

House Bill No. 1009

An act relating to real estate profession regulation; amending s. 475.161, F.S.; providing for broker associate or sales associate licensure as a professional limited liability company; amending s. 475.181, F.S.; revising and adding conditions for licensure; amending s. 475.183, F.S.; providing continuing education requirements for certain license renewal; requiring the Florida Real Estate Commission to prescribe certain continuing education courses; amending s. 475.25, F.S.; increasing a maximum disciplinary administrative fine; providing additional grounds for discipline for brokers; providing filing limitations for administrative complaints against sales associates; requiring the Department of Business and Professional Regulation or the commission to provide notification to certain persons upon the department's or commission's filing of a formal complaint against a licensee; amending s. 475.278, F.S.; revising the required information on a transaction broker notice, a single agent notice, and a no brokerage relationship notice; amending s. 475.42, F.S.; removing a cross-reference to conform to changes made by the act; amending s. 475.451, F.S.; requiring schools teaching real estate practice to keep certain records and documents and make them available to the department; requiring certain personnel of schools teaching real estate practice to deliver course rosters to the department by a certain date; specifying the information required in a course roster; amending s. 475.453, F.S.; revising a provision relating to rental information given by a broker or sales associate to a prospective tenant; amending s. 475.701, F.S.; revising definitions; amending s. 475.707, F.S.; revising a provision relating to commission notice recording; amending s. 475.709, F.S.; clarifying provisions relating to claim of commission; amending s. 475.711, F.S.; clarifying provisions relating to actions involving disputed reserved proceeds; amending s. 475.713, F.S.; revising the award of costs and attorney's fees in civil actions concerning commission; amending s. 475.715, F.S.; revising the method by which an owner's net proceeds are computed; amending s. 475.719, F.S.; removing an exception from a buyer's broker provision shielding the rights and remedies available to an owner, a buyer, or a buyer's broker; amending s. 475.807, F.S.; revising a provision relating to the recordation of lien notices; providing that the recording of a broker's lien notice or any extension thereof and any lis pendens shall not constitute notice of the existence of any lease; amending s. 721.20, F.S.; removing a cross-reference to conform to changes made by the act; repealing s. 475.452, F.S., relating to advance fees, deposit, accounting, penalty, and damages; providing an effective date.

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

Section 1. Section 475.161, Florida Statutes, is amended 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, limited liability company, or professional limited liability company. A license shall be issued in the licensee's legal name only and, when appropriate, shall include the entity designation. This section shall not operate to permit a broker associate or sales associate to register or be licensed as a general partner, member, manager, officer, or director of a brokerage firm under s. 475.15.

Section 2. Subsection (2) of section 475.181, Florida Statutes, is amended to read:

475.181 Licensure.—

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25. The application shall expire 2 years ~~1-year~~ after the date received if the applicant does not pass ~~fails to take~~ the appropriate examination. Additionally, if an applicant does not pass the licensing examination within 2 years after the successful course completion date, the applicant's successful course completion is invalid for licensure.

Section 3. Subsection (2) of section 475.183, Florida Statutes, is amended to read:

475.183 Inactive status.—

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

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

Section 4. Subsections (1) and (5) of section 475.25, Florida Statutes, are amended, subsection (6) is renumbered as subsection (7), and a new subsection (6) is 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 ~~\$5,000~~ \$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 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, or involves moral turpitude or fraudulent or dishonest dealing. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

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

(h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set

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

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

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

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

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

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

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

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

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

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

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

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

(t) Has violated any standard 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 who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

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

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

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

(7)(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 5. Paragraph (c) of subsection (2), paragraph (c) of subsection (3), and paragraph (c) of subsection (4) of section 475.278, Florida Statutes, are amended to read:

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

(2) TRANSACTION BROKER RELATIONSHIP.—

(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 sales associate 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.—

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

CONSENT TO TRANSITION TO TRANSACTION BROKER

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

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

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

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

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

(4) NO BROKERAGE RELATIONSHIP.—

(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 sales associate 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)...

Section 6. Paragraph (n) of subsection (1) of section 475.42, Florida Statutes, is amended to read:

475.42 Violations and penalties.—

(1) VIOLATIONS.—

(n) A broker or sales associate may not enter into any listing or other agreement regarding her or his services in connection with the resale of a timeshare period unless the broker or sales associate fully and fairly discloses all material aspects of the agreement to the owner of the timeshare period ~~and fully complies with the provisions of s. 475.452~~. Further, a broker or sales associate may not use any form of contract or purchase and sale agreement in connection with the resale of a timeshare period unless the contract or purchase and sale agreement fully and fairly discloses all material aspects of the timeshare plan and the rights and obligations of both buyer and seller. The commission is authorized to adopt rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this paragraph.

