

CHAPTER ONE

Core Law

LEARNING OBJECTIVES

Define the eight licensing activities that require a real estate license

Explain licensing renewal requirements including classroom and distance learning

Understand the late renewal process

Distinguish the appropriate time to disclose brokerage firm or trade names in advertising

List the revised duties of unlicensed assistants

Explain brokerage relationship disclosure requirements

Understand the rules for the national and state Do Not Call laws

Describe the requirements for reporting criminal convictions

Explain the new time frame for a records retention

KEY TERMS

Blind Advertisement

Branch Office

Brokerage Relationship Disclosure Act BRDA

CANSPAM

FS 475

Continuing Education CE

Department of Business and Professional Regulations DBPR

Designated Sales Associate

Distance Learning

Do Not Call List

First Renewal

Florida Real Estate Commission FREC

Involuntary Inactive

Mutual Recognition

No Brokerage Relationship

Principal Office

Record Retention

Single Agency

Temporary Shelter

Transaction Broker

Transition to Transaction Broker

Unlicensed Assistant

Voluntary Inactive

License Law

HISTORY

Florida's first real estate license law was enacted in 1923. At first, violations of the real estate licensing law were pursued through the court system, which was both time-consuming and expensive. In 1925, the Florida Real Estate Commission (FREC) was created to administer and enforce the law, streamlining the process by removing the necessity for court enforcement. In 1941, the Real Estate License Law was designated Chapter 475 of the Florida Statutes. Many revisions to Chapter 475 have taken place over the years. In 1991, Parts I and II were created. In 2005, Chapter 475 was revised to include Parts III and IV. Parts I-IV are summarized below.

Part I is concerned with the licensure and regulation of real estate licensees and schools.

Part II is concerned with the registration, licensure, and certification of appraisers.

Part III is concerned with the sale of commercial property and allows brokers to place a lien against an owner's net proceeds. This is a lien upon personal property attached to the owner's net proceeds only and does not attach to any interest in real property.

Part IV is concerned with the lease of commercial property, allowing brokers to place liens upon the owner's interest in the real estate. The lien attaches to the landlord's interest in the commercial real estate but not to the tenant's leasehold estate. If the owner is obligated to pay the commission to the tenant, the broker's lien attaches to the tenant's leasehold estate but not to the landlord's interest in the commercial real estate.

PURPOSE OF LICENSE LAW

The purpose of the Florida Real Estate License Law (FS 475) is to protect the public. Eight activities that require a Florida Real Estate License.

FS 475 clearly identifies those activities that require a real estate license when dealing with the public. A Florida real estate license is required if a person who, for another and for compensation or valuable consideration, directly or indirectly

paid or promised is engaged in the business of advertising buying appraising renting selling auctioning leasing or exchanging any Florida business opportunities or real property of others or interest therein including mineral rights A BAR SALE is a useful memory aid to help remember these eight activities requiring licensure It is a third degree felony punishable by a fine of up to 5000 and five years in prison for providing real estate services to the public without a current active valid real estate license

These appraisal practice services performed by a real estate licensee exclude those appraisal services that must be performed by a statelicensed or statecertified appraiser

A BAR SALE

Advertising Buying Selling
 Appraising Auctioning
 Renting Leasing
 Exchanging

Licensing and Renewal Process

The licensing process for sales associates and brokers consists of three required phases prelicensing postlicensing or first renewal and continuing education

OBTAINING A SALES ASSOCIATE LICENSE SALES ASSOCIATE PRELICENSING

A candidate applying for their initial real estate sales associate license must meet the following criteria

Be at least 18 years of age

Hold a high school diploma or its equivalent

Be honest truthful trustworthy and of good character

Have a good reputation for fair dealing

To obtain a Florida real estate sales associates license candidates must

Submit an application form to the Florida DBPR

Applicants must disclose if they have ever been convicted pled guilty or no contest to any crime

All applicants must provide a Social Security number SSN

Submit to electronic fingerprinting through any approved vendor

Provide proof of successful completion of the 63Hour Sales Associate Course FREC I
A candidate successfully completes the course upon passing the class exam with a score of 70 or higher

Pay the required state application and exam fees

Pass the state exam with a minimum score
of 75

OBTAINING A BROKER LICENSE BROKER PRELICENSING

Broker candidates including graduates with a fouryear degree or higher in real estate and Florida attorneys must have held an active sales associate license for at least 24 months during the preceding five years in

The office of one or more real estate brokers licensed in Florida or any other state territory or jurisdiction of the United States or any foreign national jurisdiction

The employ of a governmental agency for a salary and performing real estate licensee duties as described in FS 475

Any other state territory or jurisdiction of the US or any foreign national jurisdiction as a licensed broker for 24 months within the last five years

To obtain a Florida brokers license candidates must

Submit an application form to the DBPR

Applicants must disclose if they have ever been convicted plead guilty or no contest to any crime

All applicants must provide a Social Security number SSN

Submit to electronic fingerprinting through any approved vendor

Complete the sales associate postlicense education requirements prescribed by the

FREC

Provide proof of successful completion of the 72Hour Broker PreLicense Course
FREC II A candidate successfully completes the course upon passing the class exam with a score of 70 or higher

Pay the required state and application fees

Pass the state exam with a minimum score of 75

Broker PreLicensing Procedure
State Application SSN
Fees
Fingerprinting
72Hour FREC II Course Pass 70 or higher
State Exam Pass 75 or higher

POSTLICENSING FIRST RENEWAL

After obtaining a sales associate or broker license all licensees must complete a postlicensing course prior to the first license renewal Sales associates must complete 45 hours of instruction and pass the endofcourse exam with a score of 75 or higher Brokers must complete 60 hours of instruction and pass the endofcourse exam with a score of 75 or higher Once licensees pass the endofcourse exam there is no further testing for the first renewal since there is no postlicensing state exam But licensees are required to pay a state renewal fee
Sales Associate PostLicensing
1st Renewal Procedure
45Hour Course Pass 75 or higher
State Renewal Fee
No State Exam

Broker PostLicensing
1st Renewal Procedure
60Hour Course consisting of two 30hr courses
Pass 75 or higher on each 30hr course
State Renewal Fee
No State Exam

CONTINUING EDUCATION SALES ASSOCIATES AND BROKERS

After satisfactory completion of all first renewal requirements all licensees must complete 14 hours of FRECApproved continuing education CE during each and every subsequent twoyear renewal period to maintain their license Renewal dates are

assigned on either March 31st or September 30th

The 14hour CE course must consist of three hours of core law three hours of business ethics and eight hours of specialty courses approved by the FREC These hours may be completed by distance learning correspondence or classroom courses Three hours may be obtained by attending one legal agenda session of the FREC per license renewal period

Sixty days before the end of the twoyear license period the DBPR emails a renewal notice to each licensee at their last known email address It is imperative that licensees keep their current address uptodate with the DBPR It is the licensees responsibility to pay the renewal fee whether or not they have received a notice To renew a license licensees must satisfactorily complete the 14hour CE course or postlicense course if applicable then send back the renewal form and fee to the DBPR before the end of the license period Logon to the DBPR website at www.myfloridalicense.com to renew your license

If licensees do not complete the 14hour CE course by the end of the required renewal period their license automatically reverts to involuntary inactive status Licensees are prohibited from providing real estate services while their license is in this status

Classroom vs distance learning Continuing education CE can be completed either in a live classroom or through distance learning Classroom CE requires students to attend 14 hours of classroom instruction with no final exam Distance learning CE can be accomplished in a variety of ways including online and correspondence methods All distance learning includes a course final exam that students must pass with a score of 80 or higher to complete the course successfully If the student fails the exam they can take an alternate exam immediately without any waiting period

Exemptions

Florida attorneys Sales associate candidates who are actively licensed Florida attorneys in good standing with the Florida Bar

Are exempt from the 63hour FREC I
prelicense course for sales associates but

Must take and pass the state sales associate
prelicense examination to obtain a license

Must take and pass the 45hour sales associate postlicensing course for the first
license renewal

Actively licensed Florida attorneys in good standing with the Florida Bar sales associates or brokers are also exempt from the 14hour CE requirements Graduates with real estate degrees Graduates with a fouryear degree or higher in real estate are exempt from all prelicensing and postlicensing requirements however they must take and pass the applicable state prelicensing exam sales associate or broker and comply with all continuing education requirements Before becoming eligible to take the brokers state exam these graduates must have maintained an active sales associate license in good standing for two of the previous five years

BROKER RESPONSIBILITY TO VERIFY LICENSEE STATUS

It is the brokers responsibility to ensure that all licensees registered with the broker have a valid and current license that includes successfully completing the 14hour CE course or postlicense course and timely submission of the renewal form and fee to the DBPR FAC 61J2240013y

LATE LICENSE RENEWAL PROCEDURES

If a licensee does not complete their postlicensing course by the first license expiration date the licensees status becomes null and void Sales associates desiring to regain license status would be required to retake the 63hour prelicensing course and meet all of the requirements A broker who fails to complete the postlicensing requirement by the first expiration date may revert to sales associate status by completing 14 hours of CE within six months of their broker license becoming null and void and submitting Form DBPR RE15 Revert Broker License to Sales Associate License

Once licensees have fulfilled their postlicensing requirements both active and voluntary inactive licensees sales associates or brokers must renew their licenses within the required twoyear renewal cycle

By not completing the required 14hour CE their license automatically reverts to involuntarily inactive status Licensees cannot be engaged in real estate activities during this time Licensees can remain in involuntary inactive status for a maximum of two years as follows

One to 12 months late Licensees must complete the 14hour CE course pay the state renewal fee and pay a required state late fee to renew their license

Thirteen to 24 months late Licensees must complete a 28hour reactivation course pass a 50question reactivation course exam with a score of 70 or higher pay the state renewal fee and pay a state required late fee If the licensee does not complete the reactivation course within 24 months of becoming involuntary inactive their license becomes null and void

Involuntary vs voluntary inactive Licensees who do not wish to provide real estate services to the public may elect to place their license in voluntary inactive status Licensees who are not employed by an active broker or developer may remain in this status as long as they complete their CE requirements every two years In other words a licensee can remain voluntarily inactive indefinitely This should not be confused with involuntary inactive status that is outlined above A licensee can remain involuntarily inactive for a maximum of two years

Sales Associate

PreLicensing Procedure

State Application SSN

Fees

Fingerprinting

63Hour FREC I Course Pass 70 or higher

State Exam Pass 75 or higher

Licensing Renewal Periods

Mutual Recognition

In 1994 the Florida Legislature added FS 475180 titled Nonresident Licensees Before this section was added an outofstate real estate licensee was required to fully complete the educational experience and exam requirements before operating as a licensee in Florida

With the addition of FS 475180 the FREC is authorized to enter into written agreements known as mutual recognition with the real estate commissions of other states The purpose of such agreements is to recognize the educational and experience requirements of that state when they are comparable to or superior to those of Florida The outofstate applicant is required to take and pass a Florida real estate law exam consisting of 40 questions prior to becoming a Florida resident A minimum score of 75 or higher 30 or more correct answers is required to pass the exam

The written agreements with the other real estate commissions also offer similar licensure opportunities for Florida licensees in those states

At the time of this book printing Florida has mutual recognition agreements with the real estate commissions of the following states Alabama Arkansas Connecticut Georgia Illinois Kentucky Mississippi Nebraska and Rhode Island Refer to the Department website myfloridalicense.com for the most uptodate list of mutual recognition states and statespecific qualification information

Contact the appropriate state real estate commission for information regarding fees and examination requirements Mutual recognition agreements automatically expire every five years unless renewed by the FREC

Advertising

Any time a real estate licensee advertises their services or a property for sale or lease the advertisement must contain certain information and conform to specific standards Advertising includes yard signs newspaper and magazine ads mail outs business cards billboards benches Internet ads novelty items key chains coffee mugs etc or any other medium or vehicle by which services or property are displayed All advertising must include the registered name of the brokerage firm as it is registered with the FREC It must be displayed in such a manner that a reasonable person would know that they are dealing with a real estate licensee In addition no real estate advertisement placed or caused to be placed by a licensee shall be fraudulent false deceptive or misleading in form or content

FS 475251c and FAC 61J210025

All advertisements must be presented in a manner so that reasonable persons would know they are dealing with a real estate licensee or company

BLIND ADVERTISEMENTS

A blind ad is an illegal advertisement in which brokerage services or property for sale or lease is displayed without the name of the brokerage firm

NAME IN ADVERTISEMENTS

A licensee is not required to place their personal name in an advertisement However when the licensees name does appear as a minimum requirement their last name must appear as registered with the FREC The licensee may use a nickname or initials for

the first name and is not required to display the first and/or middle name as registered with the FREC FAC 61J2100252

LICENSE REGISTRATION INFORMATION IN ADVERTISEMENTS

There is no requirement for a licensee to display their license number or the registration number of the brokerage firm. In addition, there is no requirement that the licensee display their license status. However, if the licensee is a member of a private trade association that association may enforce a code of ethics that may impose standards and rules over and above FREC requirements.

PHONE NUMBERS IN ADVERTISEMENTS

The FREC does not regulate the use of telephone numbers in ads. Therefore, licensees may use either their office or personal telephone numbers without qualifying them as such. The only requirement in all advertising is that the brokerage firm or trade name as registered with the FREC must appear.

INTERNET ADVERTISING

The FREC has additional guidelines for Internet advertising. The FREC's rule requires that the brokerage firm's name or trade name be placed immediately adjacent to, immediately above or below, the point-of-contact information.

Point-of-contact is defined as any means by which the brokerage firm or individual licensee may be contacted, including mailing addresses, physical street addresses, email addresses, telephone numbers, or facsimile telephone numbers.

All other FREC advertising requirements apply to Internet advertisements as well. FAC 61J2100253

ADVERTISEMENT OF PERSONALLY OWNED REAL ESTATE

If a licensee is selling their own real property and is doing so on a personal basis and not through the licensee's brokerage firm, then there are no disclosure requirements. In such a situation, the licensee may place an advertisement in the same manner that any other private citizen would.

There is a common belief that the license status must be disclosed, such as owner/broker or owner/licensee, on a yard sign or in a newspaper ad when the licensee is selling property as a private citizen. This is not a legal requirement.

It is advisable for the licensee to disclose their license status in the Purchase and Sale Contract when an offer is made on the property.

USE OF ORGANIZATION IDENTIFICATION

Pursuant to FAC 61J210027, a licensee is not permitted to use an identification or designation of a trade association or organization unless the licensee is entitled to use such identification or designation.

UNSOLICITED FAX

Finally, it is a violation of FS 3651657 to send unsolicited advertising material via a facsimile transmission. This includes advertising for any real property, goods, or services. The State, through the attorney general, may bring an action to impose a civil fine and for injunctive relief. The fine is up to \$500 per violation of FS 3651657; each transmission counts as a separate violation.

Brokerage Principal Office Requirements

Each active broker is required to open and maintain an office which must be registered with the DBPR. The office must consist of at least one enclosed room in a building of stationary construction where negotiations and the closing of real estate transactions can be conducted with privacy.

BRANCH OFFICE

When a broker conducts business at some location other than the registered principal office this location must be registered as a branch office If in the judgment of the FREC the business conducted at a place other than the principal office is of such a nature that public interest requires the office must be registered as a branch office If the name or advertising of a broker is displayed in a location other than the principal office in such a manner as to lead the public to reasonably believe that the other location is owned or operated by the broker that location must be declared a branch office

FS 47524 and FAC 61J210023

For instance a temporary shelter in which no transactions are closed and no sales associates are permanently assigned is not deemed to be a branch office In general the permanence use and character of activities customarily conducted at a location determine its status as a branch office FAC 61J210022

Sales associates must be registered from and work out of an office maintained and registered in the name of the broker or employer However sales associates may be registered from the principal office but work at branch offices

FAC 61J210022

A fee is required for the registration of each branch office If a broker closes a branch office but reopens at the same location within the same license renewal period then no fee is required If a broker closes a branch office and simultaneously opens a branch office at a different location then a new registration fee is required FAC 61J2100233

OFFICE SIGNS

Every broker is required to maintain a sign on or about the entrance of the principal office as well as at all branch offices Signs must be positioned so that they are easily seen and read by any person entering the office Signs must be posted on either the exterior or the interior entrance area of the office FS 47522 Each office entrance sign must contain the name of the broker as licensed with the FREC as well as the trade name if any For a partnership or corporation the sign must also include the name of the partnership or corporation or trade name of such entity If the partnership or corporation has more than one registered broker the name of only one broker need appear In addition each sign must display the words Licensed Real Estate Broker The word Licensed may be abbreviated to Lic but no other abbreviations are allowed There is no minimum size requirement for the letters on the sign

If the broker maintains a registered office in their residence the office entrance sign is not required to be posted on the front door or outside the home The sign may be posted on or about the entrance to the actual office

TEMPORARY SHELTER

Unless transactions are closed or sales associates permanently assigned a temporary shelter used by a broker as protection from the elements for sales associates and customers is not considered to be a branch office The permanence and use of a location and the character of activities conducted there determine whether registration is required FS 47524 and FAC 61J210023

INSPECTIONS AND AUDITS

The DBPRs goal is to have 100 compliance To help reach that goal investigators conduct routine inspections of brokerage offices to ensure compliance with the real estate license law The investigator usually sends the broker a letter and then phones to arrange a time to visit the office for an audit The investigator checks for compliance in the following areas

Office requirements There must be at least one enclosed room in a stationary building

Office entrance sign The sign must be easily observed and read by anyone entering the office The sign must have the name of the broker a partnership or corporate name or trade name if any and the words Licensed or Lic Real Estate Broker

Brokerage relationship disclosures Brokers must retain all required disclosures on contracts for sale and purchase of residential properties for at least five years

Licenses Licensees and registration of the firm and all its members are verified to ensure that all persons involved in providing real estate services have current licenses

Escrow accounts The investigator reviews monthly reconciliation statements for several months as well as bank deposit receipts pending sales contracts and property management contracts

Retention of records A broker must retain at least one legible copy of all books accounts and records pertaining to their 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 Brokers must also retain all executed signed by both parties listing agreements offers to purchase rental property management agreements rental or lease agreements or any other written or verbal agreements that engages the services of the broker for at least five years All records must be retained for at least two years after the conclusion of litigation but not less than five years FS 4755015

Other Laws

THE NATIONAL AND STATE DO NOT CALL REGISTRIES

Some people think that the federal government has over stepped its bounds with the Telephone Consumer Protection Act TCPA which established a National Do Not Call Registry While the US Supreme Court decisions have allowed the regulation of interstate commerce the matter of intrastate commerce is reserved to the individual states to regulate That notwithstanding real estate licensees have two laws to contend with the national and state laws

NATIONAL DO NOT CALL LAWS

The Federal Communications Commission FCC began exercising authority under the TCPA in 2003 by establishing a national Do Not Call DNC list of consumers who do not want to be contacted by telemarketers The list only covers commercial telemarketers and gives exemptions to political candidates charities and people who conduct

surveys Companies with which consumers have existing business relationships are exempt from the Do Not Call rules and registries Additionally a company may call a consumer even if that consumer is on the registry for

Eighteen months after that consumers last purchase delivery or payment

Three months after that consumer makes an inquiry or submits an application to the company Example signing an open house register

Brokerage firms must pay for access to the National Do Not Call Registry brokerage firms and may register on the Federal Trade Commissions FTCs website The Do Not Call Registry may not be used for any purpose other than preventing telemarketing calls to the telephone numbers in the registry The only consumer information available from the registry is telephone numbers that are sorted and available by area code Companies will be able to access any area codes desired

Licensees covered by the rule must pay for consumer data in any area code before they call any consumer within that area code even those consumers whose telephone numbers are not on the registry The only exceptions are calls to consumers with whom they have an existing business relationship or written agreements and do not access the Do Not Call Registry for any other purpose The national law makes no exceptions for licensees calling For Sale by Owners FSBOs unlike Floridas law A real estate brokerage firm with agents doing cold calling could be in violation of the law for placing any calls even to numbers NOT on the Do Not Call Registry if the company has not paid the required fee to access the registry Violations of the National Do Not Call Registry may be subject to fines of up to 40000 for each violation

If a brokerage firm can show that as part of its routine business practice it meets all of the following conditions it will not be subject to civil penalties or sanctions for mistakenly calling a consumer who has asked for no more calls or for calling a person on the Do Not Call Registry

To successfully avoid penalties safe harbor the brokerage firm must demonstrate that it

Has written procedures to comply with the Do Not Call requirements

Trains its personnel in those procedures

Monitors and enforces compliance with these procedures

Maintains a companyspecific list of telephone numbers that may not be called by consumer request

Accesses the national registry no more than three months before calling consumers and maintains records documenting this process

Any call made in violation of the Do Not Call rules was the result of an error

The best source of information about complying with the Do Not Call rules is the FTC's website. It includes business information about the registry.

National Do Not Call Registry FTC

www.donotcall.gov

FLORIDA'S DO NOT CALL LAW

Florida continues to enforce its own Do Not Call law and accepts new consumer telephone numbers. The national registry goes beyond some portions of the Florida law that are less strict.

Florida's Do Not Call program www.fldncc.com

If you are going to do cold calling, review all three lists: the National Do Not Call Registry, the Florida Do Not Call list, and your own in-office company-specific list.

Differences between federal and Florida laws

Under federal law, you can call an FSBO listed in the national registry only if you have a buyer who wants to purchase the property but may not use the call to discuss listing the property. Florida's law allows you to call an FSBO on the Florida list if the FSBO is not on the national registry and solicit the listing.

THE CANSPAM ACT

The CANSPAM Act of 2003, Controlling the Assault of Non-Solicited Pornography and Marketing Act, gives consumers the right to ask emailers to stop spamming them by establishing requirements for those who send commercial email and companies whose products are advertised in spam. The act covers only commercial electronic mail messages and regulates emailers whose primary purpose is to advertise a commercial product or service.

It spells out penalties for spammers who violate the law.

The rules define the primary purpose as commercial if the email is exclusively an advertisement for a commercial product or service or if a reasonable interpretation of the subject line would lead to the conclusion that a message is commercial. The rules also define a transactional or relationship message as one that does not appear in whole or in part at the beginning of the message's body text to be commercial.

The law bans false or misleading header information; this means that the To and From of the routing information must be correct and properly identify the individual who sent the email. It requires that the email give recipients a method to opt out and that commercial email be identified as an advertisement, including the sender's valid physical mailing address.

Transactional or relationship messages include those that inform sellers regarding the progress on marketing a listed property or thanking past customers and generally updating the relationship.

As long as these emails don't contain false or misleading routing information, they are exempt from most provisions of the act. General informational messages such as newsletters that don't contain advertisements are also exempt.

The CANSPAM Act is enforced by the FTC and the Department of Justice (DOJ). Each violation is subject to a fine of up to \$43,280. For more information, please access the FTC website at www.ftc.gov/spam.

