Chapter 1 Summary
Real Estate License Law and Commission Rules

The purpose of the Department of Business and Professional Regulation is to operate as a consumer protection agency. The Division of Real Estate is part of this department.
• Adopting rules for the biennial renewal of licenses, using the fee caps as established.
• Submitting an annual budget to the Florida Legislature.
• Requiring all proceedings to be electronically recorded.

Neither the department nor any board may create unreasonable restrictive and extraordinary standards that deter qualified persons from entering the various professions.

Florida Real Estate Commission

It protects the public in three distinct areas: publication of books and newsletters; education of licensees; and investigation of complaints.
• The FREC is Quasi-legislative in the power to enact rules and Quasi-judicial in the power to impose disciplinary actions.
• Rules enacted by the FREC must be filed with the Secretary of the Department of Business and Professional Regulation.
• Printed copies of the rules shall be prima facie evidence of their existence and substance.

Made of seven members, appointed by the Governor, subject to confirmation by the Senate.
• Four must be licensed brokers, for at least 5 years
• One must have held an active license for two years.
• Two must not be brokers, nor ever have been brokers or sales associates.
• One must be 60 years of age or older.

Four of the members of the Commission constitute a quorum to do business. Commission term of office is 4 years.

The Executive Director of the Division of Real Estate is not a member of the FREC and has no vote on any FREC actions.

The services of the Division include: Recordkeeping; Examination; Legal and Investigative.

Florida passed its first real estate license law in 1923, to protect the public.

Because of Caveat emptor, the Florida Legislature determined that there was a need for consumer protection.

A sales associate or a broker associate must always operate under the direction and guidance of a broker.

A spouse of an active duty member of the Armed Forces of the United States may be issued a temporary license to practice a profession in Florida.

The applicant for real estate license:

At least 18 years old with a high school diploma.
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Disclosure is required if the applicant has ever been convicted of a crime or is currently a patient of mental health facility.

No person shall be disqualified solely because she is not a US citizen.

Any licensee who received a 4-year degree in real estate from an institution of higher education is exempt from the post-license requirement.

To become a Broker, the applicant must:
- Have been a sales-associate actively licensed under a broker for at least 24 months.
- Complete a FREC approved pre-license course for brokers.
- Submit a completed application, fingerprint card and appropriate fee.

Two post-license courses are required during the first licensure period as a broker.

The FREC has entered into mutual agreements with a few other states; these agreements will recognize a current, existing license. These agreements change frequently. Check with the Division of Real Estate for current agreements.
- Must be 18 years of age and hold a high school diploma.
- Applicant must not be a resident of Florida, at time of application.
- Take a written examination of 40 questions.

A Florida resident is anyone who resided in Florida continuously for a period of 4 calendar months.

Florida real estate licenses include:
- The name of the Governor
- The Seal of the State of Florida
- The name of the Secretary of the Department

When real estate is practiced as a business entity rather than as an individual, the state of Florida provides for Registration, rather than individual licensing.

All sales associates and broker associates licensed in Florida must also be registered in Florida with their employing broker.

When a broker or school changes business address, it must file a notice of change and the names of the licensees no longer associated with the firm.

All licensees must renew their real estate licenses every two years. After that first renewal, all other renewals will require continuing education courses.

A licensee may reactivate a license which has been involuntarily inactive 12 months by completing a 14-hour Commission-prescribed continuing education course.

Licensees who have remained involuntarily inactive by not renewing their continuing education for more than 2 years will have their licenses become null and void.
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Certain individuals do not need a license:
- An owner selling own property;
- Anyone acting as an Attorney in Fact;
- An employee of a public utility, rural electric cooperative, a railroad or state or local government;
- A full-time graduate student enrolled in a FREC-approved degree program, appraising at a college or university.

A broker renewing for the first time must have completed a schedule of two thirty-hour postlicense courses.

There are two types of Inactive Status licenses:
- A voluntary inactive license must be renewed, must pay the same fee as an active license and must complete continuing education.
- If the licensee does not bring the license back from involuntary license status within two years, the license will automatically be canceled.

A licensee who enters military service and the spouse of military personnel have their license fees and educational requirements waived during service and for the following 6 months. Neither can practice real estate during this time.

A license is considered effective for an initial license when the licensee is properly notified in writing that he has successfully passed the state examination.

The effective date of a renewal is that it is received prior to the expiration of the current license.

A license ceases to be in force when:
- A broker or school changes his business address.
- A sales associate working for a broker instructor changes employer.

When there is a change of address, the commission must be notified no later than 10 days.