Section 7. Subsections (8) and (9) are added to section 475.451, Florida Statutes, to read:

475.451 Schools teaching real estate practice.—

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

(9)(a) Each school permitholder of a proprietary real estate school, each chief administrative person of such an institution, or each course sponsor shall deliver to the department, in a format acceptable to the department,

a copy of the classroom course roster of courses that require satisfactory completion of an examination no later than 30 days beyond the end of the calendar month in which the course was completed.

(b) The course roster shall consist of the institution or school name and permit number, if applicable, the instructor's name and permit number, if applicable, course title, beginning and ending dates of the course, number of course hours, course location, if applicable, each student's full name and license number, if applicable, each student's mailing address, and the numerical grade each student achieved. The course roster shall also include the signature of the school permitholder, the chief administrative person, or the course sponsor.

Section 8. Subsection (1) of section 475.453, Florida Statutes, is amended to read:

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

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

Section 9. Subsections (10) and (12) of section 475.701, Florida Statutes, are amended to read:

475.701 Definitions.—As used in this part:

~~(10) “Disputed reserved proceeds” means the portion of the owner’s net proceeds reserved by a closing agent under s. 475.709 that the owner disputes the broker’s right to receive such reserved proceeds under s. 475.709(5).~~

~~(12) “Owner’s net proceeds” means the gross sales proceeds that the owner is entitled to receive from the disposition of any commercial real estate specified in a brokerage agreement, less all of the following:~~

~~(a) The amount of Any money secured by that is required to pay any encumbrance, claim, or lien that has priority over the recorded commission notice as provided in s. 475.715 other than an encumbrance, claim, or lien that the buyer of the commercial real estate authorizes to remain after the disposition.~~

(b) Any costs incurred by the owner to close the disposition, including, but not limited to, real estate transfer tax, title insurance premiums, ad valorem taxes and assessments, and escrow fees payable by the owner pursuant to an agreement with the buyer.

Section 10. Subsection (3) of section 475.707, Florida Statutes, is amended to read:

475.707 Recording commission notice; effectiveness.—

(3) A commission notice recorded under this part expires 1 year after the date of recording, unless the owner remains obligated to pay a commission to the broker ~~brokerage agreement remains effective~~ after the expiration date of the commission notice and the broker records an extension notice in the same public records within the last 60 days before such expiration date. An extension notice shall refer to the recording information of the original commission notice, shall state that the owner remains obligated to pay a commission to the broker ~~brokerage agreement remains effective~~, and shall include the information and be executed in the manner as required by s. 475.705(1) for the original commission notice. A timely recorded extension notice shall extend the expiration date of the original recorded commission notice by 1 additional year. Successive extension notices may be recorded for so long as the owner remains obligated to pay a commission to the broker ~~brokerage agreement remains effective between the broker and the owner~~. Within 10 days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

Section 11. Subsection (6) of section 475.709, Florida Statutes, is amended to read:

475.709 Duties of closing agent; reservation of owner's net proceeds.—

(6) The commission claimed in the commission notice shall be deemed confirmed by the owner, and the closing agent shall release the reserved proceeds to the broker, if the closing agent is required pursuant to subsection (1) to reserve any or all of the owner's net proceeds, and if all of the following conditions have been met:

(a) Five days have passed after the closing.

(b) The owner has neither confirmed nor disputed the claimed commission to the closing agent.

(c) The closing agent receives reasonably satisfactory evidence that the broker delivered a copy of the commission notice to the owner in accordance with s. 475.705.

Section 12. Subsection (1) of section 475.711, Florida Statutes, is amended to read:

475.711 Interpleader or other proceedings; deposit of reserved proceeds in court registry; discharge of closing agent from further liability.—

(1) The closing agent shall, by interpleader action or other legal proceeding, seek adjudication of the rights of the parties with respect to disputed reserved proceeds by the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the disputed reserved proceeds, in a county where all or a portion of the commercial real estate is located if, after the closing of a transaction for the disposition of the commercial real estate, all of the following conditions are met:

(a) The closing agent has reserved all or a portion of the owner's net proceeds pursuant to s. 475.709 and the owner disputes the release to the broker of all or any portion of the reserved proceeds.