PERMISSIBLE ACTIVITIES OF AN UNLICENSED ASSISTANT

Unlicensed assistant is defined as support staff for a real estate corporation or other licensed individuals Although these items are not defined in the rule previous Commissions have stated that the following activities do not require a license

Answer the phone and forward calls

Fill out and submit listings and changes to any multiple listing service

Followup on loan commitments after a contract has been negotiated and generally secure the status reports on the loan progress

Assemble documents for closing

Secure documents public information from courthouse utility district etc

Have keys made for company listings order surveys termite inspections home inspections and home warranties with the licensed employers approval

Write ads for approval of the licensee and the supervising broker and place advertising newspaper ads update websites etc prepare flyers and promotional information for approval by licensee and the supervising broker

Receive record and deposit earnest money security deposits and advance rents

Only type the contract forms for approval by licensee and supervising broker

Monitor licenses and personnel files

Compute commission checks

Place signs on property

Order items of repair as directed by licensee

Prepare flyers and promotional information for approval by licensee and supervising broker

Act as a courier service to deliver documents pickup keys

Place routine telephone calls on late rent payments

Schedule appointments for licensee to show a listed property

Attend an open house for

Security purposes

Hand out materials brochures

Answer questions concerning a listing from which the answer must be obtained from the licensed employer approved printed information and is objective in nature not subjective comments

Gather information for a comparative market analysis

Gather information for an appraisal

Hand out objective written information on a listing or rental

BROKERAGE RELATIONSHIP DISCLOSURE ACT BRDA DISCLOSURE REQUIREMENTS

Since the passage of Floridas first agency relationship disclosure law in 1988 the law of agency disclosure has been an area that has seen frequent changes The legislature amended the law effective July 1 2003 and July 1 2006 There have been no changes since 2007 This section reviews the current state of agency disclosure in Florida which includes the 2003 and 2006 changes

The Florida agency disclosure law is known as the Brokerage Relationship Disclosure Act BRDA and is found in FS 4752701 through 4752801

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

In FS 4752785a residential sales are defined as the sale of

Improved residential property of four units or fewer

Unimproved residential property intended for use of four units or fewer or

Agricultural property of 10 acres or fewer

Further the disclosure requirements of BRDA do not apply to the following situations

FS 4752785b1 and 2

When a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker

When an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential buyer that the owners employee or single agent is acting on behalf of the owner whether because of the location of the sales office or because of office signage or placards or identification badges worn by the owners employee or single agent

Nonresidential transactions

The rental or leasing of real property unless an option to purchase all or a portion of the property improved with four or fewer residential units is given

A bona fide open house or model home showing that does not involve eliciting confidential information the execution of a contractual offer or an agreement for representation or negotiations concerning price terms or conditions of a potential sale

Unanticipated casual conversations between a licensee and a seller or buyer which do not involve eliciting confidential information the execution of a contractual offer or agreement for representation or negotiations concerning price terms or conditions of a potential sale

Responding to general factual questions from a potential buyer or seller concerning properties that have been advertised for sale

Situations in which a licensees communications with a potential buyer or seller are limited to providing general factual information oral or written about the qualifications background and services of the licensee or the licensees brokerage firm

Auctions

Appraisals and

Dispositions of any interest in business enterprises or business opportunities except for property with four or fewer residential units

AUTHORIZED BROKERAGE RELATIONSHIPS

There are four types of authorized brokerage relationships a real estate licensee may have with a customer/principal. Each type of relationship is described in detail in the sections that follow.

No brokerage relationship

Transaction broker

Single agent

Designated sales associate

Since July 1, 2003, it is presumed all real estate licensees are operating as transaction brokers unless a single agency or a no brokerage relationship is established in writing with a customer. Effective July 1, 2008, the use of the printed Transaction Broker Disclosure form is no longer required (FS 475.278).

A licensee may not operate as a dual agent. Dual agency is not permitted in Florida. Instead, Chapter 475 allows licensees to offer limited representation to both parties in the transaction as a transaction broker.

In order for a real estate licensee to establish a no brokerage, single agent, or designated sales associate relationship, a specific type of written disclosure must be given to the customer on a form prescribed by the legislature and at a designated time in the formation of the relationship. For each of the four authorized relationships, a licensee must also be mindful of the duties and responsibilities that go along with each type of relationship and must act accordingly at all times.

The failure of a licensee to give timely and appropriate disclosure forms will subject the licensee to disciplinary action by the FREC. Further, not only would the sales associate be held responsible, but the broker could be as well.

In addition to disciplinary action by the FREC, the failure to make the disclosure or to abide by the duties of a particular type of relationship may also subject the licensee to civil liability. A seller or buyer who feels that the licensee has not performed the duties and responsibilities as required by law and who has suffered damages as a result may bring a civil suit seeking payment for those damages.

Be mindful of the overriding purpose of the timely disclosure of a brokerage

relationship To place the consumer on notice as to how the licensee is working with the consumer and the minimum duties the consumer can expect as a result of that relationship

No Brokerage Relationship

It is commonly thought that a party in a transaction must be represented by a licensee either as a single agent or as a transaction broker Similarly it is commonly thought that when the licensee is showing their own listing the relationship between that licensee and the potential buyer is required to be represented by a transaction broker These assumptions are both untrue

FS 4752781 specifically states

This part BRDA does not require a customer to enter into a brokerage relationship with any real estate licensee

As such a licensee may work with one party as either a single agent or a transaction broker and work with another party in a no brokerage relationship To take it onestep further the licensee may work with both parties at the same time in no brokerage relationships

Duties of the licensee in a no brokerage relationship FS 4752784c

Dealing honestly and fairly

Disclosing all known facts that materially affect the value of residential real property and which are not readily observable to the buyer

Accounting for all funds entrusted to the licensee

According to this statute to operate with a party without being either a single agent or transaction broker the No Brokerage Relationship Notice at the end of this chapter is used These duties must be fully described and disclosed in writing to the buyer or seller and made before showing the property

Transaction Broker

A transaction broker is a licensee who provides limited representation to a buyer a seller or both

A transaction broker does not represent either party in a fiduciary capacity or as a single agent

FS 4750111

Duties of a transaction broker

Dealing honestly and fairly

Accounting for all funds

Disclosing all known facts that materially affect the value of residential real property and that are not readily observable to the buyer

Using skill care and diligence in the transaction

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 prevents disclosure of any of the following

That the seller will accept a price less than the asking or listed price or

That the buyer will pay a price greater than the price submitted in a written offer

The motivation of any party for selling or buying property

That a seller or buyer will agree to financing terms other than those offered

Of any other information requested by a party to remain confidential

Any additional duties that are mutually agreed to with a party

Transaction broker duties are required to be verbally disclosed in all transactions regardless of whether it is a residential or commercial transaction The disclosure must be made before or at the time of entering into a listing agreement or an agreement for representation or before the showing of property whichever occurs first

As mentioned previously a transaction broker may represent the buyer or seller or both parties in the same transaction When representing both the parties give up their rights to the undivided loyalty of the licensee The licensee will facilitate the transaction by assisting both parties but may not work to represent one party to the detriment of the other party

Single Agent

Single agency is when a licensee represents as a fiduciary either the buyer or the seller As a single agent a licensee may not represent both buyer and seller in the same transaction Single agency is a fiduciary relationship one of trust and confidence between the licensee as agent and the seller or buyer as principal

FS 475011f and k

Duties a single agent owes to a buyer or seller

Dealing honestly and fairly

Accounting for all funds

Disclosing all known facts that materially affect the value of residential real property and are not readily observable

Using skill care and diligence in the transaction

Presenting all offers and counteroffers in a timely manner unless a party has previously directed the licensee otherwise in writing

Confidentiality

Obedience

Loyalty

Full disclosure

Note This is a fiduciary duty

The duties of a single agent must be fully described and disclosed in writing to a buyer or seller in the Single Agent Notice form as required by FS 4752783c This notice can be found at the end of this chapter

The disclosure form may be used as a separate document or included as part of another document such as a listing agreement The disclosure must be made before or at the time of entering into a listing agreement or an agreement for representation or before the showing of property whichever occurs first

If the form is incorporated into other documents it must be of the same size type or larger than other provisions of the document and must be conspicuous in its placement The first sentence of the notice must be printed in uppercase and boldface type

Transition to Transaction Broker

FS 4752783c2 allows different licensees within the same real estate firm or one licensee who is requested or desires to represent both parties in the same transaction to change from a single agent relationship to a transaction broker in order to continue with the transaction To accomplish this a Consent to Transition to Transaction Broker form must be signed by both the buyer and seller As stated previously both parties in a transaction may be represented by the same licensee as a transaction broker

To convert or transition from single agent to the role of transaction broker the licensee must first obtain the written consent of the party represented by the licensee as a single agent The Consent to Transition to Transaction Broker form

must be provided any time before the licensee is to act as a transaction broker. The form, as with other disclosure forms, may be a separate document or be included as part of another document. If it is part of another document, the form must be of the same size, type, or larger than the rest of the document and must be conspicuous in its placement. The first sentence on the form must be in uppercase and boldface type. See the end of this chapter for the Consent to Transition to Transaction Broker form.

The transition form is the one disclosure form that must be signed or initialed by the party or parties. Failure to obtain the proper signature or initials is a violation of the license law, and the relationship may well be viewed in a civil action as a violation of single agency duties or even as an undisclosed dual agency. As a side note, while it is strongly recommended that the other forms be signed, there is no specific statute that mandates signing.

Designated Sales Associate

In a transaction other than a residential sale as defined in FS 4752785a, in which the seller and buyer each have assets of 1 million or more, customers represented by the same brokerage must request that the broker designate different sales associates to act as single agents for each customer in the same transaction. The designated sales associate shall have the duties of a single agent as outlined previously and is required to provide to their respective party the Single Agent Notice. The parties themselves are required to disclose that their assets meet the dollar threshold amount in order to take advantage of this section. The broker does not represent either party and is available to each designated sales associate, not the parties, for advice or assistance without discussing this information directly with the parties.

The Designated Sales Associate required disclosure is shown below.

OTHER IMPORTANT AREAS OF LAW AND/OR RULE

Reporting Criminal Convictions

All professional licensees are required to report to the DBPR within 30 days of being convicted or found guilty of or having plead nolo contendere or guilty to a crime in any jurisdiction. Licensees who fail to report this information may be subject to disciplinary action, including fines, suspension, or license revocation. Licensees are to use the Criminal Self-Reporting Document when notifying the Department. FS 4552271t.

Professional License: Active Duty Service Members and Spouses

The Department will issue a professional license to applicants who are or were active duty members of the armed forces of the United States. Former military members must have received an honorable discharge. A professional license will also be issued to a spouse or to one who was married at any time to the member during any period of active duty or to a surviving spouse who was married to the active duty member at the time of their death. The applicant must hold a valid professional license issued by another state, the District of Columbia, any possession or territory of the US, or any foreign jurisdiction. The initial application fee will be waived. FS 455023a.

Escrow Deposit with Title Company or Attorney

Licensees who prepare or present sales contracts are required to follow specific notifications when placing a deposit with a title company or an attorney. Proof of new escrow responsibilities must be maintained in the office file for five years. DRE field investigators are checking for this during office audits. FAC 61J210026 and 61J214008.

TEAM OR GROUP ADVERTISING

This Rule was enacted so the public would know that a team is not the brokerage
Further the Rule regulates what can appear and what cannot appear in an
advertisement FAC 61J210026

1

Team or group advertising shall mean a name or logo used by one or more real estate licensees who represent themselves to the public as a team or group The team or group must perform licensed activities under the supervision of the same broker or brokerage

2

Each team or group shall file with the broker a designated licensee to be responsible for ensuring that the advertising is in compliance with FS 475 and FAC 61J2

3

At least once monthly the registered broker must maintain a current written record of each teams or groups members

4

Team or group names Real estate team or group names may include the word team or group as part of the name Real estate team or group names shall not include the following words

a

Agency

b

Associates

c

Brokerage

d

Brokers

e

Company

f

Corporation

g

Corp

h

Inc

i

LLC

j
LP LLP or Partnership

k
Properties

l
Property

m
Real Estate

n
Realty

o
Or similar words suggesting the team or group is a separate real estate brokerage or company

5
This rule applies to all advertising

6
In advertisements containing the team or group name the team or group name shall not be in larger print than the name of the registered brokerage All advertising must be in a manner in which reasonable persons would know they are dealing with a team or group

7
All advertisements must comply with these requirements no later than July 1 2019

Nothing in this rule shall relieve the broker of their legal obligations under FS 475 and FAC 61J2

WEBSITE ACCESSIBILITY UNDER AMERICANS WITH DISABILITIES ACT ADA

When the Americans with Disabilities Act ADA was developed in 1990 the modern internet and websites were not yet available Businesses should be aware that recent rulings direct that websites and mobile apps must be accessible to people with vision hearing or other cognitive and physical disabilities Brokers sales associates and anyone else with a website should check with their web developers to ensure that sites are in compliance Failure to comply can result in lawsuits and judgements

DESIGNATED SALES ASSOCIATE

Florida law prohibits a designated sales associate from disclosing except to the broker or persons specified by the broker information made confidential by request or at the instruction of the customer the designated sales associate is

representing However Florida law allows a designated sales associate to disclose information allowed to be disclosed or required to be disclosed by law and also allows a designated sales associate to disclose to his or her broker or persons specified by the broker confidential information of a customer for the purpose of seeking advice or assistance for the benefit of the customer in regard to a transaction Florida law requires that the broker must hold this information confidential and may not use such information to the detriment of the other party
FS 4752755

House keys photo created by rawpixelcom wwwfreepikcom

NO BROKERAGE RELATIONSHIP NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS

As a real estate licensee who has no brokerage relationship with you insert name of real estate entity and its associates owe to you the following duties

1

Dealing honestly and fairly

2

Disclosing all know facts that materially affect the value of residential real property which are not readily observable to the buyer

3

Accounting for all funds entrusted to the licensee

Date

Signature

SINGLE AGENT NOTICE

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

As a single agent insert name of real estate entity and its associates owe to you the following duties

1

Dealing honestly and fairly

2

Loyalty

3

Confidentiality

4

Obedience

5

Full disclosure

6

Accounting for all funds

7

Skill care and diligence in the transaction

8

Presenting all offers and counteroffers in a timely manner unless a party has previously directed the licensee otherwise in writing and

9

Disclosing all known facts that materially affect the value of residential real property and are not readily observable

Date

Signature

CONSENT TO TRANSITION TO
TRANSACTION BROKER

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT As a transaction broker insert name of Real Estate Firm and its associates provides to you a limited form of representation that includes the following duties

1

Dealing honestly and fairly

2

Accounting for all funds

3

Using skill care and diligence in the transaction

4

Disclosing all known facts that materially affect the value of residential real property and are not readily observable to they buyer

5

Presenting all offers and counteroffers in a timely manner unless a party has previously directed the licensee otherwise in writing

6

Limited confidentially 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 they buyer will pay a price greater than the price submitted in a written offer of the motivation of any party for selling or buying property that a seller or buyer will agree to financing terms other than

those offered or of any other information requested by a party to remain confidential and

7

Any additional duties that are entered into by this or by separate written agreement

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

I agree that my agent may assume the role and duties of a transaction broker.

Must be initialed or signed

CHAPTER TWO

Business Ethics

LEARNING OBJECTIVES

Define business ethics

List examples and causes of unethical behavior

Describe the strategies for establishing an ethical business culture

Discuss the history of the Code of Ethics

Explain the preamble to the Code

Discuss the Code's articles and standards of practice

Explain how changes to the Code are made

Describe the informal ombudsman program of Code enforcement

Discuss mediation

Explain how ethics complaints are handled

Discuss arbitration

Describe the pathways to professionalism

KEY TERMS

Arbitration

Article

Business Ethics

Code of Conduct

Code of Ethics

Code of Practice

Corporate Social Responsibility

Dispute Resolution

Ethics Complaint

Grievance Committee

Hearing Panel

Mediation

Ombudsman Program

Pathways to Professionalism

Preamble

Standards of Practice

Unethical Behavior

Whistleblower

Professional Business Ethics

DEFINITION

Business ethics deals with the ethical practices that arise in a business environment. It involves the study and examination of moral and social responsibility in relation to business practices and decisionmaking. 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 everchanging 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 broadbrush view point 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. Keep in mind that ethics is not law; it is simply a code of behavior.

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 your ancient history class in grade school, your teacher more than likely covered the Code of Hammurabi, that was a Babylonian law code of ancient Mesopotamia dating back to about

1754 BC. The code identified a number of topics such as

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

Theft Law 22 If anyone commits a robbery and is caught then 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

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

Trade Law 104 If a merchant gives 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

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

In the Middle Ages the chivalric code was a code of conduct associated with the medieval institution of knighthood that 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 influenced modern 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 Colleges and universities nationwide offered at least 500 courses in business ethics by the mid1980s At least some 20 textbooks being published at the same time supported this effort

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 individuals conduct ingrained into each person by family faith tradition community laws and personal

morals Most professional organizations have a written Code of Ethics that govern standards of professional conduct expected of all in a chosen field

Legal vs ethical 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 US 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 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 type of activities have on a business the businesses are generally 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

Code of ethics 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 establishes the code and describes a companys obligation to its stakeholders The code is publicly available to anyone with an interest in the companys 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

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

Code of practice Professions governmental agencies or nongovernmental organizations adopt a code of practice 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 Failure to comply with a code of practice as a group member can result in expulsion from the professional organization

Social contract 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 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 2500 individual codes from approximately 1500 different organizations and collects both current and historical versions of these documents ECCs goal is to provide practitioners students scholars and the public access to codes of ethics to assist with 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 onlineonly 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 been formally appointed to the organizational structure since the mid1980s One of the catalysts for the creation of this new role was a series of fraud corruption and abuse scandals prevalent in the US 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 that 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 mediumsized companies began to appoint ethics officers Ethics officers are responsible for assessing the ethical implications of the companys activities making recommendations regarding policies and training employees in ethical

practices Emphasis on ethical practices is partly due to the SarbanesOxley Act that was a response to the business scandals that took place in the early 2000s

The SarbanesOxley Act of 2002

The SarbanesOxley 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 US public company boards management organizations and public accounting firms The Act contains 11 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 were 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 nations securities markets

Debate continues over the perceived value of SOX Opponents say the bill has reduced Americas international competitive edge against foreign financial service providers due to overly complex regulatory rules now operating in the US 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 didnt 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 vehicles history

Unethical Behavior by Businesses

Polluting the environment

Keeping two sets of accounting books

Not properly classifying a worker as an employee but as a an independent contractor to avoid payroll taxes

Failing to properly test products before delivery

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

Engaging in price fixing to force competitors out of the market

Unethical Behavior by Professionals

Dating clients or patients

Receiving a kickback 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 nonapproved 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 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 their

authority by implementing an illegal executive order

Hubris Hubris indicates a loss of contact with reality and an overestimation of ones 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 is pressured to falsify auto emissions test results given to the EPA or they will be fired

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

At some point in time in todays society of social media and unprecedented media coverage most unethical behavior is challenged and exposed 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 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 interestnational 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

A patchwork of federal and state laws currently 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

The 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 US Department of Justice by paying 198 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 his fellow troopers subjected him to hazing and harassment He uncovered evidence of a secret society within the state police known as the Lords of Discipline whose mission 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 400000 settlement with Hopson Justin Hopson and his book were featured on ABC News 2020 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 former United States Customs Service employee Harris personally observed numerous incidents of Black travelers being stopped frisked bodycavitysearched 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 Whistleblowers Story contains detail accounts of such treatment

Chuck Blazer The Fdration Internationale de Football Association FIFA

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 Africas bid for the 2010 World Cup

John Tye US 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 Tyes concerns were rooted in the massive amounts of private confidential

content that the National Security Agency NSA keeps

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 bylaws slogans mottos policy manuals and some type of written performance standards for all employees to follow Too often this information piles on the desk of the new hire on their 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 the behaviors they expect 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 organizations standards of conduct

4

Treat all complaints seriously Treat employees in a supportive and earnest manner when they are notifying management of ethics violations Avoiding or ignoring complaints only results in the complaint being submerged creating problematic friction in the organization

5

Hire ethical fire unethical employees Members in the same profession network a lot regardless of which company they actually work for Consider that when individuals change companies chances are high that their reputation precedes them Hiring a topflight sales representative with a checkered past signals to other employees that behavior takes a back seat 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 and there is no consequence when circumvented

6

Reward ethical acts Organizations should reward employees who take the high road and make tough decisions while maintaining high ethical standards

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 desired behavior 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 daytoday 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 their 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 that had a party at a house that they had listed or about the agent that ate steaks out of the clients 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 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 that focus on antidiscrimination laws and fair trade practices

Real estate licensing regulation on the state level dealing primarily with agency issues and disclosures

Selfregulation 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 statelevel rules and regulations directing the conduct of licensees in their particular states This code of ethics gives REALTORS a higher standard than the laws

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 industrys 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 standards of conduct for the industry NAR established the Code of Ethics as professional standards 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 clients 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 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 NAR Code of Ethics

The NAR 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 that 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.

Offer an opinion in an objective professional manner, uninfluenced by any personal motivation or potential advantage or gain.

Endeavor to represent clients exclusively.

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 articles divided under the headings of Duties to Clients and Customers Duties to the Public and Duties to REALTORS
Duties to Clients and Customers Articles 19 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 clients 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 national origin sexual orientation or gender identity

In November 2020 NAR added a new standard of practice 105 It is NOT retroactive since it only applies to violations that occur after November 13 2020 See the complete text in the NAR Code of Ethics

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 5 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 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.

The board of directors must approve all proposals to the Code and to the policies and procedures that enforce the Code. The delegate body must also approve any amendments to the 17 articles.

The Code and the Law

It is 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.

If it happens that the licensees cannot resolve their difficulties 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

Using an 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 noncoerced 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 one or both parties involved in the dispute may refuse to use ombudsman 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 they possess 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 refile an ethics complaint.

Submitting to 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.

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.

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 their findings along with a possible solution. The mediation process is nonbinding. 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 that must be available to all REALTORS Local associations have the option of offering mediation to the disputing parties before or after a grievance committees 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

Filing an ethics complaint

Arbitration

Filing an Ethics Complaint

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

Grievance Committee

Members of the association make up the grievance committee 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 they disagree with the dismissal The directors will review the same material seen by the grievance committee along with the complainants explanation of their disagreement of the dismissal and render a final decision The involved parties are not present at the appeal
Hearing Panel

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 associations 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 15000

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

The chief reason for imposing discipline for an ethics violation is to create a keen awareness of and appreciation for the Code

In addition the panel may also impose an administrative processing fee of up to 500. However such processing fee 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 REALTORS real estate license. The hearing panel does not determine license violations and are 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 reads: In the event of contractual disputes or specific noncontractual 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

Standards of Practice 174 lists the specific noncontractual disputes covered by this Article 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

Grievance Committee

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 wellinformed 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

Arbitration Hearing Panel

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 associations professional standards committee

Procuring Cause

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 NARs 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 nonprevailing 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

The following list is from the 2014 NAR Code of Ethics and Arbitration Manual

Pathways to Professionalism

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 dont 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 eg vandalism contact the listing broker immediately

7

Be considerate of the sellers 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 your shoes and boots inside property

9

Respect sellers instructions about photographing or taking video of 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 emails 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

REALLIFE SCENARIO BASED ON THE PATHWAYS TO PROFESSIONALISM

Buyer agent Sandy represents Ted and found the first property to show him in the local MLS The showing instructions mentioned a lockbox on the property and Sandy learns from another agent in her office that the sellers are out of town Sandy does not contact the listing broker to show the property because she already has a lockbox access code

Just before entering the property Sandy gets a call from her sons school She gives Ted the access code to the lockbox and tells him to take a look around while she takes the call outside After she hangs up Sandy notices a little dog running around the front yard and realizes its the owners dog that got out when Ted left the front door open She manages to get the dog back inside then sees both she and the dog have tracked mud into the house

Frustrated by the chaos Sandy hurried Ted out of the house without turning off the lights or locking the front door Ted mentioned to her that they should probably clean up the mud that she and the dog had tracked into the house Sandy knowing the homeowners brushed off Teds comments by making a disparaging remark about how there are so many foreigners in Florida anyway she doesnt care if the house is owned by one of them Ted was horrified by Sandys comments

As Sandy drove them to the next showing she talked to Ted about the lovely familyfriendly neighborhood the next house was in and just knew that Ted and his family would love it While Sandy talked Ted received a phone call Listening to the conversation Sandy discovered that Ted was shopping for a home for him and his life partner Erik With that new information she abruptly turned the car around Ted asked if something was wrong Sandy believing that she knows best explained that the neighborhood she was going to show him would not be appropriate for people with his sexual orientation so she wants to show him a much more interesting property in the arts district

Understandably offended Ted declined to have any further association with Sandy Based on the Pathways to Professionalism Sandy displayed a lack of respect for her peers when she chose not to contact the listing broker because she had a lockbox access code She also showed contempt for the homeowners when she disparaged their ethnicity and refused to take care of their property Furthermore Sandy caused irreparable harm to her relationship with her own client when she insulted him and disrespected his lifestyle

Based on the new language of Article 105 Sandy could be charged with violating the NAR Code of Ethics In addition Sandy ignored the following guidelines found in the Pathways to Professionalism

When entering a property ensure that unexpected situations such as pets are handled appropriately

Be aware of and respect cultural differences

Show courtesy and respect to everyone

Enter property only with permission

Never allow buyers to enter listed property unaccompanied

When the occupant is absent leave the property as you found it

Carefully replace keys in the lockbox after showings

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/codeofethicsandarbitrationmanual/tableofcontents> 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 22 Responsibility for Sales Associates Error

Revised Case 95 May 1988 Transferred to Article 2 November 1994

An owner asked REALTOR A, a REALTOR principal, to list a neglected house that obviously needed a wide range of repairs. REALTOR A strongly advised the owner that it would be to their advantage to put the house in good repair before offering it for sale. However, 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 their fix-up hobby to improving a home. The sale was made. Shortly thereafter, the buyer charged REALTOR A with having misrepresented the condition of the property.