Anyone can file a complaint against a licensee.
- For a minor violation, the Department may issue a Notice of Noncompliance for a first time offense.
- If the violation is not corrected, a Citation is issued.
- A summary suspension is issued when the public is in immediate danger from the actions of the licensee.

A complaint must be legally sufficient to be investigated. Investigators have subpoena power.
- The panel is required to meet and make a decision within 30 days.
- If the panel does not believe probable cause exists, the Department has ten days to override the decision and file its own charges.
- The licensee is notified in writing and has 20 days to file an answer.

An informal hearing is held at a meeting of the FREC, usually at its regular meeting time.
- The licensee is given the opportunity to be heard, to bring witnesses to support his case.
- If there is a dispute or disagreement, the case will be sent to an administrative law judge.
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Formal Hearing
- **Notice** must be given to the parties charged.
- The administrative law judge prepares a **Recommended Order**, based on findings of fact and rulings of law.
- Each party is allowed **15 days** to file exceptions to the hearing officer’s order.

The **Final Order** Panel receives the Recommended Order from the administrative law judge order along with exceptions.
- The licensee has the right to be present, to have an attorney and to make final arguments.
- The Final Order must be signed by the Chairperson, Vice Chairperson or Director of the Division of Real Estate.

The licensee must **appeal** in 30 days to the District Court of Appeals.
- While the case is under appeal, the licensee does not receive a **stay enforcement** against the FREC.
- The FREC or the courts may issue a **supersedeas**.
- The appeal will be based on disputed issues of procedure, findings of fact and rulings of law.

When a license is denied by the FREC, a copy of the order is mailed to the applicant by registered or certified mail, setting forth the reasons for denial and advising the applicant has 21 days from date of receipt to request a hearing.

**Refusal to renew a license** may be the following:
- Did not file the proper paperwork in a timely fashion,
- Did not pay the appropriate fee,
- Did not take the continuing education or post-license courses,

A **suspension** of a license is considered a short term, temporary penalty that can last up to 10 years.
- The usual action of the Commission shall be to impose a penalty of a five-year suspension to revocation.
- No licensee can act in a real estate capacity with a suspended license until the suspension is lifted.

**Revocation** of a real estate license is permanent and as such it is a very serious punishment.
- **Exceptions** - a licensee filed for renewal without completing his continuing education or an application which contained false information.
  - In these cases the individual **cannot apply** for a sales associate's license for a period of **five years**.
  - All sales associates and broker associates licenses are place in involuntarily inactive status.

A **Citation** is issued for minor violations of the law when public welfare is not threatened. The licensee has 30 days to pay the citation or request a hearing.

The **fine** for each offense is not to exceed $5,000 for each violation of Florida Statutes Chapter 475 and $5000 for each offense under FS Chapter 455.

The usual action of the Commission shall be to impose a penalty from a 7 years suspension to revocation and an administrative fine of $1000.
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Probation as a penalty, unless otherwise stated, is for a period of 90 days starting with 30 days after the filing of the Final Order.

The notice of noncompliance shall only be issued for an initial offense of a listed minor violation. The DBPR allows 15 days for compliance and notifies the licensee of this.

The Department and the FREC do not issue criminal prison sentences.

Violations which will lead to a First Degree misdemeanor are:
- Publishing false or misleading information.
- Collecting unlawfully an advance fee for listing real property.
- Failing to provide accurate and current rental information for a fee.

Unlicensed real estate activity is a third degree felony.

Buyers or sellers or tenants may seek legal action against brokers when they feel they have been victimized. The Commission has no authority to order any commission paid to be returned. Civil courts can and do seek the recovery of compensation.

The Real Estate Recovery Fund was designed to serve as consumer protection for those consumers who were harmed in a real estate transaction and who seek compensation. Punitive damages punishment are never awarded.
- To obtain the funds, a civil suit must be filed against a broker claiming a violation of Chapter 475.
- Once a payment has been made from the Real Estate Recovery Fund, the licensee's license is automatically suspended until full repayment.

The only exception to the licensee being suspended for a claim on the Recovery Fund is when the broker followed an Escrow Disbursement Order of the Commission and the order was overturned by the courts.

When the claim is based on earnest money disbursement, the Commission shall pay the reasonable attorney's fees and court costs.

Individuals who are not eligible for compensation from the Fund are:
- A spouse of the judgment debtor.
- A licensed broker or sales associate who acted as a single agent or transaction broker.
- When the judgment is against a real estate brokerage corporation, partnership, limited liability company or limited liability partnership.