

14-Hour Real Estate Continuing Education Course

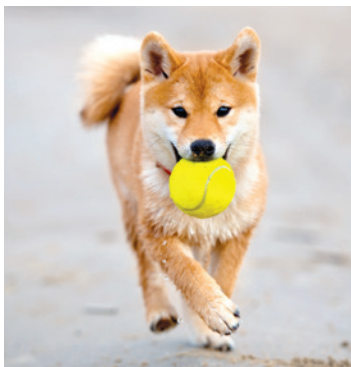


14-HR COURSE INCLUDES:

**Mandatory 3-Hour
Core Law**

AND

**Newly Required
3-Hour Business Ethics**



***ALSO INCLUDED ARE 8-HOURS
OF SPECIALTY EDUCATION TOPICS!***

- ◆ Non-Traditional Real Estate
- ◆ Smart Houses & Aging in Place
- ◆ Building a Successful Real Estate Team
- ◆ Paperless Transactions



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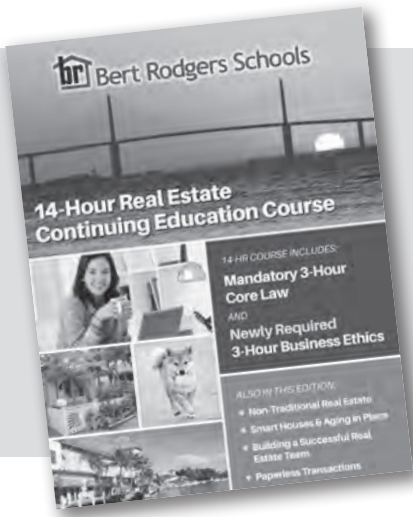


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14-Hour Real Estate Continuing Education Course

EDITION 19.3

FREC (Florida Real Estate Commission) Course Approval
#0020412 / #0020413

Required Continuing Education for Florida
Sales Associates, Brokers, and Broker Associates



Acknowledgements

Bert Rodgers Schools is fortunate to have industry leaders contribute to the 19th edition of this continuing education course for real estate professionals. We thank Randy Schwartz, John Greer, and Melanie McLane for sharing their expertise with our students.

As always, the publishing team deserves a hearty round of applause for a job well done.

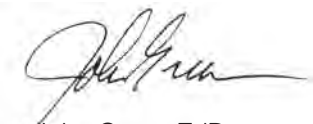
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Warm Regards,



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NOTE: The ✓ Comprehension questions in Module 1 and the Module Review questions throughout the course are optional exercises intended to enhance your knowledge. You are not required to complete these exercises to obtain course credit.

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Real Estate Core Law

Recent Law and Rule Changes

This module satisfies the 3 hours of Core Law required by the FREC.



Written by Randy Schwartz

Randy Schwartz has over 40 years' experience as an attorney in the real estate field. He was Bureau Chief for the Real Estate Bureau of the Orlando Office of the Florida Attorney General and also served as the General Counsel for the Florida Association of REALTORS® for over 20 years. Randy has spoken at local, state, and international conferences on all aspects of real estate regulation and brokerage law and served as an adjunct professor at UCF and FAMU Law Schools. For several years he was on the Executive Committee of the Real Property Section of the Florida Bar. Randy is the coauthor of the Florida Bar's book, "Florida Real Property Sales Transactions 8th Edition." He is currently in private practice in the Orlando area.

Glossary

Moral turpitude—conduct that is considered contrary to community standards of justice, honesty, or good character

Prima facie—a matter that appears to be self-evident upon initial observation; the evidence presented to support a legal claim

Funds—money in hand or available for the payment of a debt, claim, or expense

Promulgate—the formal act of announcing a statute or rule of court

Latent material defect—a defect that has a significant adverse impact on the value of a real property and is not observable by a visual inspection

PART I: REAL ESTATE LICENSE LAW—THE FLORIDA STATUTES

LEARNING OBJECTIVES

Upon completion of Part I, the student will be able to:

1. Review key definitions of Florida real estate license law.
2. Distinguish among the different forms of representation offered by a licensee.
3. Examine the real estate licensing requirements and exemptions for brokers, broker associates, and sales associates.
4. Discuss the renewal and continuing education requirements for licensees.
5. Consider the effect of relocating a brokerage office without notifying the DBPR.
6. Identify the safest, fastest, and least expensive method to resolve an escrow dispute.

INTRODUCTION

Chapter 475, Part I, F.S., is the relevant section of law dealing with real estate matters such as licensees, real estate business entities, and real estate schools. The following are some of the most important sections of the law that real estate licensees should be familiar with.

DEFINITIONS

Broker:

a licensed person who, for another, and for compensation, or with the intent to receive compensation, acts as an agent for others in the performance of one or more services of real estate; this includes transactions involving business enterprises or opportunities. As set forth in Chapter 475, F.S., the term broker also includes:

- 1) any person who advertises rental property information or lists
- 2) any person who is a general partner of a brokerage partnership, or an officer or director of a brokerage corporation if they perform brokerage activity. An unlicensed person can be an officer or partner of a real estate entity as long as they do not engage in brokerage activity, and
- 3) any person or entity who lists, advertises for sale, promotes, or sells by any means whatso-

ever one or more timeshare periods per year on behalf of others, except as otherwise provided by law

In simpler terms, just about anyone who performs services of real estate *for another, for compensation* in Florida must have a Florida real estate license. One area that the Florida Real Estate Commission is still struggling with is property management. Unfortunately it is a term that is used in the industry but not defined in the law. Therefore does a property manager need a license? It depends on activity. There are a few exemptions which are covered in this section.

This definition does not mean if you receive a commission, you automatically need a license. The license requirement is determined more by your actions than how you are paid. Each situation must be independently reviewed.

Broker Associate:

a person who has earned a broker's license but chooses to be licensed as a broker associate and operate as a sales associate registered with a broker.

Reminder: Broker associates and sales associates cannot hold multiple licenses nor can they be an officer or director of a brokerage entity.

Sales Associate:

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. Chapter 61J2-6.006, of the *Florida Administrative Code* further states that a sales associate or broker associate may only be employed by one broker or by one owner-developer.

Even though the definition refers to “employment” of a sales associate or broker associate by a broker or owner-developer, most brokers enter into independent contractor agreements with their sales associates and broker associates.

When the terms *employ*, *employment*, *employer*, and *employee*, are used in Chapter 475, they describe the relationship between a broker and a sales associate or broker associate and include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate.

Fiduciary:

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
- Accounting for all funds, and
- The duty to use skill, care, and diligence

In today’s real estate practice, the vast majority of brokers operate as transaction brokers. Transaction brokers do *not* owe fiduciary duties. Only single agents owe full fiduciary duties to the parties they represent. This is why the term *agent* is not appropriate to use unless the broker, and thereby their associates, enter into a single agent relationship.

It is important to remember that *only brokers may enter into agency and nonagency relationships with buyers and sellers*. As noted in the definition of broker above, a broker performs services of real estate for another, for compensation. Sales associates and broker associates operate under their broker and cannot enter into agency relationships on their own and cannot be paid directly by customers or clients.

Principal:

the party with whom a real estate licensee has entered into a single agent relationship. When a real estate broker represents a buyer or seller (or a lessor or lessee) as a single agent and thereby functions in a fiduciary capacity, the party represented is the broker’s principal.

Customer:

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.

Single Agent:

a broker who represents only one buyer or seller (or lessee or lessor) per transaction, as a fiduciary, but not both in the same transaction.

In a single agent relationship, a broker is a fiduciary and owes these duties to their principal:

- Loyalty
- Confidentiality
- Obedience
- Full disclosure
- Accounting for all funds, and
- The duty to use skill, care, and diligence

The most important distinction between a single agent and a transaction broker is their representation of and loyalty to only one party. Single agents must keep *all* information confidential and work solely for the benefit of their principal, the buyer or seller or lessor or lessee.

Transaction Broker:

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 cannot work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

In Florida, all licensees are presumed to be transaction brokers unless another relationship is established in writing. This is the most prevalent form of brokerage relationship in our state. In a transaction broker relationship the broker (and their sales associates and broker associates) owes these duties:

- Dealing honestly and fairly
- Accounting for all funds
- Using skill, care, and diligence in the transaction
- Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer
- Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing
- Limited confidentiality, unless waived in writing by a party. This limited confidentiality 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
- Any additional duties that are mutually agreed to with a party

Did you notice the line in the definition of transaction broker that says the buyer or seller is not responsible for the actions of the broker? That language is there because a buyer or seller in a single agency relationship with a broker *is responsible for the actions of the broker* within the scope of the services performed. Interesting! This exists due to common law in the area of agency.

Designated Sales Associate:

in a commercial transaction in which both the buyer and seller are working with the same real estate licensee, the broker may allow different sales associates of the same firm to act as designated sales associates to represent the buyer and seller as single agents as long as the following conditions are met:

- The request must be made by the buyer *and* seller
- The transaction must involve only commercial real estate, and

- The buyer and seller each must have assets of \$1 million or more

Designated sales associates have the same duties as a single agent including disclosure requirements.

No Brokerage Relationship:

in a no brokerage relationship, even though a customer is not represented, the following duties are still owed by a real estate licensee:

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

A licensee who has no brokerage relationship with a buyer or seller must fully describe and disclose the relationship in writing to the buyer or seller. The disclosure must be made before the showing of property.

Disclosure Requirements

Chapter 475, F.S., requires disclosure of agency and nonagency relationships. The disclosures apply *only* to residential transactions. Notice must be provided in writing using specific forms.



See §475.278 or go to <http://www.flsenate.gov/Laws/Statutes/2014> for full details.

Review

Single Agency: Fiduciary relationship with a buyer or seller who is the broker's principal.

Transaction Broker: Limited Representation and limited duties, not a fiduciary relationship.

No Brokerage Relationship: The customer is not represented by the broker but the broker must deal honestly, disclose known material facts, and account for all funds.

LICENSE REQUIREMENT EXEMPTIONS

§475.011. The licensing requirements for Florida real estate brokers, broker associates, sales associates, and schools do *not* apply to 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 a certified public accountant, as defined in Chapter 473, within the scope of her or his duties; as the personal representative, receiver, trustee, or general or special magistrate under, or by virtue of, an appointment by will or by order of a court of competent jurisdiction; or as trustee under a deed of trust, or under a trust agreement, where the ultimate purpose and intent is charitable or philanthropic.

Many Florida attorneys are under the mistaken belief that they are totally exempt from license law. The exemption does not allow attorneys to take listings or get paid to find buyers.

- Individual, corporation, partnership, trust, joint venture, or other entity which sells, exchanges, or leases its own real property. This exemption is not available if 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.

Just because an employee is paid on a commission basis they are not automatically excluded from this exemption. For example, the office manager's job is to have everyone come to work on time. The office manager can receive a bonus for this. This is true if no brokerage activity is performed by the office manager. No license activity was performed therefore no license is required.

- Salaried employee of an owner, or of a registered broker for an owner, of an apartment community who works in an on-site rental office of the apartment community in a leasing capacity.
- 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 one year.*

- 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, F.S.

The *property* must be registered under Chapter 509, not the person.

- 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. Unlicensed persons are not authorized by this law to advertise or promote this service.



Generally, salaried employees performing duties within the scope of their employment for the owner and where a commission or bonus are not paid are exempt from Chapter 475, F.S.

REGISTRATION AND LICENSING

General Partners, Members, Officers, and Directors of a Firm

§475.15. Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker must register with the Commission and must renew the licenses or registrations of its members, officers, and directors for each license period. However, if the partnership is a limited partnership, only the general partners must be licensed brokers or brokerage corporations registered pursuant to this part. If the license or registration of at least one active broker member is not in force, the registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during that period of time.

A sales associate *cannot* be an officer or director of a brokerage corporation but a sales associate *can* own all the stock or shares of the corporation.

COMPREHENSION QUESTION 1

Secretary Olivia mailed the license renewals to the DBPR for all three general partners of Bamboo Realty one week before the deadline. Unfortunately, the envelope was damaged and they were delayed in the mail. The status of all three broker licenses became involuntarily inactive for five days until they were successfully renewed online. What was the status of the partnership's registration during those five days?

Broker Associates and Sales Associates

§475.161. The Commission must license a broker associate or sales associate as an individual or—if the licensee provides the Commission with authorization from the Department of State—as a professional corporation, limited liability company, or professional limited liability company. A license will be issued in the licensee's legal name only and, when appropriate, must include the entity designation. This section does not allow a broker associate or sales associate to register or be licensed as a general partner, member, manager, officer, or director of a brokerage firm.

Post-license Education

§475.17. The first time a license is renewed, post-license education is required: 45 hours for sales associates and 60 hours for broker associates and brokers. If the post-license education is not completed by the initial renewal deadline, the license becomes null and void. To obtain a new sales associate license, the individual must meet the pre-license requirements again. Brokers and broker associates can revert to a sales associate license if they satisfactorily complete the 14-hour continuing education course within six months after the license expiration. To operate as a broker, the licensee must repeat the broker pre-license requirements.

**Post-License Education Requirements****Before First License Renewal - §475.17**

Sales Associates	45 hours
Brokers and Broker Associates	60 hours

**New License Renewal Education Requirement Rule**

Beginning October 1, 2017 licensees are required to take a FREC approved 3-hour Business Ethics course during each license renewal cycle.

NOTE: Completion of the 3-hour Business Ethics module included in this book will satisfy the requirement.

LICENSE RENEWAL: CONTINUING EDUCATION

§475.182. After the first license renewal sales associates, broker associates, and brokers are required to complete 14 hours of Commission-approved continuing education during each two-year license period, which must include three hours of real estate Core Law. Beginning October 1, 2017, licensees must also take a Commission-approved three-hour Ethics and Business Practices course once during each licensure renewal period. Licensees who complete the Core Law course and Ethics and Business Practices course will receive six hours credit toward the 14 hour requirement. 61J2-3.009(2)(b). The education may be completed online, by correspondence, or in a classroom. Licensees must certify that they have completed the required continuing education during the license period. A license is renewed when the department receives the renewal application and fee.

The required education may be completed any time during the two-year license period, however the DBPR only accepts renewal applications and fees within 90 days prior to the expiration of the license.

Licensees may choose active or inactive license status. If you are performing services of real estate, your license must be active. Sales associates and broker associates must have their license registered with a broker to be active. Changing your license status is fairly simple.



Go online to **www.myfloridalicense.com**, print DBPR Form RE 11, and follow the directions on the form.

Involuntarily Inactive License

§475.183. Any license that is not renewed at the end of the license period prescribed by the department

will automatically revert to *involuntarily inactive status*. Under current Commission rule, a license may remain involuntarily inactive for up to 24 months. Remember, if you are performing services of real estate, your license must be active and sales associates and broker associates must have their license registered with a broker to be active.

Licensees may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing at least 14 hours of approved continuing education and paying late renewal fees. If the license has been involuntarily inactive for more than 12 months but fewer than 24 months, they must complete a Commission-approved 28-hour education course. A renewal fee plus any late fees must be paid to the DBPR for each renewal period in which the license was involuntarily inactive.

Any license that has been involuntarily inactive for more than two years will automatically expire. After that, the license becomes **null and void**. For example, Sales Associate Ali did not renew her license in September of 2014 and again in September 2016. On October 1, 2016, her license status became null and void.

COMPREHENSION QUESTION 2

If your license expires on March 31 and you do not complete the renewal requirements on time, what is the status of your license on April 1?

MULTIPLE LICENSES

§475.215. A licensed broker may be issued additional licenses as a broker whenever it is clearly shown that the requested additional licenses are necessary to the conduct of real estate brokerage business (e.g., one for a main corporation and one for a referral corporation). Sales associates and broker associates may *not* be issued additional licenses because they cannot have more than one registered employer at any one time.

At the current time, multiple broker licenses are more closely reviewed than ever before. What was at one time a routine matter has now been subject to closer scrutiny. The FREC wants to prevent the practice of

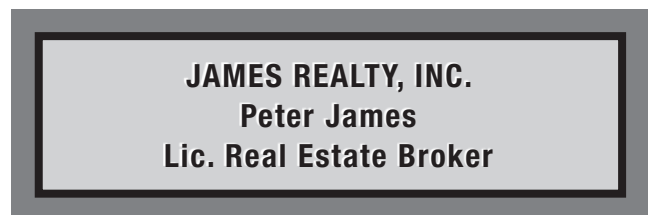
brokers lending their license to entities. The FREC has discussed limiting the number, but such limitations would probably require legislative action.

BROKER OFFICE AND SIGN REQUIREMENTS

§475.22. Each active broker must maintain an office consisting of at least one enclosed room in a building of stationary construction. Each active broker must maintain a sign on or about the entrance of her or his principal office and each branch office. The sign must be easily observed and read by any person about to enter the office. Each sign must contain the name of the broker and the broker's 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, and 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. See Figure 1.1.

Brokers who do not want to pay the extra expense of having an outside office may use a room in their house as an office. This is permissible as long as the proper signage outside the entrance to the room is not a violation of local zoning laws.

Figure 1.1:
Requirements of a Corporation Office Sign



If a broker's registered office is located outside the State of Florida, prior to registering this office or branch office, the broker must agree in writing to cooperate with any investigation initiated in accordance with this chapter or commission rules. Cooperation includes promptly supplying documents requested by authorized representatives of the department and personally appearing at any designated office of the department or other location in the state or elsewhere as reasonably requested by the department. Failure to comply with a request to provide documents or appear as requested is a violation of the license law.

CHANGE OF BUSINESS ADDRESS

It is not uncommon to move your office space as well as your home in today's mobile economy. It is a big job! Remember to update your address with the DBPR within 10 days.

§475.23. Until a new address has been reported to the DBPR, a license will expire and cease to be in force when:

- A broker changes her or his business address
- A sales associate working for a broker or an instructor working for a real estate school changes employer, or
- A real estate school operating under a permit changes its business address

Licensees must 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 the business address, the brokerage firm or school permit holder 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 will 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.

Any time a licensee changes their address, they should make and keep a computer record of when, to whom, and how the change of address was submitted to the DBPR. Remember the burden could be on the licensee to establish it was done properly.



Counting Days

Days are usually counted as calendar days unless the law, rule, or agreement contains language that states otherwise. Some organizations recognize when a time period ends on a day other than a business day and will allow the last day of the time period to be the next business day. To avoid unwanted consequences, address the issue at the beginning of the time period or when the agreement is written.

BRANCH OFFICE FEES

§475.24. Whenever any licensee desires to conduct business at some other location, either in the same or a different municipality or county than where she or he is licensed, the additional place of business shall be registered as a branch office, and an annual registration fee prescribed by the commission, in an amount not exceeding \$50, shall be paid for each additional office. Any office is considered to be a branch office if the name or advertising of a broker having a principal office located elsewhere is displayed in such a manner as to reasonably lead the public to believe that the office is owned or operated by that same broker. As you can see whether or not a location is a branch office is a rather subjective area.



DISCIPLINE

Section 475.25 is probably the most important section of the license law not only because violating this section could result in loss of your license; it also establishes how you are to conduct your business.

The Commission has broad powers that include:

- Denying an application for licensure, registration, or permit, or renewal thereof
- Placing a licensee, registrant, or permittee on probation
- Suspending a license, registration, or permit for a period not exceeding 10 years
- Revoking a license, registration, or permit
- Imposing an administrative fine not to exceed \$5,000 for each count or separate offense
- Issuing a reprimand

The Commission may choose any or all of the above actions if it finds that the licensee, registrant, permittee, or applicant 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. Please note that culpable negligence is a higher degree of negligence than simple negligence.

- 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. Advertising by real estate team names is an area of concern of FREC. Currently there is no prohibition for individuals to advertise as teams, but is such an ad misleading to the public? This is an issue to watch for in the future.

COMPREHENSION QUESTION 3

A licensee was found guilty of misrepresentation and breach of trust. His fine was \$10,000. Why was the fine more than \$5,000?

FREC may impose any of the disciplinary actions above if it finds that the licensee, registrant, permittee, or applicant 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, funds, 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 by 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 must promptly notify the commission of such doubts or conflicting demands and will promptly:

- request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property, or
- submit the matter to arbitration with the consent of all parties, or
- seek adjudication of the matter in court by interpleader or otherwise, or
- submit the matter to mediation with the written consent of all parties

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 must 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.



In **mediation**, a professionally trained neutral third party facilitates a discussion between the buyer and seller. The mediator does not have the ability to render a decision. If the buyer and seller reach a mutually agreeable solution it is not binding unless they sign a written mediation settlement agreement.

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 must 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 above. For example, 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 section 718.503, F.S., 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 above.



Escrow Dispute Options

If, in good faith, the licensee is unsure of who should receive a disbursement, the licensee must promptly notify the commission and request either:

- an escrow disbursement order—the commission decides who receives the escrow
- arbitration—a neutral third party decides the outcome
- adjudication in court—litigation
- mediation—the buyer and seller work with a neutral third party to reach a mutually agreeable solution.

The commission may impose punishment if it finds that the licensee, registrant, permittee, or applicant:

- has failed to deposit money in an escrow account when the licensee is the purchaser of real estate under a contract that requires the deposit money to be placed in an escrow account and to be applied to the purchase price if the sale closes.
- 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 will be admissible as *prima facie* evidence of such guilt.
- 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.
- 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 section 475.01(1)(a), F.S. 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 (i.e., a state or government that is not Florida), so long as the foreign broker does not violate any law of this state.
- is temporarily incapacitated from acting safely and capably as a broker or sales associate for 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 will be only for the period of such incapacity.
- 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 must be kept until disbursement thereof is properly authorized; or has failed, if a sales associate, to immediately place with their registered employer any money, fund, deposit, check, or draft entrusted to them by any person dealing with her or him as agent of the registered employer. The commission must establish rules to provide for records to be maintained by the broker and the manner in which such deposits will 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 will 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.



Brokers Maximum Personal Funding Allowance

<u>Escrow Account</u>	<u>Amount</u>
Property Management	\$ 5,000
Sales	\$ 1,000

Table 1.1: The Administrative Complaint Process

- Step 1 Complaint is filed
- Step 2 Notification sent to licensee
- Step 3 Investigation
- Step 4 Report to prosecutor
- Step 5 Prosecutor recommendation to Probable Cause Panel:
 - a. dismiss, or
 - b. administrative complaint
- Step 6 If disputed facts, a hearing occurs
- Step 7 Administrative Law Judge – recommended order
- Step 8 Final Order – FREC minus the probable cause panel members

- is confined in any county jail, post adjudication; 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.

- 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.
- 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 cannot contain a provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.
- 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.

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

SCENARIO 1

Customer A finally has the nerve to file a complaint against the biggest broker in town. The customer says the broker misled him in 2005. Why was the case dismissed by the FREC?

The case was filed beyond the 5 years statute of limitation.

CASE STUDY 1

Respondent violated Florida Statute Section 475.25(1)(b) by giving the property inspector the wrong email address for the buyer in a real estate purchase transaction, giving the buyer an altered report instead of the inspector's report, and by telling the buyer that the inspection company would refund the cost of the inspection when it never offered to make the refund. By stipulation, the Respondent agreed to the following penalty: 30 days of suspension beginning six months after the effective date; administrative fine of \$1,000; investigative costs of \$251.25; and restitution to buyer in the amount of \$25,130.

CASE STUDY 2

Respondent violated Florida Statute Section 475.25(1)(b) by committing an act of breach of trust by converting his client's earnest money deposits for his own personal usage; Section 475.25(1)(d)1 by failing to account and deliver his client's earnest money deposits on demand; Section 475.42(1)(d) for collecting money in connection with a real estate brokerage transaction in a name other than that of his registered employer; and Section 475.25(1)(e) through a violation of Florida Administrative Code Rule 61J2-14.009 by failing to deliver escrow deposits to his registered broker no later than the end of the next business day. Penalty: revocation; administrative fine of \$4,000; investigative costs of \$561.

BROKERAGE RELATIONSHIP: AGENCY OR TRANSACTIONAL

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

THE BROKERAGE RELATIONSHIP DISCLOSURE ACT (BRDA)

§475.2701. This legislation was enacted in 1997 to create the role of the transaction broker, allowing a licensee to provide limited representation to both parties in the same transaction. It is further explained in sections 475.272-.2801, F.S.

The Purpose of BRDA

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

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

Required Relationship and Transaction Disclosures

§475.278. There are *four types* of authorized brokerage relationships a real estate licensee may have with a buyer or seller:

- Transaction Broker—the most common form of representation
- Single Agent
- No Brokerage Relationship
- Designated Sales Associate

In Florida, it is presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established **in writing** with a customer. A licensee may change from single agent to a transaction broker as long as the buyer and seller, or both, gives consent as required by section 475.278(3)(c)2, F.S., prior to the change and the appropriate written disclosure of duties is made to the buyer and seller.



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

Whenever a licensee is representing a buyer or seller in a capacity other than a transaction broker or if they are transitioning from one type of authorized relationship to another, disclosure must be provided 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. The disclosure must be made in writing and fully describe the duties of the specified type of brokerage relationship being entered into.

CONTRACTS BY AN UNLICENSED PERSON

§475.41. A contract for a commission or compensation for any act or service is not valid unless the broker or sales associate has complied with this chapter in regard to issuance and renewal of the license **at the time the act or service was performed.**

For example: John had a valid sales associate license when he earned a commission from his last closing. Before his broker issued the commission check, John's license was revoked by FREC due to an unrelated matter. Can John's broker still pay him? Yes, because his license was valid at the time he performed the services. The key is license status *at the time of the service*, NOT the license status at the time of payment.

LICENSE VIOLATIONS AND PENALTIES

§475.42. Any person who violates any of the provisions below is guilty of a misdemeanor of the second degree unless the punishment is prescribed in this chapter.

- A person may not operate as a broker or sales associate without being the holder of a valid and current active license; therefore, any person who violates this paragraph commits a felony of the third degree, punishable as provided in sections 775.082 or 775.083, F.S., or, if a corporation, as provided in section 775.083.
- A person licensed as a sales associate may not operate as a broker or operate as a sales associate

for any person not registered as her or his employer.

- A sales associate may not collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer and with the express consent of the employer; and no real estate sales associate, whether the holder of a valid and current license or not, will commence or maintain any action for a commission or compensation in connection with a real estate brokerage transaction against any person except a person registered as her or his employer at the time the sales associate performed the act or rendered the service for which the commission or compensation is due.
- A broker or sales associate may not place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose. However, nothing in this paragraph will be construed to prohibit a broker or a sales associate from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.
- A person may not operate as a broker under a trade name without causing the trade name to be noted in the records of the commission and placed on the person's license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless such partnership or corporation is the holder of a valid current registration.

COMPREHENSION QUESTION 4

Which violation of real estate license law is a third-degree felony?

CASE STUDY 3

Respondent violated Florida Statute Sections 475.25(1)(d) for failure to account or deliver; 475.25(1)(b) for fraud; 475.24(1)(k) for failure to place funds received with his employer; and 475.25(1)(d) for collecting money in a real estate transaction not in the name of the employer and without the express consent of the employer. The Respondent received wired money into his personal account from a client for a real estate transaction. He did not have the consent of the employer to receive these monies in his personal account, did not turn the funds over to his employer, did not account for, nor deliver the deposit to the client upon demand, and committed fraud in the transaction. Penalty: revocation; investigative costs of \$584.10.

ADVERTISING BY REAL ESTATE SCHOOLS

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

A school cannot use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a real estate school, or of its representative, must be based upon relevant facts and supported by evidence establishing their truth. One of the areas that FREC is wrestling with: can a school advertise its pass-fail rate? Can a school do such or is it misleading per se? Would this information be important so a member of the public knows which school is best for his or her chances to pass the exam? This is an area to watch to see if upcoming legislation gives more guidance.

No representative of any school or institution coming within the provisions of this chapter will promise

or guarantee employment or placement of any student or prospective student using information, training, or skill purported to be provided, or otherwise enhanced, by a course or school as an inducement to enroll in the school, unless such person offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student.

RENTAL INFORMATION

§475.453. Each broker or sales associate who furnishes a rental information list to a prospective tenant, for a fee, must provide the tenant with a contract or receipt. The contract or receipt must contain a provision for the repayment of any amount over 25% of the fee to the prospective tenant if he or she does not obtain a rental. If the rental information list provided by the broker or sales associate is not current or accurate in any material respect, the full fee must be repaid to the prospective tenant upon demand. A demand from the prospective tenant for the return of the fee, or any part thereof, must be made within 30 days following the day on which the real estate broker or sales associate was contracted to perform services. The contract or receipt must also conform to the guidelines adopted by the Commission. Violation of these provisions is a misdemeanor of the first degree. In addition to the penalty, the license of any broker or sales associate who participates in any rental information transaction which is in violation of the provisions of section 475.453(1), F.S., is subject to suspension or revocation by the Commission. Figure 1.2 is an example of the notice required by F.A.C. 61J2-10.030.

NOTICE PURSUANT TO FLORIDA LAW:

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

Figure 1.2: Rental Information Notice

If a prospective tenant paid \$50.00 for a rental information list and did not obtain a rental, he or she can receive a \$37.50 refund ($50 \times 75\% = 37.50$), if the refund is requested within 30 days.

BROKERAGE BUSINESS RECORDS

§475.5015. Each broker must keep and make available to the department books, accounts, and records that enable the department to determine whether the broker is in compliance with the provisions of this chapter. Each broker must preserve at least one legible copy of all books, accounts, and records pertaining to her or his real estate brokerage business *for at least five years* from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker or, in the event no funds are entrusted to the broker, for at least five years from the date of execution by any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker. If any brokerage record has been the subject of or has served as evidence for litigation, relevant books, accounts, and records must be retained for at least two years after the conclusion of the civil action or the conclusion of any appellate proceeding, whichever is later, but in no case less than a total of five years as set above. There is nothing in the law that specifically mentions emails or text messages. Representatives of the State have stated it's not required, however it might be needed to avoid a prosecution in some particular cases. In other words maintaining such documents might be wise for a licensee's own protection.

SCENARIO 2

An investigator from the DBPR comes to inspect the office of Broker A. The Investigator asks to see business records. The broker does not have copies of all emails and texts. Is he in violation?

Nothing in the law says emails and texts have to be kept for five years, however if the texts and emails are necessary for the broker to avoid liability, the broker would be well advised to maintain these as records. In other words he is not required do so, but the emails and texts could be needed for the broker to defend a specific action against him.

AUTHORITY TO INSPECT AND AUDIT

§475.5016. Duly authorized agents and employees of the Department have the power to inspect and audit in a lawful manner at all reasonable hours any broker or brokerage office licensed under this chapter for the purpose of determining if any of the provisions of this chapter, Chapter 455, F.S., or any rule of either chapter is being violated.

SCENARIO 3

Broker A is in his office and a DBPR investigator arrives unannounced and requests to review all business records. The broker agrees to give the investigator access to the records but at a later, more convenient time. Is broker in violation?

Yes, the law states that the DBPR has the power to inspect and audit in a lawful manner at all reasonable hours any broker or brokerage office licensed under Chapter 475, Florida Statutes. In most cases, unless there is an emergency, the investigator will notify the broker well ahead of the visit.