REALTOR A accompanied Sales Associate B to the hearing, armed with a copy of their candid advertisement. The hearing established that the buyer fully understood that the house was represented to be generally in poor condition. However, while inspecting the house with a view to needed repairs, Sales Associate B 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 their 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 121 Absence of Name on Sign

Reaffirmed Case 193 May 1988 Transferred to Article 12 November 1994 Revised November 2001

Prospect A observed a sign on a vacant lot reading For Sale Call 3305215 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 REALTORASSOCIATE B in REALTOR As office

Prospect A led a complaint against REALTOR A and REALTORASSOCIATE B REALTOR A and REALTORASSOCIATE B alleging a violation of Article 12 of the Code of Ethics

At the hearing REALTOR A stated that he permitted REALTORASSOCIATE B to put up the sign REALTORASSOCIATE Bs 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 REALTORASSOCIATE 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 161 Confidentiality of Cooperating REALTORS Participation

Revised Case 215 May 1988 Transferred to Article 16 November 1994

When Client A listed their 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 their cooperation and explained fully the Clients instructions REALTOR B discussed the matter with no other REALTOR and refrained from any kind of advertising of the property However 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 Cs breach of confidence under the circumstances was a failure to respect his REALTOR Bs exclusive agency and that this action had jeopardized their relationship with their client

The complaint was referred to the Boards 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 their 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 their cooperation and therefore had not violated Article 16

At the conclusion of the hearing the panel held that REALTOR Bs complaint was valid that proper respect for their exclusive agency and the circumstances under which it existed required REALTOR C to observe the confidence entrusted to him and that REALTOR Cs discussion of the matter with REALTOR D was in violation of Article 16

CHAPTER THREE

Case Studies

LEARNING OBJECTIVES

Explain failure to account

Explain advertising requirements

Explain sales associate advertising requirements

Discuss activities that can be performed by a sales associate

Discuss signs of potential loan fraud

KEY TERMS

Administrative Complaint

Charges

Final Order

Penalty

Resolution

Stipulation

FREC Meetings

Every month the Florida Real Estate Commission FREC holds meetings typically in Orlando The meetings are open to the public Every real estate licensee should make it a point to attend at least one FREC meeting These meetings are fantastic educational experiences and after attending licensees often comment tha they wish they had attended sooner and will attend more often

Meetings normally consist of legal cases and hearings rulemaking escrow disbursement orders and summary of applicants Agendas for meetings and minutes from previous meetings can be found online at

<http://www.myfloridalicense.com/DBPR/real-estate/commission-meetings-and-workshops>

DISCIPLINARY ACTIVITY REPORTS

Disciplinary activity reports can also be found on this website Licensees should review disciplinary reports to be familiar with the types of violations and frequency of occurrence that the FREC deals with on a regular basis

The next few pages contain five case studies These cases were developed from actual administrative complaints and final orders The names have been changed and locations have been left out to protect those involved but all charges penalties and key details are real

Case Study 1

Failure to Account for Escrow Funds Properly

FACTS AS OUTLINED IN ADMINISTRATIVE COMPLAINT

Respondent was licensed and acting as a licensed real estate broker and qualifying broker for ABC Realty Group Inc

Respondent negotiated two purchase and sale contracts for condominium units subject properties one and two located in Orlando Florida

Respondent instructed buyers to deposit 50000 in a bank account controlled by respondent in the Republic of Venezuela for the purchase of subject properties one and two Buyers deposited funds as directed by respondent

Respondent failed to deposit buyers funds in an escrow account in the state of Florida

Respondent failed to account and deliver funds to buyer when required

CHARGES

Respondent was charged with six counts of violations of FS 475 including

1

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 violation of FS 475.251b

2

Failure to account or deliver funds in violation of FS 475251d1

3

Failure to maintain trust funds in violation of FS 47525 1k

4

ABC Realty Group Inc was charged with three additional counts mirroring the above personal charges

QUESTIONS

1

What should this broker have done to avoid this problem

2

Do you see how one mistake or issue can turn into multiple charges in the administrative complaint

RESOLUTION AND PENALTY

The broker filed an election of rights form disputing facts The case was scheduled for an administrative hearing The respondent was not at the hearing and was found guilty by the administrative law judge who recommended revocation of both the brokers personal license and the license of ABC Realty Group Inc
FREC revoked both licenses and ordered the respondents to pay a total of 10000 in fines and 726 in costs

LESSONS LEARNED

1

Escrow accounts must be located in Florida

2

Escrow money does not belong to the broker and it should be handled according to all applicable rules and laws

Case Study 2 False Advertising

FACTS AS OUTLINED IN ADMINISTRATIVE COMPLAINT

Respondent John Q Public was a licensed real estate sales associate registered with XYZ Realty Pros He listed a residential property through XYZ Realty Pros He also employed an unlicensed assistant

Respondent advertised subject property and included the brokerage name in the advertisement as XYZ Realty Pros John Q Public Inc Respondent amended the BrokerageListing Agreement to read XYZ Realty Pros John Q Public Inc He employed his unlicensed assistant to conduct open houses for him discussed the neighborhood because he was a resident there and provided opinions on current market pricing In another transaction John Q Public acted as a buyer and represented to the seller that a 500 deposit had been placed with a title company when in fact that deposit

had never been placed

CHARGES

Respondent was charged with the following four counts

1

Advertised a property or services in a manner which is fraudulent deceptive or misleading in violation of FS 475.251c

2

Aiding and assisting procuring employing or advising any unlicensed person or entity to practice a profession contrary to FS 455 or FS 475

3

Fraud misrepresentation concealment false promises false pretenses dishonest dealing by trick scheme or device etc in violation of FS 475.251b

4

Failure to deposit escrow funds in violation of FS 475.251d2

QUESTIONS

1

If you were on the FREC what penalty would you impose

2

Is this a case that could be negotiated

RESOLUTION AND PENALTY

In exchange for pleading guilty the petitioner DBPR agreed to a stipulation negotiated settlement whereby counts 2 3 and 4 were dismissed The respondent agreed to pay a 1500 fine 34650 in costs serve one year of probation and attend one full twoday FREC meeting

LESSONS LEARNED

1

Sales associates must perform all real estate activities under the name of their licensed employer

2

Unlicensed assistants must be supervised and are limited as to the tasks they can perform See the Permissible Activities of an Unlicensed Assistant section in Chapter 1

3

Whether a licensee is acting as a party to a transaction or in the capacity of a licensee they are still held to standards prescribed by law

Case Study 3

Sales Associate Advertising in Own Name

FACTS AS OUTLINED IN ADMINISTRATIVE COMPLAINT

The respondent held an active real estate sales associate license She placed an advertisement on the community bulletin board for the sale of real property located within her condominium complex She did not list the name of her registered broker in the advertisement

CHARGES

The respondent was charged with one count of having advertised property or services in a manner that is fraudulent false deceptive or misleading in form or content in violation of FS 475251c

QUESTIONS

1

Do you think this is a minor or major violation

2

Could this charge be settled through a stipulation

RESOLUTION AND PENALTY

The respondent agreed by stipulation to pay a fine of 500 and 495 in costs In addition the respondent must attend one FREC general meeting two days

LESSONS LEARNED

1

All advertisements must include the registered name of the broker

2

Sales associates cannot advertise in their own name and cannot place blind ads

Case Study 4

Operating as a Broker While Licensed
as a Sales Associate

FACTS AS OUTLINED IN ADMINISTRATIVE COMPLAINT

The respondent was licensed as a real estate sales associate with Company A a properly licensed and registered real estate brokerage company The respondent was a managing member of Company B that was not licensed as a real estate brokerage company The respondent advertised rental properties and rental services available through Company B

CHARGES

The respondent was charged with operating as a broker while licensed as a sales associate in violation of FS 475421b having advertised property or services in a manner that is fraudulent false deceptive or misleading in violation of FAC 61J210025 and FS 475251c aiding assisting procuring employing or advising any unlicensed person or entity to practice a profession contrary to FS 455 FS 475 or rules of the Commission

QUESTIONS

1

How could this licensee have accomplished what they were trying to do within the limits of the law

2

Are media such as websites and blogs considered advertising

RESOLUTION AND PENALTY

The respondent agreed by stipulation to pay a 2000 fine 37950 in costs serve oneyear probation attend three twoday FREC meetings and complete a residential property management course

LESSONS LEARNED

1

Any form of media can be considered advertising

2

All advertising must include the name of the brokerage

3

A sales associate can only operate and perform real estate services within the brokerage with which they are licensed

4

A sales associate can only have one licensed employer at a time

Case Study 5 Loan Fraud

FACTS AS OUTLINED IN ADMINISTRATIVE COMPLAINT

The respondent was a properly licensed real estate sales associate who entered into two separate listing agreements for properties owned by the seller The listing price on both properties was 350000 The seller then entered into purchase and sale agreements for both properties with a buyer with an agreed upon sales price for each property of 329000 When the seller arrived at closing all documents reflected a sales price of 450000 The respondent admitted to altering the purchase price The sellers attorney recommended that seller refuse to close

CHARGES

The respondent was charged with fraud misrepresentation concealment false promises false pretenses dishonest dealingin violation of FS 475251b

QUESTIONS

1

Why would a licensee change a sales price on documents prior to closing

2

What penalties do you think should be imposed

RESOLUTION AND PENALTY

The respondent disputed facts of the case The case went to the Division of

Administrative Hearings DOAH for a hearing before an administrative law judge ALJ
The ALJ found the respondent guilty and imposed a penalty including a oneyear
suspension 1000 fine and costs FREC filed exceptions to the ALJs findings and
imposed a final order including revocation of the respondents license a 1000 fine
and costs of 1551

LESSONS LEARNED

1

Licensees should be aware of indications of loan fraud including changed prices
buyers purchasing for above market value and buyers purchasing multiple properties

2

This licensee appears to have been involved in some type of fraud FREC has the
ability to override an ALJs recommendation by doing a complete review of the
transcript and filing exceptions to findings of facts and conclusions of law

NOTES

CHAPTER FOUR

Florida Landlord and Tenant Act

LEARNING OBJECTIVES

List some of the key points found in Part II of the Florida Residential Landlord
and Tenant Act

Describe what factors the credit reporting agencies use when calculating a credit
score

Discuss FICO VantageScore Credit Reporting and Experian Connect

Identify lease terms found in the Florida Residential Lease for SingleFamily Home
or Duplex

Discuss important sections of the Florida Residential Landlord and Tenant Act

Explain the transient rental tax

KEY TERMS

Chapter 83

Credit Rating

FICO Score

Fair Credit Reporting Act FCRA

Florida Landlord and Tenant Act

Florida REALTORS Lease

Security Deposit

Sublease

Transient Rental Tax

VantageScore

The Florida Landlord and Tenant Act Overview

When an individual pays rent to live in a house apartment condominium or mobile home that renter becomes a tenant governed by Florida law That law is known as Chapter 83 Landlord and Tenant

ACT ORGANIZATION

The Florida Landlord and Tenant Act contains three sections

Part I Nonresidential Tenancies ss 8300183251

Part II Residential Tenancies ss 834083683

Part III SelfService Storage Space ss 8380183809

Part I of the law deals with nonresidential tenancies which are tenancies in commercial properties Both the commercial and residential sections of the law look very similar but their application is very different Commercial tenancies are considered armslength transactions between business entities As such each party must look out for its own interests in the market place The difference in residential tenancies is that the law clearly defines the obligations of the landlord and the tenant

Part III of the law covers selfstorage facilities and primarily deals with liens and the withholding of personal property for failure to pay storage fees

For our purposes in this chapter we will focus on Part II of the law Part II of the Act has over 50 different articles of law so we will look at only the key statutes If you wish to review the entire law go to Florida Statute 8340 to 83683 We will cover additional key points later in this chapter

LANDLORD DISCLOSURES

Landlords must disclose specific information to tenants such as the identity of anyone authorized to act on the landlords behalf and information about where the security deposit is being held

Security Deposits

Florida state law does not limit how much a landlord can charge for a security deposit It does require that the deposit be returned within 15 days after a tenant moves if the landlord does not intend to impose a claim on the deposit The landlord has 30 days to give the tenant notice by certified mail of their intention to impose a claim on the deposit along with the reason for imposing the claim

Small Claims Lawsuits

Tenants can sue landlords in small claims court for the return of their deposit up to a dollar amount of 8000

Rent Rules

State law regulates several rentrelated issues such as a tenant has three days to pay overdue rent or move before a landlord can file for eviction

Tenant Rights to Withhold Rent

Tenants may withhold rent if a landlord fails to take care of important repairs such as a broken air conditioner

Flotation Bedding System

No landlord may prohibit a tenant from using a flotation bedding system provided the flotation bedding system does not violate applicable building codes The tenant will be required to carry flotation insurance in an amount that is reasonable to protect the tenant and owner against personal injury and property damage

License Law History

PROHIBITED PRACTICES

The following actions are prohibited by the Act

1

A landlord cannot terminate any utility service furnished to the tenant including but not limited to water heat light electricity gas elevator garbage collection or refrigeration

2

A landlord cannot prevent the tenant from gaining reasonable access to the dwelling unit by changing locks or using a bootlock

3

A landlord cannot discriminate against a service member in offering a dwelling unit for rent

4

A landlord may not prohibit a tenant from displaying one portable removable cloth or plastic United States flag not larger than 4 feet by 6 feet in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement

5

A landlord will not remove the outside doors locks roof walls or windows of the unit except for purposes of maintenance repair or replacement and the landlord will not remove the tenants personal property from the dwelling unit unless such action is taken after surrender or abandonment

Landlord Retaliation

It is unlawful for a landlord to increase a tenants rent discriminatorily decrease services to a tenant or 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

Termination and Eviction Rules

State laws specify when and how a landlord may terminate a tenancy For example a landlord may give a tenant who has caused intentional destruction an unconditional quit notice that requires the tenant to move out within seven days before filing for eviction

LANDLORD ACCESS TO RENTAL PROPERTY

Landlords must provide 12 hours notice of entry The landlord may enter the dwelling unit when necessary under any of the following circumstances

With the consent of the tenant

In case of emergency

When the tenant unreasonably withholds consent

If the tenant is absent from the premises for a period of time equal to onehalf the time for periodic rental payments If the rent is current and the tenant notifies the landlord of an intended absence then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises

As we go further into this chapter we will cover the above topics in more detail and share additional materials regarding lease laws

People photo created by wayhomestudio www.freepik.com

Understanding Credit

A credit rating agency CRA also called a ratings service is a company that assigns credit ratings that rate a debtors ability to pay back debt by making timely interest payments and the likelihood of default Credit rating is a highly concentrated industry with Experian Transunion and Equifax controlling approximately 95 of the ratings business Each of these credit reporting agencies compiles an individuals credit information from various reporting sources such as lenders into a credit report Its important to understand that all credit reporting agencies are forprofit companies and are in no way affiliated with the federal government

When people apply for credit cards student loans auto loans and mortgage loans lenders check their credit report to make decisions about whether to grant them credit and to determine the rates and terms for which they would qualify

CREDIT AGENCIES

Every month creditors send millions of records to the credit reporting agencies updating them about their borrowers These reports include whether or not the borrowers paid the money they owed that month if they were late making a payment or if they defaulted on their balance The credit reporting agencies then list account information on each individuals credit report

There are three major creditreporting agencies in the United States that report update and store consumer credit histories These agencies are Experian Transunion and Equifax While there can be differences in the information collected by the three credit bureaus there are five main factors evaluated when calculating a credit score

Payment history Payment history accounts for 35 of a credit score and shows whether a person pays their obligations on time

Total amount owed Total amount owed accounts for 30 and takes into account the percentage of credit available to a person that is currently being used known as credit utilization

Length of credit history Length of credit history accounts for 15 with longer credit histories being considered less risky as there is more data to determine payment history

Types of credit Types of credit used account for 10 of a credit score and show if a person has a mix of installment credit such as car loans or mortgage loans and revolving credit such as credit cards

New credit New credit accounts for 10 It factors in how many new accounts a person has how many new accounts they have applied for recently which results in credit inquiries and when the most recent account was opened

CREDIT REPORT INFORMATION COLLECTED

The following types of information are contained in a credit report

Personal information The individuals name including any aliases or misspellings reported by creditors birth date Social Security number current and past home

addresses phone numbers and current and past employers

Accounts A list of the individuals credit accounts including credit cards installment loans mortgage loans and auto loans The list includes creditor names account numbers balances payment history and account status

Public records A list of any court judgments bankruptcies and tax liens

Recent inquiries Who has recently asked to view the credit report and when

A credit report does not include

Marital status

Income

Bank account balance

Level of education

Note that creditors are not required to report information and may not furnish data at all If they do it may be given to only one or two of the credit bureaus

CREDIT REPORT ACCESS

The Fair Credit Reporting Act FCRA limits who can view a persons credit report and for what reasons Generally the following people and organizations can view a credit report

Individuals Individuals are entitled to review the information on their credit report If a person views their own credit report it does not affect their credit score

Lenders When a person applies for credit from a credit card company mortgage company or auto lender that creditor can ask to view their credit report These are considered hard inquiries and can affect the persons credit score Lenders must have the persons permission to check their credit report for applications on new credit Landlords When a person applies to rent an apartment or home the landlord must have the persons permission to check their credit report

Insurers Insurers can ask to review a credit report when a person applies with them for coverage Again insurers must have the persons permission to check their credit report

Employers Employers may request to view a persons credit report to make hiring decisions However no employer can review a persons credit report without their written consent

CHANGES IN CREDIT RATINGS

Credit ratings are never static They change all the time based on the newest data One negative debt will bring down even the best score Credit also takes time to build up A person with good credit but a short credit history is not seen as positively as another person with the same quality of credit but a longer history Debtors want to know that a borrower can maintain good credit consistently over time As new information is reported by lenders older information is gradually removed per federal retention requirements

Credit Rating Errors

Credit reporting agencies deal with millions of data records every month and they are very prone to making mistakes According to a report by the FTC one in five Americans has a mistake on their credit report Due to the passing of the FCRA a person can request a free copy of their credit report from each credit reporting agency once a year in order to see if there are any mistakes listed If the person sees any mistakes they can file a dispute in order to get the incorrect items removed

Credit reporting agencies arent public entities but the Consumer Financial Protection Bureau conducts examinations to monitor how the agencies screen for accuracy and they investigate consumer complaints

CREDIT SCORES

A credit score is a threedigit number that relates to how likely a person is to repay debt Banks and lenders use it to decide whether theyll approve a credit card or loan Landlords use it to approve or deny a rental application Some employers use it to select job applicants

Credit Score Ranges

Credit score ranges and their corresponding meanings are as follows

800 This score is excellent and well above the average credit score Consumers in this range experience an easy approval process when applying for new credit Less than 1 of consumers with a credit score of 800 are likely to become seriously delinquent

740 to 799 This score is very good and above the average credit score Consumers in this range may qualify for better interest rates from lenders Approximately 1 of consumers with a credit score between 740 and 799 are likely to become seriously delinquent in the future

670 to 739 This score is good and the median credit score range Consumers in this range are considered acceptable borrowers Approximately 9 of consumers with a credit score between 670 and 739 are likely to become seriously delinquent in the future

580 to 669 This score is fair and below the average credit score Consumers in this range are considered subprime borrowers and getting credit may be difficult with interest rates that are likely to be much higher Approximately 27 of consumers with a credit score between 580 and 669 are likely to become seriously delinquent in the future

300 579 This is a poor score Consumers may be rejected for credit Credit card applicants in this range may require a fee or a deposit Utilities may also require a deposit Approximately 62 of consumers with a credit score under 579 are likely to become seriously delinquent in the future This is the bottom range for scores and has the fewest number of consumers at just 17 Its highly unlikely for someone to have a credit score under 300 However those who have been through a messy bankruptcy could easily wind up with 400 or below

Credit Score Interpretation

The interpretation of a credit score varies by lender industry and the economy as a whole Traditionally a score of 640 has been the divider between prime and subprime Fannie Mae and Freddie Mac are now charging extra for loans over 75 of the value that have scores below 740 Private mortgage insurance companies will not even provide mortgage insurance for borrowers with scores below 660 Therefore the definition of prime is a product of the lenders appetite for the risk profile of the borrower at the time that the borrower is asking for the loan

FICO AND VANTAGESCORE CREDIT REPORTING

The Fair Isaac Corporation FICO introduced its FICO credit scoring system in 1989 and the phrase What is your FICO score has become commonplace in our vernacular FICO scores determine all kinds of lending decisions such as mortgages credit cards auto loans and rentals

FICO's market dominance has been challenged by an upstart company called VantageScore VantageScore uses similar scoring methods to FICO but with slightly different results Following are the major similarities and differences between the two

Data Collection

Both agencies use the same basic criteria

Payment history

Length of credit

Types of credit

Credit usage

Recent inquiries

Credit Rating Scores

Both FICO and VantageScore issue scores ranging from 300 to 850

Scoring Requirements

FICO requires at least six months of credit history and at least one account reported to a CRA within the last six months VantageScore requires only one month of history and one account reported within the past two years

Late Payments

Both scores consider these factors

1

How recently the last late payment occurred

2

How many of the person's accounts have had late payments

3

How many payments the person has missed on an account

FICO treats all late payments the same VantageScore judges them differently VantageScore penalizes late mortgage payments more harshly than other types of credit A late payment on credit cards has about the same impact on both FICO and VantageScore A late payment on a mortgage will maintain a higher FICO score than VantageScore

Credit Inquiries

Every time a person applies for a credit card the lender does a hard inquiry to check that persons creditworthiness FICO and VantageScore both penalize borrowers who have multiple hard inquiries in a short period of time Inquiries arent a big concern but they do have an impact

LowBalance Collections

FICO and VantageScore both have penalties for accounts that have been sent to collection agencies However FICO might be a bit more lenient when it comes to lowamount collection accounts FICO ignores all collections where the original balance was under 100 It also doesnt count collection accounts that have been paid off VantageScore ignores only paid collection accounts regardless of the original balance amount

EXPERIAN CONNECT CREDIT

As a real estate agent it is critical to check a clients credit information to evaluate their financial status In the past this was a multistep task that required numerous phone calls and personal contacts Today however there are a number of services that can do a lot of the credit checking legwork for a landlord One such program is called Experian Connect that allows you to review a persons credit score and financial history To gain access you must first register for an account and then be given access by your client to their account

The Experian Connect program has the following features

There is no cost to establish an account

There is no membership fee and no monthly minimums

There is no charge to run a tenants credit history The cost is the responsibility of the tenant