(b) The owner and the broker have not agreed in writing, within 5 days after the closing, regarding the closing agent's release of the disputed reserved proceeds.

(c) Neither the owner nor the broker have commenced a civil action to determine the rights of the parties with respect to the disputed reserved proceeds.

Section 13. Subsection (5) of section 475.713, Florida Statutes, is amended to read:

475.713 Civil action concerning commission; order to show cause; hearing; release of proceeds; award of costs and attorney's fees.—

(5)(a) In a civil action commenced by the owner or the broker under this section or in an interpleader action or other proceeding commenced by the closing agent under s. 475.711, the owner or the broker that is not the prevailing party shall be required to pay:

1. The costs and reasonable attorney's fees incurred in the action by the prevailing party.

2. The costs and reasonable attorney's fees incurred in the action by the closing agent.

3. The amount of any costs, recording charges, and service charges of the clerk of court that were deducted from the disputed reserved proceeds under s. 475.711(2) in determining the net amount thereof deposited into the registry of the court.

(b) If the court determines that neither the owner nor the broker is the prevailing party, the amounts set forth in subparagraphs (a)~~2.1.~~ and ~~3.2.~~ shall be divided equally between and paid by the owner and the broker.

Section 14. Section 475.715, Florida Statutes, is amended to read:

475.715 Priority of recorded commission notice.—All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a commission notice pursuant to the provisions of s. 475.707, have priority over

the commission notice. The closing agent shall compute the owner's net proceeds by subtracting from the gross sales proceeds, and the amount required to discharge any such prior recorded lien and the amount of money secured by any such prior recorded lien that liens shall be subtracted from gross sales proceeds in computing the owner's net proceeds unless the buyer permits the same to remain a lien against the title to the commercial real estate. A prior recorded lien includes, without limitation, a valid construction lien claim that is recorded after the recording of the broker's commission notice but which relates back to a notice of commencement recorded under s. 713.13 prior to the recording date of the broker's commission notice.

Section 15. Subsection (3) of section 475.719, Florida Statutes, is amended to read:

475.719 Buyer's broker.—As used in this section, the term “buyer's broker” means a broker that is entitled to receive payment from the buyer of commercial real estate of any fee or other compensation for licensed services, as specified in a written contract made between the buyer and the broker on or after the effective date of this act relating to the buyer's purchase of the commercial real estate.

(3) No such notice given by the buyer's broker pursuant to subsection (2) shall constitute a tortious interference with the sale or disposition or financing of the commercial real estate, ~~except this section shall not affect the rights and remedies otherwise available to the owner, the buyer, or the buyer's broker under other applicable law.~~

Section 16. Paragraph (b) of subsection (8) of section 475.807, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

475.807 Recording lien notice; effectiveness.—

(8)

(b) To the extent that a lien notice recorded by a broker under this part claims an automatic renewal commission that is earned but not then payable, the lien notice expires 10 years after the date of recording, unless within that time the broker commences an action to foreclose the lien under s. 475.809 and records a notice of lis pendens in the public records of the county where the lien notice was recorded. If the owner remains obligated to pay a commission to the broker brokerage agreement remains effective, the broker may extend the expiration date of a lien notice for an automatic renewal commission by recording an extension notice in the same public records within the last 6 months before such expiration date. An extension notice shall refer to the recording information of the original lien notice, shall state that the owner remains obligated to pay a commission to the broker brokerage agreement remains effective, and shall include the same information and be executed in the same manner as required by s. 475.805(1) for the original lien notice. A timely recorded extension notice shall extend the expiration date of the original recorded lien notice by 10 additional years. Successive extension notices may be recorded for so long as the owner remains obligated to pay a commission to the broker brokerage agreement remains effective between the broker and the owner. Within 10

days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

(9) Neither the recording of a broker's lien notice or any extension thereof nor the recording of any lis pendens to foreclose a broker's lien thereunder shall constitute notice to any creditor or subsequent purchaser pursuant to s. 695.01 or chapter 712 of the existence of any lease described in the lien notice, extension notice, or lis pendens.

Section 17. Subsection (6) of section 721.20, Florida Statutes, is amended to read:

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

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

Section 18. Section 475.452, Florida Statutes, is repealed.

Section 19. This act shall take effect July 1, 2006.

Approved by the Governor June 13, 2006.

Filed in Office Secretary of State June 13, 2006.