Audit numbers are up! Be prepared. The length of any inspection depends on whether the brokerage company keeps an escrow account. To avoid the requirement to perform a monthly reconciliation many brokerages do not have an escrow account. Instead they choose to have earnest money held by an independent entity.

CASE STUDY 4

Respondent violated Florida Statute Sections 475.5015 by failing to be present for a scheduled office and escrow audit inspection and failing to make her brokerage's escrow accounts available to the Department; 475.25(1)(e) and Florida Administrative Code Rule 61J2-5.019 by operating as the qualifying broker of a corporation that did not hold a current and active license. Penalty: investigative costs of \$660; attendance at two complete FREC meetings; 10 years of probation, during which Respondent is to manage no licensees, maintain no escrow accounts, and is not to manage rental properties.

FLORIDA REAL ESTATE COMMISSION (FREC)

§475.02. The Commission consists of seven members 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 five years preceding appointment; one member must be a licensed broker or a licensed sales associate who has held an active license for the two years preceding appointment; and two members must be persons who are not, and have never been, brokers or sales associates. At least one member of the com-

mission must be 60 years of age or older. The current members may complete their present terms unless removed for cause.

In 2010, the Department determined that a licensed real estate broker or sales associate who holds an active real estate school permit, chief administrator permit, school instructor permit, or any combination of such permits issued by the DBPR may serve on the Florida Real Estate Commission (FREC). Members are appointed to four-year terms and may serve no more than two consecutive terms.

PART II: FLORIDA REAL ESTATE COMMISSION RULES

LEARNING OBJECTIVES

Upon completion of Part II, the student will be able to:

1. Explain the changes in a brokerage partnership when the general partner withdraws.
2. State the real estate licensing restrictions for officers and directors of a Florida real estate brokerage corporation.
3. Discuss the factors that determine if a location qualifies as a branch office which must be registered with the FREC.
4. Review the Commission's requirements for advertising by real estate firms.
5. Recall the five forms of disciplinary actions imposed by the FREC.

INTRODUCTION

The Florida Statute section 475.05 authorizes the Real Estate Commission to adopt rules pursuant to Chapter 120, Laws of Florida. Below is a review of the Commission rules most relevant to your daily practice of real estate. The complete list of FREC's rules can be found in Chapter 61J2 of the *Florida Administrative Code* (F.A.C.) online at:



<https://www.flrules.org>

CHAPTER 61J2-4; PARTNERSHIPS

Real estate brokerage partnerships must be registered with the Florida Real Estate Commission. The partnership must contain at least one licensed or registered active real estate broker. In addition, each partner that deals with the public must hold a valid real estate broker license. Under general partnership law, when a general partner dies or withdraws, the partnership is *automatically dissolved* and a new partnership must be created. However, for FREC purposes, *if the business is continued by two or more*

persons, one of whom is an active real estate broker, the partnership will be able to continue. In this scenario, it is only necessary to cancel, issue, or reissue registration or licenses reflecting the change in the organization.

CHAPTER 61J2-5; CORPORATIONS

Corporations must have a legal existence with the State of Florida before being registered with the FREC. A registration will *not* be granted or renewed for any corporation if:

- It appears that the individual(s) having control of the corporation has been denied, revoked, or suspended and not reinstated, or
- A person having control of the corporation has been convicted of a felony in any court and has not had civil rights restored for at least five years, or
- An injunction has been entered against the individual for operating as a real estate licensee without a license

When applying this rule, a person is deemed to be in control of a corporation when the person or their spouse, children, or member of the household owns or controls, directly or indirectly, more than 40% of the voting stock.

All officers and directors of a corporation must be registered with the FREC. An officer or director can be either a real estate broker or member of the general public. However, a real estate sales associate or a broker associate may not be a director or officer of a real estate corporation. Even though a real estate sales associate or broker associate cannot hold the titles of either director or officer, they are allowed to own 100% of the stock of the corporation.

61J2-5.018 Vacancies of Office.

(1) A brokerage shall have at all times registered the name(s) of its officer(s) and director(s). In the event that a brokerage has but one active broker, and such broker dies, resigns, or is unexpectedly unable to remain in the position as the active broker, then, in such event, such vacancy shall be filled within 14 calendar days during which no new brokerage business may be performed by the brokerage or a licensee registered with the brokerage until a

new active or temporary broker is appointed and registered with the brokerage.

CASE STUDY 5

Respondent violated Florida Statute Section 475.25(1)(b) by operating as a broker without the requisite license and by operating as a sales associate for a company not registered as his employer; Section 475.25(1)(k) by failing to place a deposit in an escrow account and failing to place a deposit with his registered broker; Section 475.42(1)(d) for collecting money in a name other than his employer; Section 475.25(1)(e) through a violation of Rule 61J2-10.038, Florida Administrative Code, for failing to notify the Department of a change in his mailing address within 10 days after the change; and Rule 61J2-14.009, Florida Administrative Code, for failing to deliver a deposit to his broker no later than the end of the next business day. Penalty: Revocation; administrative fine of \$1,000; investigative costs of \$577.50.

COMPREHENSION QUESTION 5

Who is prohibited from being an officer or director of a real estate corporation?

CHAPTER 61J2-10; BUSINESS OPERATIONS

Brokerage Offices

A real estate brokerage must have an office. This office may be located in a residential location as long as it is not in violation of local zoning ordinances and must still have a sign on or about the entrance of the office—not necessarily on the front door of the house. A broker may also have a branch office, which is required to be registered with the FREC.

While there is no clear-cut definition of what constitutes a branch office, a mere temporary

shelter, on a subdivision being sold by the broker, for the protection of sales associates and customers and at which transactions are not closed and sales associates are not permanently assigned, is not deemed to be a branch office. The permanence, use, and character of activities customarily conducted at the office or shelter will determine whether it must be registered.

Gifts and Kickbacks

An issue that frequently arises is whether a real estate licensee can give a gift to a member of the general public. Permissibility is determined by the reason the gift is given. For example:

- A real estate licensee refers a buyer to a moving company and in return receives compensation. This kickback or rebate, is permissible *if* the buyer has been told all the details of this arrangement ahead of time.
- A real estate licensee can share part of their commission with a party of the transaction if full disclosure is made to all interested parties.
- A real estate licensee is usually *not* allowed to compensate a nonlicensee for the referral of real estate brokerage business. The only exception can be found on page 5 of this module (i.e. property manager and a finder's fee).

SCENARIO 4

Broker A recommends to a new buyer to use ABC Moving Company, and discloses to the buyer orally ahead of time that for every referral the broker gets \$100. The new buyer files a complaint against the broker when ABC drops his antique piano. Result: no violation of the licensing law.

While it would have been wise to disclose the relationship in writing, the Rule does not say it must be in writing. So there is no violation.

Advertising

Advertising by real estate firms must be designed so that a reasonable person knows they are dealing with a real estate licensee. It must always include the registered name of the brokerage firm. If a licensee's name appears in the advertisement, the name must

be the same as licensed with the Commission. Informally, the FREC has allowed nicknames to appear in advertisements as long as they are not considered to be misleading. When advertising on a site on the Internet, the brokerage firm name must be placed adjacent to or immediately above or below the *point of contact information*. **Point of contact information** refers to any means by which to contact the brokerage firm or individual licensee including all mailing addresses, physical street addresses, email addresses, telephone numbers, and facsimile telephone numbers.

In regard to nicknames, the use of Tom instead of Thomas would be acceptable. Remember, the allowance is not official and cannot be misleading, so a prudent person would refrain from using nicknames such as Skippy or Fair Fiona.

COMPREHENSION QUESTION 6

Is it misleading per se for a sales team to have a team name that does not include their last name? For example the "Sunshine Realty A-team."

Trade Names

The FREC will *not* issue a license containing a trade name that is the same as the real or trade name of another licensee. Further, no individual partnership or corporation may be registered under more than one trade name.

COMPREHENSION QUESTION 7

When are nicknames allowed to be used in advertising?

NEW**Team or Group Advertising**

A new rule (FAC: 61J2-10.026) has been created which regulates team or group advertising. The rule was first created in 2018, however, to give licensees time to meet compliance requirements, it did not go into effect until July 1, 2019. The complete rule can be viewed at the Florida Department of State website via the following link: <https://www.flrules.org/gateway/ruleNo.asp?id=61J2-10.026>

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

Once the parties have entered into a sales contract, usually the buyer puts down a deposit toward the purchase of real property. If the deposit is to be held in escrow by an attorney or a title company, the sales contract must contain their name, address, and telephone number.

Be aware of the timeline:

- *Within 10 days of the due date* for every deposit specified in the sales contract, the buyer's broker must request in writing that the attorney or title company verify that the deposit was received (unless the seller or the seller's agent selected the attorney or title company to hold the deposit).
- *Ten days after the written request is made*, the buyer's broker must provide the seller's broker with a copy of the written verification or written notice that no verification was received.
- If the seller is not represented by a broker, then the buyer's broker must notify the seller directly in the same manner described above.

The FREC allows a broker to place a limited amount of the broker's personal money in the real estate brokerage escrow account. The amount is \$1,000 in the sales escrow account, and \$5,000 in the property management escrow account.

Note: *A broker is not required to maintain an escrow account and most brokerages do not; however, if a broker does maintain an escrow account, the brokerage must prepare a monthly reconciliation statement. The statement must then be reviewed, signed, and dated by the broker. This is the primary reason many brokerage firms do not keep escrow accounts.*

The role of escrow agent may be one of the most important roles that a real estate broker undertakes. Not only is the broker entrusted with the monies of another, but the broker is required to timely deposit the funds in an appropriate institution, maintain the funds until properly instructed as to how and to whom to disburse, and perform the regular reconciliation of the escrow account to ensure the proper accounting of the funds being maintained.

Table 1.2: Monthly Escrow Reconciliation Statement Required Information

- Date the reconciliation was undertaken
- Date used to reconcile the balances
- Name(s) of the bank(s)
- Name(s) of the account(s)
- Account number(s)
- Account balance(s) and date(s)
- Deposits in transit
- Outstanding check identified by date and check number
- Itemized list of the broker's trust liability

Include any other items necessary to reconcile the bank account balance(s) with the balance per the broker's checkbook(s) and other trust account books and records disclosing the date of receipt and the source of the funds.

If a broker holding funds in their escrow account receives **conflicting demands** from the parties or if the broker has **good faith doubts** as to who is entitled to the escrow funds, the broker must follow Chapter 61J2-10.032, F.A.C., which states:

- Within 15 business days of receiving the last party's demand or of having good faith doubts, the broker must report **in writing** the dispute or doubts to the FREC.
- Within 30 business days of the last demand or of having good faith doubts, the broker must institute a settlement procedure and notify FREC of that action.

Many brokerages feel that the best recourse in this situation is to request an escrow disbursement order from FREC. It can be a safe, quick, and inexpensive way to have the matter decided.

CHAPTER 61J2-24; DISCIPLINARY MATTERS

This chapter contains the disciplinary guidelines that the FREC follows when licensees are guilty of violating Chapter 455 or Chapter 475. These guidelines give the FREC wide discretion in imposing penalties and provide for a range of penalties, including differentiation between first time violations and second and subsequent violations. The order of penalties, ranging from lowest to highest, is: reprimand, fine, probation, suspension, and revocation or denial.

The FREC may choose to impose any of the following disciplinary sanctions:

- **Notice of Noncompliance:** A violation is considered a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. The notice of noncompliance shall only be issued for an initial offense of a listed minor violation.
- **Citations:** A citation will be issued for violations that are not a substantial threat to the health, safety, and general welfare of the public.
- **Mediation:** The process whereby a mediator appointed by the DBPR acts to encourage and facilitate resolution of a legally sufficient complaint. It is an informal process with the objective of assisting the complainant and subject of the complaint to reach a mutually acceptable resolution.
- **Revocation:** Revocation of a license is permanent except for a few specific violations.

- **Probation:** Unless otherwise stated in the final order a term of probation shall be 90 days, beginning 30 days after the filing of the final order.

Of all the violations that go before the FREC, improper handling of escrow funds is considered the most serious. When the public has entrusted their money to a broker and the broker mishandles the funds or fails to properly reconcile the account, the FREC does not hesitate to take the appropriate and sometimes harsh action to not only discipline the broker, but to send the message to the licensee community that escrow violations will not be treated lightly.

CHAPTER 61J2-26; NONRESIDENT LICENSURE

An individual does not have to be either a Florida resident or a United States citizen to qualify for a Florida real estate license. Applicants are expected to be knowledgeable in Florida law, statutes, and administrative rules. They must meet education, experience, and examination requirements comparable to the requirements for Florida resident applicants as prescribed in sections 475.17(2), (6), and 475.175, F.S.

Prior to May 4, 2012, Florida nonresident licensees were required to sign an Irrevocable Consent Form that would allow legal actions against the licensee to commence in any county in the State of Florida where the plaintiff resided. When the governor approved House Bill 693 during the 2012 legislative session, the Irrevocable Consent Form requirement was eliminated.

PART III: STATE AND FEDERAL LAWS AFFECTING REAL ESTATE

LEARNING OBJECTIVES

Upon completion of Part III, the student will be able to:

1. Describe the purpose for the energy-efficiency rating, radon gas, Residential Swimming Pool Safety Act, and property tax disclosures.
2. Explain when the lead-based paint, homeowners' associations, condominiums, and property condition disclosures are required.
3. Give examples of material facts that must be disclosed to the seller.
4. Recognize special laws that apply to contracts for military personnel.
5. Explain the proper handling and disposition of deposit money or advance rent as required in the Florida Landlord Tenant Act.

INTRODUCTION

In this section we review state and federal laws such as Community Development Districts, the Residential Swimming Pool Safety Act, contracts with military personnel, and landlord/tenant regulations. Various disclosure requirements are addressed including radon gas, lead-based paint, property tax, homeowners' associations, condominiums, property conditions, and energy-efficiency.

COMMUNITY DEVELOPMENT DISTRICT (CDD)

A Community Development District, commonly known as a CDD, is a local special-purpose government authorized under the Uniform Community Development Act of 1980 by Chapter 190 of the *Florida Statutes* and is an alternative method for managing and financing infrastructure required to support community development.

CDDs are legal entities and possess several powers such as: the right to enter into contracts; the right to own both real and personal property; adoption of by-laws, rules, regulations, and orders; the right to sue and be sued; to obtain funds by borrowing; to issue bonds; and to levy assessments.

Legal overview of a CDD

- A CDD provides a mechanism to finance, construct, and maintain community or subdivision infrastruc-

ture improvements. Infrastructure includes water and sewer collection systems, roads, sidewalks, drainage and storm water systems, parks, boardwalks, community areas, landscaping, and wetlands mitigation.

- A CDD is organized as a special-purpose unit of local government and operates as an independent taxing district.
- Because a CDD is an independent special district, the governing body establishes their own budget and operates independently of the local governmental entity within the scope of specific and very limited powers.
- A CDD does not have police powers and cannot regulate land use or issue development orders; those powers reside with the local general-purpose government (city or county).
- The primary function of a CDD is to issue tax-exempt bonds to construct infrastructure such as roads, water and sewer lines, recreational facilities, etc.
- CDDs are designed to pay for themselves. Theoretically, the cost of growth is allocated proportionately by levying special assessments on the lands which receive the benefit of the improvements.
- Under ideal circumstances, the CDD provides a more efficient method of paying the operation and maintenance expense of infrastructure and related

services. However, there are inherent risks, especially during the recent economic downturn. If a CDD goes into foreclosure or only sells a small percentage of lots, owners could find themselves paying disproportionately high fees.

- CDDs may replace HOAs, but have board powers. As is true for all communities, the professionalism of the board members directly contributes to or detracts from the operation and harmony of the neighborhood.

Required Disclosure Language

Subsequent to the establishment of a district under Chapter 190, F.S., each contract for the initial sale of a parcel of real property and each contract for the initial sale of a residential unit within the district must include, immediately prior to the space reserved in the contract for the signature of the purchaser, the following disclosure statement in boldfaced and conspicuous type which is larger than the type in the remaining text of the contract:

COMMUNITY DEVELOPMENT DISTRICT DISCLOSURE- F.S. section 190.048

THE (Name of District) COMMUNITY DEVELOPMENT DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW.

ENERGY-EFFICIENCY RATING

A prospective buyer of a building must be provided with a copy of an information brochure notifying the buyer of the option for an energy-efficiency rating on the building. The brochure must be given at the time of or prior to the buyer's execution of the contract for sale and purchase pursuant to section 553.996, F.S.

The Department of Community Affairs provides free copies of this brochure.

RADON GAS

A radon disclosure must be provided at the time of, or prior to, the execution of the sale or purchase of any building as well as prior to the execution of a rental agreement for any building. This disclosure is not required for residential transient occupancy provided the occupancy is for 45 days or less in duration as further discussed in Section 509.013 [12].

RADON GAS

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department (Chapter 404.056(5), F.S.).

LEAD-BASED PAINT DISCLOSURE

Many houses and apartments built before 1978 have paint that contains lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly.

Federal law—Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C Section 4852d—requires that individuals receive certain information before renting or buying pre-1978 housing:

- Landlords must disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure form about lead-based paint.
- Sellers must disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure form about lead-based paint. Buyers have up to 10 days to check for lead hazards.

Housing excluded from the disclosure requirement:

- Housing built after 1977 (Congress chose not to

cover post-1977 housing because the Consumer Product Safety Commission (CPSC) banned the use of lead-based paint for residential use in 1978)

- Zero-bedroom units, such as efficiencies, lofts, and dormitories
- Leases for less than 100 days, such as vacation houses or short-term rentals
- Housing for the elderly (unless children live there)
- Housing for the handicapped (unless children live there)
- Rental housing that has been inspected by a certified inspector and found to be free of lead-based paint
- Foreclosure sales

PROPERTY TAX DISCLOSURE

A prospective purchaser of residential property must be given the following disclosure summary at or before the execution of the contract regardless of the age of the dwelling. Pursuant to section 689.261, F.S., it must either be included in the contract or must be provided by the seller.

PROPERTY TAX DISCLOSURE SUMMARY

BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

HOMEOWNERS' ASSOCIATION DISCLOSURE

A purchaser who is buying in a community that mandates membership in a homeowners' association (HOA) must be given a disclosure of said requirement prior to the execution of the contract for sale and purchase. This disclosure must be provided by either the

developer or the seller. If the required disclosure is not given to the buyer prior to the execution of the contract, the buyer has the option to void the contract in writing within three days after receipt of the disclosure summary or prior to closing, whichever occurs first. The buyer's right may not be waived by the buyer but terminates at closing. The exact language of the disclosure can be found in Section 720.401, F.S.

COMPREHENSION QUESTION 8

Is an HOA disclosure required prior to contract execution for *all* residential property sales within a HOA community?

CONDOMINIUM DISCLOSURE

Chapter 718, F.S., requires a developer and a non-developer unit owner disclosure prior to the sale of a condominium. While the language of these disclosures varies between a developer and nondeveloper, both require that the disclosure be given prior to the execution of the sales contract. The language of both forms is contained in section 718.503, F.S. If a real estate licensee provides to, or otherwise obtains for, a prospective purchaser the documents described in this subsection, the licensee is not liable for any error or inaccuracy contained in the documents.

DISCLOSURE OF MATERIAL FACTS

Florida law requires real estate licensees to disclose material facts affecting the value of residential property which are not readily observable to the buyer. The information is considered material to the extent that if the information had been disclosed, the sales contract would not have been signed or the terms may have been negotiated differently.

Physical material facts that affect the value of residential property can generally be measured monetarily. The court can determine the amount of damages due to a leaky roof or termite infestation, compare it with the purchase price and cost to repair the damages, and then decide whether the value was materially affected.



If a bucket has been placed in the attic to collect rainwater from a leaking roof, it must be disclosed that the roof is leaking. However, if the bucket is placed in the middle of the living room and the buyer can see the rain water going into the bucket from the ceiling, neither the seller nor licensee needs to disclose what is in clear view.

Property Condition—Johnson v. Davis

The landmark case in the area of disclosures is the case of *Johnson v. Davis*, 480 So.2d 625 (Florida 1985). Prior to this case, the rule was *caveat emptor*, buyer beware, which is still the rule in commercial real estate contracts. In *Johnson v. Davis*, the Supreme Court of Florida held that:

...where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer. This duty is equally applicable to all forms of real property, new and used.

The Court next held in *Rayner v. Wise* that the doctrine in *Johnson* also applied to real estate professionals. This meant that the seller or licensed real estate professional must disclose material facts that affect the value of the property which are not readily observable and are not known to the buyer. This duty to disclose can also be found in Chapter 475, F.S. The case law does not mandate the manner in which disclosure must take place, whether written, oral, or any specific form.



A Seller's Disclosure is a common form used by many real estate professionals to comply with the property condition disclosure requirement. Whether written or oral, disclosure:

- is required in all residential real property transactions
- is not required in commercial transactions
- must disclose material facts not readily observable to the buyer that affect value

While disclosing a leaking roof is not a hard determination to make, other situations can be more difficult to determine if they are considered an unknown material defect. What if a halfway house is going in across the street? What if the halfway house is going in five houses down? What if it is public record that the property is zoned for this type of occupancy? At this time, these questions have not been addressed by legal decisions.

Some might argue that you cannot go wrong with disclosing, but what if the seller tells you not to and you owe the seller a fiduciary duty as a single agent? In other words, the legal obligation in these situations is not always clear. Standards of Practice 1-9 of the 2016 REALTOR® Code of Ethics states, "Information concerning latent material defects is not considered confidential information." Please note that the Code of Ethics does not apply to all licensees, only members of NAR. Remember, if the seller asks you not to tell or in any situation, you always have the option to seek legal counsel.

COMPREHENSION QUESTION 9


If a seller represented by a transaction broker reveals that their home experienced flood damage several years ago but they covered it up with new carpeting, is the broker required to disclose this information to potential buyers?

Sinkholes

When there is a non-observable sinkhole on the property, it is clear that it should be disclosed. Less clear is whether there is a duty to disclose a *repaired* sinkhole on the property. Correlate this with the situation of a repaired roof leak. It would be uncommon to disclose that in the past the roof leaked, when there is no leak now.

Although the law is unclear about a repaired sinkhole, Florida law does provide direction when an insurance claim is processed for a sinkhole repair. Section 627.7073, F.S., requires the professionally prepared sinkhole report and certification to be filed with the County Clerk of the Court:

- When an insurer has paid a claim
- As a precondition to accepting payment for a loss
- Upon completed foundation repairs or building stabilization

 **Disclosure of a sinkhole claim.** Section 627.7073(2)(c), F.S. (2005), states: The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the closing, that a claim has been paid and whether or not the full amount of the proceeds was used to repair the sinkhole damage.

Stigmatized Property

Fortunately, some areas of the law have made it clear what one should disclose and what one should not. Section 689.25, F.S., states that if the property was a site of a homicide, suicide, or death it is not a material fact which must be disclosed. Other situations are not as clear. Further, according to Florida law, HIV and AIDS status are not material facts that must be disclosed in a real estate transaction. No cause of

action arises against a real estate licensee or owner for failure to disclose that the occupant of the property is infected with HIV/AIDS.

What if a seller believes their house is haunted? Is the listing agent or seller required to disclose this belief to prospective buyers? The law is silent on haunting. Your best course of action is to consult your broker and/or legal counsel.

COMPREHENSION QUESTION 10

Broker A knows that a house has a reputation for being haunted and fails to disclose to the buyer that fact. The buyer closes on the house and then files a complaint to the DRE for failing to disclose a material fact that affects the value of the property. What is the result of the broker failing to disclose this fact?



Table 1.3: Disclosure Guide

Property disclosures should be provided prior to contract execution under the following conditions:*

Type	Application
CDD:	Prior to initial sale of real property or a residential unit in a CDD
Energy-Efficiency Rating:	The buyer of a building must be given an information brochure
Radon Gas:	Any building, except for residential transient rentals less than 45 days
Lead-based Paint:	Most residential housing built before 1978, see exceptions list
Property Tax:	All residential properties
HOA:	When membership is mandatory
Condominium Association:	All condominium units in residential transactions
Sinkholes:	When a claim has been made and paid by an insurer
Property Condition:	All residential property when material facts not readily observable affect the value

*refer to the *Florida Statutes* for more specifics on each disclosure.

RESIDENTIAL SWIMMING POOL SAFETY ACT

The Residential Swimming Pool Safety Act, Chapter 515, F.S., went into effect in the year 2000. It requires certain safety features to be installed on newly constructed homes with swimming pools to prevent drowning of a young child or medically frail elderly person.

To pass the final inspection and receive a certificate of completion, a residential swimming pool must meet *one* of the following safety features pursuant to Section 515.27, F.S.:

- The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirement.
- There must be an approved safety pool cover.
- All doors and windows with direct access from the home to the pool must be equipped with an approved exit alarm system with minimum sound pressure ratings.
- All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with the release mechanism at least 54 inches above the floor.

The failure to equip a new residential home and pool with at least one of the above safety features is a second-degree misdemeanor. No penalty will be imposed if the person, within 45 days after arrest or issuance of a summons or a notice to appear, has equipped the pool with at least one safety feature as listed above and has attended a drowning prevention education program. However, the requirement of attending a drowning prevention education program is waived if such program is not offered within 45 days after issuance of the citation.

§515.33, F.S., Information required to be furnished to buyers: A licensed pool contractor, on entering into an agreement with a buyer to build a residential swimming pool, or a licensed home builder or developer, on entering into an agreement with a buyer to build a house that includes a residential swimming pool, must give the buyer a document containing the requirements of this chapter and a copy of the publication produced by the department under section 515.31 that provides information on drowning prevention and the responsibilities of pool ownership.

CONTRACTS WITH MILITARY PERSONNEL

An active member of the United States Armed Forces, the United States Reserve Forces, or the Florida National Guard, collectively known as **servicemember**, may terminate a contract to purchase real property, prior to closing, by providing to the seller or mortgagor on the property a written notice of termination under the following circumstances:

- Servicemember is required, by permanent change of station orders, to move 35 miles or more from the location of the property
- Servicemember is released from active duty and the property is more than 35 miles from the member's home of record
- Servicemember receives orders to move into government quarters, or the member becomes eligible to live in government quarters, or
- Servicemember receives temporary duty orders to move more than 35 miles from the location of the property and the temporary duty orders exceed 90 days

The notice to the seller or mortgagor canceling the contract must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer. Upon termination of the contract, the member is entitled to a full refund of the deposit within seven days.

The law may not be waived or modified by agreement of the parties under any circumstances. §689.27, F.S., (2003).

COMPREHENSION QUESTION 11

When military personnel are required to move more than 35 miles from the location of the property during active duty, what proof is required to terminate a real estate purchase contract?

LANDLORD-TENANT REGULATIONS

The most current laws can be seen by going to the 2016 Florida Statutes at: www.flsenate.gov/Laws/Statutes. The Landlord-Tenant Act Chapter 83, F.S., is divided into three sections:

- Part I: Nonresidential Tenancies
- Part II: Residential Tenancies
- Part III: Self-service storage space

Residential Tenancies

For the purposes of this section, the discussion concerning landlord-tenant regulations will focus solely on the regulations in residential tenancies. Part II of the Landlord-Tenant Act applies to the rental of dwelling units. It does *not* apply to the following:

- Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services
- Transient occupancy in a hotel, condominium, motel, rooming house, or similar public lodging, or transient occupancy in a mobile home park
- Occupancy by a holder of a proprietary lease in a cooperative apartment
- Occupancy by an owner of a condominium unit
- Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or in which the buyer has paid at least one month's rent and a deposit of at least 5% of the purchase price of the property.

Disposition of Deposit Money or Advanced Rent

§83.49, F.S. This is one of the more important sections of the Landlord-Tenant Act. When a landlord or his/her agent receives deposit money or advance rent, they must hold the money in one of three manners:

- Hold the total amount of such money in a separate noninterest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord cannot commingle such moneys with any other funds of the landlord
- Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant will receive and collect

interest in an amount of at least 75% of the annualized average interest rate payable on such account or interest at the rate of 5% per year, simple interest, whichever the landlord elects. The landlord cannot commingle such moneys with any other funds of the landlord

- Post a surety bond with the clerk of the circuit court in the county in which the dwelling unit is located in the amount of the security holdings or \$50,000, whichever is less

The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d) (see following bullet points). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

- Be given in person or by mail to the tenant
- State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law
- State whether the tenant is entitled to interest on the deposit
- Contain the following disclosure:

ADVANCE RENT AND SECURITY DEPOSIT DISCLOSURE

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR

DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord will have 15 days to return the security deposit together with interest if otherwise required, or the landlord will have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice must contain a statement in substantially the following form:

NOTICE OF CLAIM

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



Unless the lease states otherwise, section 83.49(5), F.S., does allow the landlord some breathing room when a tenant vacates the premises prior to the expiration of the lease term and fails to give the landlord at least seven days' advance written notice to vacate. Failure of the tenant to give such notice shall relieve the landlord of the notice requirement of section 83.49(3)(a), but shall not waive any claim the tenant may have to any part of the security deposit.

As referred to in section 475.25(1)(d), F.S., when facing conflicting demands on money in escrow, a real estate broker is required to notify the Florida Real Estate Commission. However, section 83.49 prevails over conflicting provisions in Chapter 475 and permits licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in section 475.25(1)(d).

In most landlord/tenant disputes the burden is on the landlord to keep careful documentation. A meticulous paper trail will help keep potential conflicts to a minimum.

COMPREHENSION QUESTION 12

Broker A has conflicting demands on a security deposit in her escrow account. The tenant says he did not damage the property by putting holes in the wall for pictures and the landlord says the holes were not there before the tenant moved in so the tenant must have made them. Broker A disburses the money as set forth by 83.49 to the landlord. The tenant files a complaint to the DRE for the broker failing to follow the procedure set out in 475.25(1) d, Florida Statutes. Why is the case dismissed?

Landlord's Obligation to Maintain Premises

§83.51. The law provides that the landlord must provide screens installed at the commencement of the tenancy (without qualification as to whether such item is covered in a lease agreement) and repair the screens once annually during the tenancy.

Restoration of Possession to Landlord

§83.62. In an action for possession, after entry of judgment in favor of the landlord, the clerk must issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. The new law clarifies that Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

Retaliatory Conduct

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

Furthermore, the law provides for two additional instances of retaliatory conduct:

- Where the tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association, and

- Where the tenant has exercised his or her rights under local, state, or federal fair housing laws

Termination of Rental Agreement by a Servicemember

Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

- The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises
- The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty
- The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty
- After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters
- The servicemember receives temporary duty orders, temporary change of station orders, or active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days
- The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises

The above is pursuant to Chapter 83.682, F.S.

COMPREHENSION QUESTION 13

A sergeant in the Air Force is renting a house near Patrick Air Force Base. The sergeant has three years left on his military service obligation. Due to the peaceful nature of the world, the government decides his service is no longer needed. Can the sergeant get out of his lease? What if the lease specifically states that members of the military cannot get out of their leases even if they get early discharge?