To run a check all you need is the tenants name and email address

Information comes directly from a credit bureau and not from a potentially fraudulent printout fax or scanned copy

The Experian Connect services are available to landlords and tenants that

Can verify some personal information about themselves

Have a valid Social Security number

Are at least 18 years of age

Do not have a security freeze or fraud alert on their credit

An Experian Connect report does the following

Provides credit rating and credit score

Verifies that a tenants identity information matches what is in the rental application

Provides a history of late payments collection accounts chargeoffs or major issues such as bankruptcies tax liens and evictions

Calculates current debt to ensure that tenants can afford their rent payment

Provides credit report inquiries past 24 months from student loans store credit cards and collection agencies

Provides contact information for the tenants employer and previous landlords

Experian Connect uses the VantageScore calculation with their credit report
CREDIT REPORT ACCESS

As we mentioned consumers are entitled to one free credit report in every 12month period from each of the three major credit bureaus However they are not entitled to receive a free credit score Consumers wishing to obtain their credit scores can in some cases purchase them separately from the credit bureaus or can purchase their FICO score directly from FICO

Under the Fair Credit Reporting Act a consumer is also entitled to a free credit report within 60 days of any adverse action taken as a result of their credit score eg being denied credit or receiving substandard credit terms from a lender

Under the Wall Street reform bill passed on July 22 2010 consumers are entitled to receive a free credit score if they are denied a loan or insurance due to their credit score

Florida REALTORS Lease

A Florida REALTORS Lease is a somewhat lengthy document that contains 18 pages plus a Nonlawyer Disclosure form Part of what adds to the heft of the lease is the inclusion of the entire Florida Residential Landlord and Tenant Act

The two residential lease forms in Florida are

Residential Lease for SingleFamily Home or Duplex

Residential Lease For Apartment or Unit in MultiFamily Rental Housing Other Than a Duplex Including a Mobile Home Condominium or Cooperative

The parts of the lease document include

Nonlawyer Disclosure Form Page 1

Lease Terms Pages 27

Early Termination Fee Liquidated Damages Addendum Page 8

Landlord and Tenant Act Pages 919

Lets look at each of these parts individually

NONLAWYER DISCLOSURE FORM PAGE 1

The Nonlawyer Disclosure is a onepage document that a licensee uses to inform all parties that the lease is being completed by a nonlawyer Its important to remember that in a standard lease the licensee may complete only the blank spaces The terms of the lease cannot be altered or overwritten

The top of the disclosure page includes instructions that explain how to complete the form properly If the licensee is filling in the blanks for both the landlord and tenant the licensee must complete two Nonlawyer Disclosure forms and give one to each party

To complete the form the licensee will

Enter their name as the individual aiding with the lease on the five blank Name lines and sign in the blank space provided on the lower left of the page

Have the tenant or landlord verify their English speaking status by checking the first blank line in the section labeled Landlord or Tenant If the landlord or tenant cannot read English and needs to have the document translated check the second blank line and enter the name of the translator as well as the language in which the lease must be translated

Have the landlord or tenant sign in the blank space provided on the lower right of the page

It is important for licensees to remember the following items when filling out the lease form

A licensee can only fill in the blanks on the lease Any changes are illegal

Under penalty of law a licensee cannot make any correction strikeouts or addendums

A standard lease form may not exceed one year If it does an attorney must write the lease

At the bottom of each page of the document the licensee landlord and tenant need to sign their initials

LEASE TERMS PAGES 27

In this section we will describe the terms found in the Residential Lease for a SingleFamily Home or Duplex It will be easier for you to understand and follow the directions if you look at an actual hardcopy of the lease document Note that at the bottom of each lease page there is space for the parties to initial acknowledging they have received a copy of that page The top of the lease explains that every negotiable item requires the parties to check mark a box andor fill in a space with applicable information

1

Parties This provision requires the name of the landlord followed by the name of the tenant Each party must provide their full name and contact information for this section

2

Property rented This provision requires the street address of the property being rented including state and zip code If there are any furnitureappliances the licensee will enter them in the space provided Following is space to enter the names of the persons who will occupy the premises

3

Term This provision is where the licensee will enter the month day and year the lease will start followed by the month day and year on which it will terminate

4

Rent Payments Taxes and Charges This provision defines the amount of money the tenant must pay to enter the lease First the licensee will enter the total amount of money that will have been paid by the tenant to the landlord by the end of the lease The rent may be paid in monthly installments weekly installments or in full

a

If the rent will be paid in installments the licensee will check the first box Then there are boxes to check indicating whether it will be paid in monthly or weekly installments For either of these choices there are spaces to write in the day the rent is due and the amount of the payment

b

If the lease will be paid in full the licensee will check the appropriate box and then enter the date of payment and the amount due in the spaces provided

c

If taxes are applicable the licensee will write in the amount and terms at the top of the next page of the lease

The next section of this provision is the Payment Summary

d

There are check boxes to indicate if the rent is to be paid in installments or in full and to write in the amount due including taxes This is followed by space to enter the name of the person who receives the rent and the address of that person

e

There is a check box to indicate if the rent is being prorated due to a midmonth movein date with spaces to enter the starting and ending proration dates the payment amount due and its due date

f

There is a series of check boxes to indicate the method of rent payment The choices are cash personal check money order and cashiers check If another payment method is preferred there is a check box for other and space to specify the method

g

If the tenant pays rent with a bad check the landlord may want to change the payment method There are several check boxes to indicate how the landlord wants to receive future payments as well as a place to check if the landlord wants the tenant to pay the bad check fees and in what amount

5

Money Due Prior to Occupancy This section deals with the amount the tenant must pay before they can move in It provides space to write in the name and address of the landlord It then lists a number of items that may need to be paid and spaces to write in the amount and due date for each item The list includes the following items

First week or months rent plus taxes

Prorated rent amount plus applicable taxes

Advance rent for a specified week or month plus applicable taxes

Last week or months rent plus applicable taxes

Security deposit

Additional security deposit

Security deposit for homeowners association

Pet deposit

Other reserved to write in items not listed above

6

Late fees This item provides space to write in the amount of late charge a tenant will need to pay if the rent is received a specified number of days after it is due If left blank the assessment is 4 of the rent amount and it goes into effect five days after the due date on monthly rentals and one day after the due date on weekly rentals

7

Pets and smoking This provision deals with pets on the premises and pet deposits If pets are allowed the description must be entered in the space provided This provision also states that if the appropriate box is not checked smoking is not allowed in the rental unit

8

Notices This section provides space to enter the name of the landlords agent check boxes to indicate whether notices should be sent to the landlord or to the agent and spaces to list the address for each

9

Utilities The tenant pays for all utility services connection charges and deposits unless the landlord has agreed to pay for some services and it is written in the space provided

10

Maintenance This provision lists a number of items with check boxes to indicate which party landlord or tenant is responsible for its upkeep The landlord will automatically be responsible for an item if it is left blank There is a line at the end of the list designated as Other to address any maintenance concerns that have not been named Below this is space to write in the name address and phone number of the person to notify with any maintenance or repair requests

11

Assignment This provision states that unless the box is checked the tenant may not sublease the unit without the landlords written permission

12

Keys and locks This section provides space to write in the number of keys to the dwelling mailbox keys and garage door openers the landlord will provide to the tenant If applicable the provision also provides space to write in the number of keys remotes and electronic cards to common areas that the homeowners association will provide and the name and address of the person to whom all items will be returned at the end of the lease

13

Leadbased paint This section provides a box to check if the rental property was built or in construction before January 1 1978 If the box is checked the remainder of this provision must be completed

The first section deals with what the lessor knows about the possibility of leadbased paint in the dwelling In the section marked a the lessor will initial and indicate whether they know or do not know about any leadbased paint or paint hazards In the section labeled b the lessor will initial and indicate whether or not they have provided the lessee with any records or reports pertaining to leadbased paint If so provided there is space to list the names of the documents

The next section is where the lessee will initial to indicate that they have received copies of the listed documents and have received the pamphlet called Protect Your Family from Lead in Your Home

Below that is a place for the agent to initial that they have fully informed the landlord of their responsibility to comply with 42 USC 4852d

The last section Certificate of Accuracy requires the signatures and signature dates of all parties to verify that all required information has been reviewed and is accurate

14

Servicemember This provision states that a member of the active duty military Florida National Guard or US Reserves has the right to terminate the lease according to FS 83682

15

Landlords access to the premises This provision outlines under what conditions the landlord or landlords agent may enter the premises

16

Homeowners association This provision references HOA tenant approval

17

Use of the premises This provision states clearly that the premises is for residential use only and must comply with all state county municipal laws and ordinances and any applicable HOA covenants and restrictions The tenant may not make any improvements to the property without the landlords written permission however the lease permits the hanging of pictures and window treatments by the tenant without consent provided the tenant removes them before the end of the lease term This provision also states that the tenant agrees not to use store or keep hazardous materials on the premises that could cause a fire or increase insurance costs

18

Risk of lossinsurance This provision deals with insurance responsibilities of the landlord and tenant

19

Prohibited acts by landlord This provision references landlord prohibited actions that are described in the Florida statutes

20

Casualty damage This provision deals with the tenants ability to terminate a lease due to damage or destruction of the unit that was not caused by the tenant

21

Defaultsremedies This procedure references the part of the Florida Landlord and Tenant Act that explains procedures regarding lease default remedies

22

Subordination This provision states that the lease is automatically subordinate to the lien of any mortgage encumbering the fee title to the property

23

Liens This provision states that the landlords property will not be subject to liens based on work contracted by the tenant

24

Renewalextension This provision provides terms of a lease renewal

25

Tenants telephone number This provision directs a tenant to record in writing a contact phone number with the landlord

26

Attorneys fees This provision deals with payment of legal fees in the event of a lawsuit between tenant and landlord

27

Miscellaneous This provision deals with several other terms including the landlords requirement to provide a radon gas disclosure

28

Brokers commission If applicable there is a box to check to indicate whether the landlord or tenant will pay the brokers commission This is followed by spaces to write in the names of the licensees the brokerage companies and the amount of the commission

29

Tenants personal property This provision provides a check box for the tenant to initial which states that upon surrender abandonment or death of the tenant the landlord is not responsible for storage or disposal of the tenants personal property

Below provision 29 is space for all involved parties to sign and date the lease This is followed by spaces to write in the name business name address and telephone number of any individual or business that helped in the completion of the lease The last statement on page 6 informs the tenant that a current version of the Florida Residential and Landlord and Tenant Act FS 83 is attached

EARLY TERMINATION FEELIQUIDATED DAMAGES ADDENDUM PAGE 8

This document deals with fees owed by the tenant if a lease is terminated early According to this addendum the landlord is giving the tenant a choice to either

Pay a specified amount in liquidated damages or a termination fee amount of up to two months rent in the event of the tenants early termination with the acknowledgement that the landlord waives the right to seek additional rent beyond the month in which they retake possession

Not agree to pay a termination fee with the acknowledgement that the landlord may seek damages

Beneath the two options are spaces for the landlords and tenants to sign and date the addendum

Using this addendum is of benefit to both parties The landlord benefits because if the tenant skips the landlord can charge the liquidated damages The tenant benefits because if they give the required notice and pay the termination fee they can leave without breaching the lease

FLORIDA RESIDENTIAL LANDLORD AND TENANT ACT PAGES 919

Licensees should read the entire Part II section of the Florida Residential Landlord and Tenant Act Do to the comprehensive nature of the Act we will emphasize some of the more relevant sections here

Section 8343 Definition 12 security deposits means any moneys held by the landlord as security for the performance of the rental agreement including but not limited to monetary damage to the landlord caused by the tenants breach of lease prior to the expiration thereof

Section 8346 This section titled Rent duration of tenancies provides that

Rent is due without demand or notice Periodic rent is payable at the beginning of each rent payment period and rent is uniformly apportionable from day to day

If the lease has no provision regarding duration the duration is determined by when the rent is due If the rent is payable weekly then the tenancy is from week to week If payable monthly then the tenancy is from month to month If payable quarterly then the tenancy is from quarter to quarter If payable yearly then the tenancy is from year to year

If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy the duration is determined by the periods for which wages are payable

Section 8349 This section deals with the disbursement of deposits and advance rental funds By far this is the most contentious topic when a lease disagreement occurs Titled Deposit money or advance rent duty of landlord and tenant paragraph 1 of this section states in part the following

Whenever money is deposited or advanced by a tenant the landlord will do one of the following

Hold such money in a separate noninterestbearing account in a Florida banking institution for the benefit of the tenant The landlord must not commingle such moneys with any other funds

Hold such money in a separate interestbearing account in a Florida banking institution for the benefit of the tenant and the tenant will receive interest in an amount of at least 75 of the annualized average interest rate payable on the account or interest at the rate of 5 per year simple interest whichever the landlord elects

Post a surety bond on behalf of the tenant in the total amount of the security deposits and advanced rents they hold on behalf of the tenants or in the amount of 50000 whichever is less

Paragraph 3 of this section deals with the disbursement of advance rents and states that the landlord or their agent may disburse advance rents for the landlords benefit when the advance rental period begins and without notice to the tenant For all other deposits

If a landlord does not plan to keep a security deposit the landlord has 15 days to return the security deposit with interest

If a landlord does plan to keep a security deposit the landlord has 30 days to give the tenant written notice by certified mail to the tenants last known mailing address of their intention to claim the deposit and the reason for the claim The notice must contain a statement in substantially the following form

If the landlord fails to give the required notice within the 30day period they forfeit the right to impose a claim upon the security deposit

Unless the tenant objects to the landlords claim within 15 days after receipt of the landlords notice the landlord may then deduct the amount of their claim and remit the balance to the tenant within 30 days

If either party institutes a court action the prevailing party will have the right to reasonable attorney fees and court costs

Section 8351 This section is titled and covers the Landlords obligation to maintain premises Under the terms of a lease a landlord is required to

Comply with applicable building housing and health codes

Where there are no codes the landlord must still maintain roofs windows doors floors steps porches exterior walls foundations screens and all other structural components in good repair

Make reasonable provisions for

The extermination of rats mice roaches ants wooddestroying organisms and bedbugs

Locks and keys

Clean and safe condition of common areas

Garbage removal and outside receptacles

Functioning facilities for heat running water and hot water

Install working smoke detection devices

Section 8352 This section is titled and covers the Tenants obligation to maintain dwelling unit The tenant at all times during the tenancy must

Comply with all obligations imposed upon tenants by provisions of building housing and health codes

Keep that part of the premises that they occupy and use clean and sanitary

Remove all garbage from their unit in a clean and sanitary manner

Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair

Use and operate all electrical plumbing sanitary heating ventilating airconditioning and other facilities and appliances including elevators in a reasonable manner

Not destroy deface damage impair or remove any part of the premises or property in the unit belonging to the landlord nor permit any other person to do so

Conduct themselves in a manner that does not unreasonably disturb the tenants neighbors or constitute a breach of the peace and require other persons on the premises with their consent to conduct themselves in like manner

Section 8353 This section is titled and covers the Landlords access to the dwelling unit It states in part that

A tenant cannot unreasonably withhold consent to the landlord to enter the dwelling unit from timetotime in order to inspect the premises make necessary repairs supply agreed upon services or show the unit to prospective buyers tenants workers or contractors

A landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time. Reasonable notice is at least 12 hours prior to entry and reasonable time is between the hours of 730 am and 800 pm.

A landlord may enter the dwelling unit under the following circumstances:

With the consent of the tenant

In case of emergency

When the tenant unreasonably withholds consent

If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments

A landlord cannot abuse the right of access nor use it to harass the tenant

Section 835.615, The Protecting Tenants at Foreclosure Act (PTFA), is a federal law that was reinstated as of May 24, 2018. Florida integrated the Act into The Landlord and Tenant Act, FS 83, as FS 835.615, thereby repealing FS 835.61. Termination of rental agreement upon foreclosure. The purpose of the Act is to protect tenants living in a property that has been foreclosed. The federal law is not meant to override any state or local laws that provide longer time periods or additional protections for tenants.

It is estimated that during the financial crisis of 2008-2009, approximately 40% of families that faced eviction were renters. Homeowners were given some indication that a foreclosure was coming while renters were often caught entirely off guard. The PTFA addresses tenant evictions due to foreclosure as follows:

A tenant who has entered into a bona fide lease before the foreclosure notice is provided to the homeowner may continue to occupy the property until the end of the lease term.

If the new property owner of the foreclosed property will occupy the unit as a primary residence, they may give the tenant a 90-day notice to vacate even when the tenant has a lease that extends beyond 90 days after foreclosure.

If there is no lease or tenancy at will then the tenant may be given a 90day notice to vacate

The PTFA considers a lease to be bona fide if

The mortgagor or the child spouse or parent of the mortgagor under the contract is not the tenant

The lease or tenancy was the result of an armslength transaction

The lease requires rent that is not substantially less than fair market rent or is reduced or subsidized due to a federal state or local subsidy

Section 8357 This section is titled and covers Termination of tenancy without specific term A tenancy without a specific duration may be terminated by either party by written notice in the following manner

When the tenancy is from year to year by giving not less than 60 days notice prior to the end of any annual period

When the tenancy is from quarter to quarter by giving not less than 30 days notice prior to the end of any quarterly period

When the tenancy is from month to month by giving not less than 15 days notice prior to the end of any monthly period

When the tenancy is from week to week by giving not less than seven days notice prior to the end of any weekly period

Section 83682 This section is titled and covers Termination of rental agreement by a servicemember It states in part that any servicemember may terminate their rental agreement by providing the landlord with a written notice of termination if any of the following criteria are met

The servicemember is ordered to move 35 miles or more from the location of the rental premises

The servicemember is prematurely or involuntarily discharged from active duty

The servicemember is released from duty after signing a lease while on active duty and the rental unit is more than 35 miles from their home of record prior to active duty

The servicemember receives orders to move into government quarters or becomes eligible to do so and chooses that option

The servicemember receives temporary orders to an area more than 35 miles from the rental unit that will last longer than 60 days

The servicemember receives a change of orders to an area more than 35 miles from the rental unit after signing the lease but prior to taking possession of the unit

The servicemember must include a copy of the military orders or a signed verification from their commanding officer with the termination notice to the landlord

In the event a servicemember dies during active duty an adult member of their immediate family may terminate the servicemembers rental agreement to be effective at least 30 days after the landlord receives the termination notice The notice must include a copy of the military orders showing the servicemember was on active duty along with a copy of the death certificate

When terminating the rental agreement the servicemember is liable for the rent due prorated to the effective date of the termination

Section 83683 This section is titled and covers Rental application by a servicemember It states in part that

If a landlord or condominium association requires a prospective tenant to complete a rental application before residing in a rental unit the landlord must complete processing of the rental application submitted by the servicemember within seven days after submission The landlord must within that seven day period notify the servicemember in writing of an application approval or denial and if denied the reason for denial

If a timely denial is not given the lease must be honored

The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances

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 s 83493 Florida Statutes 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 landlords address

Other Residential Lease Forms

A licensee should also become familiar with other forms that have been approved by the Supreme Court of Florida These forms are reviewed and changed periodically so be sure you are always working with the most updated versions

As we mentioned earlier another residential form commonly in use is the Residential Lease for Apartment or Unit in MultiFamily Rental Housing Other than a Duplex Including a Mobile Home Condominium or Cooperative Many of the terms in this lease are the same or similar to the terms discussed above in the singlefamilyduplex lease However there are enough differences to warrant taking a close look at the lease terms on the apartmentmultifamily lease A sidebyside comparison of pages 27 of the two lease documents may be very helpful

LANDLORD TENANT EVICTION FORMS

It would be helpful for you to examine the forms listed below that can be found at www.floridabar.org

Form 1 Notice from Landlord to Tenant Termination for Failure to Pay Rent

Form 2 Notice From Landlord To Tenant Notice Of Noncompliance For Matters Other Than Failure To Pay Rent

Form 3 Notice From Tenant To Landlord Termination For Failure Of Landlord To Maintain Premises As Required By Florida Statute

Form 4 Notice From Tenant To Landlord Withholding Rent For Failure Of Landlord To Maintain Premises As Required By Florida Statute 83511 Or Material Provisions Of The Rental Agreement

Form 5 Complaint For Landlord To Evict Tenants

Form 5a Complaint For Landlord To Evict Tenants For Failure To Pay Rent And To Recover Past Due Rent

Form 6 Complaint For Landlord To Evict Tenants For Failure To Comply With Rental Agreement Other Than Failure To Pay Rent

Form 7 Summons Eviction Claim

Form 8 Summons Damages Claim

Form 9 Final Judgment Damages

Form 11 Writ Of Possession

Form 12 Notice Of Intention To Impose Claim On Security Deposit

Form 13 Satisfaction Of Judgment County Court

Form 14 Satisfaction Of Judgment Circuit Court

Form 66 Final Judgment Eviction

Form 76 Motion For Clerks Default Residential Eviction

Form 77 Motion For Clerks Default Damages Residential Eviction

Form 78 Motion For Default Final Judgment Residential Eviction

Form 79 Motion For Default Final Judgment Damages Residential Eviction

Form 80 Affidavit Of Damages

Form 81 Nonmilitary Affidavit

Remember nonlawyers may assist consumers in filling out the forms and may answer general questions but they cannot give advice as to what to write in the forms or about what decisions consumers should make

Transient Rental Tax

Individual Florida counties and certain cities may impose a local option tax on the rental or lease of living sleeping or housekeeping accommodations for a term of six months or less These taxes are often called local option transient rental taxes and include the following

Tourist development tax

Convention development tax

Tourist impact tax

Municipal resort tax

The local tax imposed is in addition to the 6 state sales tax and any applicable discretionary sales surtax

Sales tax is due at the rate of 6 on rental charges or room rates paid for the right to use or occupy living or sleeping accommodations Florida law refers to these living or sleeping accommodations as transient accommodations If you rent or lease any of these types of transient accommodations you must collect sales tax and pay it to the Department of Revenue

Hotel or motel

Apartment house or any other multiple unit structure for example duplex triplex quadraplex condominium

Rooming house

Tourist or mobile home court for example trailer court motor court recreational vehicle camp fish camp

Singlefamily dwelling

Garage apartment

Beach house or cottage

Cooperativelyowned apartment

Condominium parcel

Timeshare resort

Mobile home

Any other house

Vehicle or other structure place or location held out to the public to be a place where living quarters or sleeping or housekeeping accommodations are provided to transient guests in exchange for payment

Boats with a permanent fixed location at a dock and not operated on the water away from the dock by the tenant

Rental charges include any charge for the use of items or services required to be paid as a condition of the use or possession of the accommodation Many counties have at least one of the taxes mentioned above on rentals of transient accommodations Landlords should contact their local county taxing agency to determine whether a county has any of these local taxes and whether the landlord is required to report and pay this amount directly to the county or if they should report it on the sales and use tax return

EXEMPTIONS

Certain leases and rentals are exempt from sales tax The owner or owners representative must keep documentation to support the exempt transaction Exempt transactions include

Rental charges or room rates paid by a person who has a signed bona fide written lease for a continuous residence longer than six months If there is no written lease and a person has continuously resided at any one location for a period longer than six months and has paid the tax on the rental charges or room rates due at that location for the first six months additional charges for continuous residence at that location are taxexempt

Rental charges or room rates paid by a fulltime student enrolled in an institution offering postsecondary education A written statement from an official of the students institution documenting that the student attends the institution full time is proof of the students fulltime enrollment

Rental charges or room rates paid by military personnel who are on active duty and are present in the community under official orders The military personnel must provide a copy of the official orders supporting the active duty status of the military personnel and making it necessary to occupy the accommodation

