broker associate ~~broker-salesperson~~ who is not a certified or licensed real estate appraiser or registered assistant real estate appraiser from appraising real estate for compensation. Such persons may continue to provide appraisals and appraisal services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.

(3) This section does not apply to a real estate broker or sales associate ~~salesperson~~ who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of the value of real estate. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to or construed as an appraisal.

Section 51. Section 689.25, Florida Statutes, is amended to read:

689.25 Failure to disclose homicide, suicide, deaths, or diagnosis of HIV or AIDS infection in an occupant of real property.—

(1)(a) The fact that an occupant of real property is infected or has been infected with human immunodeficiency virus or diagnosed with acquired immune deficiency syndrome is not a material fact that must be disclosed in a real estate transaction.

(b) The fact that a property was, or was at any time suspected to have been, the site of a homicide, suicide, or death is not a material fact that must be disclosed in a real estate transaction.

(2) A No cause of action shall not arise ~~arises~~ against an owner of real property, or his or her agent, an or against any agent of a transferee of real property, or a person licensed under chapter 475 for the failure to disclose to the transferee that the property was or was suspected to have been the site of a homicide, suicide, or death or that an occupant of that property was infected with human immunodeficiency virus or diagnosed with acquired immune deficiency syndrome.

Section 52. Sections 475.421 and 475.422, Florida Statutes, are repealed.

Section 53. Paragraph (d) of subsection (3) of section 83.49, Florida Statutes, is amended to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(3)

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and ~~sales associates salespersons~~, shall constitute compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

Section 54. Paragraph (d) of subsection (15) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(15)

(d) “Employee” does not include:

1. An independent contractor, if:

a. The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;

b. The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal requirements;

c. The independent contractor performs or agrees to perform specific services or work for specific amounts of money and controls the means of performing the services or work;

d. The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform;

e. The independent contractor is responsible for the satisfactory completion of work or services that he or she performs or agrees to perform and is or could be held liable for a failure to complete the work or services;

f. The independent contractor receives compensation for work or services performed for a commission or on a per-job or competitive-bid basis and not on any other basis;

- g. The independent contractor may realize a profit or suffer a loss in connection with performing work or services;
- h. The independent contractor has continuing or recurring business liabilities or obligations; and
- i. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

However, the determination as to whether an individual included in the Standard Industrial Classification Manual of 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449, or a newspaper delivery person, is an independent contractor is governed not by the criteria in this paragraph but by common-law principles, giving due consideration to the business activity of the individual. Notwithstanding the provisions of this paragraph or any other provision of this chapter, with respect to any commercial building project estimated to be valued at \$250,000 or greater, a person who is actively engaged in the construction industry is not an independent contractor and is either an employer or an employee who may not be exempt from the coverage requirements of this chapter.

2. A real estate licensee ~~salesperson or agent~~, if that person agrees, in writing, to perform for remuneration solely by way of commission.

3. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, if a written contract evidencing an independent contractor relationship is entered into before the commencement of such entertainment.

4. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, if the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to the performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help; and the owner-operator is paid a commission for transportation service and is not paid by the hour or on some other time-measured basis.

5. A person whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer.

6. A volunteer, except a volunteer worker for the state or a county, municipality, or other governmental entity. A person who does not receive monetary remuneration for services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees

in the same agency or, if such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the department; and

b. Volunteers participating in federal programs established under Pub. L. No. 93-113.

7. Any officer of a corporation who elects to be exempt from this chapter.

8. A sole proprietor or officer of a corporation who actively engages in the construction industry, and a partner in a partnership that is actively engaged in the construction industry, who elects to be exempt from the provisions of this chapter. Such sole proprietor, officer, or partner is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

9. An exercise rider who does not work for a single horse farm or breeder, and who is compensated for riding on a case-by-case basis, provided a written contract is entered into prior to the commencement of such activity which evidences that an employee/employer relationship does not exist.

10. A taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues.

11. A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event. For purposes of this subparagraph, such a person is an independent contractor. For purposes of this subparagraph, the term "sports official" means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

Section 55. Paragraph (n) of subsection (21) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(21) EMPLOYMENT.—“Employment,” subject to the other provisions of this chapter, means any service performed by an employee for the person employing him or her.

(n) Exclusions generally.—The term “employment” does not include:

1. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (g).

2. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

3. Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

a. Service performed in connection with the catching or taking of salmon or halibut for commercial purposes.

b. Service performed on, or in connection with, a vessel of more than 10 net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

4. Service performed by an individual in the employ of his or her son, daughter, or spouse, including step relationships, and service performed by a child, or stepchild, under the age of 21 in the employ of his or her father or mother, or stepfather or stepmother.

5. Service performed in the employ of the United States Government or of an instrumentality of the United States which is:

a. Wholly or partially owned by the United States.

b. Exempt from the tax imposed by s. 3301 of the Internal Revenue Code by virtue of any provision of federal law which specifically refers to such section, or the corresponding section of prior law, in granting such exemption; except that to the extent that the Congress shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the Secretary of Labor under s. 3304 of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in s. 443.141(6) with respect to contributions erroneously collected.

6. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions, except as provided in paragraph (b), and any service performed in the employ of any instrumentality of one or more states or political subdivisions, to the extent that the instrumentality is, with respect to such service, immune under the

Constitution of the United States from the tax imposed by s. 3301 of the Internal Revenue Code.

7. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in paragraph (c).

8. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

9.a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under s. 501(a) of the Internal Revenue Code, other than an organization described in s. 401(a), or under s. 521, if the remuneration for such service is less than \$50.

b. Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

10. Service performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative.

11. Service performed in the employ of an instrumentality wholly owned by a foreign government:

a. If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

b. The Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

12. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a state law; service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law; and service performed by a patient of a hospital for such hospital.

13. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such

individual for such person is performed for remuneration solely by way of commission, except for such services performed in accordance with 26 U.S.C.S. s. 3306(c)(7) and (8). For purposes of this subsection, those benefits excluded from the definition of wages pursuant to subparagraphs (40)(b)2.-6., inclusive, shall not be considered remuneration.

14. Service performed by an individual for a person as a real estate ~~licensee salesperson or agent~~, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

15. Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

16. Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law.

17. Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.

18. Service performed by an individual for a person as a barber, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

19. Casual labor not in the course of the employer's trade or business.

20. Service performed by a speech therapist, occupational therapist, or physical therapist who is nonsalaried and working pursuant to a written contract with a home health agency as defined in s. 400.462.

21. Service performed by a direct seller. For purposes of this subparagraph, the term "direct seller" means a person:

a.(I) Who is engaged in the trade or business of selling or soliciting the sale of consumer products to buyers on a buy-sell basis or a deposit-commission basis, or on any similar basis, for resale in the home or in any other place that is not a permanent retail establishment; or

(II) Who is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in any other place that is not a permanent retail establishment;

b. Substantially all of whose remuneration for services described in sub-subparagraph a., whether or not paid in cash, is directly related to sales or other output, rather than to the number of hours worked; and

c. Who performs such services pursuant to a written contract with the person for whom the services are performed, which contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

22. Service performed by a nonresident alien individual for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F) or subparagraph (J) of s. 101(a)(15) of the Immigration and Nationality Act, and which is performed to carry out the purpose specified in subparagraph (F) or subparagraph (J), as the case may be.

23. Service performed by an individual for remuneration for a private, for-profit delivery or messenger service, if the individual:

a. Is free to accept or reject jobs from the delivery or messenger service and the delivery or messenger service has no control over when the individual works;

b. Is remunerated for each delivery, or the remuneration is based on factors that relate to the work performed, including receipt of a percentage of any rate schedule;

c. Pays all expenses and the opportunity for profit or loss rests solely with the individual;

d. Is responsible for operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

e. Determines the method of performing the service, including selection of routes and order of deliveries;

f. Is responsible for the completion of a specific job and is liable for any failure to complete that job;

g. Enters into a contract with the delivery or messenger service which specifies the relationship of the individual to the delivery or messenger service to be that of an independent contractor and not that of an employee; and

h. Provides the vehicle used to perform the service.

24. Service performed in agricultural labor by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to ss. 101(a)(15)(H) and 214(c) of the Immigration and Nationality Act.

25. Service performed by a person who is an inmate of a penal institution.

Section 56. Subsection (25) of section 501.604, Florida Statutes, is amended to read:

501.604 Exemptions.—The provisions of this part, except ss. 501.608 and 501.616(6) and (7), do not apply to:

(25) A person ~~who is a licensed real estate salesperson or broker~~ pursuant to chapter 475 and who is soliciting within the scope of the chapter.

Section 57. Subsection (4) of section 687.14, Florida Statutes, is amended to read:

687.14 Definitions.—As used in this act, unless the context otherwise requires:

(4) “Loan broker” means any person, except any bank or savings and loan association, trust company, building and loan association, credit union, consumer finance company, retail installment sales company, securities broker-dealer, real estate broker or sales associate ~~salesperson~~, attorney, federal Housing Administration or United States Department of Veterans Affairs approved lender, credit card company, installment loan licensee, mortgage broker or lender, or insurance company, provided that the person excepted is licensed by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license; and also excepting subsidiaries of licensed or chartered consumer finance companies, banks, or savings and loan associations; who:

(a) For or in expectation of consideration arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;

(b) For or in expectation of consideration assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(c) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(d) Holds herself or himself out as a loan broker.

Section 58. Subsections (1) and (6) of section 721.20, Florida Statutes, are amended to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.—

(1) Any seller of a timeshare plan must be a licensed real estate ~~salesperson, broker, broker associate, or sales associate~~ broker-salesperson as defined in s. 475.01, except as provided in s. 475.011.

(6) Notwithstanding the provisions of s. 475.452, it is unlawful for any ~~real estate broker, broker associate salesperson, or sales associate broker-salesperson~~ to collect any advance fee for the listing of any timeshare estate or timeshare license.

Section 59. Paragraph (a) of subsection (1) of section 760.29, Florida Statutes, is amended to read:

760.29 Exemptions.—

(1)(a) Nothing in ss. 760.23 and 760.25 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate ~~licensee broker, agent, or salesperson~~ or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such ~~licensee broker, agent, salesperson, or person~~; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

Section 60. This act shall take effect July 1, 2003.

Approved by the Governor June 20, 2003.

Filed in Office Secretary of State June 20, 2003.