Prohibited Provisions in Rental Agreements

A provision in a rental agreement is void and unenforceable to the extent that it purports to waive or preclude the rights, remedies, or requirements set forth in Chapter 83.47, F.S.

COMPREHENSION QUESTION 14

The tenant moved out of Landlord Kevin’s unit on October 15. Shower tiles were damaged and need to be replaced. By what date must Kevin mail his Notice of Claim on the security deposit to the tenant?

COMPREHENSION QUESTION 15

Does the notice requirement change if the tenant vacated the premises prior to the expiration of the lease term and did not give at least seven days written notice of vacating?

MODULE 1 REVIEW – CORE LAW

You are *not* required to answer the module review questions to complete the 14-hour course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

- 1. In a mandatory homeowners' association the required disclosure must be provided by the:**
 - a. developer or seller.
 - b. broker or sales associate.
 - c. mortgage company.
 - d. closing agent.

- 2. A fiduciary duty is owed by:**
 - a. a transaction broker.
 - b. a single agent.
 - c. all real estate licensees.
 - d. all parties in a real estate transaction.

- 3. A broker who owns a brokerage firm and a referral company may be issued upon request:**
 - a. dual licenses.
 - b. blanket permits.
 - c. multiple operations permits.
 - d. multiple licenses.

- 4. A real estate license is required when acting as a/an:**
 - a. attorney-in-fact for the purpose of the execution of contracts.
 - b. individual selling their own real property.
 - c. salaried employee for an owner of an apartment community who works on site.
 - d. leasing agent who is paid on a transactional basis.

- 5. Under the license law, it is presumed that all licensees are operating as:**
 - a. single agents.
 - b. transaction brokers.
 - c. broker associates.
 - d. seller's agents.

 **MODULE 1
COMPREHENSION ANSWER KEY**

1. Secretary Olivia mailed the license renewals to the DBPR for all three general partners of Bamboo Realty one week before the deadline. Unfortunately, the envelope was damaged and they were delayed in the mail. The status of all three broker licenses became involuntarily inactive for five days until they were successfully renewed online. What was the status of the partnership's registration during those five days? **The partnership was canceled automatically during that period of time. The license or registration of at least one active broker member must be in force.**
2. If your license expires on March 31 and you do not complete the renewal requirements on time, what is the status of your license on April 1? **If you miss the renewal deadline, your license status becomes involuntarily inactive the first day of the next license period.**
3. A licensee was found guilty of misrepresentation and breach of trust. His fine was \$10,000. Why was the fine more than \$5,000? **The commission can impose a fine up to \$5,000 per offense. Two separate offenses would amount to a \$10,000 fine.**
4. Which violation of real estate license law is a third-degree felony? **A person who operates as a broker or sales associate without a valid or current license is committing a third-degree felony.**
5. Who is prohibited from being an officer or director of a real estate corporation? **A sales associate or broker associate may not be an officer or director of a real estate corporation.**
6. Is it misleading per se for a sales team to have a team name that does not include their last name? For example the "Sunshine Realty A-team." **While it cannot be said that it is a per se violation, in all likelihood if this issue came before FREC it would be ruled a misleading advertisement. However each case would have to be determined on an individual basis.**
7. When are nicknames allowed to be used in advertising? **The FREC permits nicknames to be used in advertising as long as they are not misleading; however, the licensee's last name must appear as it is licensed with the commission.**
8. Is an HOA disclosure required prior to contract execution for *all* residential property sales within a HOA community? **If the homeowners' association mandates membership, then the HOA disclosure is required prior to contract execution for all residential sales.**
9. If a seller represented by a transaction broker reveals that their home experienced flood damage several years ago but they covered it up with new carpeting, is the broker required to disclose this information to potential buyers? **Yes, the Brokerage Relationship Disclosure requires all licensees to disclose all known unobservable facts that materially affect a property's value.**



MODULE 1

COMPREHENSION ANSWER KEY

10. Broker A knows that a house has a reputation for being haunted and fails to disclose to the buyer that fact. The buyer closes on the house and then files a complaint to the DRE for failing to disclose a material fact that affects the value of the property. What is the result of the broker failing to disclose this fact? **The “fact” that a house is haunted is not a material fact that would have to be disclosed. Therefore that matter would not be prosecuted by the DRE.**
11. When military personnel are required to move more than 35 miles from the location of the property during active duty, what proof is required to terminate a real estate purchase contract? **In order to terminate a real estate purchase contract or rental agreement, the servicemember must provide either a copy of the official military orders or a written verification signed by the servicemember’s commanding officer.**
12. Broker A has conflicting demands on a security deposit held by her in the escrow account. The tenant says he did not damage the property by putting holes in the wall for pictures and the landlord says the holes never existed and the tenant did it. Broker A disburses the money as set forth by 83.49 to the landlord. The tenant files a complaint to the DRE for the broker failing to follow the procedure set out in 475.25(1) d, Florida Statutes. Why is the case dismissed? **Case is dismissed because Chapter 83 controls this matter and as long as Section 83.49 was followed, the requirements of F.S. 475.25 need not be followed.**
13. A sergeant in the Air Force is renting a house near Patrick Air Force Base. The sergeant has three years left on his military service obligation. Due to the peaceful nature of the world, the government decides his service is no longer needed. Can the sergeant get out of his lease? What if the lease specifically states that members of the military cannot get out of their leases even if they get early discharge? **The sergeant would be able to get out of the lease. Having a clause in the lease with a statement that servicemembers cannot get out of their lease is not enforceable because it attempts to waive or circumvent the law.**
14. The tenant moved out of Landlord Kevin’s unit on October 15. Shower tiles were damaged and need to be replaced. By what date must Kevin mail his Notice of Claim on the security deposit to the tenant? **To comply with the notice requirement Landlord Kevin must mail his notice by November 14, which is within 30 days of the tenant’s departure.**
15. Does the notice requirement change if the tenant vacated the premises prior to the expiration of the lease term and did not give at least seven days written notice of vacating? **If the tenant vacated the premises prior to the expiration of the lease term and did not give at least seven days written notice of vacating, the landlord does not have to follow the 30-day notice requirement. However, the tenant is still owed whatever is due from the balance of the security deposit.**

~ NOTES ~



Business Ethics for Real Estate Professionals

This module satisfies the 3 hours of Business Ethics required by the FREC.



Written by John Greer

John Greer has over 30 years of experience in Florida real estate and real estate education. He has authored and co-authored numerous Florida real estate texts and online courses, and personally taught thousands of Florida real estate licensees. John's educational background includes a Master's degree in Adult Education, and a Doctorate in Educational Leadership and Management. John has participated in many Florida Real Estate Commission workshops and task forces including the latest Sales Associate and Broker pre-license syllabus updates. John is a United States Air Force veteran, and enjoys playing ice hockey, offshore fishing, and scuba diving in his spare time.

Glossary

Business Ethics—deals with the ethical practices that arise in a business environment.

Code of Conduct—generally addressed to and intended for employees alone. It usually sets out restrictions on behavior and will emphasize compliance and rules.

Corporate Social Responsibility—a term used to create a higher level of accountability, trust, and understanding between businesses and consumers.

Code of Practice—identifies professional responsibilities in relationship to difficult issues and provides a clear directive as to what behavior is considered ethical or correct.

Unethical Behavior—any action that falls outside of what is considered morally right or proper for a person, a profession or an industry.

Whistleblower—a person who exposes any kind of information or activity that is deemed illegal or unethical.

Code of Ethics—improves the professionalism and reliability of the real estate industry.

Preamble—contains a number of thoughts as to how licensees should conduct themselves.

Articles—outline the way that REALTORS® should conduct their activities both personally and professionally.

Standards of Practice—are designed to support, interpret, and amplify an Article.

Dispute Resolution—designed to assist licensees who are unable to resolve a difficulty.

Ombudsman Program—a form of informal dispute resolution which focuses on communication and finding mutual, non-coerced agreement between the parties.

Mediation—an informal intervention process conducted by a trained third party.

Ethics Complaint—gives members of the public an alternative to legal action, saving time and money for licensees and consumers.

Grievance Committee—conducts a review of the complaint to determine if a possible violation of the Code of Ethics has occurred.

Hearing Panel—the group that conducts any full “due process” hearings.

Arbitration—arbitration issues are typically monetary disputes among broker members of the Association.

Pathways to Professionalism—a list of professional courtesies that agents should follow.

LEARNING OBJECTIVES

Upon completion of this module, the student will be able to:

1. Define business ethics.
2. List examples and causes of unethical behavior.
3. Describe the strategies for establishing an ethical business culture.
4. Discuss the history of the code of ethics.
5. Explain the Preamble to the Code.
6. Discuss the Code’s Articles and Standards of Practice.
7. Explain how changes to the Code are made.
8. Describe the informal ombudsman program of Code enforcement.
9. Discuss mediation.
10. Explain how ethics complaints are handled.
11. Discuss arbitration.
12. Describe the Pathways to Professionalism.

BUSINESS ETHICS

Definition

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

In this chapter, we will first look at business ethics from a broad-brush viewpoint and get a basic understanding of the interaction between business practices and ethics. Then we will focus on ethics as it relates to the real estate industry, and how the concept of ethics is formally enforced in the real estate industry.

Overview

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

- **Slander—Law #127:** “If anyone points the finger at a sister of a god or the wife of any one, and cannot prove it, this man shall be taken before the judge, and his brow shall be marked.”
- **Trade—Law #265:** “If a herdsman, to whose care cattle or sheep have been entrusted, be guilty of fraud and make false returns of the natural increase, or sell them for money, then shall he be convicted and pay the owner ten times the loss.”
- **Slavery—Law #15:** “If anyone takes a male or female slave of the court, or a male or female slave of a freed man, outside the city gates, he shall be put to death.”
- **Duties of Workers—Law #42:** “If anyone takes over a field to till it, and obtain no harvest therefrom, it must be proved that he did no work on the field, and he must deliver grain, just as his neighbor raised, to the owner of the field.”
- **Theft—Law #22:** “If anyone commits a robbery and is caught, then he shall be put to death.”
- **Trade—Law #104:** “If a merchant give an agent corn, wool, oil, or any other goods to transport, the agent shall give a receipt for the amount, and compensate the merchant therefor. Then he shall obtain a receipt from the merchant for the money that he gives the merchant.”
- **Liability—Law #53:** “If anyone be too lazy to keep his dam in proper condition, and does not so keep it; if then the dam break and all the fields be flooded, then shall he in whose dam the break occurred be sold for money, and the money shall replace the corn which he has caused to be ruined.”

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

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

The term “business ethics” came into common usage in the 1970s. By the mid-1980s at least 500 courses in business ethics were offered at colleges and universities nationwide. This effort was supported by at least some twenty textbooks being published at the same time.

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

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

It is important to note that “law” and “ethics” are not synonymous, nor are the “legal” and “ethical” courses of action in a given situation necessarily the

same. Statutes and regulations passed by legislative bodies and administrative boards set forth the “law” but do not rise to the level of defining specific ethical behaviors. This dichotomy is glaringly apparent in the practice of slavery that was once legal in the U.S., but certainly was not an ethical act.

Corporate Social Responsibility

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

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

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

Codes That Regulate Behavior

Many companies use the phrases ethical code, code of conduct, and code of practice interchangeably, but there are distinctions. A *code of ethics* sets out the values that underpin the code and describes a company’s obligation to its stakeholders. The code is publicly available to anyone with an interest in the company’s activities

and the way it does business. It will include details of how the company plans to implement its values and vision, as well as guidance to staff on ethical standards and how to achieve them.

A *code of conduct* is generally addressed to and intended for employees alone. It usually sets out restrictions on behavior and will emphasize compliance and rules. Many employers have taken the code of conduct and broken it down even further into a series of fundamentals that explain exactly how each section of the code of conduct is to be interpreted. For example, what does “treat each other with respect” really mean? Instead of a simple bullet point, a fundamentals document will likely give the topic a paragraph or so of coverage to clearly define what that means in the course of business.

A *code of practice* is adopted by a profession, a governmental agency, or non-governmental organization to regulate their operations. A code of practice identifies professional responsibilities in relationship to difficult issues and provides a clear directive as to what behavior is considered ethical or correct. As a group member, failure to comply with a code of practice can result in expulsion from the professional organization.

A social contract is used by some organizations as a standard way to deal with internal issues in the organization. Typically, all employees will agree to the social contract which outlines how disputes will be resolved, and generally encourages strong communication to bring issues forward and resolve them in meaningful and ethical ways.

The Ethics Codes Collection (ECC)

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

Business Ethics Magazine

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

Ethics Officers

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

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

The Sarbanes–Oxley Act of 2002

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

implement rulings on requirements to comply with the law.

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

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

Unethical Behavior

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

Unethical Behavior by Individuals

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

Unethical Behavior by Businesses

- Polluting the environment
- Keeping two sets of accounting books

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

Unethical Behavior by Professionals

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

Unethical Behavior by Elected and Government Officials

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

Causes for Unethical Behavior

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

- **Financial Advantage** – A financial advantage allows a firm or individual to produce goods and/or

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

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

Whistleblowers

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

- A violation of company policy

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

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

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

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

- **Adam B. Resnick – Omnicare**

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

- **Justin Hopson – New Jersey State Police**

During his first few days as a rookie, Hopson witnessed an unlawful arrest and false report made by his training officer. When he refused to testify in support of the illegal arrest, he was subjected to hazing and harassment by his fellow troopers. He uncovered evidence of a secret society within the State Police known as the Lords of Discipline, whose mission it was to keep fellow troopers in line. Trooper Hopson blew the whistle on the Lords of Discipline, which sparked the largest internal investigation in State Police history. Hopson filed a

federal lawsuit alleging that after he refused to support the arrest, Hopson was physically assaulted, received threatening notes, and his car was vandalized while on duty. In 2007, the State of New Jersey agreed to a \$400,000 settlement with Hopson. Justin Hopson and his book were featured on ABC News 20/20 “Confessions of a Cop” in 2012 and “Crossing the Line” in 2014.

- **John Kiriakou – Central Intelligence Agency**

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

- **Cathy Harris – United States Customs Service**

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

- **Chuck Blazer – The Fédération Internationale de Football Association (FIFA)**

The former FIFA executive, cooperating with the FBI on a major corruption inquiry, has admitted that he and other members of the executive committee were bribed in return for voting for South Africa’s bid for the 2010 World Cup.

- **John Tye – U.S. State Department**

Former State Department official John Tye released an editorial in The Washington Post in July 2014, highlighting concerns over data collection under Executive Order 12333. Tye’s concerns were rooted in the massive amounts of private confidential content that is sucked up by the National Security Agency.

Developing an Ethical Business Culture

Ethics starts at the top of the organization by leadership that is keenly aware of the importance of fair and equal treatment of all clients, employees, suppliers,

shareholders and the general public. Establishing an ethical business culture is based on a number of targeted strategies.

1. Establish Clear Expectations

Most organizations have a set of by-laws, slogans, mottos, policy manuals and some type of written performance standards for all employees to follow. Too often, this information is piled on the desk of the new hire on his or her first day on the job. The new hire is instructed to read the lofty prose but is not provided any additional directions or expected to give any feedback. Within a few weeks on the job, the new hire discovers how the organization truly operates and begins to understand the discrepancies between printed expectations and the realities of the actual work environment. Clear expectations should not only be in the written records of the company, but also must accurately reflect the actual ethical behavior expected.

2. Model Desired Behavior

Employees model their behavior after those in higher positions. Organizational leaders must practice what they preach and demonstrate by their actions which behaviors are expected within the ranks. The statement that actions speak louder than words is a true axiom.

3. Provide Ethics Training

Providing seminars and workshops on ethical topics demonstrates to everyone the importance that the organization places on ethical performance and reinforces the organization's standards of conduct.

4. Treat All Complaints Seriously

Employees who notify management of ethics violations should be treated in a supportive and earnest manner. Avoiding or ignoring complaints only results in the complaint being submerged and creating problematic friction in the organization.

5. Hire Ethical/Fire Unethical Employees

Members in the same profession network frequently regardless of which company they actually work for. Consider that when individuals change companies, chances are high that their reputation precedes them. Hiring a top-flight sales representative with a checkered past signals to other employees that behavior takes a backseat when it

comes to meeting performance quotas.

When an employee demonstrates unethical practices, even after corrective counselling has taken place, the organization has to have the courage to terminate the individual. Failure to do so sends a message that rules are just transparent rhetoric that can be circumvented without any consequences.

6. Reward Ethical Acts

Employees who take the high road and make tough decisions while maintaining high ethical standards should be rewarded by the organization.

7. Provide Protective Mechanisms

The organization needs to provide formal mechanisms so that employees can discuss ethical dilemmas and report unethical behavior.

8. Provide Corrective Feedback

Organizations need to reinforce behavior that is desired, but they must also be ready to take corrective action when behavior is unacceptable.

9. Provide Periodic Reminders

The demands of daily business operations oftentimes overshadow the intangible tenant of ethical behavior. Thus, the organization needs to remind all staff members periodically of the importance of conducting day-to-day business operations in an ethical fashion.

ETHICS IN REAL ESTATE

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

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

Professional Code of Ethics

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

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

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

History of the Code of Ethics

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

At the time the Code of Ethics was adopted, there were no state licensing laws and no standard of conduct for the industry. NAR established the Code of Ethics as a professional standard of conduct, and

through the years the Code of Ethics became a basis for license laws. REALTORS® were among the first professions to adopt a professional code of ethics for their business practices. The code is a promise of professionalism.

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

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

Structure of the Code of Ethics

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

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

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

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

Note: You can find a copy of the NAR Code of Ethics on the Florida Realtors® website at www.floridarealtors.org. Click on the "Legal Center" tab on the left to find the Code of Ethics link. Print a PDF copy of the Code from this location and follow along as we discuss the sections.

The Preamble

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

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

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

The Articles

The Preamble is followed by seventeen (17) Articles divided up under the headings of Duties to Clients and Customers, Duties to the Public, and Duties to REALTORS®.

Duties to Clients and Customers

Articles 1-9 deal with these duties:

- **Article 1** – REALTORS® protect and promote their clients' interests while treating all parties honestly.
- **Article 2** – REALTORS® refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.
- **Article 3** – REALTORS® cooperate with other real estate professionals to advance their clients' best interests.

- **Article 4** – When buying or selling on their own account or for their families or firms, REALTORS® make their true position or interest known.
- **Article 5** – REALTORS® do not provide professional services where they have any present or contemplated interest in property without disclosing that interest to all affected parties.
- **Article 6** – REALTORS® cannot accept any commission, rebate, or profit on expenditures made for a client without the client's knowledge and consent and must disclose any fee or financial benefit they may receive from recommending related real estate products or services.
- **Article 7** – REALTORS® receive compensation from only one party except where they make full disclosure and receive informed consent from their client.
- **Article 8** – REALTORS® keep entrusted funds of clients and customers in a separate escrow account.
- **Article 9** – REALTORS® make sure that contract details are spelled out in writing and that parties receive copies.

Duties to the Public

Articles 10 – 14 deal with the public:

- **Article 10** – REALTORS® give equal professional service to all clients and customers irrespective of race, color, religion, sex, handicap, familial status, or national origin.
- **Article 11** – REALTORS® are knowledgeable and competent in the fields of practice in which they engage or they get assistance from a knowledgeable professional, or disclose any lack of expertise to their client.
- **Article 12** – REALTORS® paint a true picture in their advertising and in other public representations.
- **Article 13** – REALTORS® do not engage in the unauthorized practice of law.
- **Article 14** – REALTORS® willingly participate in ethics investigations and enforcement actions.

Duties to REALTORS®

The last three Articles deal with duties to colleagues:

- **Article 15** – REALTORS® make only truthful, objective comments about other real estate professionals.

- **Article 16** – Respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with their clients.
- **Article 17** – REALTORS® must mediate or arbitrate financial disagreements with other REALTORS®, provided the clients agree to be bound by any resulting agreement or award.

Standards of Practice

The Articles of the Code are very broad statements of conduct. Associated with the Articles are one or more Standards of Practice which are designed to support, interpret, and amplify that Article.

When someone files an ethics complaint against a licensee, **only Articles may be named**, never anything contained in the Preamble. Also, REALTORS® **cannot be found in violation of a Standard of Practice**, only in violation of the associated Article. However, Standards of Practice may be referenced to support an alleged Article violation.

Each of the Articles has some number of Standards of Practice associated with it as follows:

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

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

Changes to the Code

When needed, amendments to the Code and the Standards of Practice are made annually at the NAR Midyear Meetings and the REALTORS® Conference and Expo.

NAR has a group of members who belong to an Interpretations and Procedures Subcommittee. This body frequently makes recommendations to the Professional Standards Committee about enhancements to professional standards procedures and to the Code of Ethics.

All changes that are proposed to the Code and to the policies and procedures by which the Code is enforced must be approved by the Board of Directors. Amendments to the 17 Articles must also be approved by the Delegate Body.

The Code and the Law

It's important to note the following:

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

Enforcing the Code of Ethics

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

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

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

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

However, if it happens that the licensees are unable to resolve a difficulty on their own; there are two courses of action available:

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

Informal Dispute Resolution

There are two avenues for informal dispute resolution:

- Using an ombudsman
- Submitting to mediation

Ombudsman

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

Real Estate Ombudsman Programs

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

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

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

If an ethics complaint is resolved through an ombudsman, the complaint is considered discharged. If a member fails or refuses to comply with the terms

of a mutually agreed upon decision, the complaining party can then file or re-file an ethics complaint.

Mediation

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

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

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

Mediation is also a voluntary process and one which must be available to all REALTORS®. Local associations have the option of offering mediation to the disputing parties before or after a grievance committee's review of any arbitration requests. If the association offers mediation before a grievance review, then they must offer it again after the grievance committee makes its determination on whether the matter is actually appropriate for arbitration.

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

Formal Dispute Resolution

The avenues for formal dispute resolution include:

- Ethics complaints
- Arbitration

Ethics Complaints

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

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

- Grievance committee
- Hearing panel

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

The grievance committee members will confirm the following information:

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

If the grievance committee establishes that a potential violation occurred, and if other requirements

of the complaint process are met, the committee will submit the complaint to the Professional Standards Committee for a hearing by an ethics hearing panel.

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

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

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

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

In addition, the panel may also impose an administrative processing fee of up to \$500. However, such processing fees should be the same for all cases, subject to association policy and not based on the

specific case itself. Any administrative fee imposed would be in addition to, not part of, any disciplinary fine imposed.

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

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

Arbitration

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

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

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

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

- If the claims in the request for arbitration are taken as true on their face, is the matter at issue related

to a real estate transaction that could be arbitrated properly; in other words, is there some basis on which an arbitration hearing could base an award?

- If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?
- Is the amount of the dispute too small or too large for arbitration?
- Is the matter too complex legally, involving matters that the arbitrators may not be able to address in a knowledgeable manner?
- Are there enough well-informed arbitrators available to address the issue?

As with mediation, this review is **not** a hearing on the merits, but rather a preliminary analysis to determine if a hearing is necessary.

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

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

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

Other procuring cause considerations could be:

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

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

After appropriate consideration, the panel will decide which licensee is entitled to the disputed commission. The awards may be judicially enforced when not paid by the non-prevailing party. **Note:** Many associations require that when awards are not paid, an equal amount must be deposited with the association until the hearing process can be reviewed or during the time any legal challenge is pending.

Pathways to Professionalism

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

The list is divided into three sections:

- Respect for the Public
- Respect for Property
- Respect for Peers

Here is the list as it appears on page 262 of the *NAR Code of Ethics and Arbitration Manual*.

Respect for the Public

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

Respect for Property

1. Be responsible for everyone you allow to enter listed property.
2. Never allow buyers to enter listed property unaccompanied.
3. When showing property, keep all members of the group together.
4. Never allow unaccompanied access to property without permission.
5. Enter property only with permission even if you have a lockbox key or combination.

6. When the occupant is absent, leave the property as you found it (lights, heating, cooling, drapes, etc.). If you think something is amiss (e.g., vandalism) contact the listing broker immediately.
7. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. Leave the house as you found it unless instructed otherwise.
8. Use sidewalks; if weather is bad, take off shoes and boots inside property.
9. Respect sellers' instructions about photographing or videographing their properties' interiors or exteriors.

Respect for Peers

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

Sample Case Interpretations

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

Duties to Clients and Customers

Related to Article 2: REALTORS® must refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.

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

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

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

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

REALTOR® A accompanied Sales Associate B to the hearing, armed with a copy of his candid advertisement. The hearing established that the buyer fully understood that the house was represented to be generally in poor condition, but that while inspecting the house with a view to needed repairs, Sales Associate B had commented that since the house was of concrete block and stucco construction, there would be no termite worries since termites could not enter that type of construction. Sales Associate B confirmed this and his belief that the statement was

correct. However, after the sale was made, the buyer ripped out a sill to replace it and found it swarming with termites, with termite damage to floors in evidence. Further questioning established that there had been no evidence of termite infestation prior to the sale, and that the Sales Associate had volunteered an assurance that he thought was well grounded.

REALTOR® A, prior to the conclusion of the hearing, offered to pay the cost of exterminating the building and the cost of lumber to repair termite damage in view of Sales Associate B's failure to recommend a termite inspection, which was the usual and customary practice in this area. The complainant stated that this would satisfy him completely. It was the Hearing Panel's view that while REALTOR® A's actions were commendable, and would be taken into account by the Hearing Panel, REALTOR® A was still responsible for the errors and misstatements of the sales associates affiliated with him. The Hearing Panel concluded that REALTOR® A was in violation of Article 2.

Duties to the Public

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

Case #12-1: Absence of Name on Sign

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

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

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

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

The Hearing Panel determined that the sign was an

advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR-ASSOCIATE® B were in violation of Article 12.

Duties to REALTORS®

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

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

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

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

REALTOR® B, having reason to think that REALTOR® C was in touch with prospective buyers to whom the property would appeal, approached REALTOR® C to invite his cooperation, and explained fully the Client's instructions. REALTOR® B discussed the matter with no other REALTOR® and refrained from any kind of advertising of the property. But a few days later, REALTOR® B learned that REALTOR® D was discussing the property with prospective buyers, knew that REALTOR® C was working on it, knew the price at which the property had been listed, and other details about it. Questioning revealed that REALTOR® C had told REALTOR® D that he was working on the sale of the property.

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

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

At the hearing, REALTOR® B detailed the instructions of the client and the manner in which he had conveyed them to REALTOR® C in inviting his cooperation. REALTOR® D told the Hearing Panel that REALTOR® C had discussed the listing with him. REALTOR® C defended himself against the charge of violating Article 16 by saying that while he had discussed

the matter briefly with REALTOR® D, he had not expressly invited his cooperation, and, therefore, had not violated Article 16.

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

MODULE 2 REVIEW – BUSINESS ETHICS FOR REAL ESTATE PROFESSIONALS

You are *not* required to answer the module review questions to complete the 14-hour course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

- 1. Which is *not* considered to be unethical behavior?**
 - a. taking credit for work you did not do
 - b. cheating on an exam
 - c. selling a rundown house and disclosing known defects
 - d. sexually harassing someone at work

- 2. The Articles of the NAR Code of Ethics deal with all of the following duties, EXCEPT:**
 - a. Duties to clients and customers
 - b. Duties associated with the Brokerage Relationship Disclosure Act
 - c. Duties to the public
 - d. Duties to other REALTORS®

- 3. The sections in Pathways to Professionalism do *not* include:**
 - a. Respect for Peers
 - b. Respect for the Public
 - c. Respect for Pets
 - d. Respect for Property

- 4. The act of “outing” someone for illegal or unethical behavior is:**
 - a. a legal issue that should be dealt with by HR.
 - b. an act that normally involves retaliation by the person outed.
 - c. generally not recommended due to repercussions that may occur.
 - d. called whistleblowing and can be reported internally, externally, to law enforcement, or to a third party.

- 5. Good ethical practices have to do with:**
 - a. honesty
 - b. competence
 - c. trustworthiness
 - d. all of the above

**How did you do? Remember, we have instructors available to assist you throughout your learning experience.
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Trending in Real Estate Today

**Specialty Topics for Today's Real Estate
Professional (Modules 3-6)**



Non-Traditional Residential Real Estate



Written by John Greer

John Greer has over 30 years of experience in Florida real estate and real estate education. He has authored and co-authored numerous Florida real estate texts and online courses, and personally taught thousands of Florida real estate licensees. John's educational background includes a Master's degree in Adult Education, and a Doctorate in Educational Leadership and Management. John has participated in many Florida Real Estate Commission workshops and task forces including the latest Sales Associate and Broker pre-license syllabus updates. John is a United States Air Force veteran, and enjoys playing ice hockey, offshore fishing, and scuba diving in his spare time.

LEARNING OBJECTIVES

Upon completion of this module, the student will be able to:

1. List several different types of non-traditional housing.
2. Identify the ways that Florida deals with mobile and manufactured homes.
3. Discuss the different types of non-traditional building materials.
4. Explain conditions surrounding the use of aluminum wire, Chinese drywall, formaldehyde, and various types of pipe.
5. Describe ramifications of wood foundations, synthetic materials, use of EIFS, and meth contaminated properties.
6. Explain issues surrounding the sale of non-traditional homes, including marketing, financing, home inspections, and insurance considerations.

NON-TRADITIONAL HOUSING TYPES

Non-traditional housing has always been on the fringe of the real estate market. Most homebuyers don't require a wine cellar, a backyard model railroad, or a natural rock stream-fed shower. The typical American mainstream buyer is looking for a home with approximately the following similar features:

- Three to four-bedrooms
- Three baths
- 2,000 square feet of living space
- Two-car attached garage
- Open floor plan
- Neutral décor

However, more and more non-traditional homes are being built, bought, and sold every day. The real estate agent who is versed in the concept, practices, and materials used in non-traditional buildings will be ahead of the pack when a property owner is seeking out a listing agent or a buyer is shopping for a unique or unusual home.

There are a number of different building types that fall under the heading of alternative real estate. The only constant is that the original design for the structure was not intended for primary residential living.

This module is designed to give you an overview of the different types of non-traditional residential homes and associated building materials that a licensee may encounter in the State of Florida. The goal is not to make you an expert in the field of alternative building construction. The goal is to provide you with some background information, so when faced with a non-traditional transaction, you have a basic understanding of the type of real estate being listed or sold. As always, you must avoid claiming to be a building expert and strongly recommend that your clients seek advice from dedicated and appropriate inspectors.

Barns



Across the country and especially in the northeast, hay and dairy barns have been rescued and refitted with living space that has become extremely attractive and comfortable. Most conversions have required the guidance from professional engineers, architects, and builders. While not as prevalent as in northern states, Florida does have some converted barn homes, mostly located in the Ocala area. In addition, a number of companies in Florida specialize in horse barns, riding arenas, timber frame homes, and barns with living quarters.