Rental of accommodations in a migrant labor camp trailer camps recreational vehicle parks and mobile home parks Rental charges at trailer camps recreational vehicle parks and mobile home parks except mobile home lots regulated by FS 723 are taxable unless more than 50 of the total rental units are occupied by tenants who have continuously resided there for more than three months If this criteria is met the owner or owners representative of the camp or park must file a Declaration of Taxable Status Trailer Camps Mobile Home Parks and Recreational Parks Form DR722 with the Florida Department of Revenue in order to treat the rental units as tax exempt All rental charges for accommodations at a camp or park are taxable until the owner or owners representative informs the Florida Department of Revenue of exemption changes This exemption applies only to the rental units Any retail sales or rentals of tangible personal property for example nongrocery items and recreational equipment or rentals of commercial rental property are taxable

REGISTRATION REQUIREMENTS

The owner of living or sleeping accommodations must register each taxable accommodation separately The owner can register to collect and/or report tax through the Florida Department of Revenue website The site will guide the user through an application interview that will help determine the tax obligations If a person does not have Internet access they can complete a paper copy of the Application to Collect and/or Report Tax in Florida Form DR1 If the property owner uses a real estate brokerage firm other entity or other person not an employee to collect or receive rent or license fees on behalf of the owners lessors then that firm entity or person must register

Agents who are registering multiple properties for management and rental may complete an Application for Collective Registration for Rental of Living or Sleeping Accommodations Form DR1C The agent must complete a separate application for each county where property is located

SUBLEASES

Any person who leases a taxable accommodation and then subleases it to a third party must register as a dealer and collect the applicable tax due on the subrents subleases sublets or licenses The dealer may issue a signed copy of the current Annual Resale Certificate to the property owner or property owners representative to rent accommodations taxexempt or take a credit for the tax paid to the owner or owners representative on the original lease

Any person who cannot prove sales tax has been paid to the landlord is liable to Florida for any applicable tax interest or penalty due on the subleased property

WHEN TAXES ARE DUE

Taxes are due and payable at the time the rent payment is received by the lessor or other person receiving the rent payment Returns and payments are due on the 1st and late after the 20th day of the month following the receipt of the rent payment For example if the rent payment is received on the 1st of one month then the return and remittance of sales tax is not due until the 1st of the next month

PENALTY AND INTEREST

If the returns and payments are not postmarked or handdelivered on or before the due date the landlord will owe a late penalty of 10 of the amount of tax due A minimum penalty of 50 is due on late returns even if no tax is due A penalty applies if the return and/or payment is submitted on time but is incomplete A floating rate of interest applies to underpayments and late payments of tax

CHAPTER FIVE

Florida Specific Environmental Protection Issues

LEARNING OBJECTIVES

Discuss the Florida Department of Environmental Protection brownfield sites and the Clean Air Act

Explain how water and solid waste issues impact Floridas environment

Describe Floridas wetlands management and Everglades protection initiatives

Explain shoreline stabilization and the Florida Beach and Shore Preservation Act

Discuss solar energy development docks and permits needed for dredge and fill operations

Explain what Florida is doing to protect endangered species mangroves and archeological sites

KEY TERMS

Brownfield Site

Clean Air Act

Coastal Construction Control Line CCCL

Conservation Easement

Florida Beach and Shore Preservation Act

Florida Department of Environmental Protection DEP

Mangrove

Onsite Wastewater Treatment Systems OWTS

R22 Refrigerant

RipRap

Riparian Rights

Shoreline Stabilization

Superfund Site

Wetlands

Turtle photo created by wirestock www.freepik.com

Terms to Know

These terms and definitions are important to know when discussing Floridaspecific environmental issues

Conservation easements A conservation easement is a legal agreement a property owner makes with a nonprofit or government organization to protect a cultural or natural resource on their property

Mangrove A mangrove is a shrub or small tree that grows in coastal saline or brackish water Mangroves play a vital role in the maintenance of a balanced ecosystem

Onsite wastewater treatment systems OWTS An onsite wastewater treatment system is a term referring to any system for the collection storage treatment neutralization or stabilization of sewage that occurs on a property A septic system is a typical example of an OWTS

R22 refrigerant R22 refrigerant is a commonly found ozonedepleting gaseous liquid found in air conditioning systems and other refrigeration appliances As of December 31 2009 it became required by law that if any system using R22 refrigerant became faulty it must be recycled and replaced

Riprap Riprap refers to rock or other material used to armor shorelines streambeds bridge abutments pilings and other shoreline structures against water erosion It is made from a variety of rock types such as granite or limestone and occasionally concrete rubble from building and paving demolition

Riparian rights Riparian rights afford the owner of a property that borders navigable waters the right to ingress egress boating bathing fishing and the right to an unobstructed view of the water

Shoreline stabilization Shoreline stabilization refers to methods techniques and structures designed to protect shorelines from erosion

Superfund site A superfund site is any land in the United States that has been contaminated by hazardous waste and identified by the EPA as a candidate for cleanup because it poses a risk to human health and/or the environment These are also called brownfield sites

Wetlands Wetlands include marshes swamps bogs and similar areas that support plant animal and marine life

License Law History

In order to protect the distinctive natural features for the enjoyment of future generations the Florida Legislature has enacted a number of laws to regulate activities that may potentially pollute or destroy environmentally sensitive lands waters and wildlife As environmental concerns grow across Florida and more state statutes are passed a licensee needs to be conversant in environmental issues to be better able to advise their clients on such matters

This chapter deals with those environmental issues that are specific to Floridians and have an impact on residential homeowners In many other states the mere act of installing a boat dock or trimming a tree does not even raise an eyebrow However Florida has some unique laws that are unknown to new residents and just remotely understood at best by current residents For example wild sea oat plants are important in the preservation of sand dunes and protected by state law It is illegal to pick wild sea oats even the seeds

Understanding a particular environmental law in Florida is not always straightforward For the most part the federal government passes a law that applies to all states This law is usually broad in scope and subject to interpretation Then state laws are passed to strengthen and apply specificity to the law Over the course of time local governmental entities also add a layer of regulations to laws to assure that compliance is adhered to by its citizens As such laws rules regulations codes and permits can become a labyrinth to the average homeowner To avoid violating any laws it is suggested that homeowners check with local authorities before performing any act that may change or alter the surrounding environment Also licensees should be vigilant for possible permit and code violations when conducting a real estate transaction As always inform clients to seek professional advice when an issue seems questionable Keeping clients compliant and happy will result in more referrals for you

Riparian Rights

Florida has over 2000 miles of coastline 11200 miles of rivers streams and waterways and approximately 7800 lakes in excess of 10 acres With this abundant access to waterfront property owners should have some knowledge of riparian rights

In general riparian rights allow the owners of property that borders navigable waters to ingress egress boating bathing fishing and the right to an unobstructed view to the water Riparian rights do not apply to all waters Under Florida law only lands that border waters that were navigable at the time of Floridas statehood on March 3 1845 are allowed full riparian rights Such rights do not apply to artificially erected waterbodies The Florida legislature has codified many aspects of the common law regarding riparian rights in FS 253141 Establishing exact riparian rights in Florida is frequently very difficult This task is constantly in a state of flux due to the increasing demands of population growth and tourism It is often difficult to distinguish where private land rights cease and the sovereign land rights begin To avoid legal matters property owners and real estate licensees need to be current on all state and local laws that affect riparian rights

Florida Department of Environmental Protection

AREAS OF RESPONSIBILITY

The Florida Department of Environmental Protection DEP is the states lead agency for environmental management DEP is divided into three areas of responsibility

Land and recreation area This group acquires and protects lands for preservation and recreation The land and recreation groups oversee 175 state parks more than 12 million acres of public lands and 4 million acres of coastal uplands and submerged lands

Regulatory area This group safeguards natural resources by overseeing permitting and compliance activities

Ecosystem restoration area This group protects and improves water quality and aquatic resources

The DEP has 28 divisions and six district offices District offices review permit applications conduct inspections of permitted facilities respond to reports of environmental damage and conduct compliance assistance and enforcement activities The DEPs annual budget typically exceeds 15 billion dollars and employs over 4200 employees These numbers underscore the importance that environmental protection issues have with both legislators and the general public

BROWNFIELD SITES

The EPA defines a brownfield site as real property the expansion redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance pollutant or contaminant

Brownfields are often closed industrial facilities such as an abandoned factory commercial building or warehouse Brownfields can be located anywhere and be of any size For example many dry cleaning establishments and gas stations that produce high levels of contaminants during their operation are classified as brownfields Another term used to identify brownfield sites is superfund sites

Government Study

A recent US General Accounting Office study found that there are over 500000 brownfield sites in the United States and estimated that the cleanup costs could

exceed 650 billion On a positive note the remediation of these sites can help a community breathe life into a blighted area increase tax revenues and create jobs Brownfield initiatives are gaining traction across the country In Florida spurred by the shortage of affordable housing a number of developers have approached the idea of developing brownfield sites for residential use As a licensee you should be conversant in the development of brownfield sites for residential use and be able to respond appropriately to questions asked by clients

Regulatory Initiatives

The following three regulatory initiatives have spurred brownfield development

Asset Conservation Act of 1996 gave lenders protection against environmental liability in debtfinancing activities

Taxpayer Relief Act of 1997 allowed favorable tax relief for environmental remediation costs

Brownfields Redevelopment Initiative provided funding for site cleanup loans

The main issues involving brownfields redevelopment are the concern over legal liability the uncertainty of rehabilitation costs that scare off investors and the uncertainty of the creep of environmental laws that over time expand government oversight

Brownfield Site Redevelopment

Over 45 states have enacted laws to help alleviate the risks of liability for brownfield site development The state of Florida has redeveloped a number of brownfield sites Following are just a few noted successes

Agrico Chemical Co This 35acre superfund site is located in Pensacola Florida It includes an area where agrochemical production operations took place from 1889 to 1975

Alpha Chemical Corp This superfund site is located in Lakeland Florida Since 1967 a plant on the site has produced polyester resin for fiberglass manufacturers From 1967 to 1976 plant operators discharged plant wastewater that contained small amounts of volatile organic compounds VOCs into an onsite pond

American Creosote Works Inc This 18acre superfund site is located in Pensacola Florida A woodtreating facility operated at the site from 1902 to 1981 when it filed for bankruptcy Facility operators sent process wastewaters to four holding ponds on the western portion of the site The ponds often overflowed after heavy rains

Beulah Landfill This 101acre superfund site is located in Escambia County Florida Escambia County operated a landfill on the site from 1966 to 1984 A state

investigation in 1987 found that site activities had contaminated soil and groundwater

The Petroleum Products Corp This fiveacre superfund site is located in Pembroke Park Florida Petroleum Products Corp operated a used oil refining facility at the site from 1957 to 1971 Improper waste handling practices and oil spills resulted in the contamination of soil and groundwater

CLEAN AIR ACT

For the most part federal and state laws regarding clean air regulations are targeted towards industrial operations such as mining energy plants and meeting motor vehicle emissions standards However the Clean Air Act also influences homeowners who have air conditioners that were manufactured before January 1 2010 The refrigerant used in these systems is called hydro chlorofluorocarbon HCFC22 also known as R22 R22 has been found to deplete the earths protective ozone layer The EPA has gradually reduced the production of R22 as a refrigerant In fact manufacturers can no longer make air conditioners that use R22 However R22 can still be used to service existing air conditioners but it has become very expensive R22 is also used in older refrigerators and freezers When it comes time to replace an older AC system or appliance homeowners must follow some governmental regulations regarding disposal A homeowner should not cut refrigerant lines or remove compressors prior to discarding If an owner purchases a new appliance the retailer will likely remove the old one at no charge Many governments and private organizations also will arrange for curbside pickup of appliances The EPA requires the safe disposal of ozone-depleting refrigerants in appliances so they do not harm the environment

Water and Solid Waste Issues

These issues are typically well known to the public but the enormity of their importance in Florida may not be so well known

WATER NEEDS FOR A GROWING POPULATION

In 2019 the population of Florida was more than 21 million citizens About 1000 new residents are added daily According to US census figures Florida is now the nations second fastestgrowing state behind Texas The influx is not expected to slow down with the states population predicted to rise to 26 million by 2030 Rapid growth could bring a host of issues such as environmental protection problems infrastructure development demands and an increase in home site demands The demand for fresh water seems to be the biggest challenge over the next decades Florida faces a projected daily water shortfall of one billion gallons a day by 2030 according to the DEP The most critical water shortage will be in the Orlando area where five central Florida counties are predicted to have a shortfall of 250 million gallons per day by 2030

Florida obtains much of its drinking water from the Floridan and Biscayne aquifers as well as from surface water from Lake Okeechobee and other lakes but population increases have begun to strain available resources The state has built 120 desalination plants more than three times as many as any other state Additionally an electrodialysis reversal plant in Sarasota is the largest of its type in the

world and a nanofiltration plant in Boca Raton is the largest of its type in the western hemisphere The average Floridian uses about 158 gallons per day Still demand has outstripped supply in most areas of the state

Florida Cities with Unhealthy Drinking Water

The following two cities in Florida have been rated in the top ten of have drinking water with unhealthy levels of chemicals and contaminants as reported by a study conducted by the EPA

Ranked 1 PENSACOLA

Analysts say it has the worst water quality in the country Of the 101 chemicals tested for over 45 were discovered Of those 45 21 were discovered in unhealthy amounts The worst of these were radium-228 trichloroethylene tetrachloroethylene alpha particles benzene and lead

Ranked 10 JACKSONVILLE

Twentythree different toxic chemicals were found in Jacksonvilles water supply The chemicals most frequently discovered in high volumes were trihalomethanes that consist of four different cleaning agents one of which is chloroform Chemicals like arsenic and lead were also detected at levels exceeding health guidelines

To protect and provide adequate clean drinking water in Florida it will take a number of major infrastructure developments that will result in increased water costs

WASTEWATER TREATMENT

As a state Florida treats 25 billion gallons of wastewater on a daily basis in over 2000 wastewater treatment plants As Floridas population has grown its sewage treatment plants have struggled to keep pace Much of the states wastewater infrastructure is nearing the end of its useful life This issue was underscored by the fact that over 100 million gallons of sewage overflowed at utility plants across Florida after Hurricane Irma hit in 2017 In the future homeowners hooked up to municipal systems can expect to incur higher user fees to pay for infrastructure development In addition treatment plants will be required to meet more stringent pretreatment discharge regulations established by the EPA

Some homeowners with onsite wastewater treatment systems commonly referred to as septic tanks may need to upgrade their system to what is called a performance based treatment system PBTS

A PBTS is defined by the Florida Department of Health FDOH as a specialized onsite sewage treatment and disposal system designed by a professional engineer with a background in wastewater engineering licensed in the state of Florida using appropriate application of sound engineering principles to achieve specified levels of CBOD₅ carbonaceous biochemical oxygen demand TSS total suspended solids TN total nitrogen TP total phosphorus and fecal coliform found in domestic sewage waste to a specific and measurable established performance standard

Performance Based Treatment Systems PBTS

There are three levels of PBTS

Secondary treatment ST An ST refers to a device that cleans the wastewater before it goes to an absorption field Usually this treatment device is installed

downstream of the septic tank and treats the liquid effluent

Advanced secondary treatment AST AST units percolate effluent down through a medium such as peat moss or a synthetic material

Advanced wastewater treatment AWT An AWT system increases effluent treatment by introducing chlorinators UV lights and/or recirculation pumps

Homeowners are responsible for maintaining a PBTS in accordance with the laws of Florida The FDOH requires the following

A valid operating permit

A maintenance contract between the homeowner and an approved maintenance entity for the system

Lab samples to be submitted by the maintenance entity every six months for residential systems and every three months for commercial systems Different sample levels are required depending on the performance standards required by the of PBTS

SOLID WASTE MANAGEMENT

Both federal and state governments have enacted the Resource Conservation and Recovery Act RCRA that deals with the disposal of solid waste The federal rules are administered by the EPA and the state rules are administered by the DEP Solid waste is defined as any

Garbage refuse sludge or other discarded material

Liquid semisolid or contained gaseous material

On average each Floridian generates approximately 10 pounds of waste per person per day The traditional method of solid waste management is to collect and transport waste to bury in landfills or transport to other communities The term given to this type of operation is removal and disposal As the population increases landfills reach capacity and new facilities must be built which are very costly This method is not sustainable Therefore in Florida there is a focus on sustainable waste management that deals with waste avoidance minimization and recycling Sustainable waste management aims to address the longterm consequences of traditional waste disposal methods

Wetland Issues

There are nine million acres of wetlands throughout the state of Florida that help filter dirt and pollutants and provide home to rare wildlife. The wetlands can also store vast amounts of water to protect communities against flooding. Wetlands are the first line of defense against flooding but they are dwindling.

WETLANDS MANAGEMENT

Since Florida became a state, total wetland area has decreased by approximately 44%. From 1985-1996, Florida lost more than 260,000 acres of freshwater wetlands. Wetlands are some of the most productive and diverse ecosystems on the planet, providing home to a variety of plants and animals.

Florida wetlands are defined as those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support and under normal circumstances support a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial or possess characteristics that are associated with reducing soil conditions.

Wetlands include marshes, swamps, bogs, and similar areas populated with a variety of vegetation. For years, wetlands were viewed as low-valued land that needed to be drained for uses that are more productive. However, today it is understood that wetlands provide many important environmental functions that are lost when they are converted.

Clean Water Act

Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the United States. The goal of this section is to restore and maintain the chemical, physical, and biological integrity of the nation's waters that include all rivers, streams, lakes, wetlands, and coastal waters. Florida passed similar legislation in 1984 known as the Warren S. Henderson Wetland Protection Act. In addition, many local governments have developed their own wetland protection programs. The majority of these programs have focused on real estate development activities.

EVERGLADES PROTECTION INITIATIVES

The Everglades is a tropical wetlands system that begins near Orlando with the Kissimmee River and discharges into Lake Okeechobee. Water leaving the lake flows southward to Florida Bay. Of the original 3,000,000 acres of the Everglades, the northern 1,000,000 acres were designated as the Everglades Agricultural Area (EAA). Today, most of this land is used to raise sugarcane. The southern 1,500,000 acres were dedicated as the Everglades National Park. The remaining 500,000 acres located in the middle of the Everglades became a water conservation area with a system of canals, dams, and dikes used to control the flooding in large Florida cities. One out of every three Floridians, eight million people, rely on the Everglades for their water supply.

The Everglades Forever Act

The Everglades Forever Act is a Florida law passed in 1994 designed to restore the Everglades.

The law recognized that the Everglades ecological system is endangered as a result of adverse changes in water quality and in the quantity, distribution, and timing of flows and therefore must be restored and protected.

The Everglades Forever Act requires the state to

Restore and protect the Everglades ecological system

Proceed expeditiously with implementation of the Everglades program

Reduce excessive levels of phosphorus

Pursue comprehensive and innovative solutions to the issues of water quality water quantity hydro period and invasions of nonnative species that affect the Everglades ecosystem

Expedite plans and programs for improving water quantity reaching the Everglades

Achieve the water quality goals of the Everglades program through the implementation of storm water treatment areas and best management practices

The Comprehensive Everglades Restoration Plan

The Comprehensive Everglades Restoration Plan CERP is the plan enacted by the US Congress for the restoration of the Everglades ecosystem in southern Florida When originally authorized in 2000 it was estimated that CERP would cost a total of 82 billion and take approximately 30 years to complete Estimates that are more recent indicate that the plan will take approximately 50 years to implement and would cost approximately 163 billion more than originally thought plus additional adjustments for inflation

The goal of CERP is to capture fresh water that now flows unused to the Atlantic Ocean and the Gulf of Mexico and redirect it to areas that need it most The majority of the water will be devoted to environmental restoration and reviving dying ecosystems The remaining water will benefit cities and farmers by enhancing water supplies for the South Florida economy

Coastal and Shoreline Issues

Coastal communities in Florida face constant challenges from shoreline erosion Although erosion is a natural coastal process many valuable resources border Floridas coastline Shorelines need protection from damage caused by intense storms wave erosion and sealevel rise

SHORELINE STABILIZATION

In Florida seawalls jetties and other structures are used to stabilize the shoreline Also shoreline structures are built to alter the effects of ocean waves currents and sand movement Some structures are even built to redirect rivers and streams The common term used to describe these types of structures is coastal armoring

The DEP regulates the construction of seawalls riprap and other shoreline stabilization structures in order to protect

Surface water quality

Beach and dune systems

Upland property along the shoreline

Florida state law requires property owners to obtain a permit for any construction seaward of the coastal construction control line

State law defines the land seaward of the coastal construction line as land that is subject to 100year storm surge storm waves or other unpredictable weather conditions

Florida state law allows coastal armoring under the following conditions

If the structure is vulnerable to erosion in accordance with the model described in the Erosion Due to High Frequency Storm Events report published by the University of Florida in November 1995

The coastal armoring will not result in complete loss of beach access without providing alternative access The construction will not result in significant adverse impacts to beach and dune systems

Homeowners planning to build a shoreline stabilization project should check with the DEP prior to construction to determine if a permit is required Any activity conducted without a required permit is considered a public nuisance and may be required to be removed

FLORIDA BEACH AND SHORE PRESERVATION ACT

Floridas beaches are the primary attraction for the approximately 20 million tourists to the state each year Both tourists and residents come to the beaches to relax and enjoy the sights and sounds of natural beauty Others visit the beaches and nearby waters to engage in boating fishing diving and other recreational activities Floridas beaches are an integral part of the states economy

The beach and dune system is the first line of defense against storms because it acts as a buffer between the storm waves and coastal development or infrastructure During storms waves encounter the beach and dunes prior to reaching upland property therefore absorbing wave energy and reducing the damage suffered to upland structures

The Coastal Construction Control Line

The purpose of the Florida Beach and Shore Preservation Act is to preserve and protect Floridas beach and dune systems The Coastal Construction Control Line CCCL program one of three interrelated components of the Act protects the beach and dune system from imprudent upland construction that could weaken damage or destroy the integrity of the system

The CCCL line defines the landward limit of the DEPs authority to regulate construction Control lines are not setback lines or lines of prohibition New

construction as well as additions remodeling and repairs to existing structures are allowed seaward of the control line however such structures and activities unless exempt by rule or law require a CCCL permit from the DEP

The remaining two components contained in the Act are the Beach Erosion Control Program that provides for the restoration and maintenance of critically eroding beaches and the Joint Coastal Permit Program that protects the shoreline from activities that could contribute to erosion water pollution or habitat degradation

Miscellaneous Issues

A number of other issues fall into the category of environmental protection and are being dealt with in Florida in various ways

SOLAR ENERGY DEVELOPMENT

Florida has low electricity costs compared with other states which makes individual solar investment less attractive However solar energy is the states most abundant energy resource and solar power in Florida has been increasing as the cost of solar power systems using photovoltaics PV has decreased in recent years Florida ranks ninth nationally in solar resource strength according to the National Renewable Energy Laboratory

In 2009 Florida Power Light FPL built the states first solar power plant the FPL DeSoto Next Generation Solar Energy Center At the time the 25MW plant was the largest of its kind The states largest solar plant is the 75 MW FPL Martin Next Generation Solar Energy Center in Martin County In 2018 FPL plans to install 25 million panels at eight new solar energy centers solar farms located around the state Together the projects will generate an estimated net lifetime savings of more than 39 million for FPL customers

Babcock Ranch

Babcock Ranch is a new Florida community that eventually will include 19500 singlefamily and multifamily homes on nearly 18000 acres Developers claim it will be the worlds first solarpowered town and the most sustainable community in the United States Babcock Ranch is located in Punta Gorda about 10 miles east of Fort Meyers Over 350000 solar panels will be installed at the FPL Babcock Ranch Solar Energy Center to produce enough electricity to power a community of 50000 people Babcock Ranch is designed towards sustainability by building its own water system wastewater facility and graywater irrigation system Half of Babcock Ranchs total footprint will be dedicated to parks lakes and hiking trails

Solar Farms

The installation of solar farms is not without its environmental protection issues Solar farms require large swaths of land that range from 100 to 500 acres and encroach on wildlife habitation To prevent any conflicts between Floridas clean energy future and the future of wildlife solar farm operators homeowners and government authorities need to work together to protect important habitats

DOCKS

The DEP regulates the construction of docks in order to protect habitats and water quality of surface waterbodies Therefore a permit is usually needed from the DEP prior to construction However some docks may be permitexempt due to their size and location

A permit for the construction of singlefamily docks may also be required by the US Army Corps of Engineers and county or municipal governments Local jurisdictions

typically impose more stringent requirements on dock construction than the DEP. Local regulations may also impose restrictions on vessel length and vessel draft particularly in artificially created waterways where such limitations are necessary to maintain safe navigation.

Dredge and Fill Permitting

The DEP regulates dredging and filling operations in order to protect the environment. Most residential dredging and filling by waterfront property owners requires a permit from the DEP. If the proposed activities are located on state-owned submerged lands, written authorization to use these lands may also be required from the DEP. Both the permit and authorization, if required, must be obtained prior to construction.

Dredging refers to any type of excavation conducted in wetlands or other surface waters.

Dredging includes digging, pulling up vegetation by the roots, leaving vehicular ruts, or any other activity that disturbs the soil. The following single-family waterfront property owner projects are classified as dredging:

Filling a house pad, septic tank, drainfield, driveway, or lawn.

Removing trees or other vegetation by pulling out the root ball.

Installing a fence.

Placing sand along the edge of a waterbody for a beach.

Constructing a boat dock.

Placing materials along a shoreline to create a seawall or riprap.

Dredging in a waterway to provide new boating access.

Dredging in a wetland to create a pond.

Dredging a ditch to drain property.

The following dredge and fill activities are exempt from DEP permitting:

Installation and repair of mooring pilings at private docks.

Installation of private docks of 1000 square feet or less of surface area over

waters 500 square feet or less when conducted in an Outstanding Florida Water

Construction of seawalls riprap or docks in manmade waterways

Replacement or repair of existing docks

SPECIES PROTECTION

Floridas endangered species policy involves the identification and protection of endangered and threatened animal and plant species Policies are implemented and enforced at the state and federal levels of governments

Endangered Species Act

Florida has 87 endangered species and 37 threatened species listed under the federal Endangered Species Act ESA

Endangered species Animals or plants in danger of extinction within the foreseeable future throughout all or a significant portion of its range

Threatened species Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

The Florida Fish and Wildlife Conservation Commission FWC is authorized to post rewards to persons responsible for providing information leading to the arrest and conviction of persons illegally killing wounding or wrongfully possessing any endangered or threatened species

Species Given Special Protection

With the efforts of the FWC private individuals environmental groups and corporate entities the following species have been given special protection under federal and state regulations

American alligators Alligators residing throughout the waters of the South came face to face with the threat of extinction in the 1950s Today there are over one million alligators roaming the waters of Florida

Brown pelican The US Fish and Wildlife Service first placed the brown pelican the worlds smallest pelican species on the endangered species list in 1970 Due to the use of the insecticide DDT in the 60s and 70s coupled with the hunting of the birds for their feathers the brown pelican once faced the threat of extinction A ban on the use of DDT in 1972 led to a dramatic increase in the birds population numbers and by 2009 there were an estimated 650000 brown pelicans throughout their nesting range

Eastern indigo snake The eastern indigo snake is classified as a threatened species by the FWC Taking of eastern indigo snakes is prohibited by the ESA without a permit Take is defined as an attempt to kill harm harass pursue hunt shoot wound trap capture collect or engage in any such conduct Penalties include a maximum fine of 25000 for civil violations and up to 50000 and/or imprisonment for criminal offenses if convicted

Florida black bear In 1974 the Florida black bear was classified as being threatened after it was reported that only 300 or so bears still lived throughout the state In 2012 after decades of hard work by conservationists to increase the population Floridas largest land mammal was finally removed from the endangered species list Biologists estimate that the current population of black bears

residing in Florida is close to 4000

Florida panther The Florida panther is no longer on the brink of extinction as it was in the 1970s However despite gains over the past few decades biologists estimate there are still only 240 panthers left

Key deer The Florida Keys are home to many unique animals including the worlds smallest whitetailed deer commonly referred to as the key deer In the 1940s the key deer population was less than 50 In 1957 the National Key Deer Refuge was established which helped to nurse the population back to a healthy level Today estimates put the number of deer living in the Keys at somewhere between 700 and 800

Manatees Manatees were designated as Floridas state marine mammal in 1975 and first listed as federally endangered in 1966 Once numbering just a few hundred today the manatees total population is more than 6600

Smalltooth sawfish At one time the smalltooth sawfish roamed the Atlantic coastline from New York to Florida Now these 10 to 18 feet fish are found only in the waters around Florida

MANGROVE PROTECTION

Mangroves are trees or bushes usually grown between the high water mark and mean low tide There are over 555000 acres of mangroves in Florida Of this total over 80 are under some form of government or private ownership and set aside for conservation purposes Mangroves play important ecological roles as a

Habitat for various species of fish mammals birds and reptiles

Shoreline stabilization and storm protection system

Filter and protection for water quality

Floridas mangrove forests provide nursery support to sport and commercial fisheries activities Through a combination of functions mangroves contribute to the economies of many coastal counties in the state

Solar panel photo created by wirestock www.freepik.com

Mangrove Trimming and Preservation Act

Mangroves are protected by the state of Floridas Mangrove Trimming and Preservation Act Homeowners should know the following facts regarding the law

No herbicide may be used for the purpose of removing leaves of a mangrove

No mangrove may be trimmed below six feet

One cannot legally trim below the prop root insertion on the trunk

Mangroves over ten feet in height must be trimmed by a licensed professional

A maximum of 25 of trees may be trimmed in any given year regardless of tree height

Mangrove trimming is best done in late spring just as trees are flowering and fruiting is minimal

The state recognizes only certified arborists certified environmental professionals and wetland scientists as qualified trimmers

Trim laws are strictly enforced and any homeowner wishing to prune mangroves should seek professional assistance A few years ago a suit filed by the DEP in Charlotte County cost one homeowner 250000 for reckless trimming

ARCHEOLOGICAL SITES

Florida has a rich history of human habitation that dates back thousands of years The Division of Historical Resources under the Department of State is responsible for preserving and promoting Floridas historical archaeological and folk culture resources The direct regulation of activity affecting archaeological sites usually occurs at the local levels of government

Many cultural resources are held and protected by the state under public ownership However private landholders own significantly more resources and are also able to preserve these tangible remains of Floridas past for the future

Archeological Site Protection Programs

The Division of Historical Resources supports a number of programs that encourage the protection of archeological sites on private lands such as

State archaeological landmarklandmark zone designation Under the provisions of FS 26711 the Division of Historical Resources can designate archaeological resources on private property as an archaeological landmark or landmark zone to recognize the significance and increase legal protection of privately owned archaeological sites under state law Often without a state archaeological landmark or landmark zone designation an owners only legal protection against illegal or unwanted digging is the trespass law With a state designation a permit is required from the Division to conduct field investigation legally An owner may take action against nonpermitted illegal digging An owner must give written consent to designate their property as a state archaeological landmark or landmark zone A designation does not convey ownership interest

Land trust Land trusts are private nonprofit organizations that protect valuable natural and cultural resources through land acquisition

While there is no one program carried out by all land trusts the work they do involves private lands Their objective is to achieve permanent preservation of lands having at least one of the following qualities natural historic cultural agricultural recreational or scenic significance

Registry program A registry program recognizes an owners protection of historic or archaeological sites Registration is voluntary and nonbonding It is an agreement that can be canceled by either party at any time Registration involves neither payment nor receipt of funds Some registry programs also provide assistance in site management and education Through a registry program the owner will usually receive a certificate or plaque that recognizes the importance of the owners site There are registry programs at national and state levels The National Register of Historic Places is the most prominent The state of Florida has several registry options including a landmarks program and the Florida Site Steward Agreement

Conservation easements Broadly applied a conservation easement is a legal agreement a property owner makes with a nonprofit or government organization to protect a cultural or natural resource on their property Depending on the resource conservation easements are known by several different names For example

An agricultural easement would protect a family farm

A conservation easement might be used to protect an historic building or archaeological site

Along with tax benefits and community benefits conservation easements are uniquely tailored to meet the needs of the individual property owner They allow property owners to protect specific resources on their property while retaining ownership An owner can choose which portions of the property they wish to protect and which to exclude from protective covenants of the easement

SITE STEWARDSHIP PROGRAMS

The Florida Bureau of Archaeological Research has developed the following three programs

Site stewardship agreements By signing the site steward agreement a property owner agrees to notify the state prior to initiating activities that may have a negative impact on the site or to report destructive acts such as dumping unauthorized digging or environmental degradation The site stewardship agreement includes a statement of commitment by the state to provide guidance and technical assistance in site preservation The agreement may allow regular site visits by a state archaeologist for the purpose of evaluating the site for success of the agreement

and to offer assistance in site management

Stewardship volunteer programs The Bureau of Archaeological Research initiated stewardship volunteer programs for the maintenance and protection of archaeological sites and historic buildings. Volunteers can be used on any site in need of stewarding. The state's role in this initiative is to assist property owners in coordinating site volunteers. Site steward volunteers have the opportunity to assist professional archaeologists in various site maintenance activities. They may commit to a long-term monitoring agreement involving site visits every few months to record damage or any other management concern.

Sitewatch programs The sitewatch program is a volunteer-based initiative that establishes site monitors. Monitors agree to regularly visit and maintain a site. Monitors routinely fill out a site monitoring form to alert the site owner and Bureau of Archaeological Research of site management needs. The monitors indicate different types of management concerns such as looting, tree falls, and trash dumping on the forms. The form is then sent to the owner. Typically, the owner and the site monitors will work together to maintain the site.

Environmental Protection Issues Disclosure

For the past 30 years, conducting environmental due diligence has been a major part of commercial real estate transactions. Presently, however, residential buyers also want to know all they can about potential environmental problems before they buy. Most states have laws in place requiring sellers to disclose known property condition hazards.

In Florida, a seller of residential property is required to disclose all facts known to a seller that materially and adversely affect the value of the property that are not readily observable by a buyer. Typically, a licensee will provide the appropriate form for the seller to complete.

A preprinted disclosure form may not address every significant issue that is unique to the property. If a seller needs more space to provide additional information, they should complete an addendum.

The following sections on a seller's property disclosure form are of particular importance regarding environmental protection issues:

Environmental This section deals with the disclosure of lead-based paint, asbestos, mold, urea formaldehyde, radon, methamphetamine, defective drywall, storage tanks, mangroves, and archeological sites located on the property.

Plumbing This section covers drinking water sources, past problems with water quality, the type of wastewater treatment located on the property, plumbing leaks, and polybutylene pipes on the property.

Sinkholes When an insurance claim for sinkhole damage has been made by the seller and paid by the insurer FS 62770732c requires the seller to disclose to the buyer that a claim was paid and whether or not the full amount paid was used to repair the sinkhole damage

Water Intrusion This section deals with drainage flooding coastal construction control lines and the possession of an elevation certificate

By law the disclosure of the physical conditions of a property is squarely placed on the seller However when a transaction occurs under fraudulent conditions everyone involved gets some share of the blame Over the years there seems to be an uptick in errors and omissions claims on real estate agents insurance policies for being complicit in failing to disclose a defect or condition that was judged to be a material item As a licensee if you detect something that appears to be defective or a source of a potential problem you should get the issue resolved prior to the close of the transaction

NOTES

CHAPTER SIX

Homeowners and Flood Insurance

LEARNING OBJECTIVES

Identify important terms and types of policies

Discuss typical homeowners policy coverage

Explain several policy features

Identify types of supporting insurance coverage

List reasons policies are cancelled

Discuss flood insurance

KEY TERMS

Actual Cash Value

Additional Living Expense ALE

Admitted Insurance Company

Cancellation Notice

Catastrophic Ground Cover Collapse

Deductible

Dwelling coverage

Endorsement

Flood Insurance

Forced Place Insurance

Homeowners Insurance

Replacement Cost Value

Sinkhole

Surplus Lines Insurance

Underwriting

Windstorm Coverage

Terms to Know

The following terms and definitions are important to know when discussing insurance

Actual cash value amount Refers to what it would cost to replace an item with the deduction of depreciation due to age and usage

Additional living expense ALE Covers extra cost you incur when your home is deemed unlivable and is being restored This includes reasonable payments for lodging food clothing and other associated expenses This is also referred to as loss of use coverage

Admitted insurance company An insurance company that has been approved by a states insurance department

Deductible amount The amount of money a policyholder must pay before they can collect money from the insurance company for a covered loss In Florida a homeowners insurance policy has two deductibles one for hurricane damage and one for all other perils which is generally a flat amount

Dwelling coverage Coverage for a home and its attached structures This is based on the cost to rebuild the home and does not include the value of the land This means the amount paid for a home in a real estate sale could be different from the dwelling coverage amount

Endorsement An amendment or addition to an existing insurance contract which changes the terms of the original policy Endorsements may also be referred to as riders

Flood insurance Available from the federal government under the National Flood Insurance Program It is excluded under homeowners policies

Forced place insurance Insurance that a lien holder places on a property to provide coverage in the event the borrower allows coverage to lapse

Replacement cost value Amount it would cost to replace an item based on current market prices meaning depreciation would not be deducted However the cost reimbursed would not exceed the maximum dollar amounts shown on the policyholders declarations page

Surplus lines insurance Insurance that can be purchased from an insurer that is not licensed in the insureds state though the surplus lines insurer will still be licensed in the state where it is based

Property Insurance Overview

The Great Fire of London took place in September 1666 The fire began on Pudding Lane in the house of the kings baker When the fire finally burned out over 370 acres in London were in ashes More than 13000 buildings were lost and many of Londons businesses lost everything Shortly after the fire business owners knew they needed some type of protection from such a loss So in 1667 the first insurance company was started and was given the apropos name of The Insurance Office Over time other insurance companies were started and as the old saying goes The rest is history

The state of Florida is no stranger to property loss due to floods hurricanes forest fires and sink holes As a real estate licensee your clients expect you to have a certain level of knowledge regarding property insurance to help them in

selecting and understanding a policy This content certainly will not provide the knowledge required of a licensed insurance agent but it will give you a basic working understanding of homeowners and flood insurance As always its wise to recommend to your clients that they seek information from an insurance specialist when specific questions arise

PURPOSE OF INSURANCE

The main purpose of homeowners insurance is to protect the owner from loss Typically a policy will cover costs to

Repair or replace structures

Repair or replace personal property

Allow for living expenses while the owner waits for the home to be repaired

Cover personal liability claims

Cover medical payment to injured parties

Homeowners insurance also is used to insure rental condominium and modular home units Florida law does not require homeowners insurance but most people get coverage to insure their home since it is typically their largest investment In addition some government entities require liability coverage for homes with certain pets or a swimming pool Lending institutions also require insurance coverage on a home when a mortgage is granted In addition flood insurance may be necessary if the property is located in a special flood zone

Homeowners insurance called property and casualty insurance PC in the industry is big business PC insurers paid out 22 billion in property losses related to catastrophes in 2017

The following are some industry facts

Homeowners claims related to wind or hail are the most frequent

The costliest claims are related to fire and lightning

About 1 in 15 insured homes has a claim each year

About 1 in 35 insured homes has a property damage claim related to wind or hail each year

About 1 in 50 insured homes has a property damage claim caused by water damage or freezing each year

About 1 in 230 insured homes has a property damage claim due to theft each year

About 1 in 285 insured homes has a property damage claim related to fire and lightning

About 1 in 1010 homeowners policies has a liability claim related to the cost of lawsuits for bodily injury or property damage that the policyholder or family members cause to others

Types of Policies

There are many different types of homeowners insurance policies available. The type of policy coincides with the type of structure to be insured, coverage availability, and how the structure is occupied.

H01 Basic Coverage Form: This policy is the most basic policy available and is typically purchased by mortgage lenders when the borrower's insurance is cancelled.

H02 Broad Coverage Form: This policy provides the same coverage as H01 but includes some additional protection.

H03 Special Homeowners Form: This policy is the most common type of homeowners insurance coverage.

H04 Renters Insurance Form: This policy is for tenants' personal property and does not provide coverage for the building.

H05 Comprehensive Form: This policy provides more coverage than H03 but is rarely sold anymore.

H06 Condominium Owners Insurance Form: This policy is for condominium unit owners.

H07 Manufactured Mobile Home Insurance Form: This policy covers damage to mobile homes.

H08 Older Home Form: This policy provides only actual cash value instead of replacement costs. It is usually reserved for historic or architecturally special homes.

Insurance Packages

The most common insurance packages available to Florida homeowners, condominium unit owners, and mobile home owners typically provide coverage for

Accidental discharge or overflow of water or steam

Aircraft

Explosion

Falling objects

Fire or lightning

Freezing

Riot or civil commotion

Smoke

Sudden and accidental damage from artificially generated electrical current

Sudden and accidental tearing apart cracking burning or bulging

Theft

Vandalism

Vehicles

Volcanic eruption

Weight of ice snow or sleet

Windstorm or hail

Florida law requires insurers to provide policyholders with the option to exclude coverage for personal property and windstorm damage if the policyholder personally writes a statement that they do not want the coverage

Typical Homeowners Policy Coverage

The standard homeowners insurance policy is divided into the following parts

Coverage A Dwelling

Coverage B Other Structures

Coverage C Personal Property

Coverage D Loss of Use/Additional Living Expenses

Coverage E Personal Liability

Coverage F Medical Payments to Others

Additional Coverages

Exclusions

The first three bullets above apply directly to the property. Let's look at those sections first.

COVERAGE A DWELLING

Coverage A Dwelling coverage helps pay for damage caused by perils to the home. Most policies provide special limits to some personal property such as cash, antiques, firearms, jewelry, furs, and electronics. A property owner must add additional coverage for these types of items. Some policies may even cover dependent children while they attend college.

Condominium Insurance

In a condominium, there are two levels of property insurance coverage operating. One is the association's policy, and the other is the unit owner's policy.

H06 Condominium Owners Insurance Form covers personal property and certain building items not insured by the association's policy. It also includes personal liability coverage. A condominium owner's policy usually covers the following items:

Appliances

Built-in cabinets and countertops

Electrical fixtures

Floor, wall, and ceiling coverings

Water filters

Water heaters

Window treatments

If an item is covered by both the associations and unit owners policy the associations policy should pay first Condominium associations may assess individual unit owners for damage to the commonly owned areas that are not covered by the associations policy A unit owners policy may provide limited coverage for such a loss assessment The extent and amount of loss assessment coverage varies by insurance company but all admitted carriers those issued a Certificate of Authority by the Office of Insurance Regulation are required to include a minimum of 2000 with a deductible no greater than 250

Condominium owners are strongly urged to review coverage to fully understand their liability An assessment by the condominium association for the associations policy deductible is usually not covered by a unit owners assessment coverage

Mobile Home Insurance

Mobile home policies usually dont provide the same broad coverage as a standard homeowners policy Typically there are three settlement options available on a mobile home policy All three are subject to the limits shown on the policy

Actual cash value policy The insurer will pay the amount needed to repair a home after depreciation is subtracted

Face value policy The insurer will pay the policys face amount in the event of a total loss This type of policy is often offered on new model homes

Replacement cost policy The insurer will pay for the replacement of a damaged or destroyed home without deducting for depreciation

Renters Insurance

Anyone who rents a home or apartment needs renters insurance to cover personal property for loss or damage This insurance also provides liability protection in the event someone is hurt while visiting Essentially a renters policy is similar to a homeowners policy except that there is no coverage for the actual structure The structure itself should be covered by the landlords policy

COVERAGE B OTHER STRUCTURES

The second of the property coverages Coverage B Other Structures deals with other structures located on the property The term other structures refers to buildings or structures not attached to the home such as

Barns

Carports

Detached garages

Driveways

Fencing

Gazebos

Greenhouses

Guest houses

Patios

Pool houses

Retaining walls

Sheds

Swimming pools

Most insurance companies will automatically include other structures coverage that is 10% of the dwelling coverage. For example, if the policyholder has \$300,000 in dwelling coverage, they might have up to \$30,000 in coverage for the fence, shed, and other unattached structures on the property.

COVERAGE C: PERSONAL PROPERTY

The third type of property coverage, Coverage C: Personal Property, deals with the loss of personal property. Furniture, clothes, sports equipment, and other personal items are covered if they are stolen or destroyed by fire, hurricane, or other insured disasters. The coverage is generally 50% to 70% of the insurance the policyholder has on the structure of the house. Personal property stored off-premises may also be covered. In addition, trees, plants, and shrubs are generally covered for about \$500 per item. Trees and plants will not be covered if they show disease or have been poorly maintained.