Silos/Factories/Mills

Over the years, homeowners have taken on the challenge of retrofitting commercial structures into private single-family dwellings. Firehouses, churches, and retail stores are just some of the buildings that

have been repurposed. Most custom projects require a substantial outlay of cash and sweat equity.

Accessory Dwelling Units

An accessory dwelling unit (ADU) is a living area located in or detached from a single-family home. Some other terms have been used as synonyms for ADU, such as:

- Accessory apartment
- Backyard cottage
- Carriage house
- Garden suite
- Granny cottage
- Mother-in-law suite

Since the year 2000, numerous cities have encouraged ADUs, including Santa Cruz, California; Seattle, Washington; Arlington, Virginia and Denver, Colorado. Portland, Oregon is considered to be the leader in the ADU movement with over 600 permitted dwellings.

Currently, real estate appraisers, mortgage lenders, and real estate brokers all lack a consistent view of the monetary value of properties with ADUs.

Micro Homes

A micro home, aka tiny house, is a small house that is energy-efficient and designed to maximize usable space. No official definition of a micro house exists, though most homes are smaller than 500 square feet. Typically, a micro home features a loft space for a bedroom, a living space, a kitchen, and a small bathroom. A micro home is usually suitable for only one to two people. Micro homes are designed to be



minimalist structures, but are not lacking in upgraded features such as custom cabinets and creative storage space.

Many micro homes are designed and installed on flatbed trailers. These types of homes are not transferred with a real estate deed, but rather by a motor vehicle title. Micro homes are typically the most inexpensive type of alternative housing, due to the fact that the ground the unit sits on is not a part of ownership.

Trailers/Manufactured/Modular Housing

This type of housing deals with factory-built homes. They have a variety of names such as trailers, manufactured homes, modular homes, panelized homes, pre-cut homes, and mobile homes. The only common dominator is that the entire dwelling or major components are built in a factory.

There are a number of misconceptions when it comes to housing that has attached wheels and housing that is delivered to a site on a flatbed truck. For clarification, consider these definitions:

- A mobile home (aka trailer) is the term used for manufactured homes produced prior to June 15, 1976, when the HUD Code went into effect. Despite the formal definition, mobile home and trailer are still common terms in the United States for this type of housing. The wheels and axles are intended to be permanent.
- A manufactured home (commonly known as a mobile home constructed after 1976) is a type of prefabricated housing that is largely assembled in a factory and then transported to a site. The definition of the term in the United States is regulated by federal law (Code of Federal Regulations, 24 CFR 3280): "Manufactured homes are built as dwelling units of at least 320 square feet in size with a permanent chassis to assure the initial and continued transportability of the home. The wheels and axles are intended to be permanent." Texas gets the largest share of new manufactured homes, followed by Louisiana, Florida, Michigan, and Alabama.
- A modular home is one that is also built indoors in a factory. The finished home or major building units are transported to their new location and then assembled. A modular home is not a mobile home



or trailer. It is simply a home that is built off-site as opposed to on-site. High-end modular homes come in all styles and allow for one-of-kind customization. Modular homes do not have attached axles and wheels.

Florida taxes mobile homes in one of three ways.

- **Assessed and taxed as real property – RP:** The owner of a mobile home who permanently affixes his or her mobile home to land he or she owns must buy an RP (real property) decal. This is a one-time purchase. RP decals are issued by the Department of Highway Safety and Motor Vehicles and purchased from the local county tax collector's office. The county property appraiser must assess mobile homes with an RP decal. Mobile homes with an RP decal must be on the real property assessment roll and taxed annually as real property.
- **Annual license tax – MH:** The owner of a mobile home who does not own the lot or land on which the mobile home is affixed must pay an annual license tax by purchasing an MH (mobile home) decal. MH decals are issued by the Department of Highway Safety and Motor Vehicles and purchased from the local county tax collector's office.
- **Assessed and taxed as tangible personal property:** Mobile homes that meet the criteria for an MH decal but do not have a current MH decal will be taxed as tangible personal property. Mobile homes that do not bear a current decal (RP or MH) must be assessed by the county property appraiser, placed on the tangible personal property assessment roll, and taxed annually as tangible personal property. An owner may request a refund of the license tax from the Department of Highway Safety and Motor Vehicles if he or she provides documentation that the tangible personal property tax for the same year was paid.

Modular homes result in a land ownership trap. A modular home owner has basically two options as to where to place the home: privately held ground or a mobile home community.

When a mobile home is placed on privately held ground, it is treated similarly to a stick-built home. The owner pays for real property assessment that is taxed annually. Also, utilities and service fees are paid by the owner based on usage.

In a mobile home community, the mobile home owner must pay an annual tax fee, in addition to lot rental fees and any shared community fees. In some cases, it is not uncommon to see older mobile homes being sold for a very low cost, only to discover that the mortgage payment, monthly taxes, lot rental, and service fees far exceed budgeted amounts. Inexperienced buyers need to be educated in the overall costs of mobile home community living.

A limited equity housing cooperative is an alternative model for owners. In Florida, many mobile home communities were originally built outside the city limits and the land beneath them is often zoned commercial rather than single-family residential. Over time, the land becomes very valuable for commercial development and is sold to the highest bidder. Now, many homeowners discover that they are unable to sell or even move their homes.

To overcome this problem, many owners are turning to a limited equity cooperative model. Under this ownership structure, homeowners still do not own the land parcel beneath their feet; instead, they own a pro rata share in the resident corporation that owns the entire mobile home park.

The major features of this model include the following:

- Each resident owns a membership interest in the corporation that owns the land.
- Residents do not directly own their own piece of land.
- Co-op membership entitles residents to a long-term lease and a vote in corporate governance.
- Co-op members are considered both lessees and owners.
- Prices for membership interest are determined by the members at a low level and remain fixed to keep the housing affordable for current and future residents.
- Member residents establish the lot fees.

To learn more about the laws governing factory-built homes in Florida, licensees should do some additional reading. Chapter 723 of the Florida Statutes, also known as the Florida Mobile Home Act, is a chapter of law that governs the rental or leasing of mobile home lots in the State of Florida. Licensees should read the Florida Mobile Home Act in conjunction with Chapters 61B- 29 through 32, and 35, Florida Administrative Code. These administrative rules are promulgated by the Division of Florida Condominiums, Timeshares, and Mobile Homes to interpret, enforce, and implement Chapter 723, Florida Statutes. Due to periodic changes to the statute and administrative rules, readers should inquire periodically to ensure that they are referring to the most recently revised copy.

Live-Aboard Vessels and Houseboats

In general, a houseboat is a boat that has been designed or modified to be used primarily as a home. Many houseboats are not motorized, because they are kept stationary at a fixed point and often tethered to land to provide utilities.

In response to conflicts between boaters, homeowners, and law enforcement, the state of Florida passed specific guidelines that define houseboat dwellers. Local governments cannot regulate live-aboards. According to Section 22 of FS 327.02, a “live-aboard vessel” means one of the following:

- A vessel used solely as a residence and not for navigation
- A vessel for which a declaration of domicile has been filed pursuant to the law
- A vessel used as a residence that does not have an effective means of propulsion for safe navigation



According to Section 17 of the law, a “houseboat” means “a vessel that is used primarily as a residence for at least 21 days during any 30-day period in a county of this state if such residential use of the vessel is to the preclusion of its use as a means of transportation.”

Rail Cars

There is a surplus of used and out-of-service cabooses and passenger train cars that have been converted into living quarters. The internet has a listing of companies that specialize in locating, moving, and installing train cars. Cabooses are the most popular choice for homes, but there are plenty of dining and sleeping cars being converted as well.

Shipping Container Homes

Officially known as Intermodal Steel Building Units, or ISBUs, shipping-container homes are gaining in popularity. ISBUs are made of 100% corten steel. They come in a variety of sizes; however, the most popular choices are:

- 20 feet long, 8 feet wide, and 8 feet tall (equaling 160 square feet).
- 40 feet long, 8 feet wide, and 8 feet tall, (equaling 320 square feet)



Some people join multiple containers together for a bigger structure. Others owners have even built entire commercial structures, company headquarters, and student housing with ISBUs.

ISBUs are inexpensive to buy new or used. Retrofitting is easy and cost-efficient. Prefab finishing kits can be purchased that include doors, windows, and interior decor.



Tree Houses

Essentially, a tree house is a structure that is built in or around trees and provides all-weather shelter, complete with running water, kitchen, bath, and a HVAC system. Most tree houses are detached units that are located on the grounds of a main house. Many tree houses are used as offices, studios, and over-flow sleeping areas. Constructing a safe and comfortable structure among the trees requires careful planning and engineering skills. Tree house rentals have become very popular for Florida visitors.

Double Envelope Houses

Double envelope house (aka Thermal Envelope House) construction was designed and developed in 1975 by Lee Porter Butler. Butler’s design is essentially a house within a house. A double envelope house is a passive solar house which collects solar energy in the solarium-type outer walls. Warm air is then circulated around the house between two sets of walls. The thermal energy that is captured between the walls is then circulated in a looping pattern into the living area.

A number of double envelope houses have been built in northern states to deal with colder weather. A few homes of this type are located in the Florida panhandle.

Decommissioned Military Sites

Decommissioning is the process of the withdrawal of equipment and services from a site. Over the years, the U.S. Military has closed a number of cold war era installations. These installations have now become available for civilian purchase.

A number of missile silos have been repurposed as

residential living quarters. Due to the fact that Florida is a peninsula composed of a porous plateau of karst limestone, missile silos are not well suited.

However, Florida does have an abundance of surface bases and air fields stretching from Miami down through the Keys and across the Everglades that were used during the 1960s. Many decommissioned sites in the state have been demolished, left to the elements, or repurposed by commercial interests. However, sites do reach the market occasionally and are transformed into residential living spaces.

Note that sites that have been neglected for years may have a number of issues facing a new buyer, such as flooding, mold, and structural settling.

Yurts

Traditionally, a yurt is a portable structure used by nomads in the steppes of Central Asia. The structure comprises a crown or compression wheel supported by roof ribs which are bent down at the end where they meet the lattice walls. The top of the wall is prevented from spreading by means of a tension band which opposes the force of the roof ribs. The structure is usually covered by layers of fabric, animal furs, and/or sheep's wool for insulation and weatherproofing.

Today, in the United States, yurts are made using hi-tech materials and are highly engineered for year-long living and built for extreme weather conditions. Modern yurts are usually built on wood platforms supported by a post-and-beam system.

Yurts fall in the gray area between permanent and temporary structures. Some locations in Florida ban them; others allow them at the discretion of the building official. Yurts for year round living may not be compliant with the Florida Building Code. However, vacation yurt rentals typically receive exemptions.

Dome Homes

Dome homes, which got their start in the 1960s, are built from professionally designed plans, using proven building techniques and materials. They are typically made from either wood or shotcrete cement. Due to the round design feature, construction costs for dome homes are usually 10% to 20% more than that of a traditional home with the same square footage.

Domes are highly resistant to natural disasters such as flooding, earthquakes, tornadoes, and hurricanes. They are also resistant to rust, mold, water, insects, and fire.

Earth-Contact Homes

An earth-contact home (also known as an earth berm or an earth sheltered home) is an architectural style characterized by the use of natural terrain to help form the walls of a house. An earth home is usually



set partially into the ground and covered with thin growth. Modern earth homes are built with concrete walls and insulation. Earth-contact homes have been around for a number of years and have been accepted by most to be just another traditional style of home. However, there are still a number of lenders that balk at underwriting a mortgage for earth-contact homes.

Repurposed Public Buildings

Schools, churches, firehouses, clock towers, and other public buildings have all been transformed into comfortable living spaces. Most repurposed structures were originally constructed using the best and finest of building materials. Repurposed public buildings are typically located in urban areas and provide a massive amount of floor space for office, studio, and residential living all located under one roof. The renovation of such buildings has been a boon to the redevelopment of entire areas. Zoning laws, building codes, and occupancy permits provide few obstacles when the intention of the owners is to renovate and revitalize a derelict building.

Gaudy Homes

Gaudy homes are typically oversized, over-priced,

and come with over-the-top features. For example, a single-family home in this category might come with such features as:

- Thousands of square feet of living space
- Ten or more bedrooms and/or bathrooms
- Bowling alley
- Roller skating rink
- Olympic-sized swimming pool
- Underground garage with enough space for 20 cars
- Baseball field



Gaudy home sellers add personal touches that drive the cost of construction up, but in many situations actually lower the market value of the property because of the limited curb appeal.

Gaudy homes are typically the most expensive type of alternative homes to buy and maintain.

Florida is no stranger to gaudy homes. A sample listing of such homes includes:

- Le Palais Royal in Hillsboro Beach
- Gated mega mansion located on Luray Road in Fort Lauderdale
- Mega mansion located in the 600 block of S. Ocean Blvd. in Palm Beach
- \$80 million plus home in the 1000 block of N. Ocean Blvd. in Palm Beach
- Tropical compound located at 2000 South Ocean Blvd. in Manalapan

Castles

Castles in America may not be common, but at any given time, there are between 20-30 castles in the



marketplace for sale. American castles are authentic structures that look, feel, and are built like their medieval counterparts. Over the years, most castle homes in Florida have become tourist attractions, such as the Villa Zorayda located in St Augustine. However, some structures remain residential homes such as the Chateau Artisan, a secluded castle located in the Redland area of metro Miami. It is surrounded by a moat and boasts eight bedrooms, eight bathrooms, and almost 20,000 square feet of living space.

Island Homes

When talking about island homes in Florida, we mean those homes located on property that can only be reached by boat, plane, or helicopter. Locations such as Amelia Island, Marco Island, and Vince Island which have road access do not qualify.

Interest in private islands has more than doubled in the past five years. Modern technology has made island ownership somewhat more accessible due to the following:

- Solar power electric grids
- Home-size water desalination units
- Cell phones
- Satellite TV
- On-site septic system

Some questions to consider when thinking about an island home purchase:

- Does the public have access to the beach and/or waterfront?
- What environmental requirements must be followed?

- Is a bank not willing to grant a loan because there are no comparable properties on the market?

At any given time, Florida usually has more private islands for sale than any other state. Unimproved islands start around \$500,000 and move upward into the millions for turn-key homes. Similar to high-end restaurant menus, many listings do not include the asking price in their advertising.

Historic Properties

A 200-year-old property fits an entirely different profile than the average resale property. In a traditional home sale, there are three factors that influence a home buyer's decision to purchase - location, condition, and price. In the sale of a historic property, all three of those factors apply, but a fourth one is added called historic significance. To be considered historic, a property must have three essential elements:



- **Sufficient age** - A property must be old enough to be considered historic. Generally speaking, this means that a property must be at least 50 years old.
- **High degree of integrity** - The property must be relatively unchanged and the original essential characteristics must still be present.
- **Historical significance** - A property must be significant to be considered historic. Significance is defined in three ways:
 - Has direct association with individuals, events, activities, or developments that shaped U.S. history
 - Embodies distinctive physical and spatial characteristics of an architectural style or type of building

- Has the ability to provide important information to our understanding of the past through archaeological, architectural, or other physical investigation

Real estate agents can become certified Historic House Specialists by attending a seminar that instructs agents on the many facets of successfully selling a historic property.

Training programs for certification as a Historic House Specialist are offered across the country and are supported by The National Trust for Historic Preservation, which is an agency under the U.S. Department of the Interior, National Park Service.

Condominium Garages

A condominium garage is not a true non-traditional living space, but does come with marketable ownership rights. Essentially a condominium garage is designed like a typical condo, but the owner is allowed to use the space as a garage or storage area.

Similar in design and construction to off-site storage lockers, condo garages are attractive to vintage car owners, artists, and crafters. The owner is allowed to service and store vehicles, boats, tools, and machinery in a safe, secure, and climate-controlled location. When an owner is ready to move out, he or she might call on a real estate agent to broker the sale.

NON-TRADITIONAL BUILDING MATERIALS

Non-traditional homes come in many styles and use a wide variety of building materials. Some building materials have been around for ages; however, some materials are the result of highly-skilled alchemy. This next section describes a sampling of non-traditional building materials that are being used in residential construction.

Cob Homes

Cob homes are built from clumps of a mixture of clay, earth, sand, water, and straw fibers and then applied by hand to a framework. Cob is a lot like adobe in its composition of materials. The main difference is that adobe is formed into bricks that are sun-dried before building and cob is built in layers without forming bricks first.

Cob walls are typically two feet thick and are limited to one level. The wall shape is somewhat free-flowing and takes on a sculptural shape based on the skill and creativity of the builder. Cob has been used mostly on experimental buildings in the U.S. while code-testing procedures are being studied; however, more and more isolated projects are receiving permits.

Rammed Earth

Similar to the cob method, rammed earth houses are constructed with damp soil mixed with sand, gravel, and a cement binder. To form the walls, the soil mixture is compressed and tamped into plywood forms. The forms are removed, revealing flat, rectilinear walls. Rammed earth walls are typically over a foot thick and have high compression strength that can act as load bearing walls. Rammed earth is a durable material that can handle many types of climates from hot and arid to cold and humid. Rammed earth has made some inroads into Florida construction, but is ideally suited to a desert climate.

Compressed Earth Blocks



Compressed earth blocks (CEB) are similar to adobe bricks, but made with much less water and formed by some type of machine compression. CEBs have greater density than adobe bricks and are more uniform in size. CEBs need little mortar between joints and walls and are oftentimes built using a dry-stacked method. CEB had very limited use prior to the 1980s. In the US, the largest market for CEB is in the southern states.

Structural Insulated Panels (SIP)

Structural Insulated Panels (SIP) are made from insulating foam sandwiched between two layers of structural material. The structural material commonly used is oriented strand board, waferboard, or plywood. SIPs are manufactured in a factory and can be a substitute for conventional walls, floors, and roofs. The panels are lightweight, easy to handle, and fit together precisely for an airtight wall. Building with SIPs adds about 10% more to the overall construction costs than using traditional materials. Also the builder needs to be trained in installing panels to make sure air infiltration does not occur around joints, windows, and doors.

Steel Framing

Steel framing has been used for many years as partition walls in both commercial and residential construction. Heavier-gauge members are now becoming more attractive for use as bearing walls and roof framing. Steel framing is dimensionally stable and can be finished with any exterior material. Steel framing requires a special set of skills and training vastly different from traditional stick-built construction.

Welded-Wire Sandwich Panels

Welded-wire sandwich panels are composed of a polystyrene or polyurethane insulation core surrounded by a welded-wire space frame. A layer of shotcrete is applied over the wire mesh. The system's strength and rigidity is provided by diagonal truss wires welded to the wire mesh on each side. The resulting structure provides exceptional strength and rigidity. The panels can be used as floors, load-bearing exterior or interior walls, partitions, or roofs.

Autoclaved Aerated Concrete Blocks (AAC)

This type of lightweight block is made from concrete mixed with chemicals that cause it to rise like dough in an oven. The mixture is pressure cooked until its mass is about 80% air. The resulting block is as strong as concrete, but lightweight and easy to handle during building. AAC blocks are expensive and add about 20% more to the cost of the project than traditional building methods. In the United States, modern uses of AAC began in 1990 for residential and commercial projects in the southeastern states.

Insulated Concrete Forms (ICF)

These are hollow foam forms that interlock to form walls. The forms are then filled with concrete. The foam acts as insulation, and the panels are usually reinforced with rebar. The forms remain in place and can be clad with traditional interior and exterior finish materials. ICF construction adds about 15% to traditional building costs.

ICF has been proven successful in every climate and region.

Engineered Wood

Engineered wood, also known as composite wood, man-made wood, or manufactured board, includes a range of derivative wood products. Engineered wood is made by gluing thin layers of wood together and then curing the plank. This method offers more dimensional stability than conventional lumber. Plywood, medium-density fiberboard (MDF), and particle board are the most common examples of engineered wood.

Wood-Plastic Composites (WPCs)

Wood-plastic composite materials are made of wood fibers and thermoplastics. The most widespread use of WPCs is in outdoor deck floors, railings, fences, landscaping timbers, and siding. Wood-plastic composites were first introduced into the decking market in the early 1990s. Manufacturers claim that wood-plastic composites are more environmentally friendly and require less maintenance than treated wood.

Earth Bags

Earth bags are soil-filled fabric sacks or tubes used to create walls and domes. Commonly used for flood control and by the military to create bunkers, earth bags have been repurposed as a natural-building product. Earth bag construction is quick, easy, and requires just a few basic tools. In earthquake prone areas, a strand of barbed wire is used as “mortar” between the bags to reduce slipping. One of the drawbacks of earth bags is the high labor demand for placing and tamping down each course of bags.

Wool Bricks

Wool bricks were developed by Spanish and Scottish

researchers. As the name suggests, wool is added to clay bricks, resulting in a product that is 35% stronger than traditional bricks and more resistant to cold and wet conditions. These bricks dry hard without the need for being fired.

Sustainable Concrete

The manufacture of traditional concrete adds about 10% of CO2 emissions to the environment each year. Sustainable concrete is made with recycled additives such as crushed glass, wood chips, and slag to reduce production pollution.

Paper Insulation

Paper insulation is made from recycled newspapers and cardboard. With the addition of borax, boric acid, and calcium carbonate, paper insulation becomes insect resistant and fire-retardant. Paper insulation can be blown into cavity walls, creating an almost draft-free space.

Concrete Tilt-up Panels

Pre-cast concrete panel construction consists of large panels that are self-supporting or smaller panels that are fixed between supporting concrete columns. Tilt-up panels have been used in the construction of warehouse structures for almost a century. Now, this technique is being applied to residential buildings as well. Tilt-up construction combines reasonable cost with low maintenance, durability, speed of construction, and minimal capital investment. Tilt-up panel construction has gotten more notice due to the increase in damage caused by hurricanes in Florida.

SPECIAL ENVIRONMENTAL CONDITIONS

There are number of environmental conditions that an agent should be aware of when listing, marketing, and selling a non-traditional property. Lead-based paint, radon, mold, and asbestos are the most commonly known culprits. A comprehensive property inspection will likely uncover most environmental conditions that might be cause for alarm.

That being said, it's good for licensees to be familiar with some of the less common and “experimental” building products that show up frequently in non-traditional homes.

Aluminum Electric Wire

During a time of high copper costs from the late 1960s to late 1970s, aluminum wire was used to wire entire houses. Wiring devices (outlets, switches, fans, etc.) at the time were not designed with the particular properties of aluminum wire in mind and there were problems with the properties of the wire itself, resulting in the wiring being a fire hazard. The wiring was implicated in several house fires for two main reasons: improper installation and the differences in the coefficient of expansion between the aluminum wire used in the 1960s and the terminations.

Chinese Drywall

Chinese drywall is defective drywall manufactured in China and imported into the United States starting in 2001. Laboratory tests of drywall samples identified emissions of the sulfurous gases carbon disulfide, carbonyl sulfide, and hydrogen sulfide. These emissions, which have the odor of rotten eggs, worsen as temperature and humidity rise and cause copper surfaces to turn black and powdery, a chemical process indicative of a reaction with hydrogen sulfide. Copper pipes, wiring, and air conditioner coils are affected. Homeowners have reported a variety of negative respiratory symptoms.

Formaldehyde Building Products

Formaldehyde is an ever-present, colorless gas that can give off a pickle-like smell. It has been commonly used in home products for decades, in everything from certain types of wood flooring to detergents, paint, and fabric. Low levels of formaldehyde irritate eyes, nose, throat, and skin, and can cause asthma attacks.

Most recently, wood flooring has been under study regarding excessive formaldehyde emissions. Prefinished solid-wood flooring showed consistently low formaldehyde emissions. However, some engineered wood and laminate flooring have shown unacceptable high rates of emissions and should be purchased only from a reputable dealer.

Polybutylene Pipe

Polybutylene is a form of plastic resin that was used extensively in the manufacture of water supply piping from 1978 until 1995. Due to the low cost of the material and ease of installation, polybutylene piping

systems were viewed as “the pipe of the future” and were used as a substitute for traditional copper piping. Throughout the 1980s, lawsuits were filed complaining of allegedly defective manufacturing and defective installation causing hundreds of millions of dollars in damages.

PEX Plumbing Pipe

As the price of copper continues to climb, more economical plumbing solutions are sought out. To this end, synthetic materials are being used such as cross-linked polyethylene, commonly called PEX for short. PEX has gained in popularity because of its ease of use and less fittings. Compared with copper or PVC pipe, PEX can be bent around corners where a copper or PVC pipe would need an elbow fitting. However, PEX failures have led to lawsuits. The most notable failure occurs when the fitting starts leaking and causes water damage. As of 2016, several manufacturers have been sued over their PEX products. Some of the suits have settled, while others are still moving forward.

Wood Foundations

Traditional basement walls are made from masonry materials such as concrete or stone. In the 1970s, pressure-treated wood foundations (PWF) were introduced to the market and gained acceptance. Manufacturers claim that wood foundations offer a number of advantages over masonry foundations, such as their being simpler, quicker, and cheaper to construct than masonry foundations.

When discussing PWF, the question of durability is always an issue. While PWF homes are still being built today, they have never been fully accepted by mainstream builders and mortgage lenders.

Synthetic Siding

The boom in housing over the last 30 years has resulted in the construction of millions of single-family and multi-unit homes using synthetic siding. Shortly after these homes were built, consumers started noticing a consistent pattern of product deterioration. Their siding rotted prematurely, grew fungus, swelled, and even fell off. A massive recall was undertaken and a lot of homeowners received full or partial compensation. However, there are a number of homes that still remain on the market that have not been re-sided.

Roofing Shingles

In the past, some homes have been built using defective fiber-cementitious roofing shingles. These materials are not real wood but a fiber cement type product that deteriorates when exposed to moisture and the elements.

Exterior Insulation and Finishing Systems (EIFS)

EIFS is a plastic exterior wall coating that promised to replace traditional stucco. However, over the years EIFS has proven to leak and actually seal in moisture, resulting in undetected interior wall damage. Purchasing a home with EIFS is a challenging task and should be done with inspection safeguards in place.

Federal Pacific Electric Service Panels

Federal Pacific Electric “Stab-Lok®” service panels and breakers have been deemed as a latent hazard. Circuit breakers can fail to trip in response to overloads, leading to electrical fires. The breakers may also fail to shut off internally even if the toggle is switched to “off.”

Knob and Tube House Wiring

Knob and tube wiring, abbreviated as K&T, was an early standardized method of electrical wiring in buildings in North America from about 1880 to the 1930s. It consisted of single-insulated copper wires protected by porcelain insulating tubes, and supported on nailed-down porcelain knobs.

Most existing residential knob and tube installations are unable to carry current day electrical loads adequately and have become outdated and unsafe. Most companies will not write new homeowners policies unless all K&T wiring is replaced. Also, many institutional lenders are unwilling to finance a home with the K&T wiring.

Meth Contaminated Property

Meth labs don't just show up in rundown locations but have been found in such places as storage lockers, college dorm rooms, nursing homes, and even in multimillion-dollar trophy homes. Only about half of the states require that real estate agents and home owners disclose meth contamination of

a property. Florida does not have a mandatory meth home disclosure requirement.

Labs in meth homes in Florida are growing in popularity due to the ease and low cost of making these drugs. Methamphetamine is alarmingly simple to make with readily available household items. The resulting chemical cocktail permeates every surface of the home and property. Meth exposure can lead to cancer, organ damage, and numerous other health problems, particularly in children. The effects on homes are long-lasting and cleanup requires a hazardous materials team. Cleanup costs can soar into the tens of thousands of dollars to decontaminate a property.

Florida has no statewide regulations requiring a homeowner to decontaminate a home before selling or renting it.

The Drug Enforcement Administration (DEA) keeps a national registry that logs the locations of known contaminated homes as reported by law enforcement. To see Florida's registry, visit www.dea.gov/clan-lab/fl.pdf.

MARKETING AND SELLING NON-TRADITIONAL HOMES

Homes that don't fit the traditional model and are personalized with unique or odd features potentially make a property more difficult to sell. Sometimes unusual homes do sell quickly. However, more often they sit on the market for longer than normal, because it takes more time to find the right buyer and obtain the appropriate financing.

In general, a unique home will:

- Create a lot of initial interest, but few bona fide offers
- Take longer to sell
- Cost more to market
- Appeal to a much smaller market segment
- Require more creative marketing strategies
- Require more creative financing options
- Become more frustrating to the seller and the listing broker
- Sell at a lower price than anticipated by the seller

Marketing Ideas

Some tips and tricks do exist that provide out-of-the-box thinking when it comes to marketing non-traditional property.

- **Open House Party** - Open houses are commonplace when selling a home, but some sellers are upping the ante by offering wine, food, and live music. A party just might create the right buzz to sell a property.
- **Seller Financing** - Many buyers can't qualify for a mortgage on a non-traditional home. Sellers might be encouraged to assist buyers with terms such as lease-to-own deals, paying for closing costs, or paying for points.
- **Extras** – Serious sellers are throwing in all kinds of extras, like free cars, vacations, and home upgrades to attract buyers.
- **Grand Prize Raffle** - Some sellers hold raffles and award their home to the winners. This method draws attention, but it may not be legal in all areas.
- **Sleep-Over** - For serious buyers, the seller might let the buyers spend the night in the house as guests. A trial run could be just what they need to sign on the dotted line.

Financing Non-Traditional Homes

Lenders don't make loans when a property's resale value is not obvious and straightforward. Also, when appraisers look for comparable sales, unique houses have no equivalents and are quickly stamped as risky. Most unique homes wind up selling at an unvalued, marked down price, which does not help the relationship between the seller and the agent.

Conventional marketing strategies like newspaper ads and open houses don't always attract a pool of potential buyers. From a real estate agent's standpoint, there are a few critical issues that he or she must deal with effectively to be successful in selling an alternative property:

- Financing of the property must be arranged in advance, approved, and guaranteed. Typically, the buyer must be able to bring to the table at least 50% of the purchase price in cash, before a lending institution will even consider a mortgage loan. In many sales, the buyer will pay the full cash amount, or the seller will help finance the purchase.

- A real estate agent must conduct due diligence regarding the presence of a marketable deed or title. Some non-traditional properties have mobile structures located on the premises. These structures may or may not be included in the sale. A sales contract must clearly spell out what the buyer is making an offer on.
- The dwelling must be able to pass all occupancy permit requirements and the insurance underwriter. An agent can spend a lot of time, money, and energy working a deal, and then come to find out that during the week of the closing, the new buyers can't move in due to environmental issues. Conducting due diligence is imperative.

Dealing with Client's Perceptions

Owners of non-traditional homes are those individuals who do not fit into the box of conventional home owners. They are unique and have expressed their difference in the most demonstrative of ways, by owning a unique home that fits their personal lifestyle.

When it comes time to move, they tend to be more reluctant to leave their dwelling than the typical seller. In addition, they tend to have second thoughts and become very emotional at the prospect of finding a new home. These sellers tend to over-inflate the actual market value of their home, even more so than your typical client.

An agent has to take all these factors into consideration when going on a listing call. To be successful, the agent will have to talk less and listen more. The agent needs to collect and remember those building details that make this property unique. An agent needs to acknowledge the uniqueness of the owner as well as the property. In addition, the agent needs to gain the confidence of the seller, by explaining the steps that he or she will take to find a like-minded buyer that will appreciate the property as much as the original owner.