Homeowners insurance policies usually have special limits of coverage on personal

items such as cash jewelry silverware guns antiques boats and other luxury items Full coverage can be obtained by paying an additional premium

Homeowners insurance provides more than coverage of property Lets now take a look at nonpropertyrelated homeowners insurance coverage

COVERAGE D ADDITIONAL LIVING EXPENSE ALE

Homeowners policies provide Coverage D Additional Living Expense ALE that pays extra expenses if the homeowners are unable to live in the home while it is being repaired Most policies also provide this coverage when a government authority prohibits the use of a residence due to neighboring homes being damaged and thereby restricting access The items typically covered are

Food

Housing

Telephone

Relocation

ALE does not cover the mortgage groceries or utility expenses These are not expenses over and above the normal expenses A policy may designate a specified limit of coverage for additional living expenses but the policy does not obligate the insurance company to pay this amount up front or in full if the owner suffers a total or partial loss For this reason the homeowners must keep receipts for additional living expenses and submit them to their insurance company for reimbursement Policies generally offer ALE coverage without a deductible It applies only to the residence in the event of a loss

COVERAGE E PERSONAL LIABILITY

Coverage E Personal Liability protects the homeowners against financial loss if they get sued for causing personal injury or property damage to another person Usually most homeowners policies provide a standard amount of liability coverage up to 100000 per occurrence However insurance experts recommend a minimum level of at least 300000 Coverage applies only to negligence The homeowners are not covered for intentionally causing an injury or damage

COVERAGE F MEDICAL PAYMENTS TO OTHERS

If someone is injured on the homeowners property medical expenses may be paid by the insurer for items such as reasonable medical charges surgeries Xrays dental costs professional nursing services prosthetic devices and funeral services Coverage F Medical Payments to Others does not apply to the homeowners medical expenses

ADDITIONAL COVERAGE

A homeowner can purchase additional coverage if they need a higher liability than what is offered in the standard policy Some insurance companies allow the owner to pay an additional premium on the policy to take care of the additional coverage Other companies require the homeowner to take out an additional policy

Most insurance policies exclude coverage for losses resulting from earthquakes

Therefore coverage against losses from earthquakes usually requires a separate policy Some states with risk of loss from earthquakes have government mandated insurance plans that provide earthquake coverage to property owners who are unable to obtain insurance through the voluntary market

Umbrella Liability Coverage

Umbrella liability coverage expands the homeowners liability protection above that contained in the homeowners policy An umbrella policy defends against libel slander and invasion of privacy above the standard homeowners insurance and protects the homeowner against a large judgment that could cause financial ruin The more regular insurance coverage a policyholder has the cheaper the umbrella policy will be Most insurers also sell personal umbrella liability policies

EXCLUSIONS

A typical homeowners policy does not cover all losses Exclusions include

Damages caused by the policyholders car

Damages arising from business or professional activities

Damages intentionally caused by the policyholder

Injuries suffered by members of the policyholders household

Policy Features

Now that we have looked at the basic coverages offered by a typical homeowners insurance policy lets explore some of the fine print topics regarding policies

ACTUAL CASH VALUE VERSUS REPLACEMENT COST

There are two options available when purchasing insurance on a home The homeowner can insure the home for the actual cash value or the replacement cost There is a very clear distinction between the two Both types of policies are available in Florida

Actual cash value Actual cash value is the amount needed to repair or replace an item less depreciation For example the insurance company would deduct for the age and condition of a damaged 15yearold roof with a 20year life expectancy In this scenario the homeowner has used 15 of 20 years expectancy The homeowner would then be paid only for the remaining five years value The base policy for most companies is for actual cash value coverage

Replacement cost Replacement cost is the amount needed to repair or replace the damaged property with materials of similar kind and quality without deducting for depreciation For example if the homeowner suffered a loss of a freezer that was purchased in 2016 for 1200 they would receive the amount it would cost to replace

the freezer with one of the same kind and quality as the original Most replacement cost policies require the policyholder to carry limits to meet a certain percentage of the replacement value normally 80 at all times If the policyholder fails to carry the correct amount of insurance coverage they might be responsible for a percentage of a partial loss Replacement cost value policies carry higher premiums

Underwriting

In most instances an insurer must charge the rates filed with the OIR Underwriting guidelines vary between insurers They may refuse to insure an individual that owns certain animals Most insurers believe the presence of certain animals on the premises increases liability risk The credit and loss history of the applicant is also considered If the insurer makes an underwriting decision based on adverse information contained on a credit report it must furnish the insured with a copy of the report or provide the name address and telephone number of the reporting agency

Insurers hire their own inspectors to inspect the condition of a property prior to the original issuance or renewal of a policy This is part of the underwriting process Florida law does not address who an insurance company can hire for their underwriting process The Department of Financial Services would not have authority to intercede on an inspectors behalf if they were denied employment contracts with an insurer

If an insurer refuses to insure an applicant or if it decides to nonrenew or cancel an existing homeowners policy it must provide advance notice to the insured and provide the specific reason for the decision

Consent to Rate Form

By written consent of the insured the insurance company may use a rate in excess of the otherwise applicable filed rate on any specific risk This is referred to as a rating or excess rates An insurance company may not use a Consent to Rate Form for more than 5 of its personal lines policies written or renewed in each calendar year

Inflation Guard

An inflation guard endorsement gradually increases a dwellings coverage limits in order to keep the home insured at its true replacement cost So how much insurance should a homeowner have They should not rely on the purchase price of the home the amount of the mortgage loan the amount set by the property tax appraiser or the amount set by the insurance agent In order to be adequately covered a home must be insured for the amount it will take to rebuild the home at the current prices for building materials and labor costs

If a homeowner has concerns about the amount of coverage they should speak with the agent about conducting a replacement cost inspection of the home There are many types of property inspections The most common are

Underwriting inspection An insurer may require a visual inspection prior to writing a policy This inspection is done to verify information given on the application about the home and property The insurer may verify the construction of the home and whether there are potential hazards on the property such as unacceptable animals pools trampolines unrepaired steps steps without handrails etc The insurer considers whether the home is properly maintained such as overgrown weeds dead trees near the home nonoperating vehicles on the property etc The insurer decides what risks to assume or avoid If the insurer finds any insurable risks it may

refuse coverage The insurer pays for this type of inspection

FourPoint inspection If the owner is insuring an older home the insurer may require a more detailed inspection that would include the roof plumbing electrical wiring and HVAC The insured pays for this inspection

Specialized inspection An insurer may require an inspection of only one item such as the roof to determine the life expectancy The insured pays for this inspection

Mitigation inspection A policyholder may elect to have an inspection to determine the wind mitigation credits they are entitled to receive on the homeowners windstorm premium Inspectors will complete an OIRB11802 inspection form for the insured to submit to the insurance company Insurers have the right to reinspect a home to verify credit entitlements The insured normally pays for this type of inspection However if the insurer elects to reinspect a property they would pay for the inspection

Property Insurance Premium Rates

The factors used to determine insurance premium rates are

The location of the property city county and zip code

The amount of coverage on the dwelling

The fire protection class This rating ranges from 110 and is established by the Insurance Services Office A rating of Class 1 represents exemplary fire protection and Class 10 indicates that the areas firesuppression program does not meet minimum criteria

Mitigation credits These are given for certain items that help reduce hurricanewindstorm losses

Construction materials used in the dwelling such as wood frame concrete block brick etc Companies charge different premiums based on the fire resistance of the materials

Age of the home Some insurance companies charge a higher premium based on the homes age

Consistency of coverage Some insurance companies charge a higher premium if the

owner did not consistently maintain prior homeowners coverage

After the base rate is determined other rating factors are applied to determine individual surcharges and credits Also assessments currently due are added to the base rate to determine the final rate

Insurance Options

Some homeowners might find it difficult to get insurance coverage due to property location building type building materials etc The following options may be available

Florida Market Assistance Plan The Florida Market Assistance Plan FMAP was created by the Florida legislature in 1985 as a service organization designed to assist consumers in obtaining property and casualty insurance coverage from authorized insurers in the private market FMAPs online services utilize a computer database that stores information on consumers seeking insurance coverage for their property located in Florida The FMAP application matches those seeking insurance coverage with participating licensed Florida agents that may be able to write the requested insurance policy The matching insurers then call the interested party seeking coverage to determine eligibility and provide an offer where applicable Their website is www.fmap.org

Citizens Property Insurance Corporation Citizens Property Insurance Corporation CPIC was created by the Florida Legislature in August 2002 as a notforprofit taxexempt government entity Its mission is to provide insurance protection to Florida policyholders who are entitled to but are unable to find property insurance coverage in the private market CPIC is funded by policyholder premiums and if its surplus is depleted in the wake of a particularly devastating storm Florida law requires CPIC to levy assessments on most Florida propertycasualty insurance policyholders until any deficit is eliminated

Windstorm Coverage

Most homeowners insurance policies cover damage caused by windstorms hurricanes and hail unless the policyholder signs to waive the coverage Also if the home is located in the wind pool area it is likely that windstorm coverage is excluded on the regular homeowners policy The policyholder must purchase a separate windstorm policy if they want the coverage Most lenders will require a homeowner to carry windstorm coverage if they have a mortgage

Wind Pool Properties In Florida wind pool properties are located within 1500 ft of a major body of water usually a gulf or ocean When a property is in the wind pool area usually the only option for coverage is through a statesponsored insurance program

Surplus Lines

Surplus lines insurers provide coverage to consumers who cant obtain coverage from admitted companies Before turning to a surplus lines insurer the owners agent must

apply for and receive rejections from at least three admitted companies Freedom from most insurance regulation such as form and rate filings allows surplus lines companies to respond to unmet needs of customers However surplus lines carriers are not covered by the Florida Insurance Guaranty Association in the event it becomes insolvent or goes out of business If a policyholder has an unpaid claim or is due a refund of premium it may be very difficult to collect

A surplus lines policy must have stamped or written on the first page of the policy the following words

This insurance is issued pursuant to the Florida Surplus Lines law Persons insured by Surplus Lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer

Lending Institution

Most lenders that provide mortgages require the owner to purchase property insurance to protect their financial interests The mortgage holder has an interest in the dwelling until the loan is paid in full This means the owners insurance company will make claim checks for damage to the dwelling payable to both the homeowner and the homeowners financial institution The lender has a right to make sure repairs are completed The lender will inform the homeowner of its stipulations to obtain the money for repairs In some instances the lender will provide money up front for the homeowner to begin the repairs and as they are completed the homeowner will show the lender proof of the repairs and then the lender will continue to advance money In other instances the lender may allow the homeowner to provide a signed contract for the repairs and the lender will pay the contractor directly as repairs are made

Forceplaced insurance If the homeowner fails to obtain homeowners insurance the lender may purchase it for them since loan contracts usually require it This is called forceplaced insurance The premium for forceplaced coverage is very expensive The policy covers only the structure and not any personal property or the policy may cover only the loans outstanding balance Also the insured is actually the lender purchasing the policy therefore the homeowner may not have any rights to the policy even though they are billed for the premium

Credit Life Insurance

Credit life insurance may pay off the home in the event of the homeowners death The premium for this insurance will vary depending on the face amount of coverage the term of the loan and the age of the insured Certain healthrelated questions may also be asked on the application Coverage is not guaranteed A homeowner may obtain this coverage for both spouses under one contract on a firsttodie basis This means that the surviving spouse becomes the beneficiary

Builders Risk Policy

If a person plans to build they need a builders risk policy in place while the home is under construction A typical builders risk policy covers the home from the start of construction and continues until a stated time found in the policy after construction is completed Builders risk policies cover items such as the home under construction building materials machinery equipment permanent fixtures debris removal pollutant cleanup floor plans blueprints valuable records or papers landscaping etc Individuals contracting out a home can require the contractor to

obtain a builders risk policy as part of the construction contract

HomeWarranty Plans

A homewarranty plan is a service contract that can pay for unexpected repairs to the homes plumbing electrical system appliances etc during the warranty period However these plans are not a substitute for a homeowners insurance policy

Supporting Insurance Coverage

In addition to the common policies already discussed there are other types of coverage that a homeowner may need and can purchase as support for the basic coverages

SINKHOLE VERSUS CATASTROPHIC GROUND COVER COLLAPSE

In March 2013 an entire house fell into a huge sinkhole in a suburb of Tampa Large and sudden sinkholes are rare however thousands of small sinkholes appear in the US each year The most sinkhole damage occurs in Florida

In Florida insurance companies are required to provide homeowners insurance coverage that includes damage from sinkholes and it generally appears in an optional rider that comes at an additional cost Simply put a sinkhole is a land form created by subsidence of soil sediment or rock as underlying strata are dissolved by groundwater

In Florida insurance companies are also required to provide homeowners insurance coverage that includes damage from catastrophic ground cover collapse The insurance law defines catastrophic ground cover collapse in a different way than it defines a sinkhole

A catastrophic ground cover collapse is defined as geological activity that results in all of the following

The abrupt collapse of the ground cover

A depression in the ground cover clearly visible to the naked eye

Structural damage to the building including the foundation

The insured structure being condemned and ordered to be vacated by the government agency authorized by law to issue such an order for that structure

In Florida offering catastrophic ground cover collapse insurance is not an option it is required coverage This means that if a home is damaged by a sinkhole and the homeowner does not have optional coverage the insurance company is not required to pay However if the home is lost or damaged by a catastrophic ground cover collapse the insurance company must make restitution

Ordinance or Law Exclusion

If a local building ordinance or law has changed to increase the cost to repair or replace a policyholders home the insurance company does not pay that extra amount

unless the policy includes ordinance or law coverage. Complying with current building codes may require changes in design and/or building materials which could result in a policyholder paying more to rebuild the home. Admitted carriers must include an ordinance or law coverage limit of at least 25% of the dwelling coverage. Some insurance companies will allow the policyholder to reject this coverage by signing a waiver. This type of coverage is also known as code upgrade coverage or law and ordinance coverage.

Mold Coverage

Mold growth resulting from an insured peril is covered under a homeowners policy although the amount can be limited. Most insurers offer limited levels of mold-related coverage in their policies. The most common limitation is \$10,000. In some cases an insured can purchase higher limits of mold coverage for an additional premium. Other companies exclude coverage for mold-related claims.

Innocent Insured Doctrine

This doctrine holds that if one spouse is not involved in and unaware of activity in which the other spouse has engaged which nullifies an insurance contract, the innocent spouse still remains insured. For example, if a spouse intentionally damages the home in order to obtain insurance proceeds without the knowledge or consent of the other spouse, the innocent spouse aka innocent insured can still recover the insurance proceeds.

Policy Cancellation

Cancellation means the termination of an insurance policy before its normal expiration.

Common Cancellations

The most common reasons for cancellation are:

Vacant home In a vacant home cancellation, an insurance company may cancel a policy if the insured's property is found to be vacant. Most policies state that if the house is vacant for 30 days or more, a homeowner must notify the company to decide further action.

Too many claims If a homeowner has had too many claims, the insurance company may cancel the policy. It is suggested that policyholders act upon only high-value claims.

Poor payment history Poor payment of premiums makes a homeowner a target for policy cancellation. If the homeowner has not paid the policy premium by the given due date, most insurance companies will give a grace period of 30 days or less in which the homeowner can make a payment.

Cancellation Notice

In Florida, when an insurance company cancels a policy, it must provide the policyholder with a written notice including reasons for the action. Depending on the situation, the following advance notices must be provided to the insured:

During the first 90 days of a contract

The insurer must provide a 20day advance notice with certain exceptions

The insurer must provide a 10day advance notice if the premium is not paid

After the first 90 days of a contract

The insurer may cancel only for misrepresentation nonpayment of premium failure to comply with underwriting requirements a substantial change in the risk or if all policies in a given class of insureds are being cancelled

The insurer may cancel a policy with 45days advance notice if the OIR determines that the early cancellation of the policy is necessary to protect the best interests of the public or policyholders The OIR must also approve the insurers plan for early cancellation or nonrenewal

Other Cancellation Issues

Insurance companies can cancel policies for a number of reasons depending on the circumstances

Act of God claims Only under certain circumstances is it permissible for claims on property insurance policies that are the result of an act of God to be cited as the reason for cancellation The insurer must demonstrate by claims frequency or otherwise that the insured has failed to take action reasonably necessary as requested by the insurer to prevent recurrence of damage to the insured property However the insurer may raise the deductible at renewal

Daycare on premises With exceptions Florida law prevents an insurer from cancelling a homeowners insurance policy solely on the basis of operating a daycare business at the residence The insurer can cancel a policy if one or more of the following conditions exist

The insured does not carry a separate liability policy or endorsement at all times that provides liability coverage for the daycare home operations

The insured fails to comply with the daycare licensure and registration requirement

The insurer discovers any willful or grossly negligent acts or omissions or any violations of state laws or regulations establishing safety standards for daycare homes by the insured or by the insureds representatives that materially increase any of the risks insured

The insured cares for more children than allowed by law

During a hurricane If a cancellation is scheduled to take place during a hurricane the insurer is required to extend coverage until the end of the duration of the hurricane However the insurer may charge the current premium rate for the extended coverage

Mortgage company fails to pay premium If funds were available in escrow and the mortgage company failed to pay the premium in a timely manner resulting in cancellation of the policy the insurance company should reinstate coverage with no lapse if the premium is received within 90 days of the renewal date The lender should reimburse the homeowner for any penalty or fees imposed by the insurer and paid by the homeowner for purposes of reinstating the policy

Pending open claim for existing damage Currently there are no laws that prohibit an insurer from cancelling a property policy if the insured has a pending claim except upon a declaration of an emergency and the filing of an order by the Commissioner of Insurance Regulation

Premium refund timeframe When a policy is cancelled by the insurer or the insured any unearned premium must be returned to the insured within 15 working days after the effective date of the cancellation

Sinkhole claim Florida law states an insurer may not cancel any property policy on the basis of a claim for a partial loss caused by a sinkhole as long as the total of the claim payments do not exceed the current policy limit and provided the insured has repaired the structure in accordance with the engineering recommendations If the policy limits are paid the policy can be nonrenewed by the insurer

Water damage claim A single claim on a property insurance policy which is the result of water damage may not be used as the sole reason for cancellation unless the insurer can demonstrate that the insured failed to take action reasonably requested by the insurer to prevent a future similar occurrence of damage to the insured property

Policy NonRenewal

A nonrenewal is the termination of an insurance policy at its normal expiration date. Insurers must provide a specific reason in their notice to the insured if it nonrenews a policy. A nonrenewal notice must be provided at least 120 days in advance.

A policyholder may cancel their policy at any time by providing a written request. The policyholder should receive a refund of any unearned premium. However, if the policyholder cancels an insurance policy early, the company may retain 10% of the unearned premium amount. If an individual is changing insurance policies or companies, they should make sure there is no break in coverage between the two policies. This could result in the mortgage company adding the cost of a forceplaced policy to the mortgage.

Flood Insurance

Congress created the National Flood Insurance Program (NFIP) in 1968 to reduce future flood damage through floodplain management and to provide people with flood insurance through individual agents and insurance companies. The Federal Emergency Management Agency (FEMA) manages the NFIP.

Flood insurance covers direct physical loss caused by flood. In simple terms, a flood is an excess of water on land that is normally dry. The official definition used by the NFIP is:

A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties at least one of which is your property from overflow of inland or tidal waters from unusual and rapid accumulation or runoff of surface waters from any source or from mudflow.

Flood Policy

A standard flood insurance policy is a single-peril policy that pays for direct physical damage to the insured property up to the replacement cost or actual cash value of the actual damages or the policy limit of liability, whichever is less. Physical damage to the building or personal property directly caused by a flood is covered by a flood insurance policy. For example, damages caused by a sewer backup are covered if the backup is a direct result of flooding. If the backup is caused by some other problem, the damages are not covered by the flood policy.

Recently, other insurance companies have entered the flood insurance market. In some instances, a homeowner may be able to purchase flood insurance through the same insurance company that provides their homeowners coverage. A private industry policy must meet at least the requirements of policies issued by the NFIP. Flood insurance is available for the home and personal property.

Coverage under the NFIP are as follows:

Residential one-four family unit buildings and individual residential condominium units are eligible for up to \$250,000 in building coverage and up to \$100,000 in personal property coverage.

Residential buildings containing more than four units are eligible for up to \$250,000

in building coverage and up to 100000 on personal property

Nonresidential buildings are eligible for up to 500000 in building coverage and up to 500000 on personal property

Condominium associations can purchase coverage on a building that includes all the units within the building and the improvements within the units up to 250000 times the number of units within the residential building Personal property coverage on the form is limited to 100000 per building

Waiting Period

Unlike other property insurance agents who write policies under the NFIP cannot bind coverage A purchaser of flood insurance must wait 30 days from the date the application is completed and the premium presented before the policy becomes effective

Mandatory Flood Insurance Purchase Requirement

From 1968 until the adoption of the Flood Disaster Protection Act of 1973 the purchase of flood insurance was voluntary Property owners could make their own decision whether to purchase flood insurance Unfortunately the response nationwide to purchasing flood insurance voluntarily was dismal

The 1973 Act mandated flood insurance coverage for many properties For the first time regulated lending institutions could not make increase extend or renew any loan located in a participating NFIP community unless the property was covered by flood insurance Congress established this requirement because after major flood disasters it became evident that relatively few individuals in eligible communities who sustained flood damage had purchased flood insurance

Elevation Certificate

An elevation certificate EC contains information regarding a property and its risk of being flooded The EC is the form provided by FEMA to determine the risk of flooding The EC consists of four pages Pages 12 contain information regarding the property the Flood Insurance Rate Map FIRM and data pertaining to the structure Pages 34 are photos of the property and structure If a property is in a highrisk area the insurance agent will likely need an EC to determine the flood insurance premium An EC documents the elevation of the building for insurance rating purposes

There is a correlation between how high a property is above the base flood elevation BFE and the actual cost of a flood policy In a highrisk zone the higher the BFE the lower the policy will most likely be Conversely the lower the BFE the more the flood insurance policy will cost

Each of the following zones reflects the severity or type of flooding in that area

Moderate to lowrisk areas are designated with certain letter combinations

Highrisk areas that require mandatory flood insurance are designated with the letternumber combinations of A thru A99

Coastal highrisk areas that require mandatory flood insurance are designated with yet a different set of letternumber combinations

A policyholder will not need an EC if the property falls into a low to moderaterisk zone If the building is in a highrisk area the EC includes important information that is needed for determining the premium rate for flood insurance

The insurance agent will use the EC to compare the buildings elevation to the BFE The base flood is a flood with a 1 chance of occurring in any given year The BFE identifies how high the water is likely to rise also called water surface elevation in a base flood The land area of the base flood is called the special flood hazard area floodplain or highrisk zone

How to Get an Elevation Certificate

The first resource for the property owner is to ask a local floodplain manager if the propertys elevation information is on file If so the community floodplain manager is authorized to complete the EC for the property owner If the propertys information is not on file the owner might need to hire a statelicensed surveyor to obtain an EC The cost of an EC will vary significantly depending on the location and complexity of the job A surveyors cost can vary from 500 to 2000 or more

Flood Insurance Costs

The average cost of a flood insurance policy is 700 per year If the property is in a lowrisk area and needs minimal coverage the cost will most likely be much less The opposite is true if the property is in a highrisk zone and has a higher value For lowrisk homes the cost is around 450 per year Similar coverage for a highrisk area can cost more than 2500 per year

To determine whether a property is in a flood zone visit www.floodsmart.gov or navigate

to the FEMA Flood Map Service Center at www.msc.fema.gov

NOTES

CHAPTER SEVEN

Listing and Selling HUD Homes

LEARNING OBJECTIVES

Describe aspects of FHA loans including the loan process benefits and drawbacks

Discuss FHA loan programs including the 203k loans

Explain HUDs broker authorization process and home sales bidding process

Discuss closing costs and contract documents needed when purchasing a HUD home

Identify several special programs offered by HUD

List other government agencies that offer similar programs

KEY TERMS

Asset Manager AM

Energy Efficient Mortgage EEM

Federal Housing Administration FHA

FHA 203k Loan Program

Field Service Manager FSM

Home Equity Conversion Mortgage HECM

Homeownership Center HOC

Housing and Urban Development HUD

HUD Good Neighbor Next Door Program GNND

HUD Name and Address identification Number NAID

Mortgage Insurance Premium MIP

Mortgagee Compliance Manager MCM

Nonsupervised Mortgagee

SingleFamily Acquired Asset Management System SAMS

Supervised Mortgagee

Terms to Know

As with any government supported program there is a raft of dedicated terms and initials The most important ones used by FHA and HUD are covered below

Asset managers AM These individuals are responsible for the sale of HUD homes The asset managers are responsible for the marketing and sale of REO property There is one AM contractor to market HUDowned properties within a selected contract area FHA property listings and property agent contact information are available at HUDs REO listing site

Automated clearing house ACH HUD and other federal government agencies use this payment system to pay vendors for services

FHA management and marketing structure MM Since 1999 HUD has been outsourcing the disposition of its foreclosed FHA inventory under the MM contracting process MM contractors manage and market singlefamily properties owned by or in the custody of the Department

Field service managers FSM Field service managers are companies that provide property preservation and protection services consisting of but not limited to inspecting the property securing the property performing cosmetic enhancementsrepairs and providing ongoing maintenance Properties acquired by HUD are assigned to FSMs There is one contractor per geographic area for each HOC Homeownership center HOC Many of the mortgage insuring processes are centralized into four homeownership centers each supporting a specific geographic area Atlanta Philadelphia Denver and Santa Ana

HUD home store The HUDGovHUD Home Internet site is used to locate foreclosed homes for sale

Mortgagee compliance manager MCM The mortgagee compliance manager performs a variety of pre and postproperty conveyance services to ensure that HUDs interests are protected These services include

Reviewing property inspections to ensure the property is in conveyance condition

Resolving conveyance exceptions providing guidance to mortgagees related to preconveyance and postconveyance responsibilities

Leveraging HUDs software and information systems to execute and complete the tasks within a contract

Name and address identification number NAID This number is used by HUD to track the payee of HUD funds

SF 3881 Form Federal agencies use this form to enroll its vendors to receive payment by electronic funds transfer

Singlefamily acquired asset management system SAMS SAMS is a management and accounting system for HUDowned and HUDmanaged singlefamily properties

HUD Loans

HUD LOANS

Anyone who has the required cash or can qualify for a loan may buy a HUD Home HUD Homes are initially offered to owneroccupant purchasers on a bidding basis Following the priority period for owner occupants unsold properties are available to all buyers including investors While HUD does not provide direct financing for the purchase of a HUD home it is possible for a buyer to qualify for an FHAinsured mortgage to finance the purchase

Many licensees shy away from HUD home sales due to lack of understanding of the HUD process a misplaced fear of earning low compensation or the unwillingness to apply the necessary effort to learn the process There is money to be made in this market but a licensee must be open to the challenge This chapter provides an introduction and background information regarding FHA home mortgage loans and HUD home sales The information provided can be used as a foundation to seek additional information and training in the buying and selling of HUD homes

Background

The purpose of the US Department of Housing and Urban Development HUD is to provide housing and community development assistance and to make sure everyone has access to fair and equal housing To achieve these goals HUD runs many programs that support homeownership increase safe and affordable rental housing reduce homelessness and fight housing discrimination

HUD was established in 1965 It is a cabinetlevel government agency The agencys head is appointed by the president and approved by a simple majority vote in the senate HUDs mandate is to oversee various federal housing programs in the name of promoting fair and equal housing

HUD also oversees the Federal Housing Administration FHA which Congress created in 1934 The FHA operates a number of mortgage insurance programs that enable homebuyers to get home loans when they might not qualify for a conventional mortgage due to low credit scores a small down payment or poor credit history HUD oversees several programs including

Community Development Block Grant Program that provides grants to neighborhoods that agree to use the funds in ways that will primarily benefit low and moderateincome residents

Housing Choice Voucher Program commonly called Section 8 that helps very low income families the elderly and the disabled pay for rental housing

What is a HUD Home

FHA is the part of HUD that provides federal mortgage insurance. If a home was purchased with a loan insured by the FHA, the lender can file a claim for the balance due on the mortgage after a foreclosure. FHA pays the lender's claim, then transfers ownership of the property to HUD, which then sells the home. Therefore, a HUD home is defined as a 1 to 4 unit residential property acquired by HUD as a result of a foreclosure action on an FHA insured mortgage. HUD becomes the property owner and offers it for sale to recover the loss on the foreclosure claim. HUD prefers to sell their homes to owner-occupied borrowers. An owner-occupied borrower is someone who intends to live in the home as their primary residence. Initially, HUD homes are available only to owner-occupied borrowers. However, if a home does not sell after a period of time, it is offered to anyone, including investors. Anyone can buy a HUD home as long as they are able to get approved for a mortgage and haven't bought a HUD home in the last two years.