Home Inspections

A home inspection conducted by a qualified company goes a long way in uncovering a number of questionable building materials and practices. However, a number of defects are latent and not exposed by a routine home inspection, no matter how thorough.

A licensee should be extra vigilant when a client is listing or selling a non-traditional home. Due diligence is paramount. When taking a listing, make sure that the owner discloses the true nature of the property and shares its construction history. When working with buyers, advise them to seek additional professional inspections and request a longer inspection period. To avoid any claims in the future, document that extra precautions were taken prior to the transfer of ownership.

Non-Traditional Homeowners Insurance

Finding a company to insure a non-traditional home can be a challenge, because insurance companies establish rates based on the law of large numbers. For example, the one-off dome or cob house does not provide the necessary supporting data to establish coverage terms and corresponding adequate premium payments. Just a few years ago, it was impossible to insure non-traditional homes. However today there are a few “surplus lines” carriers that offer a Dwelling Fire Policy or a Homeowner’s Policy.

Surplus lines insurance, also called excess lines insurance, makes it possible to get insurance for homes with unique risks. A surplus lines broker is an insurance professional who negotiates coverage on the client’s behalf from an excess and surplus lines (E&S) insurer. E&S insurers specialize in insuring risks that most insurers won’t cover. They are non-admitted insurers, meaning they are not licensed in the states in which they operate, other than in their home state. Surplus lines insurance is often more expensive than regular insurance because it protects against unusual or higher-than-usual risks.

Florida’s Building Code

The Florida Building Code is a collection of regulations that are used as a standard of minimum requirements in the construction and alteration of buildings for the health and safety of users. Florida is the most storm-prone state in the union, but also has the strictest building codes in the nation. These codes apply equally to any newly-constructed, non-traditional home.

Building homes in Florida is big business. In the past, if a person bought a property that was full of defects and didn’t meet code specifications, that was generally considered the person’s problem and

there was little legal recourse. However, times have changed for the better.

Florida has decided that buyers of newly-constructed homes are entitled to a promise from the builder that their property is livable and meets its intended purpose. The concept of “implied warranty of fitness” was spelled out in the legal case of *Gable v. Silver*, 258 So.2d 11 Fla. 4th DCA 1972. Florida courts have also declared that implied warranties apply not only to the specific components that make up the home itself, but also to condos and any surrounding features and improvements.

Florida requires builders to warrant new construction whether coverage is included in the purchase contract or not. A standard warranty should be included in contract documents that promise that the contractors’ work is defect-free and complies with all contract requirements and building codes.

Resources for Non-Traditional Homes

There are a number of resources for non-traditional home owners. The following resources can provide additional information and support.

- Energy Efficient Building Association
- Sustainable Buildings Industry Council
- American Solar Energy Society
- The Development Center for Appropriate Technology
- The Center for Maximum Potential Building Systems
- US Green Building Council
- Center for Excellence for Sustainable Development
- Austin Energy’s Green Building Program
- Alameda County Waste Management Authority
- Earth Advantage Homes
- Earth Craft House
- Kitsap Built Green
- Container Home Review
- The National Association of Professional Surplus Lines Offices (NAPSLO)
- Harvard Green Building Services
- Environmental Building News
- Natural Home Magazine
- Home Power

MODULE 3 REVIEW – NON-TRADITIONAL RESIDENTIAL REAL ESTATE

You are *not* required to answer the module review questions to complete the 14-hour course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

- 1. An accessory dwelling unit (ADU) is best described as a:**
 - a. living area designed for temporary living.
 - b. living area located in or detached from a single-family home.
 - c. separate sleeping area that shares kitchen and bathroom facilities within a single-family home.
 - d. living area designed for mobile transportation.
- 2. In Florida, when a mobile home is placed on privately held ground, it is treated as a/an:**
 - a. mobile home.
 - b. micro home.
 - c. accessory dwelling unit.
 - d. stick-built home.
- 3. What building product is made from insulating foam sandwiched between two layers of structural material?**
 - a. structural insulated panels
 - b. steel framing
 - c. welded-wire sandwich panels
 - d. engineered wood
- 4. Which plastic exterior wall coating was developed to replace traditional stucco?**
 - a. pressure-treated siding
 - b. poly-resin insulation
 - c. exterior insulation and finishing systems
 - d. synthetic siding
- 5. Homes with unique risks can be insured through:**
 - a. secondary lines insurance.
 - b. surplus lines insurance.
 - c. underwriters' homeowners' insurance.
 - d. loss prevention insurance.

How did you do? Remember, we have instructors available to assist you throughout your learning experience.
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~ NOTES ~



Smart Houses & Aging in Place



Written by Melanie McLane

Melanie McLane is a second generation REALTOR®, who is an appraiser, broker and educator. Recently awarded REALTOR® Emeritus status, she has been in real estate all of her adult life. A graduate of Kenyon College, Gambier Ohio, she holds the following designations and certifications: ABR, CRB, CRS, EPRO, GREEN, GRI, RAA, RSPS, PSA, SRES, SRS; she is also certified as a distance instructor (CDEI) and is an Appraiser Qualifications Board approved USPAP (Uniform Standards of Professional Appraisal Practice) Instructor. She has written numerous courses, both for her own use, and as works for hire for other educational companies. Her book and course topics range from Smart Houses to Green Houses. She has served as President for her local association, West Branch Valley Association of REALTORS®, a District Vice-President for the Pennsylvania Association of REALTORS® (two terms), and has served on various NAR committees, task forces, and forums. In 2008, she was inducted into the REBAC Hall of Fame as an instructor; and in 2012, she was named RSPS of the Year for her contributions to the RSPS course. She has also been honored by her local association with “REALTOR® of the Year,” on two occasions, in 1994 and in 2017; “Spirit Award,” and “Outstanding Achievement Award.” She continues to list, sell and appraise, as well as teach. In her free time, she enjoys gardening and spending time with her grandchildren.

LEARNING OBJECTIVES

Upon completion of Part I of this module, the student will be able to:

1. Define what makes a smart house.
2. Identify the benefits of smart home technology for consumers.
3. Discuss trends in smart homes, and consumer activity.

PART I

WHAT MAKES A HOUSE ‘SMART’?

The term ‘smart house’ is used as often as the term ‘green’ house, and both can be ambiguous for the same reason. The addition of smart technology makes some consider a house ‘smart’, just as the addition of green, or sustainable features, makes some consider a house ‘green’. Probably the best definition of a Smart Home can be found from this source: <https://www.smarthomeusa.com/smarthome/>

“A Smart Home is one that provides its homeowners comfort, security, energy efficiency (low operating costs) and convenience at all times, regardless of whether anyone is home. “Smart Home” is the term commonly used to define a residence that has appliances, lighting, heating, air conditioning, TVs, computers, entertainment audio & video systems, security and camera systems that are capable of communicating with one another and can be controlled remotely by a time schedule, from any

room in the home, as well as remotely from any location in the world by phone or internet.”

As technology improves and consumers demand more convenience and control, smart home features will continue to become more common in households. Most of you, if you haven’t installed smart home features in your own home, have watched the TV ads for ‘smart doorbells’, Alexa and other devices which connect to the internet and allow the homeowner to control a variety of things by voice.

Smart homes run the gamut from limited applications to very intensive electronics, with all systems connected and controlled. The gateway into most houses is entertainment. According to a 2017 survey done by Vivent and Coldwell Banker, 57% of buyers use smart home features for entertainment. Voice activated commands are very popular among consumers, and is marketed as a convenience for the user, e.g. “Play me some jazz” or “Find me the playoff game”, or “What’s the weather?” Obviously, consumers enjoy watching and listening to TV and music programs which are customized to them. The same survey revealed that 33% of owners use smart home features for lighting, 33% for security, 33% for shopping, 30% to control temperature, 29% for cooking and chores, and 28% to control appliances.

SMART HOME APPLICATIONS

There are a number of smart home applications in addition to entertainment. Some of them combine one or more smart home features together.

Security

Some of these features are joined together, such as security with lighting. More and more advertising is being done, and more and more homeowners are installing doorbells which connect with cameras, lighting, and smart phones, which allow the owner of the house to speak to whomever is at the door, regardless of whether the owner is home or not. Here’s a link to the top rated ones by Lifewire: <https://www.lifewire.com/best-smart-doorbell-cameras-4145064> As you have seen in television ads yourself, these multi-function systems give intruders the strong idea that you may be at home. Obviously, the crooks watch TV also, but a bright light and a loud alarm go a long way toward inspiring the potential burglar to move on. These doorbells are integrated

with a smart house hub, cameras, lighting, and voice control.

While we are (figuratively) at the door, let’s talk about locks. Smart locks are being made by a variety of companies, with a variety of options. The standard “smart lock” will recognize an owner by the fob carried on them, or by the app on the smart phone they are carrying with them. Many smart locks can be programmed to let in another person with either a one-time code (much like the lock boxes used in the real estate business), or with an app. This allows the homeowner to let in friends, relatives, and trusted repair people. This past holiday season, Amazon, the world’s largest retailer, began asking customers for a key to enter their homes to drop off packages. <http://money.cnn.com/2017/10/25/technology/business/amazon-key-delivery/index.html>

This met with a variety of responses, including this one from a writer at the Washington Post, who found this to be an effort on Amazon’s part to control your home via their well-known hub product for smart homes, Alexa. https://www.washingtonpost.com/news/the-switch/wp/2017/12/07/amazon-wants-a-key-to-your-house-i-did-it-i-regretted-it/?utm_term=.b4b9c44295d3

Smart locks are made by a variety of companies, including Kwikset, August, Schlage, and Assure. All have their positives and negatives. One thing for consumers to be mindful of is what technology is compatible with technology they already have. For example, Schlage Sense locks are compatible with Apple HomeKit, which makes them a good choice for iPhone users, but not for Droid users. Assure lock has an interesting fail-safe feature for a dead battery inside the lock; it can be powered up by holding a 9V battery to the terminals at the bottom of the keypad, and entering your pin. August, which works well with Apple products, is also compatible with Amazon products, so you can use Siri if you are an Apple user or Alexa if you are an Amazon user.

Lighting

Lighting not connected to security per se is showing up in smart houses; this is lighting which can be controlled by the owner in a number of ways, either from a hub type device (like Alexa, etc) or by a smart phone. Many new lighting systems can be controlled in other ways, to use hues and spectrums of light to set a mood in the room.

Lighting connected to security has been around for a while; upscale homes built in the 1950s have had master switches, usually in the master bedroom, which could control lights anywhere inside or outside. This was the same decade that motion detectors began being used in burglar alarms. Today's motion detector lights are used inside and outside, and go on at movement. They are used for security and triggered by movement. Lighting systems are not only smart, many of them are green, with energy savings built in. Companies like Wemo make lights which turn on and off automatically, make the house look occupied, and learn the inhabitants' schedules. <http://www.wemo.com/lighting/>. Wemo marries energy savings with its other features by controlling devices which consume energy even when switched to off. Wemo, like many smart home features, can be controlled by an app on a smart phone. Another company with innovative lighting is Beon. This company makes bulbs which provide emergency lighting when the power goes out, automatically come on when a smoke detector goes off, respond and record your patterns, and respond like you would to a doorbell. <https://www.beonhome.com/>

Alerts

Smart homes can alert their owners to a variety of situations, from a leaking water heater to a freezer on the fritz. Smart homes can monitor energy usage, and alert homeowners when there are problems (the water from the water heater, or from the broken freezer) or excessive usage, which could indicate a leak somewhere. Many utility companies have installed smart meters on homes to monitor use of utilities. These smart meters send information to the utility supplier as well as keep you informed of your usage. They can also be controlled via a smart home. Smart homes can tell the owner when a door is unlocked or a window is opened. Some of the smart locks will detect when the owner leaves, and automatically lock the door; some alerts can be programmed to go to another person's smart phone. For an elderly person who lives alone, this alert can go to a family member, e.g. "Grandma's patio door is open". Smart water sprinklers will not run when it is raining; there are others that are even more high tech. Here's a list: [3qKFIA9eqQiq_cVXhBoCZHsQAvD_BwE](https://wiki.ezvid.com/best-smart-sprinkler-systems?id=adw&gclid=CjwKCAiApo3SBRA4EiwAty8i-kQXyPDpbAOFa5DPI6IsmcucR-cfp-1JPbC-</p>
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Some of these take into account climate, and local restrictions regarding water use. Inside the house, there are systems that monitor use and convert units which are the language of utility companies, to gallons, which make more sense to consumers. There are gadgets for showers that reduce the flow when there isn't a body in the shower, such as when someone steps aside to shave their legs or shampoo their hair; there are toilets that detect how much water is needed to flush them, and there are even advanced systems that take gray water (from sinks and showers) and use it to flush toilets.

Because so many of these devices collect data about you and your lifestyle, some people consider them an intrusion into their privacy. Here's an article that is somewhat biased in favor of the power companies: <https://www.thebalance.com/pros-and-cons-of-smart-meters-1182648>

Comfort

Many people start small, with a device such as a Nest programmable thermostat. Like other devices we have discussed, Nest, and other brands similar to it will learn your schedule and preferences, and before long, will start turning the heat or air conditioning on shortly before you get home; cutting it back as you leave for work and school, etc. Like so many products that integrate with other products and apps, not only will a Nest thermostat (or one like it) keep you comfortable, but it will help you to save energy. Other products that work on comfort include automated windows and blinds, which go up and down to catch breezes, let in, or block sunlight, etc.

Shopping

Then of course, there is shopping. Amazon has, among other things, a wand-like device which allows you to scan the bar codes of items you need to purchase. Like just about everything today, this also is an app for a smart phone. Because of Amazon's purchase of Whole Foods, and their division, Prime Pantry, the consumer can order food and have it delivered to their home. Food, of course, is something consumers are just beginning to purchase more and more online; but Amazon's Alexa and similar products allow consumers to order just about anything from their smart home

or smart phone. Because these devices are extremely user-friendly, some parents have found, to their dismay, that their children began ordering things using them. An article in Popular Science actually addresses keeping the kids away from using your devices in ways you don't want them to: <https://www.popsci.com/how-to-stop-amazon-alexa-buying-things-you-dont-want>

Cooking and chores are another place where smart gadgets, smart homes, and busy, stressed out consumers meet. The technology for timing devices has been around for a long time, but today's appliances can be controlled remotely by an app on the smart phone. Consumers can: start the washer/dryer, turn the crockpot down to "keep warm," start the oven, check the contents of the refrigerator remotely ("Are we out of milk?"), turn the air conditioning or furnace up or down; regulate sprinkler systems, monitor home appliances ("Is the water heater leaking?") run a robotic vacuum cleaner, and much more.

Comfort and customization did not appear in the Vivent/Coldwell Banker study, but a survey by Electronic House puts it on the list, along with: efficiency, convenience, and peace of mind. Comfort and convenience extend past the apps mentioned for controlling temperature and lighting. Smart homes can have blinds which are either raised or lowered by an app, or by changes in heat and amount of sunlight. The smart thermostats, such as Nest, 'learn' the inhabitants' schedules and adjust accordingly. Homeowners can check if they locked the doors, turned the heat down, and closed the blinds, and so on. Additionally, consumers can set up things to be just the way they want them when they get home: temperature at a certain setting, gas fireplace on, if the season is right, dinner cooking, blinds drawn, lights on, and the house freshly vacuumed.

Hubs and How Smart Homes Work

To have a complete smart home requires a system, or hub, which will control the various components of the house. There are a variety of systems that do this. Some of the more popular ones include: Zigbee, Z-Wave, Samsung, Wink Hub2, Abode Starter Kit; there are many others, as seen in this list: <https://www.techhive.com/article/3206310/connected-home/best-smart-home-system.html> These hubs control the devices in the house, the

heavily advertised Alexa, for example, is Amazon's device. Siri is Apple's voice activated control system, which some consumers have on their smart phones, but is available through the Apple Home Kit. There are a variety of other voice controlled systems; an article found here details them: <https://www.cnet.com/news/talk-to-your-house-with-these-voice-activated-smart-home-systems/>

All of these devices, including the hubs, work through the internet, which presents the problem of the system being hacked or breached. A concern about voice activated devices which record what you say, and can be hacked, is that consumers become so accustomed to them that they forget they are there, and reveal personal data. Of course, consumers using internet in their homes are also vulnerable when paying bills, doing on-line banking, or other financial transactions. All of the devices which use the internet to function are collectively referred to as "the internet of things." Any system can be hacked, and the results can be disastrous for the owners. Just as consumers should exercise due diligence and research before investing in smart home features and apps, they should also exercise due diligence and research about protecting themselves. Here's a link to an article about this: <https://www.tomsguide.com/us/secure-smart-home-how-to,news-19380.html>

Most experts suggest the use of a secure router, such as Norton Core. Anything which uses an internet connection is vulnerable. The devices themselves must be secured, as well as what controls them. One thing that consumers can do is multi-factor identification, which some financial institutions use. This requires a number to be texted to you for access. Other tips include changing passwords and other identification frequently, and use devices designed to protect your identity. It goes without saying that savvy consumers do not use public internet. Other tips include not ignoring updates; your smart phone, computer and other devices should be updated when notice is received; experts also recommend that you check for updates. Computers should have malware protection installed, as well as virus protection. It is recommended that you do not keep your main computer at home on the same network as your devices. You can split them, using a Virtual Local Area Network (VLAN).

Trends

Market Watch reports that the number of smart homes in North America is expected to hit 73 million by 2021, or more than 50% of all households. By the end of 2016, more than 21.8 million smart homes had already been connected. The Vivient/Coldwell Banker research confirmed this, saying that as of 2016, almost half (45%) of all Americans owned or were getting smart home technology; an additional 27% planned to get it; 35% of these self-identified as not early adopters; and 70% said having one smart home feature made them invest in more. This is big business, money-wise; Inman reported that in 2015 market reports valued the smart home automation market at \$4.4 billion, and that by 2020, experts estimate this industry will be worth over \$21 billion. According to Wakefield Research, more than 80 million smart home devices were purchased in 2016, a 64% increase from 2015.

Cost and Value

The question we always have in real estate is how much features cost to put into a house, and how much value they add to the house. We all know that cost ≠ value; yet we all also know this is a battle everyone in the industry has with owners when the house is listed for sale, or appraised. The fundamental truth is that all market participants, whether they are agents, appraisers, buyers or sellers, need to go back into the market and look at market behavior to determine if something is worth more. Again, the Vivient/Coldwell Banker survey reports the following:

- 54% of homeowners said they would add smart home products if it made a house sell for more money
- 65% of those would pay \$1500 or more to add smart home features
- 40% would pay up to \$3000 or more

This is the seller side; the buyer side is where we find out whether or not people 'put their money where their mouth is'. Here is where we see a difference, based on the generation of the buyer. Wakefield Research conducted a survey and found that 86% of millennials are willing to pay more for a home or rental property with smart home technology. Baby Boomers are behind millennials, but they weigh in at about 65% being willing to pay more for the technology. Millennials, of course, now represent the

largest living population block in the United States.

An ongoing trend for any home improvement is to have it done at the time the house is put on the market. Coldwell Banker found in their research that 71% of buyers want a "move-in" ready house; 57% of those buyers indicated that an older home with smart home features already in place as "updated." Over half of the buyers surveyed (54%) said they would pick a smart home over a house without smart home features. When it came to millennials, this increased to 61%. For parents with children at home, the percentage was 59%.

Relevant Characteristics

This is an appraisal term, and what it means is any characteristics of a property which have an impact on value. They can be physical, functional, or economic. Relevant characteristics are not static; they constantly evolve and change as buyers' preferences change. Appraisers need to track relevant characteristics, and track market data to see how these preferences are shaping what buyers are looking for, and willing to pay more for, in houses. A key for an appraiser to do his or her job is to be aware of all of the relevant characteristics of a house. MLS systems began adding fields for "green features" in houses about fifteen years ago. "Smart home technology" also needs to be noted in the MLS, so that appraisers can be aware of the features.

We know this about technology: it will continue to evolve, becoming less expensive, smaller, more intuitive to operate, and more ubiquitous in our world. People who have been in the business a long time will recall other innovations in housing which, at the time when they were introduced, were cutting edge and are now commonplace.

Summary

Smart home technology is here to stay, and it will become more commonplace as the technology improves, and the cost comes down. Real estate agents need the ability to recognize smart home technology when they see it, and the ability to ask intelligent questions about the technology in homes they are selling. In the next module, we will explore both generational differences, and how smart home technology is allowing older people to remain in their own homes longer.

MODULE 4 PART I REVIEW – SMART HOUSES & AGING IN PLACE

You are *not* required to answer the module review questions to complete the 14-hour course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

- 1. The gateway for smart home devices into most homes (57%) is:**
 - a. Home security
 - b. Entertainment
 - c. Lighting
 - d. Energy conservation
- 2. A consideration for consumers buying smart locks is:**
 - a. Whether or not the hardware will look good on their doors
 - b. Whether or not they can install the lock themselves
 - c. Which technology the lock is compatible with, e.g. Apple, Droid, Google
 - d. Whether or not they want to give out their pin number to family members
- 3. The lighting company that provides emergency lighting when the power goes out is:**
 - a. Beon
 - b. Wemo
 - c. Phillips
 - d. Google
- 4. Smart homes run on hubs, which present issues of hacking into the internet running the smart home. Consumers can do what to protect themselves from this?**
 - a. Install updates as needed on their computer and all devices
 - b. Use multi-factor identification, such as having a number texted to you for access
 - c. Split your main computer from your hub and other devices, using VLAN
 - d. All of the above
- 5. The Coldwell Banker/Vivent study revealed that:**
 - a. Consumers like smart home features, but will not pay for them
 - b. Sellers will not install smart home features
 - c. Only 29% of buyers want a move-in ready house
 - d. Over half of buyers indicated that they would pick a smart house over one without smart home features

SMART HOUSES & AGING IN PLACE – PART II

LEARNING OBJECTIVES

Upon completion of Part II of this module, the student will be able to:

1. Define the elements of universal design.
2. Identify the benefits of universal design and smart home features for aging in place.
3. Discuss generational trends in housing.

WHAT ARE THE ELEMENTS OF UNIVERSAL DESIGN?

There are seven elements of universal design. They are:

1. Equitable Use
2. Flexibility in Use
3. Simple and Intuitive Use
4. Perceptible Information
5. Tolerance for Error
6. Low Physical Effort
7. Size and Space for Approach and Use

Equitable use: This simply means that the design is useful and marketable to people with diverse abilities. Think of an entrance to a building: it should be equally accessible to people with limited mobility, or those who use a wheelchair, walker, etc. No group of users should have to access the building in an awkward or uncomfortable way. Websites which are accessible to people with limited, or no vision, are another example of equitable use.

Flexibility in use: The design accommodates a wide range of individual preferences and abilities. An example in buildings can be a toilet seat that can be raised or lowered, to the preferences of the user. An example would be making certain that either right- or left-handed people can use the object or device with ease. Flexibility in use also means that information can be either listened to or read by the user. Another example is providing information that can be either listened to or read by the user.

Simple and intuitive use: This means that use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level. An example is faucets in sinks that are, by design, easy to figure out how they work. Any unnecessary complexity should be eliminated. Illustrations are often used in lieu of words.

Perceptible information: The design should communicate necessary information to the user, regardless of ambient conditions, or the user's sensory abilities. An example would be tactile, visual, and auditory cues on a thermostat in a house. An example of imperceptible information would be a control with numbers the same color as the control, and only slightly raised (such as on some gas grills, etc, where the numbers are black on a black dial).

Tolerance for error: The design should minimize hazards and any adverse consequences of accidental or unintended actions. There should be 'fail-safe' features built in. An example is a key which can be inserted in either direction, e.g. there is no top or bottom. Another example is in public buildings, where an audible warning is given, e.g. "Moving sidewalk is ending." Another example is a raised edge on a walking boardwalk, so that users do not unintentionally go off the boardwalk.

Low physical effort: The design should be able to be used efficiently and comfortably by people with various levels of physical strength and stamina. Repetitive actions should be minimized. Examples are lever handles on doors, as opposed to knobs, and lamps which go on with a touch, or in a smart house, with a voice command.

Size and space for approach and use: This means that appropriate size and space is provided for approach, reach, manipulations and use, regardless of the user's body size, posture, or mobility. An example is a handicap accessible bathroom, which has room for a wheelchair to turn; a lavatory sink which can be accessed from a wheelchair, or by standing, and grab bars near the toilet and in the shower. Providing a clear path of travel, as well as wide spaces, is another way to accomplish this goal.

Universal Design

The origins of universal design are in classroom materials, meant to be accessible to all learners, however after the passage of the Americans With Disabilities Act (ADA) in 1990, architects and others became very interested in the principles of universal design as they apply to buildings, including homes. The demographics of the American population, especially the aging Baby Boomers, have spurred inclusion of universal design and smart home features.

Generational Snapshot: The following statistics are from the National Association of REALTORS® Generational Report, done in 2017. Here's a snapshot of the population, as it will be in 2020:

- **Oldest population**, born 1922-1927 will be 93 to 98. As of now, they number about eight million Americans, but they are declining in number daily. This group is the remnants of "The Greatest Generation," describing those who lived through the Great Depression and fought in World War II.
- **The Silent Generation**, which in this study is delineated by the years 1928-1945 (some demographers use different years), will be 75 to 92 in 2020. Their current population is 30 million; their numbers are also declining.
- **The Baby Boomers**, born 1946-1965, will be ages 55-74 in 2020. The current population of boomers is 73 million, but they are also declining in numbers.
- **Generation X**, born 1966 to 1976 (in the NAR study; some demographers extend this to the early 1980's), will be 44-54 in 2020, which are prime earning years. The current population of Gen Xers is 41 million.
- **Gen Y "Millennials"** will be 26-43 in 2020, and of a prime age for buying real estate. Their current population is 85 million.

- **Generation Z** Post Millennials will be 16 to 25 in 2020, so some of the older ones will just be entering the housing market. They number 23 million.

Generations and Housing

All of these generations will have a distinct role to play in housing. Traditionally, new household formation drove real estate sales at the entry level, for starter homes. Millennials have been described by some experts as being 'late to the party' because they have held off on new household formation and the purchase of their first home longer than other generations. Their student debt load has not helped them; however, as of this writing (December 2017), the general economic picture has been brightening.

In the NAR report already cited, buyers under the age of 36, which includes millennials and some younger Gen Xers topped the real estate market in 2017, accounting for 34% of all sales; for 63% of these buyers, the house was a first home. Gen Xers accounted for 28% of all purchases in 2017; these buyers are in peak earning years; they also cited school district as one of the most important features. This group reported that they compromised on things like age and size of the house in order to get the desired school district.

The younger boomers, ages 52-61, were 16% of buyers in 2017. These buyers were very likely to buy a multi-generational house; they also predicted 20 year tenure in the home. Speaking of multi-generational homes, over 11% of buyers purchased a multi-generational home. The reasons cited were: taking care of aging parents, costs savings, and children over the age of 18 moving back home. In this group, the purchasers of multi-generational homes stood out at 20%.

Older boomers, ages 62-70 were 14% of buyers. They cited as reasons to buy: retirement, close to family, smaller house. This group also reported that they were less likely to compromise on what they wanted in a house. Most agents who have worked with clients in this demographic understand exactly what these buyers are saying: they have what they consider to be a very nice house presently; they do not want to compromise quality in the next house.

Silents were the oldest group reported as buyers, and they only accounted for 8% of the purchases.

This group was least likely to purchase a single family detached house; 24% of them purchased in a retirement community. For the average real estate agent, this group is more likely to provide listing inventory than be buyers; this is the end of the market which is 'event-driven', meaning that the existing house is often sold as a result of a death, or the incapacitation of one of the owners.

Old(er) Buyers

The Baby Boomers, of course, are the generation which grew up on the mantra "Don't trust anyone over 30," and for most boomers, the word "old" remains an insult. Many marketers suggest the phrase "Thrive in place" as opposed to "Age in place." Aging has always been relative, and most of us know 'old' 40 year olds and 'young' 80 year olds. Many boomers are still working. Here are some of the boomers' thoughts about housing, and thriving in place (these statistics are from Home Advisor Insights Forum, 2016, "Aging in Place"):

- 61% of those over 55 are planning to stay in their homes indefinitely
- 67% of homeowners over 55 believe smart home technology could help them age in place
- 66% of them want to stay put because their home is conveniently located
- 38% cite that they are already close to family
- 68% feel independent in their home
- 54% are familiar with their neighborhood
- 66% feel safe in their home

The same study found that the renovation projects tackled most by this age group were:

- 48% bathroom remodeling
- 24% entrance or stairway
- 20% kitchen
- 16% home exterior
- 9% overall home

Real estate agents across the country report that as the boomers age, they are more interested in features like first floor master bedrooms, first floor laundry rooms, remodeled baths with walk-in showers (often oversized, with a bench or seat in place), easier entrance and access to the house, and both energy savings and maintenance free features for the exterior.

7 Life-Simplifying Smart Home Gadgets for Thriving in Place

The Home Advisors Forum also created a list of gadgets with the older homeowner in mind. The list is:

1. **Smart locks**, which help keep people from locking themselves out of their house, and can also provide quick access in an emergency to trusted family members or friends.
2. **Smart home security**, which can be monitored when not at home.
3. **Smart lighting**, which includes automatic timers and can be synced with voice activated devices, or with sensors.
4. **Smart sensors**, which track movements, as well as long periods of stillness; this information can be conveyed to others via a smart phone app.
5. **Voice activated devices** such as Alexa.
6. **Smart appliances**, which can create shopping lists in real time; monitor oven temperatures from a smartphone, schedule automatic vacuuming by a robotic vacuum cleaner, and smart refrigerators, which allow the owner, and others, to view the contents remotely.
7. **Smart thermostats**, which adapt to schedules and preferences, and can be adjusted via a smart phone.

Smart Homes and Thriving in Place

We've seen the list above, but let's explore how some other smart home gadgets are particularly designed to help people thrive in place. Because smart homes run off of hubs, and because any smart home can be programmed to report to more than one smart phone, one of the easiest and best applications is to have a younger member of the family receive alerts about the house or the occupants. Referencing the list above, think about home security reporting to a family member: "Grandma's patio door is open." Imagine the smart sensor reporting: "No movement in your mother's bedroom for over five hours." Alarm.com has a sophisticated system which, like so many smart devices, learns the patterns of the occupants. It can report unusual activity or inactivity; whether or not the refrigerator has been opened,

increased frequency of bathroom visits, falls, and even wandering. Or, the family member or friend can monitor the refrigerator: “Mom, I see you haven’t been to the store this week. I’m going to pick up milk and eggs and bring them to you.” Some smart refrigerators, like the Samsung Family Hub will order groceries automatically, and also read recipes aloud, which is a big help to an older person whose vision is not as good as it once was. The smart lighting comes on automatically when someone gets up in the middle of the night, and also turns on emergency lighting when there is a power outage—as well as notifying the family member or friend, “Mom, I see your power went out. The emergency lighting will stay on until I get there. I’m on my way.” Smart lighting is voice controlled, and can be set to timers, and to motion. Outside motion lights help many people feel more secure in their homes. When this is combined with devices like the Ring Doorbell, the senior resident doesn’t have to open the door to strangers, and furthermore, will know who is at the door because of the camera. The Sensi Smart Thermostat can be voice controlled, which is one of the suggestions in Universal Design—having devices which can be used in a variety of ways.

Health Monitoring Devices

In addition to adapting these smart home features, which can be used by all generations, to thriving in place, there are some apps that have been developed especially with older people in mind. Many of these are linked to health. Here is a partial list:

- Metria™, a watch that attaches with adhesive, and monitors blood pressure and other vital signs, and sends this information to an app on a device controlled by a family member or health professional.
- LOK8U “Freedom Watch”: This alerts relatives, caregivers, etc. via an app if the person wanders outside of a safe zone; it also has an emergency button the senior can press to call for help.
- RealTime Health Data also provides data which can be monitored by a physician or other health care professional.
- Grandcare Systems uses an internet connection, and monitors health functions, including glucose, blood pressure, weight, and oxygen levels. It has a screen which can display menus, diets, or be used to listen to music, watch news or videos, and video chat with family.
- IHealth has a gluco-monitoring system for an elderly person with diabetes, especially if they are prone to swings in their blood sugar levels. Again, it works via an app and sends an alert.
- EverThere, from AT&T, which can make emergency calls even if the person cannot. The person wears a small device which can detect a fall, and make a call to an emergency center.
- MedMinder unlocks a medicine container when meds should be taken; it beeps if they are not taken, or sends a recording of a family member to the person, reminding them “Gram, this is Megan. Time to take your pills.”
- Stove Guard CookStop, which will automatically turn a stove off if it is left unattended for a predetermined length of time. This can literally be a lifesaver, as it could keep the house from catching on fire, and is ideal for seniors with memory issues and/or hearing problems (they don’t hear the buzzer on the timer).

Generally Handy Devices:

Companies like Affordable Adaptive Solutions sell doors which open automatically, which is another advantage for homeowners with limited strength and mobility. There is a product called the Approach Wall Cabinet Lift, which will bring a cabinet up or down, to a range of 20”. This is much safer than an older person getting on a step stool to reach a higher shelf in the cupboard. Cameras, used for ‘nanny cams’ in homes with younger members, are a great peace of mind feature for the friends and relatives of the older person, to reassure themselves that “Dad’s okay; he is just dozing on the couch.”

What Does A Smart Home for A Senior Look Like?

Let’s imagine we are touring a smart house designed for thriving in place. Let’s start outside.

First of all, the outdoor lighting should come on automatically when it gets dark, and go off automatically the same way. All entrances should be well lit; the house number should be large, visible from the street, and lit at night. The shrubbery should be well contained and trimmed so it does not block doors or windows. The walks and pathways should

be level and free of obstructions. Ideally, there is at least one entrance with no steps; if not, a small ramp can be substituted, but minimally, a secure grab bar is needed.

Inside, the entrance area should be well lit. It's great to have a bench inside the door where the person can put down packages or stop and remove shoes, coats, and boots. The floor should be smooth enough for a wheelchair, and we don't want small rugs which are tripping hazards. If there are steps, they may need a glider chair, or minimally, a sturdy handrail. All the doorways and halls should be at least 36 inches wide, to allow for use of a wheelchair or a walker.

We have the hub for the smart home in either the living room or the kitchen, but we definitely have good lighting in the living room, and if possible, drapes and blinds which can be controlled by our smart home. Our doors and light switches will be levers, which are easy to operate. They will be between 36 inches and 44 inches from the floor; our outlets will be 18 inches to 24 inches off the floor, so our residents don't have to bend down to plug things in. The outlets will have a built-in USB adaptor, so the smart phones and other devices can be plugged in. Our thermostat is a smart device, which can be controlled by voice. If the residents want to look at it, the display is large and easy to read.

Moving into the dining area, there is plenty of room to get a wheelchair to the table. The dining area is close to the kitchen. The kitchen has accessible cabinetry, which will include pull-out shelves, especially in the lower cabinets. We will avoid knobs, and go with D-shaped pulls, or levers. We will have at least one work space in the kitchen which can be used by someone who is seated, as opposed to standing. Our kitchen will have a smart refrigerator, and the stove will have a CookStop device on it. The knobs on

the stove will be easy to read, even for a person with low vision. The faucets will require minimal effort (no turning) and we will have the hot water temperature set at a safe level to avoid scalding.

Any stairs in our house have very secure grab bars and railings. If there is carpeting, it is low nap. We avoid highly polished surfaces, and on stairs, we will install a non-slip surface. There is very good lighting for all hallways and stairs, preferably voice or motion activated.

The bedroom is designed for use by someone using a walker or a wheelchair, and the layout is such that there is a clear path to the bathroom, hall, and closet. We like natural light, but again, let's have blinds controlled by voice or remote.

The bathroom is designed for use by someone in a wheelchair, so there is a wide turning range. There is either a raised toilet, or an adjustable toilet. Again, the faucets are levers. There should be no barrier to get into the shower area; it should be large enough to accommodate a wheelchair, and there should be a secure, built-in bench. We need a hand-held shower device as well.

Anywhere we are using rugs, we have them attached with double sided tape to avoid slipping. The doors and windows are all part of the smart house system, and an app will report when they are unlocked or open.

This is just a quick view of what a smart home, designed for thriving in place, would look like. As real estate agents, you have already seen some of these features incorporated into houses you have listed and sold. As the technology gets better and cheaper, and the population ages, you will see more and more of this in the properties you sell.

MODULE 4 PART II REVIEW – SMART HOUSES & AGING IN PLACE

You are *not* required to answer the module review questions to complete the 14-hour course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

- 1. The principle in universal design that states that a device should be easy to use whether the user is right or left-handed is:**
 - a. Flexibility in use
 - b. Low tactile information
 - c. Low physical effort
 - d. Tolerance for error
- 2. The principles of universal design were adopted by architects after the passage of:**
 - a. The Equal Rights Amendment
 - b. The Americans with Disabilities Act (ADA)
 - c. The Equal Credit Opportunity Act (ECOA)
 - d. Dodd-Frank
- 3. One of the top reasons that boomers cite for remaining in their current home is:**
 - a. The school district
 - b. The energy costs
 - c. Their home is conveniently located
 - d. They like the décor
- 4. Which generational group that we discussed is least likely compromise when it comes to buying a house?**
 - a. Gen Xers
 - b. Millennials
 - c. Generation Z
 - d. Older boomers
- 5. Which of the following would *not* be considered a good feature in an aging in place home?**
 - a. Low pile carpet or smooth floors
 - b. Roll out shelves in the kitchen
 - c. A spiral staircase
 - d. Automatic exterior lighting

How did you do? Remember, we have instructors available to assist you throughout your learning experience.
Email: REinstructor@BertRodgers.com or call 941-378-2900 ext. 8898



Building a Successful Real Estate Team



Written by John Greer

John Greer has over 30 years of experience in Florida real estate and real estate education. He has authored and co-authored numerous Florida real estate texts and online courses, and personally taught thousands of Florida real estate licensees. John's educational background includes a Master's degree in Adult Education, and a Doctorate in Educational Leadership and Management. John has participated in many Florida Real Estate Commission workshops and task forces including the latest Sales Associate and Broker pre-license syllabus updates. John is a United States Air Force veteran, and enjoys playing ice hockey, offshore fishing, and scuba diving in his spare time.

LEARNING OBJECTIVES

Upon completion of this module, the student will be able to:

1. Discuss team models and the pros and cons of a team.
2. Identify the skills a good team leader should possess.
3. Describe the steps in putting a team together.
4. List the types of personnel that would make up a good real estate team.
5. Explain how compensation is handled on a team.
6. Describe the development stages of a team and the importance of leadership in a team's success.

PLANNING FOR THE TEAM

The concept of real estate teams has existed since the 1960s. However, not until the 1990s have real estate teams started to become popular. Recent studies have shown that currently there are about 80,000 teams operating nationwide. Across the industry, the establishment of real estate teams has its supporters and detractors.

Individuals who are team supporters see teams as an opportunity to grow their income without using the resources to build a separate brokerage. Also, some agents enjoy working in a team environment, because it gives them the freedom to focus on a few selected tasks and still reap the benefits of sales

commissions. A major draw to teams is the fact that over 80% of newly-licensed agents exit the business in their first two years. Teams give new agents the extra support they need to succeed.

Individuals who are anti-team avoid forming teams because of the management responsibilities and avoid joining teams because of their desire to remain independent.

Real estate teams come in a variety of types, sizes, and forms. State real estate boards, as well as agencies of the federal government, have been discussing and postulating definitions that move toward an accurate and acceptable definition of a real estate team. For the purpose of this training, let's use

the following as our working definition:

Real Estate Team – *A real estate team is a group of two or more individuals who cooperate together on shared tasks for individual gain, while under the direction of a licensed brokerage.*

Most major companies recognize the value of real estate teams and foster their formation.

Legal Issues

Teams can carry legal risks that might violate state regulations. The biggest issue about teams is that customers may get the impression that a team is a separate, independent brokerage firm. The state of Maryland has taken the lead by developing comprehensive statutes regulating real estate teams. According to the law, teams must:

- Designate a team leader.
- Maintain a list of team members.
- Refrain from naming themselves in a way that makes them sound like a brokerage.
- Clearly display their brokerage name on all advertisements.

The Florida Real Estate Commission (FREC) has taken a keen interest in the development of real estate teams and specifically how teams advertise. The FREC wants to make sure that the public is aware that a team is not a stand-alone brokerage, but rather works under the direction of a licensed brokerage.

All Florida teams need to review frequently the Florida Statutes 475 and possibly the rules contained in Chapter 61J2 of the Florida Administrative Code to determine what changes have been made that might impact advertising issues, such as team name type size, contact information, and logo placement.

Team Models

Real estate professionals are a creative lot and when it comes to a team approach to doing business, there's no one format. However, let's take a look at four common real estate team models.

Single Assistant. In this type of team, the agent takes on an assistant to oversee administrative duties. Similar to the job description of a private secretary,

the assistant takes care of ministerial duties, which in turn frees up the agent to spend more time with clients and customers. In many cases the assistant is first hired on as a non-licensed team member, but over time, he or she acquires a license and then becomes able to perform a greater range of duties. Single assistant teams typically handle from 50 to 100 transactions per year.

Partners. This team model is typically composed of one or two assistants and two licensed agents who form a partnership of sorts to share duties. Many married couples form partner teams. Partner teams frequently divide the work assignments based on individual strengths and likes. For example, one partner might take over the listing activities, while the other partner focuses on buyers. Obviously, partner teams work together very closely and must balance each other out to be successful. Partner teams typically average between 100 and 200 transactions per year.

Mid-Sized Teams. This team model ranges in size from five to 10 agents, who are supported by two to three assistants. It's not uncommon for members of mid-sized teams to divide up the work assignments to play to the strengths of the individual members. Mid-sized teams average between 200 and 400 transactions per year.

Mega-Teams. Mega-teams tip the scale at 10 or more agents and can grow into a team of 50 or more. Mega-teams are supported by a number of other professionals such as assistants, finance specialists, and document handlers. Mega-teams are the heavy hitters in the residential real estate industry. It's not uncommon for Mega-teams to be handling 400 to 600 transactions per year.

Pros and Cons of Teams

Teams offer a variety of advantages. The "pros" of the team approach include the following:

- **Increasing Productivity** – A team allows the workload to be shared among members and distributed according to each person's strengths. This strategy allows more tasks to be completed faster and more efficiently.
- **Providing a Support Network** – A team environment can offer support during periods of overloads and stress. This can reduce individual

burnout, which adds to the overall effectiveness of the group.

- **Encouraging Innovation** – Teams are better able to foster more creative solutions to problems than persons working alone.
- **Attracting Talent** – Successful teams have a tendency to attract top performers. Not unlike a sports team, everyone wants to play on a winning team.
- **Allowing for Flexibility** – Team members can arrange for more flexible work schedules, allowing agents to handle personal obligations with little disruption to productivity. Increasing work/life balance makes for increased job satisfaction.

Although teams offer a variety of advantages, there are some potential disadvantages a real estate professional should be aware of when putting together a team. These “cons” include:

- **Unequal Participation** - Some team members might sit back and coast on the work of others. This will cause resentment and conflict.
- **Not Really a Team Player** - Some members are really not cut out to be team players and begin to work on their own. Typically, their results are acceptable, but they have difficulty really fitting into the group, resulting in a generally dissatisfied team at all levels.
- **Limited Focus** – Team members can become so engrossed in working their own tasks that they fail to see the big picture and lose sight of the innovative thinking that could keep the team ahead of the competition.
- **Longer Process** – A team can sometimes take longer to produce a desired sale. A team leader must monitor this issue to make sure that transactions don’t get bogged down or bottlenecked at critical points.
- **Inherent Conflict** – All groups experience conflict. Personal styles and egos do emerge. When that happens, the leader needs to get the group back on track and reinforce team goals, while still respecting everyone’s feelings.

Typical Workflow

This simplified workflow pattern illustrates key team processes often found in mid- to mega-sized teams.

- Lead agents generate almost all of the transactions. These individuals bring a significant amount of new business to the team and are often called the “rainmakers.” Most of the lead agents’ duties involve getting listings, but some duties might also include attracting buyers.
- Once an individual becomes a client, he or she is handed off to a listing agent. The listing agent interfaces with the sellers until an offer is accepted.
- When an offer gets accepted, a transaction coordinator takes over and ensures that the deal gets closed.
- Supporting team members, such as marketing specialists, administrative assistants, and showing assistants filter in and out of the process as needed.

Growth Options

A majority of real estate teams follow a similar development pattern. It starts when an experienced agent has steadily developed a successful track record and is reaching his or her maximum productivity. For the sake of discussion, the rule of thumb for a single agent’s productivity is about 50 transactions per year. In order to accommodate future income growth, the agent has two options:

- **Establish a brokerage** – Establishing a new brokerage involves a lot of logistics, such as finding physical office space, acquiring office equipment, sourcing legal assistance, following accounting requirements, establishing an escrow account, and dealing with state compliance issues. These are tasks that some agents wish to avoid.
- **Develop a real estate team** – Developing a real estate team under the umbrella of an existing broker allows for a somewhat seamless transition and provides for a safe harbor in which to grow the team.

Overcoming Self-Doubt

During the planning stage when a number of issues and concerns take over the thought process, sometimes a twinge of self-doubt enters the mix. The following are some typical issues that often surface in the form of self-doubt questions that an agent must address before forging ahead:

- If I hire staff, will I reduce my personal touch with my clients?

- Will there be enough sales to support additional staff?
- If I train new agents, will they leave and become my competition?
- Will my clients become dissatisfied when they are passed off to other agents?
- How large a budget will I need for marketing and branding expenses?

Self-doubt questions can be endless. If an agent can't get them boxed and under control, he or she may want to rethink the entire process of developing a team and remain a sole operating agent.

Identifying the Purpose

Agents develop teams for a variety of reasons. Identifying the purpose or goal for wanting to have a team is the first step in the process. It is a good idea for the agent to write out what it is he or she wants to accomplish with the help of a team approach. Maybe the goal is to increase profits, revenue, market share, or professional status. Establishing goals is a good way for the agent to validate the initial decision as he or she travels down the team development path.

Evaluating Leadership Ability

Good leadership ability is a critical component in team development. Successful teams must have a strong leader. A team leader must have the following skills:

- **Honesty** – A team leader needs to be ethical and project that attribute to other team members. In addition, team members are an extension and reflection of the leader in the community.
- **Delegation** – Delegating is one of the most important skills an agent can develop as a team leader. Micromanaging is exhaustive work and defeats the purpose of a team approach.
- **Communication** – It is extremely important that the leader is able to explain clearly and concisely what he or she wants done. If the team leader can't communicate his or her goals and objectives to the team, the leader will have poor team performance.
- **Critical Listening** – Critical listening is similar to critical reading. Both tasks involve the analysis of the information being shared and then determining what the next steps are to follow. A successful leader needs to be able to distill a large amount of information accurately in a short period of time.

- **Confidence** – In any business there are good days, bad days, and the occasional horrible day. The team leader needs to be the shining light in the storm when things get hectic. At times, the leader must be able to put out fires and get the team back on track with an air of cool control.
- **Commitment** – The team leader must lead by example. If the leader expects the team to work hard, he or she also has to put in the time. Showing commitment earns the respect of the team and instills that same hardworking ethic among the team members.
- **Positive Attitude** – A positive attitude is certainly an intangible. However, a positive attitude is very easy to detect, even in a brief visit to the office. The mood is a blend of productivity with upbeat energy. Team members need to enjoy what they are doing and show it. An effective leader needs to be able to orchestrate this behavior with a heavy dose of positive attitude.
- **Problem Solving** – A team leader must be able to deal with problems in an efficient and effective manner. Failure to do so limits productivity and may even lead to team members sabotaging progress.

An agent needs to take an honest look at his or her strengths and weaknesses in the area of leadership abilities. If need be, the agent should seek out training and guidance to bolster improvements in areas that are lacking in his or her skill set. If it appears that there are a number of areas beyond the agent's capabilities or interests, it may be a good idea for the agent to reevaluate the idea of developing a team approach at all.

PUTTING THE TEAM TOGETHER

Once an agent decides to develop a team, there seems to be a natural pattern for development. The key steps include:

- Establishing business systems
- Acquiring physical space and resources
- Hiring personnel

Establishing Business Systems

Prior to hiring the first team member, a good leader should have most of the office procedures and

operation mechanics firmly identified and written down. In order to increase the chances of success, new hires to the team need to land in an environment that has some degree of structure and control. Over time, the team leader can change or alter any process that doesn't work effectively.

Oftentimes leaders initially hire team members with the idyllic thought that systematizing procedures will develop organically. This practice is a step in the wrong direction and can be poison for a newly-forming team.

The leader should not wait until bodies start taking office seats before he or she decides on such issues as work assignments, office procedures, listing procedures, file management, and compensation plans. This is a sure recipe for chaos and mutiny. A well-developed Policy and Procedures manual will go a long way to help fine-tune business processes.

Acquiring Physical Space and Resources

The next step in the process is for the team leader to seek out office space and supporting resources to maintain a work team. There are no hard and fast rules regarding physical office space. Most likely a team will occupy a rented location and will have to adjust to the given parameters of that space. If possible, a new start-up team should estimate a certain amount of space to allocate for each of the following:

- Team leader (200-400 sq. ft.)
- Listing manager (200 sq. ft.)
- Agents (100-150 sq. ft. each.)
- Administrative assistant (125 - 150 sq. ft.)
- Support personnel (125 sq. ft. per person)
- Reception area (100 - 200 sq. ft.)
- Meeting room (250 -500 sq. ft.)
- Conference rooms (125 – 150 sq. ft.)
- Mail room (125 sq. ft.)
- File room (100 sq. ft.)
- Storage room (200 sq. ft.)
- Break room (125 sq. ft.)
- Restrooms (Square footage will vary based on the number of restrooms needed and the type of building. According to OSHA rules, an office with

less than 15 employees is required to offer only one unisex restroom. Two toilets are required for 16-35 employees and the required number increases as the number of employees increases. In addition, restrooms must be ADA compliant.)

The leader should add 10% to 20% to the total square footage he or she calculated to accommodate future growth. Terminating a lease early and having to move an office after a short period of time because the team has outgrown the space will cost much more than having additional space in reserve waiting to be used.

Hiring Personnel

Once the leader has completed the cerebral planning tasks, it will be time to start hiring team members. The team needs a number of positions to be well-rounded and balanced.

Administrative assistant. Hiring a top notch administrative assistant is the single most important hiring task the team leader will ever make. The main duties of an administrative assistant are to free up the leader's time by taking over the following time-consuming tasks:

- Running errands
- Answering phones
- Processing mail
- Making copies
- Greeting visitors
- Filing transactions
- Taking messages

The ideal administrative assistant possesses the following traits:

- Friendly but professional
- Organized and detail-oriented
- Exceptional communication skills
- Experienced with operating the latest office technology
- Willing to complete all assigned tasks in a positive manner

Being a competent administrative assistant is a demanding job; therefore, the salary offered should be commensurate with the job. Oftentimes, a

leader may think that hiring a relative or spouse for the position is a good choice, because that person is perceived as having known loyalties. This working arrangement does work for some teams. However, just as often this situation can turn sour and the leader may feel reluctant or powerless to change the situation. That person can then become a liability and detract from the team achieving high performance.

Listing agent. The next person the leader needs to hire is a listing agent (aka rainmaker). This person is the one that drives clients to the team. He or she should have a proven track record of sales. Successful listing agents are:

- **Likeable and trustworthy** – This is like a two-step dance process. Before doing business with anyone, the customer must like and trust his or her agent.
- **Passionate** – Listing agents “talk-the-talk” and “walk-the-walk.” Real estate is not just a job but an avocation.
- **Ingenious** – A good listing agent must be creative enough to find unique solutions that overcome objections and roadblocks.
- **Goal oriented** – Establishing progressive goals is a time-honored process of exceeding past accomplishments.
- **Relationship seekers** – A successful listing agent has a wide sphere of influence.
- **Empathic** – Empathetic agents listen intently to what customers actually want and then provide solutions to meet their needs.
- **Accountable for their own actions** – Successful listing agents don’t waste time making excuses as to why they have not met projected targets.
- **Knowledgeable and well prepared** – Listing agents must have industry knowledge and be ready to respond appropriately to customer’s real estate questions.
- **Persistent and tireless** – Good listing agents are not defeated by a “no” response. They are willing to put in the extra time to seal the deal.

Listing manager. The listing manager is responsible for overseeing the transaction from the signing of the listing agreement to the acceptance of a purchase offer. This person must be well-organized and be able to handle a number of projects at the same time. A listing manager’s major job duties include:

- Listing the property
- Preparing listing materials
- Preparing the property with signage, a lockbox, home improvements, and staging
- Scheduling showings
- Providing weekly reports on progress to the sellers
- Responding to questions and concerns from the client and other licensed agents

Transaction coordinator. A transaction coordinator supports the team by interfacing with the client from the beginning of a signed purchase contract to the close of escrow. This person handles all the paperwork, schedules appointments, and coordinates communication between all parties. The transaction coordinator’s major job duties include:

- Maintaining a current file of all real estate transactions
- Coordinating title work and escrow monies
- Tracking mortgage loan applications
- Coordinating appraisals and inspections
- Maintaining communication with all parties in the transaction
- Assembling all necessary documents for closing
- Representing the team at closing

Buyer agent. The buyer agent is responsible for finding and working with buyers. The major job duties of a buyer’s agent include:

- Responding to newly-developed leads
- Developing a dialogue with buyer clients
- Identifying properties that meet prospective buyers’ needs
- Scheduling and conducting showings
- Educating and guiding clients about the home buying process
- Assisting in the writing and submission of offers
- Overseeing the entire transaction to a successful close

Inside sales agent. Due to a large volume of business, some teams find it beneficial to hire an inside sales agent. The inside sales agent is the first point of contact when a customer asks about services. An inside sales agent spends a majority of time on the phone and responding to emails and

social media communications. This agent's major job duties include:

- Prospecting for new leads
- Responding to inbound leads
- Handing off bona fide leads to other agents
- Keeping track of customers and clients that enter and leave the market for possible future business possibilities

Showing assistant. A showing assistant escorts clients and customers during the showing of properties. Showing assistants send feedback to other team members regarding the results of each showing. The showing assistant usually becomes the most knowledgeable about a home because he or she may walk the property numerous times. This team member becomes the visible face for the team. In a very real way, the showing assistant is the eyes, ears, and feet of the team. The showing assistant sometimes takes on a second assignment of staging a property. This assistant's major job duties include:

- Showing homes to clients and customers
- Responding to client questions
- Acting as a liaison between the listing manager and the client

Technical support assistant. To be competitive, teams must interface with technology and use it to its best advantage. In just a few short years, desktop computers gave way to notebook computers and now mobile devices filled with social media are playing a much bigger role in the marketing of real estate. Most team members have some familiarity with computer technology; however, their main focus must remain with the real estate tasks, not with being an expert in the latest software development and computer applications.

A technical support assistant is the go-to person that is knowledgeable about computer devices and has the ability to troubleshoot most problems that users experience. Technical support may be provided over the phone, through email, or with personal contact. Technical support assistants are oftentimes hired on a retainer type basis and are on-call only as needed.

Field service technician. A field service technician may have one of any number of different titles, such as handyman, contractor, make-ready person,

and jack-of-all-trades. Regardless of the title, the job responsibilities are usually the same. The field service technician's job is to take care of material issues that interfere with the listing and sale of a property. Some tasks that a field service technician might be called upon to complete include:

- Replacing or repairing a broken lock box
- Removing debris from a listing
- Replacing damaged yard signs
- Removing snow
- Repairing storm damage
- Repairing a door, a fence, or plumbing at a vacant property
- Replacing a broken window
- Doing some touch-up painting

Clients really appreciate it when the listing company quickly responds to complaints that a property has been damaged during a showing or something is amiss and unknown to vacant property owners. Having a prompt and courteous field service technician is an excellent way to promote goodwill with clients, customers, and the community.

MAINTAINING THE TEAM

Once a team is hired, the team leader will need to address a number of issues at least once in the beginning of the relationship and sometimes on an ongoing basis.

Compensation Plans

One of the first things that team members will want to know is how compensation will be handled. The team leader should have this aspect worked out ahead of time so that he or she can explain it to each member clearly. The compensation will take two forms: compensation to the broker and compensation to the team members.

Broker compensation. The first thing that all members need to remember regarding any compensation plan is that the brokerage is due its share of commission. There are two simple types of broker compensation plans:

- **Flat rate fee** – In a flat rate fee plan, teams pay the

brokerage a monthly fee, similar to rent. The team assumes responsibility for all team expenses and income.

- **Commission split** – In a commission split plan, the broker takes a percentage of the commission off the top and the team gets the remainder.

Other more complicated compensation plans include salary caps, bonus payments, and compensation based on a sliding scale of completed transactions.

When first developing a team, the team leader should meet with the broker and agree on a written compensation contract that will assist the team leader in spelling out the details of his or her team's compensation package.

A key factor that is sometimes overlooked is the paying of expenses. Expenses must be paid and the suggested method is to take those charges off the team's gross income and not the net proceeds.

Team compensation. There are numerous team compensation models being used today. The three basic models are:

- **Commission based** – Team members split a percentage of the earned commission based on transactions completed.
- **Salary based** – Team members receive a regular salary, regardless of the team's results.
- **Hybrid based** – Team members are paid a small salary and then augmented with a split percentage of the earned commission.

Nothing causes more rancor in a team than an ambiguous compensation plan. Team members need to be fully aware of how they will be paid.

Sample compensation plan. The following hypothetical sample illustrates the factors that go into developing a compensation plan. Income amounts and commission split percentages provided are for study purposes only. Actual figures and amounts will vary based on local markets, expenses, sales volume, and specific features of the overall team compensation package.

It is important to remind agents working in a team to focus on their annual net income rather than their actual commission split percentage. Agents on teams typically receive a lower commission split percentage than single agents, but with a team approach, they

are able to generate a lot more income due to increased volume.

- **Administrative assistant** – This position is typically a full-time hourly paid job.
- **Listing agent** – Listing agents receive around 25% to 35% commission on the listing side of the transaction upon closing.
- **Listing manager** – A listing manager who sets appointments for listing agents might earn 7% to 10% of the listing-side commission for each closed transaction.
- **Transaction coordinator** – This position is usually compensated on an hourly/salaried basis.
- **Buyer agent** – Buyer agents are generally compensated in the neighborhood of a 50/50 percent commission split. Some buyer agents might receive a 40% commission split on team-generated leads, and a 60% split for clients they procure themselves.
- **Inside sales agent** – Inside sales agents receive between 10% and 20% of the buyer's agent commission when a client referral is successful.
- **Showing agent** – Some teams pay a showing agent a flat fee for each showing. Other teams pay a percentage of the commission upon a sale. A flat fee, pre-showing arrangement may not be the best method to maintain an agent's motivation level.
- **Technical support specialist** – This position is often a part-time contract position paid on a per-hour basis as needed.
- **Field service technician** – A field service technician is usually a full or part-time position paid on an hourly basis.

IRS Status

The Internal Revenue Service has very specific rules regarding whether a team member is considered an employee or an independent contractor. The team leader needs to be aware of what those rules are and make sure they are following them to avoid any potential problems.

Employee status. Some of the things that make a team member an employee according to the IRS deal with how that person is "treated" by the firm. The IRS considers a person an employee if, among other things, that person is:

- Paid a salary or hourly wage
- Required to work specific hours
- Required to follow specific directions about how to do the job
- Expected to attend office meetings at specific times

The person is also considered an employee if the team leader or broker takes out taxes or pays for health insurance or workman's compensation. The team leader is also responsible for providing office space and equipment, plus additional errors and omissions insurance to employees.

Independent contractor status. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work, not what will be done and how it will be done. Independent contractors work when they choose, have their own equipment, and determine their own procedures. They also take care of paying their own Social Security taxes, Medicare taxes, and unemployment.

Determining whether to hire a team member as an employee or an independent contractor can be challenging. In many cases, the leader wants team members to follow a specific way of doing business. The team leader will also probably set up tasks and assignments that must be completed in a specific way and/or meet a schedule. Those kinds of expectations might put the team in the employee model rather than the independent contractor model.

Please note that the IRS pays special attention to real estate teams that may be bending independent contractor rules. The IRS could decide that independent contractors are really employees if the team operates in the way described in the employee status section above. The team leader must choose carefully to avoid any unpleasantness, including fines that the IRS could levy for misrepresentation of status, even if that misrepresentation was not intentional.

Team Development Stages

The team leader has completed all the planning, established an office, and hired personnel. Now all the leader has to do is sit back and watch the commissions roll in, right? Well not exactly.

Newly-formed teams seem to go through the following four stages of development:

- **Construction Stage** – In this stage, the team is coming into form. Typically, no serious issues arise, and team members focus on getting organized and being busy with their routines. Life is pretty good in this “honeymoon” period. Usually, the team leader is impressed with the amount of “busy work” that is getting accomplished. The leader doesn't really notice that during the construction stage, the actual business of real estate is modest.
- **Disruption Stage** – The next stage is often contentious, unpleasant, and even painful for some team members. During the disruption stage, individuals are establishing boundaries and feeling out the working mechanics of the team. At times tensions can run high and arguments will occur. The team leader may need to act as a referee to settle disputes and as a fire fighter to extinguish flare-ups. The team actually pulls in some listings and makes some sales, but the team leader frequently goes home frustrated and wonders if the effort of starting a team is worthwhile.
- **Formation Stage** – In this phase, the team starts to focus on shared goals. Team members take responsibility and avoid conflict. Team members are able to work autonomously and without a lot of supervision. In common terms, the team is starting to “jell.” The team allows disagreement as long as it is processed through means acceptable to the team. The team leader starts to back off from micro-management tasks. Listings and sales transactions are typically on an upswing.
- **Implementation Stage** – At this stage, teams are functioning at a high performance level. Jobs get done smoothly and effectively without undue conflict. Team members are competent and autonomous. They understand their roles and perform their duties with little supervision. Business is clicking along and the team leader is able to relax a little and enjoy the ride.

Importance of Leadership in Team Success

The number one overall and compelling reason why teams fail is due to lack of leadership. Learning and practicing good leadership is an art and a science. Effective leaders take a proactive position by asking

what they can do to improve the team's performance, not what the team can do to enhance the leader's importance. Successful team leaders:

- Provide resources, such as an adequate budget, necessary equipment, and the time to get the job done right.
- Provide timely training to reinforce previously learned skills and to introduce current real estate topics.
- Offer satisfactory compensation to reduce job-hopping.
- Deal with conflict in a constructive and non-defensive manner that holds people accountable, but also moves the team forward.
- Listen closely to the team members, taking the time to find out their biggest issues and concerns. Not knowing what the team really thinks may come back to haunt the team leader at a later time.
- Are realistic and understand that people commit to and give their best efforts to a team when they clearly understand how accomplishing the team's purpose helps them reach their own individual goals. The team leader must reinforce the concept that as the team gets closer to its target goals, team members also get more of what they want.

Leadership Theories

Given the importance of team leadership, let's explain some of the different leadership theories that have been around for some time. Over decades, numerous studies, research papers, and books have defined and discussed several leadership theories. The most well-known theories include the following:

- **Great Man Theory** – This theory evolved around the mid-19th century. This theory assumes that the traits of leadership are intrinsic and that great leaders are born. Furthermore, the belief holds that great leaders will rise when confronted with the appropriate situation. The Great Man Theory

was underscored by pointing to the leaders of the Allies in World War II: Franklin Roosevelt, Winston Churchill, and Joseph Stalin.

- **Trait Theory** – Trait theory considers that people are either born or are made with certain qualities that will make them excel in leadership roles. The trait theory focuses on analyzing mental, physical, and social characteristics in order to gain more understanding of what characteristics are common among leaders.
- **Behavioral Theory** – The behavioral theory focuses on the behaviors of the leaders as opposed to their mental, physical, or social characteristics. This theory holds that anyone with the right training could be a successful leader. Behavioral theorists believe that leaders are made not born.
- **Contingency Theory** – Contingency theory states that there is no single way of leading and that leadership style is based on the situation. Certain people perform at the maximum level in certain situations, but produce minimal results when taken out of their element. Contingency theory is an extension of the trait theory.
- **Transactional Theory** – Transactional theory is characterized by a transaction made between the leader and team members. Transactional leaders are most efficient when they develop a mutual environment in which the goals of the individual and the goals of the organization are in sync. The underlying principle is that people are more likely to associate themselves with individuals that add to their strengths.
- **Transformational Theory** – The transformational theory states that leaders transform their followers through their inspirational nature and charismatic personalities. According to transformational theory, group rules and regulations are flexible and develop from group norms. Team members develop a sense of belonging because they can easily identify with the leader's purpose.

MODULE 5 – BUILDING A SUCCESSFUL REAL ESTATE TEAM

You are *not* required to answer the module review questions to complete the 14-hour course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

- 1. What percent of newly-licensed agents exit the business in their first two years?**
 - a. 50%
 - b. 60%
 - c. 75%
 - d. 80%
- 2. What is the term given to a compensation plan when team members are paid a small salary and then augmented with a split percentage of the earned commission?**
 - a. Hybrid based
 - b. Commission based
 - c. Salary based
 - d. Contract based
- 3. What is the common nickname given to a team's listing agent?**
 - a. Lead Dog
 - b. Rainmaker
 - c. Storm maker
 - d. Rustler
- 4. What skill requires agents to listen intently to what customers actually want and then provide solutions to meet their needs?**
 - a. Passionate
 - b. Knowledgeable
 - c. Empathetic
 - d. Persistent
- 5. At what stage do teams operate at their highest performance level?**
 - a. Formation Stage
 - b. Implementation Stage
 - c. Construction Stage
 - d. Normalize Stage

How did you do? Remember, we have instructors available to assist you throughout your learning experience.
Email: REinstructor@BertRodgers.com or call 941-378-2900 ext. 8898

~ NOTES ~



Paperless Transactions



Written by John Greer

John Greer has over 30 years of experience in Florida real estate and real estate education. He has authored and co-authored numerous Florida real estate texts and online courses, and personally taught thousands of Florida real estate licensees. John's educational background includes a Master's degree in Adult Education, and a Doctorate in Educational Leadership and Management. John has participated in many Florida Real Estate Commission workshops and task forces including the latest Sales Associate and Broker pre-license syllabus updates. John is a United States Air Force veteran, and enjoys playing ice hockey, offshore fishing, and scuba diving in his spare time.

LEARNING OBJECTIVES

Upon completion of this module, the student will be able to:

1. Define important terms used when discussing the paperless office.
2. List the advantages and disadvantages of a paperless office.
3. Describe how to plan for a paperless conversion.
4. Explain the laws that play a role in electronic recording, including the Florida statutes that govern the use of electronic transactions.
5. Discuss customer relationship management systems.
6. List the special features of a paperless office system that would be most useful to a brokerage.

THE PAPERLESS OFFICE

The real estate industry is one of the most paper-intensive industries around. The good news is that every year, the industry gets closer and closer to a paperless office. The technology has been around since e-closings were declared legal in 2000 by the Electronic Signatures in Global and National Commerce Act (ESIGN) and the adoption of the Uniform Electronic Transactions Act. These two acts ensure that contracts signed electronically are legally binding.

Just one real estate transaction can involve nearly 50 forms totaling at least 150 pages. When you multiply

that by the number of people who will need the copies, a single transaction can generate close to 1,000 pieces of paper. Based on this scenario, moving towards a paperless system seems very attractive. Current real estate licensees using some form of a paperless office have saved from 10-20 hours of work per transaction.

However, creating a paperless office is a major undertaking. Migrating existing files, forms, notes, and contracts to a digital format takes time and resources. In addition, once the materials have been digitally formatted, can the system interface with other businesses that require access to that data?

For practical purposes, the concept of a truly paperless office is somewhat misleading. It's difficult and almost impossible to eliminate paper entirely from any business enterprise. Contracts, government documents, and employment records are examples of information that must be in a hard copy format first before being scanned and stored electronically.

The focus should not be on trying to remove every piece of paper from the office. The focus should be on improving access to information, reducing physical storage needs, and increasing productivity.

This module explores the features and benefits of using paperless office systems and provides an insight into how the real estate industry can best adopt this technology.

Terms to Know

These terms and working definitions are important to know when discussing a paperless office environment.

- **Electronic** – The term 'electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- **Electronic record** – An electronic record is created, generated, sent, communicated, received, or stored by electronic means. (aka e-document)
- **Electronic signature** – An electronic signature is a sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- **Electronically-scanned document** – This term refers to an original paper document that has been captured in a digital format.
- **Customer Relationship Management (CRM) System** – A CRM is a computer-based, data-collection system designed to manage a company's interaction with current and potential customers. The goal of a CRM system is to drive sales.
- **Paperless office** – A paperless office is a work environment in which the use of paper is eliminated or greatly reduced. This is done by converting documents and other papers into digital form.
- **E-closing** – This refers to a closing process that is fully digital and paperless.
- **E-recording** – This is the process of submitting

documents for recording online and having them reviewed, recorded, and returned back to the submitter electronically.

- **Smart documents** – This term refers to shared documents such as Excel sheets, PDFs, and Word Documents used as templates to run a business.
- **The Mortgage Industry Standards Maintenance Organization (MISMO)** – MISMO is a US not-for-profit subsidiary of the Mortgage Bankers Association (MBA). It develops technology standards for both residential and commercial property transactions.
- **Portable Document Format (PDF)** – PDF is a file format that captures all the elements of a printed document as an electronic image that a person can view, navigate, print, or forward to someone else.

The Paperless Office Concept

The concept of the paperless office was started around 1975 as a slogan intended to describe the office of the future. The idea was that computer automation would make paper unnecessary for routine job tasks such as record-keeping and bookkeeping. Even though the use of the personal computer took hold and grew, the promise of a "paperless office" did not happen.

In fact, improvements in printers and photocopiers have made it much easier to reproduce documents in bulk, causing the use of office paper to more than double from 1980 to 2000. According to the United States Environmental Protection Agency (EPA), the average office worker generates approximately two pounds of paper products each day.

Traditional offices operate on the flow of paper through printers, copiers, and fax machines. These documents include all manner of charts, maps, records, photos, and reports which are stored on shelves and in folders, books, binders, and filing cabinets. All this paper is resource intensive and requires maintenance, equipment, and space. In contrast, a paperless office might simply require only a desk, a chair, and a computer.

An office can eliminate the need for paper by implementing online systems with databases, sending letters through emails, and using reference books on the Internet. Another way to eliminate paper is to automate the paper-based forms and

applications by changing them into “electronic forms” or e-forms. This method converts print-perfect documents into an electronic format that can be filled out online and digitally signed without printing.

In its most basic format, the technologies used to create a paperless office include:

- **Portable Document Format (PDF) Software** – Used to create, display, and interact with electronic documents and forms
- **E-form Management Software** – Used to create, integrate, and route forms online
- **Database Software** – Designed to capture data for prefilling and processing documents
- **E-mail Software** – Designed to allow the sending and receiving of information
- **Digital Signature Software** – Designed to allow persons to sign documents digitally
- **Workflow Platform** – A computer hardware configuration used to route information and documents
- **Web Server** – A computer host utilized to process, submit, and store data

Stuck on Paper

So, why are most businesses still unwilling to give up the paper? The most common reasons include:

- **Government requirements** – Many local, state, and federal government entities require that records be recorded, transferred, and stored in hard-copy form. However, many government departments are studying how best to implement paperless technologies.
- **Legal necessity** – Many mortgage lenders require paperwork when applying for a loan or selling a property. The good news is that lenders are increasingly going paperless.
- **Permanence** – Some paper documents have been around for centuries, such as deeds, contracts, and land grants. Paper has a long life and still seems like a good choice. However, digital formats like PDF and JPEG will outlast most businesses that use them.
- **Tactical nature of paper** – People like the way paper feels in their hands. Psychologists call this haptic perception which literally means the ability “to grasp something.” Information stored inside a

computer or in the cloud doesn’t feel real or user friendly.

- **Cost** – Paper appears to be inexpensive and easy to distribute. However, paying for printers, toner, servicing, maintenance, and storage becomes expensive.

Advantages and Disadvantages of Going Paperless

When looking at making any kind of change, there will always be both advantages and disadvantages.

Advantages to going paperless. Electronically scanned documents:

- Require less office space to store files and thereby reduce rent expenses.
- Reduce the chance of losing important paper documents.
- Are easier to locate than filed paper documents.
- Reduce repetitive administrative tasks.
- Allow a number of individuals to work remotely on the same document, offering flexible work schedules and more efficiency.
- Allow for users to be notified automatically regarding key dates and events.
- Are a greener option than using reams of paper, so may cut down on expenses.
- Can be faxed or emailed to avoid mailing expenses.
- Can be stored and delivered in various forms and formats as required by different users.

Disadvantages to going paperless. Electronically scanned documents:

- Require up-to-date computer hardware and software to operate effectively.
- Require the services of an IT person to monitor the system, train users, perform backups, and maintain security.
- Require reluctant employees to change to a paperless system.
- Require training on new technology.
- Are vulnerable to human error, such as improperly scanned documents that are incorrectly named or stored.
- Are subject to hacking and theft.

Common Complaints

Employees often cite a number of complaints against adopting a paperless system. The most common complaints include:

- “I’m too busy to learn a new system.”
- “Learning a new system will cause too much disruption.”
- “Electronic records aren’t secure.”
- “The system will crash and I will lose my data.”
- “The system is too restrictive.”
- “I’ll be stuck at my computer all day.”
- “My clients expect face-to-face contact.”

Obstacles to a Paperless Office

A major difficulty in going paperless is that a business must be able to communicate with other businesses and individuals, as opposed to being solely an in-house system. Electronic communication requires all parties to have easy access to similar software and hardware that can communicate with each other. Incompatibility issues are the major stumbling block to widespread acceptance.

As time goes on, the real estate industry has recognized these issues and is making progress in developing systems that can seamlessly talk to each other.

In addition, other businesses are partnering with the real estate industry to move towards a more paperless model. For example, some mortgage lenders are allowing for electronically-submitted mortgage loan applications.

Larger banks with a number of satellite offices have been slowest to accept e-closings. Other banks have taken on the conversion to paperless on a piecemeal basis and have yet to move completely to an electronic closing. Smaller local banks and credit unions have been more receptive, because of the ability to make the conversion on a smaller scale and at a much lower cost.

Planning for a Paperless Conversion

Converting to a paperless office takes planning and organization. Buying a third party software package on a Friday and expecting smooth sailing on the following Monday is an ill-advised maneuver. Following are the

major steps a firm needs to follow when planning for a paperless office:

- Decide what forms and files to convert to a digital format.
- Decide how to organize the folders and files.
- Map out a proposed workflow on how a document moves through the conversion process.
- Write down the workflow process in a step-by-step format.
- Establish whose function it will be to scan forms and documents.
- Establish a protocol for the treatment of documents once they have been scanned.
- Identify who will have access to which parts of the database.
- Determine which scanned documents must remain as unchangeable static copies and which scanned documents will require editing by users.
- Decide how much the firm can spend on the project.

Once the broker or manager has established the internal procedures, he or she must start reviewing software applications that might meet the firm’s needs. There are literally hundreds of document management software systems to select from in today’s marketplace. Many vendors offer free trial periods and then require a monthly user fee to remain active.

Like most other software applications, the level of sophistication offered to users seeking a paperless package ranges from basic capabilities to full-blown dedicated systems. When reviewing possible choices, it is always wise to select a software system that is capable of growing as users become more experienced and demand more features. The cost difference between a basic system and those that offer multiple features is somewhat negligible.

Hardware requirement. The best strategy to take is for the broker or manager to select the software application first and then buy or upgrade the necessary hardware to support it. Doing the opposite will create confusion, frustration, and an excessive loss of productivity. In addition, software vendors have a habit of frequently issuing new release versions that are not supported by computers, printers, and scanners that may just be a few years old.

It would be impractical here to try to list the hardware capabilities required to support a paperless office. Any reputable software vendor has already done the work and can readily provide the firm with a list of hardware needed to be able to take full advantage of all the features of their programs. Even the most basic office configuration will require computers, printers, and scanners. The good news is that hardware has greatly dropped in price and remains very competitive in the market place.

REVIEW OF A TYPICAL REAL ESTATE TRANSACTION

It will be helpful to review a simplified residential real estate transaction from start to completion to identify possible workflow junctures where a paperless system might be most useful.

Listing

Seller agrees to and signs a listing agreement with the representing brokerage. There are three common types of listing agreements:

- **Open Listing** – Allows a seller to use more than one brokerage to sell the property. Whichever agent provides the final buyer gets the commission on the sale.
- **Exclusive Agency** – Allows the seller to seek out buyers for the property at the same time as the real estate agency is working to find buyers. If the seller finds the buyer, the seller pays no commission. If the listing agent finds the buyer, the seller owes commission to that brokerage.
- **Exclusive Right to Sell** – Entitles the real estate agent to a commission no matter who finds the buyer for the property.

Each of the above forms are multi-page documents that must be copied numerous times for distribution and filing.

Property Disclosure Form

Florida law requires a seller of a home to disclose to the buyer all known facts that materially affect the value of the property being sold and that are not readily observable or known by the buyer. Typically, the seller completes a Property Disclosure Form at

the time of the listing. The Property Disclosure Form is a multi-page document that is duplicated numerous times during the transaction.

Lead-Based Paint Disclosure Form

Federal and state laws require a Lead-Based Paint Disclosure Form to be completed prior to the sale of any residential home built pre-1978. A copy of this form goes to the buyer, seller, listing broker, cooperating broker, mortgage lender, and closing agent.

Home Warranty Agreement

The seller may purchase a home warranty at the time of the listing. A copy of the document would remain with the seller and the broker would keep a copy in his or her file. Additional copies would be sent to the home warranty provider and potential buyers as needed.

Posting to a Multiple Listing Service (MLS)

Most brokerages are serviced by one or more MLS associations. While the MLS may look like one large national database, it's actually a collection of over 700 regional databases. Each regional MLS has its own requirements for listings. MLSs are typically not equipped to accept property data in a hard copy format. Information is submitted and retrieved in a paperless environment.

Home Owners Association Information

If the property is governed by an HOA, the agent will need to collect and record HOA financial information, details about membership fees, rules, governing documents, and membership requirements. HOA documents are voluminous in nature and copies must be sent to a number of parties involved in the transaction.

Property Brochures

Creating and printing property brochures is quick and easy in a paperless system, which also allows for making changes easily and as needed.

Marketing Materials

Real estate agents can generate different forms of marketing materials from one database, such as social media ads, newspaper ads, and magazine ads, without the need for total rewrites.

Client Communications

With a paperless system, an agent can effortlessly communicate with his or her client on such matters as weekly sales activities, open house responses, and property inquiries. In addition, such a system provides a documented online record of an agent's activities to verify any performance issues that may develop over the life of a transaction.

Negotiations

The negotiation process generates a number of documents, including:

- **Purchase and Sale Contract** – This is the primary document that brings sellers and buyers together to make the deal happen. A signed Purchase and Sale Contract is in itself a multi-page document and it sets in motion an avalanche of paperwork.
- **Home Inspection Report** – A home inspection is an examination of the condition of a home. The inspector prepares and delivers a written report of findings to the client. This inspection is just one of many that could take place.
- **Home Appraisal Report** – The appraisal estimates the current fair market value of the property being sold. A number of parties involved in the transaction receive copies of this report, such as the buyer, seller, mortgage lender, insurance provider, listing agent, cooperating agent, and closing lawyer.
- **Addendums** – An addendum to a real estate purchase contract is a very important document attached to and made a part of the original contract at the time it is prepared and submitted to the principals. Even a simple transaction can generate a number of addendums. Each addendum must be accurately written and recorded to avoid any problems with the transaction.

Title Order Submission

After a purchase and sale contract has been approved, the buyer's lender or real estate agent completes and

sends a form to the closing attorney which contains all of the relevant information related to the transaction. Also, most real estate attorneys have websites that allow for forms to be electronically completed. In addition, the buyer's agent will typically send a copy of the signed purchase and sale agreement to the closing attorney.

File Processing

The processing stage of the transaction starts after the closing attorney receives the request for title. At this point, many third parties provide the following types of information:

- The status of current and prior years' taxes
- Loan payoff statements
- Survey results
- Homeowner association estoppel letters showing maintenance fees and assessments
- Inspection reports
- Proof of hazard insurance
- Title search report
- Lien and judgment search report

Title Search

A thorough search is made of the public records in the county in Florida where the real property is located. Records searched include:

- Deeds
- Mortgages
- Lis pendens notices
- Judgments
- Easements
- Covenants
- Liens
- Divorce settlements
- Other public documents affecting title to the property

After all of the documents are located, the title insurance underwriter prepares a title search report and sends it to the closing attorney.

Title Examination

The closing attorney will first issue a title commitment to the buyer and lender based upon the findings of the title search report. Then the attorney will examine all of the documents to determine the current status of title and whether any clouds on the title exist. The closing attorney also verifies the legal owner of the property and indicates any debts owed against the property.

Document Preparation

After all the title paperwork is in order, the closing attorney will prepare the following closing documents:

- Deed
- Bill of sale
- Affidavits
- Foreign Investment in Real Property Tax Act Certificate
- Closing statement

In addition, if the buyer is financing the purchase, the buyer's lender will submit its closing instructions to the closing attorney. The attorney will send copies of all closing documents for review to all interested parties in advance of closing.

Closing the Transaction

Once all of the closing documents have been approved, a date and time to close the transaction is scheduled. At the closing:

- The closing attorney oversees the purchase and sale transaction.
- The seller signs the deed and the other documents as needed.
- The buyer signs the buyer's documents and the loan documents as needed.

After closing, certain required documents are sent out for recording in the county in which the property is located.

As you can readily see from our transaction review, even a simple transaction generates a large quantity of paper that must be read, reviewed, signed, checked, mailed, and stored. Printed pages are oftentimes subject to being misprinted, lost, damaged, and misfiled. A paperless system reduces or eliminates many such problems.

LEGAL ISSUES

When dealing with paperless transactions, it's important to know the legal aspects that influence those transactions, including the current legislation.

The Electronic Signatures in Global and National Commerce Act (ESIGN)

The ESIGN Act is a landmark federal law in the United States. Passed in 2000, it granted legal recognition to electronic signatures and records in the USA based on the understanding that if all parties to a contract choose to use electronic documents and to sign them electronically, they are legal.

The ESIGN Act provided the legal foundation for use of electronic records and electronic signatures in commerce. It confirmed that electronic records and signatures carry the same weight and have the same legal effect as traditional paper documents and wet ink signatures. The ESIGN Act allows the following:

- No contract, signature, or record will be denied legal effect solely because it is in electronic form
- A contract relating to a transaction cannot be denied legal effect solely because an electronic signature or record was used in its formation

The ESIGN Act has been praised for its comprehensiveness. However, the Act does not apply to every type of documentation. Certain types of records and documents are not covered by the ESIGN Act. These include:

- Wills, codicils, and trusts
- Adoption paperwork
- Divorce decrees
- Certain areas of the Uniform Commercial Code
- Court orders and notices
- Official court documents, including briefs and pleadings
- Notices of the termination of utility services
- Notices of default, foreclosure, repossession, or eviction
- The cancellation of insurance benefits
- Product recalls or notices of material failures
- Documentation accompanying the transportation of hazardous materials

The Uniform Electronic Transactions Act (UETA)

UETA was approved by the National Conference of Commissioners on Uniform State Laws in 1999. UETA gives states a framework for determining the legality of an electronic signature in both commercial and government transactions.

The Uniform Electronic Transactions Act (UETA) goes hand-in-hand with the E-SIGN Act, in that both were enacted to help ensure the validity of electronic contracts and the defensibility of electronic signatures.

Both E-SIGN Act and the UETA have four major requirements for an electronic signature to be recognized as valid under law. Those requirements are:

- **Intent to sign** – Electronic signatures, like traditional wet ink signatures, are valid only if each party intended to sign.
- **Consent to do business electronically** – The parties to the transaction must consent to do business electronically. Electronic records may be used in transactions with consumers only when the consumer has:
 - Received UETA Consumer Consent Disclosures
 - Affirmatively agreed to use electronic records for the transaction
 - Not withdrawn such consent
- **Association of signature with the record** – In order to qualify as an electronic signature under the E-SIGN Act and UETA, the system used to capture the transaction must keep an associated record that reflects the process by which the signature was created, or generate a textual or graphic statement proving that it was executed with an electronic signature.
- **Record retention** – U.S. laws on eSignatures and electronic transactions require that electronic signature records be capable of retention and accurate reproduction for reference by all parties or persons entitled to retain the contract or record.

There are many similarities between the UETA and the E-SIGN Act, but there are a few major differences. The most obvious difference has to do with governance. The E-SIGN Act is a federal act, which means it affects people who do business online in all 50 states. The

UETA, meanwhile, has been adopted on a state-by-state basis. Individual states have the option to adopt or reject the guidelines presented in the act. UETA has been accepted by 47 states, including Florida.

The Uniform Real Property Electronic Recording Act (URPERA)

The URPERA is one of the Uniform Acts drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) with the intention of harmonizing state laws. The purpose of the URPERA is to allow county clerks and recorders to record information on real property and land records electronically (E-record).

Each county in the United States needs to approve and accept the E-recording system. The good news is that approximately 75% of the U.S. population now lives in an E-recording county. The bad news is that as of January 2018, not all counties in Florida have adopted the E-recording system. For documents that require recording, it is important to insure that the county recorders accept electronic submissions.

In its broadest sense, recording refers to the function of receiving, processing, storing, and safekeeping official public information. The majority of recorded documents deal with the ownership and transfer of personal and real property. The act of recording is important because it establishes an archive of documents that ensures the rights and entitlements of property owners. Let's look at both the paper and electronic recording formats used to file land records.

Paper Recording of Land Documents

A typical paper recording process is as follows:

- **Create the document** – Each land record starts out in a paper format that follows specific business rules and criteria for the county where it will be recorded. Once all of the appropriate information is included in a document, the document is reviewed for accuracy and completeness.
- **Correct the document** – The document reviewer corrects the document if needed and reviews it once again.
- **Sign and notarize the document** – After the document passes the review stage, the appropriate people sign and notarize it. With the signatures and

seals, the document is ready for delivery to the recording office.

- **Attach payment** – The recording offices require that payment accompany each document. Typically, incorrect payments may result in a rejected document and a delayed recording.
- **Deliver the document** – Documents are delivered to their intended locations. Document delivery takes several forms such as couriers, UPS, FedEx.
- **Acknowledge receipt** – Once the recording office has processed a request, a member of the office staff will return the original document and recording receipt to the designated receiver—a process that may take several months.

It commonly takes at least two to three working days to record and process a document. However, some recording offices have been known to take months due to paper backlogs.

E-recording of Land Documents

When using an E-recording system, the steps in the process do not change. What changes is the fact that E-recording does all of the following:

- Reduces the labor and postage costs
- Shortens the time between filing and recording
- Ensures secure delivery and receipt of documents
- Eliminates extra fee payment due to errors
- Improves document tracking
- Reduces errors and rejections

With the capabilities of today's computer systems, the entire recording and filing process can take place in seconds, not hours or days. The complete turnaround time from submission to return can be reduced to minutes instead of months.

Florida Laws

There are two main statutes that govern the use of electronic transactions in Florida. They are:

- Florida Statute 15.16 which states that people can submit legal documents electronically and they will remain valid in the Department of State. In addition, the statute says that the electronic transmission of records such as photographs, diagrams, facsimiles, drawings, and prints have the same force and effect

as originals for use as evidence. This includes the electronic filing of legal documents using electronic signatures.

- Florida Statute 668.004 which states that unless another law directly prohibits it, an electronic signature has the same force and effect as a written signature.

E-notarization

At times, some transaction documents require the seal of a notary. Duties of a notary vary from state to state, but overall a notary is to act as an impartial and public witness to a signing ceremony. A notary's role is to check the identity of the signer, witness the actual signing of the document, and affix a notary stamp/seal to the document to attest that the signatures were executed by the free will of the signers.

E-notarization technology now enables notarization when the notary is not face-to-face and in person with the signer of the document. This allows for the notarial act to occur across state lines.

Electronic notarization laws in Florida. Florida's Notaries Public statute states that any document requiring notarization may be notarized electronically. Under the Notaries Public statute, electronic notarizations must comply with all the requirements for paper notarization, except that the notary's signature and seal may be electronic. E-notarization requires:

- Personal appearance of the individual before the notary
- The acknowledgment by the individual of the document to be signed
- A notarial certificate executed by the notary
- The notary's signature, seal, and expiration date

The notary's electronic signature and seal must be affixed to the document by either a public key certificate or by means of an electronic notary system. The public key certificate or electronic notary system used must be issued at the third or higher level of assurance as defined in NIST SP 800-63-2.

The Mortgage Industry Standards Maintenance Organization, (MISMO)

MISMO is not a legal regulatory body, but was created to develop, promote, and maintain voluntary electronic commerce standards for the mortgage industry. Established in 1999 as a not-for-profit subsidiary of the Mortgage Bankers Association of America, MISMO encourages participation from all sectors of the industry. It has developed technology standards for both residential and commercial property transactions in the US, by promoting improved data consistency. MISMO aims to reduce costs and increase transparency while promoting confidence in mortgages as an asset class for investors.

MISMO publishes e-commerce specifications for supporting the following processes:

- Underwriting
- Mortgage insurance application
- Credit reporting
- Flood and title insurance
- Property appraisal
- Loan delivery
- Product and pricing
- Loan Servicing
- Secondary mortgage market investor reporting

Purpose of MISMO standards. Historically, information stored in documents has been difficult to extract and transport into a digital format. Mortgage originators had to copy and paste or transcribe information from third-party reports into their internal-review documents, spreadsheets, and forms. These efforts were manual, error-prone, slow, and tedious.

MISMO has constructed a standard approach by using a markup language that defines a set of rules for encoding documents in a format that is both human-readable and machine-readable.

MISMO does not dictate what kind of software to use. Rather, it dictates how to format the data sent to another party. This allows all parties to develop, run, and maintain their own platforms while having uniform efficiency. MISMO provides the framework, but it is up to the individual user to decide which fields they will need to populate.

MISMO developed a standard representation for eMortgage documents called the SMART document. SMART documents carry the data of the document in a standardized format and link the visual presentation to the data. It is possible to verify automatically that the data provided for machine consumption matches the information presented to humans. The good news is that any mortgage document can be represented in the MISMO SMART document. Fannie and Freddie have additional requirements on the MISMO SMART documents, which at the present time are different for delivering electronic mortgages.

Investors need to know the party that holds or has possession of the promissory note, as it is a negotiable instrument. Since it is easy to make copies of an electronic document and not so easy to determine which copy is electronically equivalent to what would be a paper original, the industry agreed to designate a registry to identify the “authoritative copy” and the controller of the electronic document and its location. The Mortgage Electronic Registration Systems (MERS) eRegistry provides this information and has been in operation for a number of years. With the MISMO standard representation for documents and the MERS eRegistry to indicate the party in control of the promissory note, much of the infrastructure has been laid.

MANAGEMENT SYSTEMS

As we stated earlier in this module, implementing a paperless office is a major undertaking. However, even a single agent working in an office that is not moving towards a paperless system can still take advantage of adopting a paperless format for many routine tasks that can be performed without the support of the brokerage.

Customer Relationship Management Systems

A number of agents have adopted a computer based Customer Relationship Management (CRM) system to assist them with primarily focusing on the following three tasks:

- Marketing
- Property listing
- Contact management

With a CRM system, these three tasks stay under the control of the agent, but can nicely dovetail with the operations of an office that is not fully paperless.

In its most basic form, Customer Relationship Management (CRM) is an approach to managing a company's interaction with current and potential customers. It analyzes data about customers' history with a company to improve business relationships with customers, specifically focusing on customer retention and ultimately driving sales growth.

Customer Relationship Management Systems Background

The concept of customer relationship management started in the early 1970s, when customer satisfaction was evaluated using annual surveys or by frontline asking. At that time, businesses had to rely on stand-alone mainframe systems to automate sales, but the extent of technology allowed them to categorize customers in spreadsheets and lists.

In 1982, the concept of "database marketing" was introduced, which allowed applying statistical methods to analyze and gather customer data. The first open-source CRM system was developed in 2004. During this period, CRM was rapidly migrating to the Cloud, as a result of which it became accessible to sole entrepreneurs and small teams, and underwent a huge wave of price reduction.

Over the years, CRM programs have become industry specific. Today, there are number of programs that have been designed especially for use by real estate agents.

Customer Relationship Management Systems Capabilities

Here is a list of capabilities that might be offered in a dedicated real estate CRM software package:

- **Digital dashboard** – This feature is an electronic interface that aggregates and visualizes data from multiple sources, such as databases, locally hosted files, and web services. A digital dashboard allows the user to monitor business activities by displaying historical trends, actionable data, and real-time information.
- **Calendar management** – This feature allows the agent to record events and appointments on an electronic calendar.

- **Property matching** – This feature automatically notifies the agent when a new property has been listed that might match the needs of a buyer client.
- **Client database** – This feature allows for the storage and retrieval of a client's biographical data.
- **MLS integration** – This feature automatically imports all of the agent's listings information to an MLS provider
- **Commission management** – This feature stores commission history and allows for the input of transaction information to determine commission splits.
- **E-signature capabilities** – This feature allows for input and transmittal of legally binding signatures.
- **Contract management** – This feature houses, tracks, and sends real estate contracts. One powerful aspect of this feature is the ability to complete standardized real estate forms seamlessly. This feature is extremely useful because it can be linked to a number of outside sources that are involved in a real estate transaction, such as lawyers, lenders, inspectors, insurance providers, and cooperating agents.
- **Document storage** – This feature allows the user to warehouse completed transactions and be able to retrieve the information with just a few computer keystrokes.
- **Regulatory compliance** – This feature allows for the storage of updated guidelines and legal information which the agent can reference to insure that all mandatory compliance regulations are followed during a transaction.
- **Document encryption** – This feature allows the user to convert files into an unrecognizable form to protect sensitive information so that only authorized parties can view it.
- **Email marketing** – This features allows for the automatic creation and emailing of marketing materials.
- **Advertisement printing** – This feature allows for the easy creation of flyers, business cards, and mailers.
- **Lead management** – This feature helps the agent track and follow all leads.
- **Property management** – This feature allows the agent to track yard signs, lock-boxes, door keys, garage door openers, and other routine property maintenance issues.

- **Website management** – This feature tracks website usage and makes suggestions on changes and updates.

Using a CRM platform offers a lot of features and benefits that can save an agent time and money. With the use of mobile devices, agents can maintain communication with customers and clients in remote locations within minutes.

Office-Wide Paperless Systems

Let's turn our attention to a much larger and more complex system that a brokerage office might use to automate the entire office. Think of an office-wide paperless system as a CRM on steroids. The larger system includes many of the same features, but with more capabilities and multi-user access. Essentially, all agents in an office would have access to all the CRM features listed in the previous section, but in a more shared environment.

Typically, in an office-wide paperless system, operating software and data records are stored on a computer server and accessed remotely by users. The hardware and software is maintained by IT personnel whose job it is to have the system be 100% operational at all times.

Office-wide systems offer the following advantages:

- Individual users do not spend any time on maintenance, troubleshooting and installing updates.
- Individual users can access information with a variety of computer terminals, without the need for high-end/high-cost hardware devices.
- The cost per individual user is usually less in a shared system.
- System applications are typically more robust than those found in a single-user CRM system.
- Commonality of office procedures bring efficiencies.
- Broker management personnel have the ability to access performance data across the entire spectrum of the operation.

BROKER MANAGEMENT ADVANTAGES

A number of special features in a paperless office system exist that would be most useful to the broker's management staff.

Digital Dashboards

Dashboards provide at-a-glance views of key performance indicators relevant to the operation of the brokerage. A digital dashboard is similar to a progress report. The term dashboard originates from the automobile dashboard where a driver can monitor the major functions of the vehicle at a glance via the instrument cluster.

Benefits of using digital dashboards include:

- Visual presentation of performance measures
- Ability to identify and correct negative trends
- Measurement of efficiencies and inefficiencies
- Ability to generate detailed reports showing new trends
- Timesaving compared to running multiple reports
- Total visibility of all systems instantly
- Quick identification of data outliers and correlations

Transaction Management

A broker is responsible for the compliance of every document uploaded in a transaction. A transaction management feature allows for the review of every transaction document or task completed by agents. A typical system might work as follows:

- Agent enters those transaction tasks that are completed.
- Broker gets instant notification of results.
- Broker reviews the results online.
- If task is in compliance, the broker marks task as complete and the process is over.
- If the task is not in compliance, the broker marks task incomplete.
- Broker notifies the agent of what needs to be corrected.
- Agent receives rework task comment by email.
- Agent fixes the problem and marks the task as complete again.

- Broker gets notified once again to review the task.
- Broker reviews task again and marks as complete.
- A task log with time stamps is recorded with the transaction report.

Compensation Plans

This feature allows the user to generate automatically all transaction financials according to an agent's commission plan when he or she creates a transaction. The user is able to generate the following types of reports:

- Brokerage sales volume by transaction type
- Brokerage commissions earned by income type
- Brokerage commission forecasting
- Agent ranking by commissions earned
- Agent ranking by sales volume
- Agent ranking by units closed

Agent Management

This feature allows the user to record within an agent's user profile important notes, conversations, or phone calls associated with an agent, such as a:

- Reminder note that an agent has taken an advanced commission
- Conversation with an agent about negotiating a commission split
- Reminder note that an agent owes brokerage last month's monthly fee
- Call that took place with an agent about increasing prospecting efforts

Transaction Activity Tracking

This feature allows the agents and staff to record important notes, conversations, or phone calls associated with a transaction, such as a:

- Record of transaction expenses
- Conversation with a seller about potential price reduction
- Conversation with a buyer who is opting to not conduct inspections
- Call with a lender about buyer's pre-approval status
- Call with buyers to discuss an inspection report

Back-Office Management

The brokerage can use this feature to manage business operations that are not related directly to real estate transactions and do not interface with clients and customers. Back-office tasks are necessary for a company to run smoothly, such as:

- **Accounting** – A feature that integrates with an automated accounting system
- **Purchasing** – A feature that manages business purchases
- **Human Resources** – A feature that tracks and records hiring, training, and dismissal of employees
- **Vendor Management** – A feature that tracks and records vendor transactions
- **Taxation** – A feature that allows for the automation of tax records

SUGGESTIONS FOR CONVERTING TO A PAPERLESS OFFICE

When converting to a paperless office, the brokerage would do well to consider implementing these suggestions.

- **Develop a back-up plan** – The brokerage should first implement a good back-up plan in at least three locations. One location should be off-site. A second location should be on a local hard drive. The third location should be on the broker's personal computer.
- **Use selective scanning** – It's not necessary to scan every single document at the beginning of the process. To get started, the broker should choose only those files that are high priority.
- **Implement a consistent filing method** – The brokerage should build a consistent file structure to store data and establish a system for how agents can access that information.
- **Provide training** – The brokerage should provide adequate and ongoing training for the staff and agents.
- **Provide security measures** – Security measures need to be in place to keep records confidential. Passwords must be secure and be changed at regular intervals.

- **Select a reputable system** – The brokerage should choose a vendor/system based on the recommendations from actual users rather than marketing hype.
- **Seek assistance** – The broker should seek out and ask for advice from a professional IT expert. Paying a small consulting fee upfront might save numerous headaches down the line.

MODULE 6 – PAPERLESS TRANSACTIONS

You are *not* required to answer the module review questions to complete the 14-hour course. They are intended to help prepare you for the Final Exam. Choose the best response to each question. The answers are found in the back of the book.

- 1. What term refers to an original paper document that has been captured in a digital format?**
 - a. Electronic record
 - b. Electronically-scanned document
 - c. Electronic signature
 - d. Smart electronic document
- 2. What landmark federal law passed in 2000 granted legal recognition to electronic signatures?**
 - a. The Electronic Signatures in Global and National Commerce Act (ESIGN)
 - b. The Electronic Signatures in Commerce Transactions Act (ESICT)
 - c. The Uniform Electronic Transactions Act (UETA)
 - d. The Uniform Electronic Transfer Act (UETA)
- 3. Agents wanting to record important notes, conversations, or phone calls associated with a transaction might use a software package that has a(n):**
 - a. agent management feature.
 - b. transaction management feature.
 - c. transaction activity tracking feature.
 - d. digital dashboard feature.
- 4. What software feature would allow the user to convert files into an unrecognizable form to protect sensitive information?**
 - a. E-signature capabilities
 - b. Document storage
 - c. Regulatory compliance
 - d. Document encryption
- 5. The Mortgage Industry Standards Maintenance Organization (MISMO):**
 - a. states that any document requiring notarization may be notarized electronically.
 - b. was created to develop, promote, and maintain voluntary electronic commerce standards for the mortgage industry.
 - c. allows county clerks and recorders to electronically record information on real property and land records.
 - d. was replaced by the Mortgage Electronic Registration Systems (MERS) eRegistry.

How did you do? Remember, we have instructors available to assist you throughout your learning experience.
Email: REinstructor@BertRodgers.com or call 941-378-2900 ext. 8898

~ NOTES ~

MODULE REVIEW ANSWER KEY

Module 1 — Real Estate Core Law

1. In a mandatory homeowners' association the required disclosure must be provided by the:
a. developer or seller.
2. A fiduciary duty is owed by:
b. a single agent.
3. A broker who owns a brokerage firm and a referral company may be issued upon request:
d. multiple licenses.
4. A real estate license is required when acting as a/an:
d. leasing agent who is paid on a transactional basis.
5. Under the license law, it is presumed that all licensees are operating as:
b. transaction brokers.

Module 2 — Business Ethics for Real Estate Professionals

1. Which is not considered to be unethical behavior?
c. selling a rundown house and disclosing known defects
2. The Articles of the NAR Code of Ethics deal with all of the following duties, EXCEPT:
b. Duties associated with the Brokerage Relationship Disclosure Act
3. The sections in Pathways to Professionalism do not include:
c. Respect for Pets
4. The act of "outing" someone for illegal or unethical behavior is:
d. called whistleblowing and can be reported internally, externally, to law enforcement, or to a third party.
5. Good ethical practices have to do with:
d. all of the above.

MODULE REVIEW ANSWER KEY

Module 3 — Non-Traditional Residential Real Estate

1. An accessory dwelling unit (ADU) is best described as a:
b. living area located in or detached from a single-family home.
2. In Florida, when a mobile home is placed on privately held ground, it is treated as a/an:
d. stick-built home.
3. What building product is made from insulating foam sandwiched between two layers of structural material?
a. structural insulated panels
4. Which plastic exterior wall coating was developed to replace traditional stucco?
c. exterior insulation and finishing systems
5. Homes with unique risks can be insured through:
b. surplus lines insurance.

Module 4 — Smart Houses & Aging in Place - Part I

1. The gateway for smart home devices into most homes (57%) is:
b. Entertainment
2. A consideration for consumers buying smart locks is:
c. Which technology the lock is compatible with, e.g. Apple, Droid, Google
3. The lighting company that provides emergency lighting when the power goes out is:
a. Beon
4. Smart homes run on hubs, which present issues of hacking into the internet running the smart home. Consumers can do what to protect themselves from this?
d. All of the above
5. The Coldwell Banker/Vivent study revealed that:
d. Over half of buyers indicated that they would pick a smart house over one without smart home features

MODULE REVIEW ANSWER KEY

Module 4 — Smart Houses & Aging in Place - Part II

1. The principle in universal design that states that a device should be as easy to use whether the user is right or left-handed is:
a. Flexibility in use
2. The principles of universal design were adopted by architects after the passage of:
b. The Americans with Disabilities Act (ADA)
3. One of the top reasons that boomers cite for remaining in their current home is:
c. Their home is conveniently located
4. Which generational group that we discussed is least likely compromise when it comes to buying a house?
d. Older boomers
5. Which of the following would not be considered a good feature in an aging in place home?
c. A spiral staircase

Module 5 — Building a Successful Real Estate Team

1. What percent of newly-licensed agents exit the business in their first two years?
d. 80%
2. What is the term given to a compensation plan when team members are paid a small salary and then augmented with a split percentage of the earned commission?
a. Hybrid based
3. What is the common nickname given to a team's listing agent?
b. Rainmaker
4. What skill requires agents to listen intently to what customers actually want and then provide solutions to meet their needs?
c. Empathetic
5. At what stage do teams operate at their highest performance level?
b. Implementation Stage

MODULE REVIEW ANSWER KEY

Module 6 — Paperless Transactions

1. What term refers to an original paper document that has been captured in a digital format?
b. Electronically-scanned document
2. What landmark federal law passed in 2000 granted legal recognition to electronic signatures?
a. The Electronic Signatures in Global and National Commerce Act (ESIGN)
3. Agents wanting to record important notes, conversations, or phone calls associated with a transaction might use a software package that has a(n):
c. transaction activity tracking feature.
4. What software feature would allow the user to convert files into an unrecognizable form to protect sensitive information?
d. Document encryption
5. The Mortgage Industry Standards Maintenance Organization (MISMO):
b. was created to develop, promote, and maintain voluntary electronic commerce standards for the mortgage industry.

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Final Examination

Section

EXAM 20A

The following pages include:

- Final Examination Guidelines and Instructions – pages 122-123
- The Final Examination – pages 124-128
- Registration Form Instructions – page 130
- Registration Form and Answer Sheet – page 131

See our License Renewal Checklist on back of registration form.



Final Examination Guidelines and Instructions

Part I: FREC Guidelines

1. According to *Florida Administrative Code*, 61J2-3.009,(1)(a), all active or inactive sales associates, broker associates, and brokers must complete a minimum of 14 hours of continuing education during each license renewal period, excluding the first renewal period of their current license.
2. **Is this your first license renewal?** Sales associates, broker associates, and brokers must complete **post-license education** during their first license renewal period. Call our school for more information: 941-378-2900.
3. The Florida Real Estate Commission (FREC) has approved this final examination for 14 hours of real estate continuing education (including both the mandatory three-hour Core Law update and the newly required three-hour Business Ethics) for sales associates, broker associates, and brokers. The FREC course approval #0020412 / #0020413 expires May 9, 2020.

4. The Final Exam begins on page 124. After completing the final exam, carefully transfer your answers to the Registration Form.
5. FREC Rule 61J2-3.009 regulates the format of final examination questions. This rule states:

- The 14-hour course examination consists of 30 multiple choice questions with four answer choices each. There is only one correct answer for each question.
- The examination questions may not follow the order of the material.
- A minimum of 21 questions must be Application Level. Students must apply the knowledge they have acquired during the course to answer the questions correctly.
- A passing score is 80% or higher. You must answer a minimum of 24 questions correctly to attain satisfactory course completion.
- Students who have failed the final examination may take a complimentary re-exam. The re-exam is an alternate version of the original exam.

GRADING POLICY

Questions Missed	Grade %
0.....	100
1.....	97
2.....	93
3.....	90
4.....	87
5.....	83
6.....	80
7+.....	Re-Exam



FREE re-exams are available if you do not pass the Final Examination on your first attempt.

Part II: Exam Instructions



important

This information will help you achieve your best possible score. Please read it **BEFORE** completing the final examination.

1. Review the FREC Guidelines on the previous page.
2. If you need assistance while taking the final examination, contact our instructor via email at REinstructor@BertRodgers.com or by phone 941-378-2900, ext. 8898.
3. After answering all 30 questions, choose one of our convenient methods to submit your completed final examination:
 - **Mail, fax, or email** – Registration Form Instructions are on page 130.
 - **Online** – Go to www.BertRodgers.com for more information.

Be sure the exam number on your Registration Form or E-Grading Exam matches the exam number you completed (i.e., Students completing Exam 20A will complete the Exam 20A Answer Sheet or 20A eGrading).

Helpful Test-Taking Tips

- Read each question carefully and identify the learning objective that is being tested.
- Review **ALL** of the answer choices and eliminate those you know are incorrect. Some application level questions may have two answer choices that are similar but only one is correct. Choose the **BEST** answer.
- Keep a record of your responses by marking your answer next to each exam question.
- This is an **open-book exam**. Use the index in the back of the book or the search feature in the e-book to look up key terms and **check your answers**. Unanswered questions are scored as incorrect.
- If you are unsure of an answer, use the answer choices to turn the question into a true or false statement. Looking at the question differently may remind you of something you have read.



Instructor support is available during office hours at **REinstructor@BertRodgers.com** or 941-378-2900 ext. 8898.



Final Examination 20A

- 1. Jason is selling his home. He previously filed a sinkhole insurance claim that was paid by the insurer. By law, he must disclose to the buyer before the closing that a claim has been paid and whether or not:**
 - a. the full amount of the proceeds was used to repair the sinkhole damage.
 - b. at least half of the proceeds were used to repair the sinkhole damage.
 - c. a licensed contractor was used to make the repairs.
 - d. the professionally prepared sinkhole report was filed with the Secretary of State.

- 2. Real estate brokerage branch offices must be registered with the FREC. Although it is *not* clearly defined, an example of a branch office is:**
 - a. a mall booth with temporarily assigned sales associates.
 - b. a temporary shelter next to a builder's model home.
 - c. the regularly used meeting space at a local café.
 - d. an office where Sales Associate Mary is permanently assigned.

- 3. Broker Max is managing a rental property. At the end of the lease, the tenant left the home severely damaged. To make a claim on the security deposit, Broker Max must notify the tenant within what period of time?**
 - a. 15 days
 - b. 25 days
 - c. 30 days
 - d. 45 days

- 4. Broker Valerie is filling out a contract for sale and purchase. The contract indicates that an attorney will be the escrow agent. Broker Valerie is *not* required to include the escrow agent's _____ on the contract.**
 - a. name
 - b. phone number
 - c. address
 - d. web address

- 5. Broker Zac has listed a beautiful lakefront home. To get more buyer leads he placed the following advertisement in a local high-end magazine: Beautiful lakefront home, 6 bed/6 bath/4 car garage, \$850,000 – for more information call Zac today at (777) 777-7777. To be in compliance with FREC rules, Zac must include:**
 - a. the street address.
 - b. the total square footage.
 - c. his brokerage firm's web address.
 - d. his name as licensed with the FREC.



6. **Sales Associate Tyler owes loyalty, obedience, and confidentiality to Buyer Stacey. What type of brokerage relationship does Tyler have with Stacey?**
- single agent
 - transaction broker
 - dual agency
 - no brokerage
7. **A seller who is in a single agency relationship with his broker, reveals to him in confidence that he is having financial difficulty and must sell his home very quickly. The broker must:**
- share the information only with serious buyers.
 - withhold the information from everyone.
 - include the information in the MLS advertisement.
 - share the information with any broker who presents an offer.
8. **Broker Jill has received an offer from a buyer on Seller Jack's home. Jack instructs Jill *not* to mention the fact that his home flooded the previous year due to a heavy rain. Jill should:**
- disclose the information to the buyer.
 - obey Jack's request.
 - share the information only if asked.
 - make sure there are no signs of damage from the flooding.
9. **Broker Michael operates a property management company. The maximum amount of personal funds he is permitted to maintain in his property management escrow account is:**
- \$5,000.
 - \$1,000.
 - \$200.
 - \$0.
10. **Mike is a resident of a large apartment community. He occasionally refers prospective tenants to the property management firm. In return, they pay him \$50 if the prospect becomes a resident. According to Chapter 475 Florida Statutes:**
- Mike may legally receive the \$50 referral fee.
 - Mike will be subject to a fine of \$5,000.
 - the property management firm will be subject to a \$10,000 fine.
 - this activity is not legally permissible.
11. **Enforcement of the code of ethics is the responsibility of:**
- the Florida Real Estate Commission.
 - the local Association of Realtors.
 - the Florida Realtors Association.
 - the National Association of Realtors.



- 12. The term “business ethics” came into common usage in the:**
- 1920s
 - 1950s
 - 1970s
 - 2000s
- 13. Over the years, business ethics has expanded to ensure a level of trust between businesses and consumers. An example of a corporate social responsibility project is a company:**
- hosting dinner for employees.
 - encouraging its employees to volunteer in the local community.
 - picnic for employees and families.
 - hosting an annual shareholder meeting.
- 14. A new CEO wishes to create a stronger, more ethical business culture. Which of the following strategies could he/she utilize?**
- Reward unethical behavior
 - Model undesirable behavior
 - Investigate only serious complaints
 - Hire ethical/fire unethical employees
- 15. Examples of unethical behavior may include:**
- taking credit for work you did not perform.
 - keeping two sets of accounting books.
 - dating clients or patients.
 - all of the above.
- 16. Which of the following is *not* a generally accepted cause of unethical behavior?**
- Trust
 - Power
 - Hubris
 - Fear
- 17. A code of conduct is:**
- adopted by a profession to help regulate its activities.
 - addressed to employees to set out restrictions on behavior and rules.
 - used by organizations to deal with internal issues in the organization.
 - a reference that sets out values that underpin the code and describes obligations to stakeholders.
- 18. Select the true statement regarding Florida real estate licensees:**
- All licensees must adhere to the Realtor Code of Ethics.
 - All Realtors agree to abide by the Realtor Code of Ethics.
 - The Realtor Code of Ethics is incorporated into Chapter 475, F.S.
 - The Realtor Code of Ethics is incorporated into Chapter 61J2, F.A.C.



19. Which statement is correct concerning changes to the Realtor Code of Ethics?

- a. The code is firmly set and does not change.
- b. Individual Realtor Associations make changes to the code as needed.
- c. State Realtor Associations make changes to the code as they see fit.
- d. Changes to the code are made annually at the NAR midyear meetings.

20. Business ethics is:

- a. a well-established system of laws and guidelines.
- b. defined in Chapter 475 F.S. and Chapter 61J2 F.A.C.
- c. a standardized method of operation that all business owners, regardless of occupation, must adhere to.
- d. an ever-changing subject because it is rooted in the fluid nature of laws and guidelines.

21. Although *Big-Time Insurance Inc.* is *not* licensed in Florida, the company is providing insurance to Florida residents. This company is operating as:

- a. non-admitted insurers.
- b. unique-risk insurers.
- c. ancillary insurers.
- d. additional-rider insurers.

22. The Tanners renovated a section of the interior of their home last year to house their exotic pet. The room has trees and grass growing straight out of the ground, and a small in-ground pool for the pet to bathe in. They now need to sell their home and move out of state. They should be aware that because of the uniqueness of their home, it may likely sell at:

- a. fair value.
- b. above value price.
- c. below value price.
- d. adapted value price.

23. What type of electrical house wiring consists of single-insulated copper wire protected and supported by porcelain fittings?

- a. Federal Pacific Electrical Wiring
- b. Knob and Tube House Wiring
- c. Porcelain Pipe Wiring
- d. Aluminum Electrical Wiring

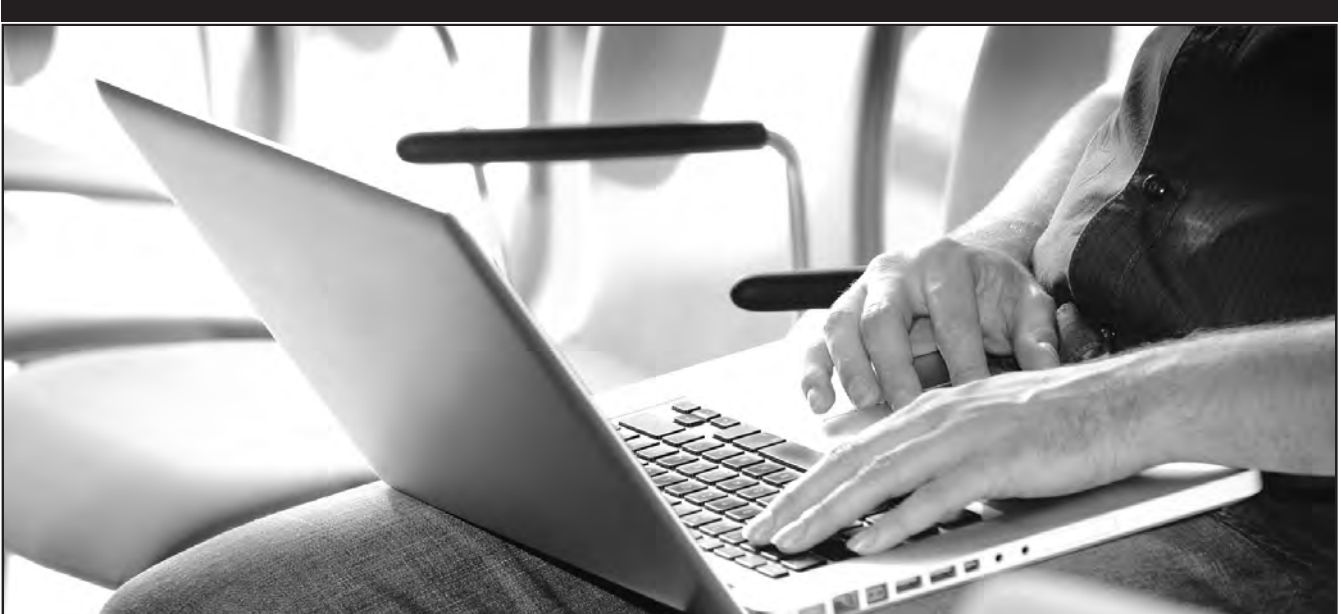
24. If Sarah wants to ensure that her grandmother takes her medicine when she is supposed to, she should consider getting:

- a. Medminder.
- b. Freedom Watch.
- c. Everthere.
- d. Stone Guard Cooktop.



- 25. Scott wants to incorporate smart home technology into his new home. The first thing he is adding is smart lighting which utilizes:**
- the recording of a family member's voice.
 - "EverThere" technology when the power goes out.
 - automatic timers.
 - thermostat technology.
- 26. John's real estate team has been working together for so long that all team members are now competent and autonomous. John's team is now in the:**
- formation stage.
 - disruption stage.
 - implementation stage.
 - construction stage.
- 27. Once an offer is accepted, Jennifer manages the transaction until it closes. Jennifer is her team's:**
- administrative assistant.
 - transaction coordinator.
 - listing manager.
 - team leader.
- 28. Jason's duties on his real estate team include picking up debris from the team's listings. Jason's role is that of:**
- technical support assistant.
 - showing assistant.
 - field service technician.
 - inside sales agent.
- 29. *We Care Realty, Inc.* wishes to reduce the amount of paperwork that is generated from their real estate transactions. They should consider:**
- electronically scanning documents.
 - becoming a paperless office.
 - utilizing PDF files when possible.
 - all of the above.
- 30. Broker Alex is transitioning his office to paperless transactions. He should be aware that UETA and the ESIGN Act will require him to follow rules regarding:**
- intent to sign.
 - consent to do business electronically.
 - record retention.
 - all of the above.





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ANSWER SHEET

14-HOUR REAL ESTATE CONTINUING EDUCATION

After answering all 30 questions on the final examination, carefully transfer your answers to the Answer Sheet. Use blue or black ink and mark only one choice per question.

If you mark more than one answer or do not mark any answer on the Answer Sheet, you will not receive credit for that question. **If you make a mistake on the Answer Sheet, place an X over the wrong answer; then bubble in and circle the correct answer.**



Example of a changed answer.

A passing score is 80% or higher; a minimum of 24 correct answers on the 14-Hour course final examination. If you do not pass your exam the first time, we offer FREE re-exams.

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Tuition

14-Hour Continuing Education—\$19.95

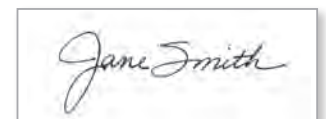
Course tuition includes the following services:

- Exam grading and processing
- Instructor support
- FREE re-exams
- Electronic reporting to the DBPR
- Results via email
- Complimentary Wall Certificate—Suitable for framing



Method of Payment

Include your check, money order, or credit card information. A signature is required with credit card payments.



Review the License Renewal Checklist on back of answer sheet.

SUBMIT YOUR FINAL EXAM

Send us your completed Registration Form:

Fax – 941-378-3883

Email – grading@BertRodgers.com

Mail – 1855 Porter Lake Drive, Sarasota, FL 34240

E-Grading/Online Enrollment – www.BertRodgers.com/grading



REGISTRATION FORM

14-Hour Real Estate Continuing Education Edition 19.3

Course Approval #0020412 / #0020413 • Expires May 9, 2020.

Bert Rodgers Schools

Phone: 800-432-0320

Select an option below to submit your Final Exam:

ONLINE: (Instant Grading!) www.BertRodgers.com/grading

EMAIL: grading@BertRodgers.com

FAX: 941-378-3883

MAIL: 1855 Porter Lake Drive, Sarasota, FL 34240

See Instructions on page 130. Print clearly using blue or black ink on all items.

STUDENT INFORMATION

Enter your SL or BK license # - 7 digits or less (not the AC#).

	SALES ASSOCIATE		BROKER OR BROKER ASSOCIATE
SL	<input type="text"/>	OR	BK

Name _____

Address _____

City _____

State _____ Zip _____

Email _____

Phone _____

PAYMENT INFORMATION

14-Hour Correspondence Course Tuition – \$19.95

TOTAL \$ 19.95

ONLINE PAYMENT & GRADING – www.BertRodgers.com/grading

(Get instant results, completion certificates, and the fastest reporting to the state.)

See License Renewal Checklist on reverse side for helpful license renewal information.

METHOD OF PAYMENT

Make your check or money order payable to Bert Rodgers Schools. If using a credit card, please sign below.

Check # _____ Money Order MC Visa Amex Discover

EXAM 20A ANSWER SHEET

Example:

(A) (●) (C) (D)

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

EXAM 20A ANSWER SHEET

Credit Card Number

Expiration Date of Card (Month) (Year)



CARDHOLDER SIGNATURE (REQUIRED)



Bert Rodgers Schools

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Ph: 800-432-0320
Fax: 941-378-3883
www.BertRodgers.com

Use this helpful checklist to make sure you have taken all the required steps for a successful license renewal.

LICENSE RENEWAL CHECKLIST

- Complete your renewal requirements early** – Allow yourself enough time to complete your continuing education well before your license expiration date. Continuing education requirements may be completed any time during your two-year license period.
- Verify your name and license number** – Verify that your name and license number are correct on the Course Completion Report. Online students go to Transcript to view your Course Completion Report.
- Pay your license renewal fees to the DBPR** – Once you have met all license renewal requirements including payment of license renewal fees and any applicable late fees, the DBPR will email your new license to you.
- Check your DBPR account at www.MyFloridaLicense.com** – Confirm that you have satisfied your continuing education requirements for the CURRENT renewal period. After your completed course has been reported, it may take 2-3 days for the information to appear in your DBPR account.

Thank You For Choosing Bert Rodgers Schools!

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Sales Associate State Exam Prep Course
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72-Hour Broker Pre-license Textbook
72-Hour Broker Pre-license Study Guide
Broker Pre-license State Exam Prep Book
60-Hour Broker Post-License Textbooks
(A text book for each 30-HR course)
Florida Real Estate License Law Review
The Language of Florida Real Estate Guide

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According to the DBPR records, your real estate license
EXPIRES MARCH 2020.

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