FHA Loans

Before we get into the details regarding the buying and selling of HUD homes, let's get an understanding of the FHA mortgage loan process. FHA mortgage loans are the engine that drives HUD real estate transactions. Understanding that process goes hand in hand with HUD foreclosure sales.

FHA loans were introduced shortly after the Great Depression of the 1930s. During this time, mortgage defaults and home foreclosures increased rapidly. In response, the government created federally insured loans that gave mortgage lenders peace of mind, reduced lender risk, and stimulated the housing market. By insuring loans, lenders were more inclined to approve mortgages in cases where they normally would not have approved the loan application.

An FHA loan is a type of government-backed mortgage insured by the FHA. The FHA does not actually make the mortgage loan but authorizes lenders who can then approve borrowers based on a set of FHA criteria. The borrower pays for mortgage insurance that protects the lender from a loss if the borrower defaults on the loan. FHA mortgage loans are often available to homebuyers who do not qualify for traditional mortgages.

Authorized FHA lenders may approve borrowers with less than perfect credit and with a small down payment. Although FHA loans were designed to serve low and moderate income homebuyers who would otherwise have trouble getting a conventional mortgage, anybody can apply for an FHA loan up to certain lending limits.

FHA Mortgage Loan Process

A borrower must follow the process outline below to qualify for a FHA-backed home mortgage loan.

Lender contact A borrower must contact a HUD-approved lender. Most major lenders such as Bank of America and Wells Fargo offer government-backed home loans, and many local lenders also participate in the program.

Loan application After a lender determines the borrowers eligibility for an FHA loan the applicant must complete a Fannie Mae Form 1003 along with a HUD Form 92900A addendum The loan officer will also require some financial documents such as W2 forms bank statements tax returns and pay stubs

Case number assignment Every FHA mortgage gets a case number assigned to it This number identifies the individual loan and borrower Think of it as a serial number for home loans

Property appraisal At this stage the lender orders a property appraisal by a licensed appraiser to determine the market value of the property The appraiser makes sure that the house meets all of HUDs property requirements

Underwriting An underwriter determines if the borrower has the ability and willingness to repay the mortgage debt The underwriter evaluates the borrowers credit history credit scores employment status and debttoincome ratio

Underwriters decision The underwriter either approves or rejects the loan application If the application gets the goahead the borrower is approved for the closing If the underwriter rejects the application the lender will notify the applicant and might explain the decision details

Closing During this step the closing is scheduled and the transaction is completed

FHA uses an automated standard underwriting system that takes all the loan data and produces a scorecard that considers many factors related to income and debt Under certain conditions particularly when a borrower doesnt fit into FHA general scorecard requirements a manual underwriting is ordered

FHA Home Appraisal

Theres a common misconception that FHA appraisals are unnecessarily strict However most discrepancies are fully correctable and a loan can be secured if repairs are made before a final inspection When an FHA loan is being used the appraiser has the following two objectives

Determine the current market value as with any appraisal

Make sure the home meets HUDs minimum standards for health and safety

FHA Mortgage Loan Benefits

The FHA loan benefits include the following

Low down payment The main advantage of an FHA mortgage is that the downpayment can be as low as 3.5% of the purchase price. Most traditional loans require an initial payment of 20% of the property cost. Newlyweds, firsttime homeowners and people with low income generally cannot afford a 20% down payment.

Designed for firsttime buyers FHA insured loans are ideal for young people who haven't been able to save enough money for a purchase and people who may have been denied a conventional loan. Also, individuals who cannot apply for a conventional loan because of a bankruptcy or foreclosure may still be able to qualify for an FHA loan.

Greater flexibility FHA loans are attractive because they allow greater flexibility in calculating payment ratios and household income. In general, to be eligible for an FHA loan, an individual must have a valid Social Security number, be a US resident, and be old enough to get a mortgage in their state.

Sellers closing costs FHA allows sellers, homebuilders, and lenders to pay some closing costs on the buyers' behalf.

Minimum credit scores There are no minimum credit score requirements in order to qualify for an FHA loan. However, the FHA requires lenders to manually sign and accept liability for loans from borrowers who have credit scores lower than 620, as well as total debt-to-income ratios higher than 43%.

Limited credit history Buyers who have limited credit history are generally not a problem since lenders will check other payment history records in order to complete their evaluation. People who have been in a credit counseling program for a year or more and have made all their payments on time are also eligible for FHA loans.

FHA Mortgage Loan Drawbacks

FHA mortgage loans have some drawbacks, such as:

Loan limits In some cases, FHA does not provide enough funding when a large loan is needed. Buying expensive property most likely will not be approved by the FHA.

Mortgage insurance The upfront mortgage insurance premium (MIP) and ongoing premiums usually cost more than private mortgage insurance. In many cases, it's impossible to cancel mortgage insurance on FHA loans, but it's much easier to cancel MIP coverage as the individual builds equity on a traditional loan.

Low down payment options A homebuyer might be able to buy a house with very little down by using a conventional loan without FHA backing. If borrowers have good credit,

they might find competitive offers that beat FHA loan terms

Property limitations Getting an FHA loan approved for a fixerupper or major bargain does not work A property that is not in movein ready condition is subject to a loan rejection

Qualifying Not every FHA loan application gets approved To qualify for the lowest down payment a borrower needs a FICO score above 580 However an individual can get approved with lower scores if they are planning to make a larger down payment

Sellers resistance Some sellers will not accept an offer from an FHA loan applicant Sellers like to know about potential buyers and an FHA loan does not signal strength Also some sellers fear that extra FHA requirements will slow down the transaction

FHA Loan Limits

The FHA nationwide ceiling high lending amount for highcost metropolitan areas is 765000 for calendar year 2020 In areas with lower housing costs the FHA floor low limit is 331760

FHA loan limits are determined by the county where the home is located except for properties that are located in metropolitan statistical areas In metro areas the limits are set using the county with the highest median home price within the metropolitan statistical area FHA limits vary from one county to the next They are based on a house price index HPI and get updated every year

FHA Loan Rules for SingleFamily Housing

FHA loan rules for home loans are found in the SingleFamily Housing Policy Handbook 40001 that contains over 1000 pages The handbook has a list of eligible property types for an FHA home loan that include the following

Detached or semidetached dwellings

Manufactured housing

Townhouses or row houses

Individual units within FHAapproved condominium projects

FHA loans do not cover recreational vehicles RVs or any other personal property that is not affixed to a permanent foundation

An RV or houseboat cannot be taxed as real estate and as such individuals are not permitted to use FHA home loan funds to purchase nonreal estate items or pay for

upgrades improvements or renovations

FHA Manufactured Home Loans

FHA home loans can be used to purchase mobile homes manufactured homes or modular homes The FHA defines a manufactured home differently than a new or existing structure

According to FHA newly constructed existing structured property is built onsite and a manufactured home is a structure that is transported in as one or more sections

To be eligible for FHA mortgage insurance the manufactured home must be built after June 15 1976 and there must be a certification label affixed to the unit A manufactured home cannot be less than 400 square feet and must be classified as real estate

A manufactured home that is classified as real estate must have a permanent foundation built to FHA standards and considered as a permanent dwelling for tax purposes FHA requires that the mortgage loan cover both the manufactured unit and its site location In addition the loan term must not exceed 30 years from the date amortization started

Mortgage Loan Programs

Besides the traditional first mortgages the FHA also offers the following types of loans

Home equity conversion mortgage HECM This reverse mortgage program helps seniors convert the equity in their homes to cash while retaining the titles to their homes

FHA 203k This loan factors in the cost of certain repairs and renovations This type of loan allows a buyer to borrow money for both a home purchase and home improvement

Energy efficient mortgage EEM This program is aimed at upgrades that lower a property's utility bills The cost of newer more efficient appliances for example becomes part of the loan

HOME EQUITY CONVERSION MORTGAGE

If a homeowner is age 62 or older has paid off their mortgage or paid down a considerable amount and is currently living in the home they may participate in FHAs HECM program The HECM is FHAs reverse mortgage program that enables the owner to withdraw a portion of the home's equity

The owner can also use the HECM to purchase a primary residence if they are able to use cash onhand to pay the difference between the HECM proceeds and the sales price plus closing costs for the property they are purchasing

To apply for a loan the home owner must meet with an HECM counselor to discuss program eligibility requirements financial implications and alternatives to

obtaining an HECM An HECM borrower must

Be 62 years of age or older

Own the property outright or have paid down a considerable amount

Occupy the property as a principal residence

Participate in a consumer information session given by a HUDapproved HECM counselor

Have financial resources to continue to make timely payments on ongoing property charges such as property taxes insurance and HOA fees

Not be delinquent on any federal debt

FHA 203K

FHA 203k loans enable homebuyers and homeowners to finance the purchase or refinancing of a house and the cost of its rehabilitation through a single mortgage or to finance the rehabilitation of their existing home

Section 203k fills a unique and important need for homebuyers When buying a house that needs repair or modernization homebuyers usually have to follow a complicated and costly process The interim acquisition and improvement loans often have relatively high interest rates short repayment terms and a balloon payment However Section 203k offers a solution that helps both borrowers and lenders insuring a single longterm fixed or adjustable rate loan that covers both the acquisition and rehabilitation of a property Section 203k insured loans save borrowers time and money They also protect the lender by allowing them to have the loan insured even before the condition and value of the property offer adequate security

For less extensive repairs or improvements homebuyers can use a Limited 203k For housing rehabilitation activities that do not require buying or refinancing the property borrowers may also consider HUDs Title I Property Improvement Loan program Types of Assistance

Section 203k insures mortgages covering the purchase or refinance and rehabilitation of a home that is at least oneyear old A portion of the loan proceeds is used to pay the seller or if a refinance to pay off the existing mortgage and the remaining funds are placed in an escrow account and released as the rehabilitation is completed The cost of the rehabilitation must be at least 5000 but the total value of the property must still fall within FHA mortgage limits The value of the property is determined by the value of the property before the rehabilitation plus the cost of the rehabilitation or 110 of the appraised value of the property after rehabilitation whichever is less

Eligible Activities

The extent of the rehabilitation covered by a Section 203k loan may range from

relatively minor to virtual reconstruction A home that has been demolished or will be razed as part of rehabilitation is eligible provided that the existing foundation system remains in place

Section 203k insured loans can finance the rehabilitation of the residential portion of a property that also has nonresidential uses loans can also cover the conversion of a property of any size to a one to four unit structure The types of improvements that borrowers may make using Section 203k financing include

Structural alterations and reconstruction

Modernization and improvements to the homes function

Elimination of health and safety hazards

Changes that improve appearance and eliminate obsolescence

Reconditioning or replacing plumbing installing a well and/or septic system

Adding or replacing roofing gutters or downspouts

Adding or replacing floors and/or floor treatments

Major landscape work and site improvements

Enhancing accessibility for a disabled person

Making energy conservation improvements

HUD requires that properties financed under this program meet certain basic energy efficiency and structural standards

Streamline Mortgages

With a 203k streamline mortgage a borrower can get the funds to purchase a rehab home plus get up to 35000 cash to make renovations and cosmetic repairs 203k streamline mortgages allow for mostly cosmetic renovations and basic repairs In addition the borrower can do the work themselves and not hire a HUD contractor A 203k streamline mortgage does not allow the following types of work

Major repairs needed to the structure or foundation

Repairs taking longer than three months to complete

Any construction that is not a part of the property

The building of a new pool or hot tub

Adding new rooms or bathrooms

Energy Efficient Mortgage

Energy efficient mortgages EEM can be used for energyefficient improvements in one or twounit existing and new homes The improvements can be included in a borrowers mortgage only if their total cost is less than the total dollar value of the energy that will be saved during the propertys useful life The cost of the improvements that may be eligible for financing as part of the mortgage is either 5 of the propertys value not to exceed 8000 or 4000 whichever is greater

EEM loans are available to anyone who meets the income requirements for FHAs Section 203b and is able to make the monthly mortgage payments The costs involved in adding energy efficient features to a home and an estimate of the energy savings must be determined by a home energy rating system or a qualified energy consultant An EEM loan may even pay up to 200 of the cost of an energy inspection report

HUD Processes

More than half of firsttime buyers use FHA loans to buy a house FHA loans are not just limited to new buyers but have become an attractive home financing tool for many buyers As a result the majority of banks and lenders offer FHA loans

FINDING FHA LENDERS

Before lenders can offer FHA loans they must be approved by HUD Financial institutions must apply for approval and submit a variety of documents including licensing information and financial reports There are four types of FHA lender approval classifications

Nonsupervised mortgagee Lending institutions may apply for this type of approval if they want to originate underwrite close endorse service purchase hold or sell FHAinsured mortgages A nonsupervised mortgagee is a lending institution that has as its principal activity the lending of funds in real estate mortgages consumer installment notes or similar advances of credit or the purchase of consumer installment contracts

Supervised mortgagee Banks savings banks and credit unions may apply for this type of approval if they want to originate underwrite close endorse service purchase hold or sell FHAinsured mortgages A supervised mortgagee is a financial institution that is a member of the Federal Reserve System FRS or whose accounts are insured by the Federal Deposit Insurance Corporation FDIC or the National Credit Union

Administration NCUA collectively referred to as Federal Banking Agencies

Government mortgagee Federal state or municipal government agencies Federal Home Loan Banks Freddie Mac or Fannie Mae agencies may apply for this type of approval if they want to originate underwrite close endorse service purchase hold or sell FHAinsured mortgages

Investing mortgagee Organizations that want to invest funds under their own control may apply for this approval if they want to purchase hold or sell FHAinsured mortgages An investing mortgagee may not originate underwrite or close FHAinsured mortgages in its own name or submit applications for FHA mortgage insurance

Registering as a HUDQualified Real Estate Broker

In order to qualify to sell HUD Homes a real estate broker must complete and sign several forms and supply copies of supporting documentation This package is then submitted to a local HUD Homeownership Center The following completed forms must be included

Singlefamily acquired asset management system SAMS 1111 Broker application This is a doublesided singlepage form On the front side the applicant is required to fill in company business information such as name address and Social Security number The back side provides directions on how to complete the form and the necessary supporting documents that must be sent in with the form

Singlefamily acquired asset management system SAMS 1111A Selling Broker

Certification This is a singlesided onepage form that provides instructions on how to handle and deposit earnest money In addition the form requires the broker to sign a nondiscrimination practices statement

It takes HUD about two months to process an application Once an applicant has been approved the broker receives a HUDissued name and address identification number NAID and can now show advertise and submit offers on HUD Homes HUD requires annual recertification To be recertified the broker must have a valid brokers license The HUD Homeownership Center that oversees the selling of HUD Homes in Florida is located at

US Department of Housing and Urban Development

Atlanta Homeownership Center

Five Points Plaza

40 Marietta Street

Atlanta GA 303032806

Sales commissions for selling brokers are determined by HUD and are comparable with averages for the office coverage area The maximum sales commission to both the listing broker and selling broker is set at 3 each

Associate Brokers and Selling Agents

Associate brokers and selling agents can register on the HUD homes website using

the same NAID as their principal broker and own real estate license number A licensee is not allowed to register with multiple principal brokers in the same state

HUD BUYING PROCESS

Buying a HUD property is different from buying a traditional home The following are some key points to remember

Only an authorized brokerage can sell a HUD property

The sale is based on a bidding process At first the property is available only to owneroccupants If there are no acceptable bids during the initial bidding period the bidding is opened up to the general public which then includes investors

Bidders do not get to see what others have offered on the property

Earnest money must be included in the bid

If the bid is accepted and the bidder is unable to complete the transaction they forfeit the earnest money

Properties are sold asis without a warranty

HUD Earnest Money Regulations

The buyer and selling broker must sign an earnest money forfeiture agreement A selling broker must submit the earnest money deposit with a completed form HUD9548 Sales Contract Property Disposition Program Form for all sales other than asset control area ACA sales to the asset manager AM within two business days of being notified that their buyer is the winning bidder unless otherwise instructed by the AM The AM will then forward the deposit to the closing agent

The earnest money deposit must be in the form of a cashiers check certified check or money order with no termination date or cancellation provision payable to the closing agent or to another entity as designated by HUD The earnest money deposit amounts are set as follows

The deposit for properties with a sales price of 50000 or less is 500

The deposit for properties with a sales price greater than 50000 is between 500 and 2000 as determined by HUD

Vacant lots are set at 50 of the list price

Properties to be purchased under the Good Neighbor Next Door GNND Sales Program require a deposit of 1 of the list price but no less than 500 and no more than 2000

HUD SELLING PROCESS

Listing brokers are subcontracted by asset managers and are responsible for listing and marketing HUD properties Similar to traditional transactions listing brokers can place properties in the multiple listing service MLS and provide signage on HUD properties

HUD Bidding Tips

Here are some tips and observations that might assist the buyer when making a HUD offer

A buyer is not obligated to offer the list price Foreclosure homes are often priced below market value but not always HUD homes are usually appraised by a professional home appraiser before being listed so a buyer needs to evaluate the price just like a traditional home

HUD homes that have been on the market for long periods may indicate that the list price is too high or the property has some serious damage

A new listing should be given an offer that is closer to the list price Making a lowball offer on a new listing is usually a waste of time Whats worse the buyer could lose the property to a higher bidder

A listing that is older than three months gives the buyer more bargaining power So a lowball offer might be accepted

Generally speaking HUD is willing to contribute up to 5 of the purchase price to the buyers closing costs on certain fees However the buyer must make the request when presenting the initial offer

Having a bid acknowledged electronically does not mean that the buyer bought the property

A winning bidder needs to complete the contract package and return it to HUD Failure to send these documents could mean that the home is placed back on the market

If HUD accepts a buyers bid the agent has 48 hours to follow up with a completed contract

Most HUD homes have what is called a Property Condition Report The Property Condition Report is similar to an inspection However a savvy buyer should also order an independent inspection

Having a bid acknowledged electronically does not mean that the buyer bought the property

The 88 Bidding Strategy

Experienced HUD real estate agents often use the 88 strategy when bidding on a property This strategy is not foolproof but may be useful HUD will usually accept 85-88% of the list price on a newly listed property HUD publishes bid results and bid statistics on all their foreclosure listings By doing a little math analysis the results show that on average bids accepted on new listing fall into the 85-88% list price range Homes on the market for longer than two or three months sell at a lower percentage

Other HUD Information

It's also important for both licensees and buyers to have information about closing costs and contract documents on a HUD sale

CLOSING COSTS

HUD has been known to pay the following closing costs in some purchase transactions

Proration of property taxes and any special assessments such as HOA fees and utility bills

Condominium or HOA transfer fees

The cost to provide condominium documents to the buyer

The repair escrow inspection fee of 200

Recording fees and charges for the deed

Some document mailing fees

State and local transfer taxes

Contract Documents

If an agent is awarded a winning bid they must then submit what is commonly

referred to as the package The package contains contract documents that must be received within two business days after the Internet posting of bid results To avoid noncompliance the package should be completed PRIOR to placing a bid Typically the package consists of the following items

Sales contract HUD form 9548

Conditions of sale

Copy of earnest money check

Forfeiture and extension policy

Brokers Agreement to Abide by HUDs Earnest Money Forfeiture Policy

LeadBased Paint Addendum if applicable

Radon Gas and Mold Notice and Release Agreement

Owner Occupant Certification HUD form 9548D if applicable

Prequalification letter or for cash sales provide verification of funds

If the buyer does not have the winning bid the licensee should not send in the package as a backup Contract packages received that are not from the awarded bidder will be discarded without notification

HUD Sales Contract

The HUD Sales Contract is identified as Form 9548 Form 9548 is a straightforward onepage singlesided document that comes with completion directions It may be submitted as an original with a carbon or as the electronic version printed from HUDs website The following are some key points to remember when completing the form

If using the electronic version the buyer must submit Electronic Filing of HUD 9548 Contract Addendum

When completing an original carbon contract the buyer should always use blue ink

Sales contracts are not assignable

The person whose Social Security number was used to place the bid must also appear on the contract

Earnest money must be in the form of a certified check cashiers check or money order

All checks must be made payable to US Department of HUD

Misrepresenting a purchaser as an owneroccupant is a serious offense that may constitute fraud and result in an investigation by the Office of Inspector General of the U S Department of Housing and Urban Development Such investigations focus not only on the buyer but also on the broker or agent representing them

All sales must close within 45 days Properties may close in less than the designated number of days however the appropriate number of days must be on the contract

A leadbased paint addendum must be attached if appropriate

All purchasers signatures are required on the contract

The Social Security number or EINFIN of all purchasers must be on the contract

All broker information must be included on the contract

If the buyer cannot close by the expiration date an extension request must be made prior to the expiration date Failure to do so may result in cancellation of the contract and forfeiture of the earnest money

HUD will NOT pay a sales commission to the selling agentbroker if the investor purchaser is also the selling agentbroker andor affiliated with the selling agentbroker

HUD Special Programs

GOOD NEIGHBOR NEXT DOOR

Buying a home through HUDs GNND initiative is designed to encourage renewal of revitalization areas by providing an opportunity for law enforcement officers firefighters emergency medical technicians and teachers to purchase homes in these communities HUD provides a substantial incentive in the form of a 50 discount off the list price of eligible properties In return buyers must commit to live in the property for 36 months Bids for property must be submitted by a HUDregistered real estate broker

How the Program Works

Eligible singlefamily homes located in revitalization areas are listed exclusively for sale through the GNND program Properties are available for purchase through the program for seven days The number of properties is limited and the list of available properties changes weekly

NONPROFITS

The FHA also offers community and faithbased nonprofit organizations the opportunity to purchase HUD homes at discounts up to 30 With this discount local nonprofit organizations invest in their communities through property rehabilitation and resell to firsttime homebuyers and low to moderateincome families

DOLLAR HOMES

HUDs Dollar Home initiative helps local governments to foster housing opportunities and address specific community needs by offering qualified HUDowned homes for 1 each Singlefamily properties are made available through the program whenever FHA is unable to sell the homes after six months By selling vacant property HUD makes it possible for communities to fix up homes and put them to good use at a considerable savings The newlyoccupied homes can then act as catalysts for neighborhood revitalization attracting new residents and businesses to an area

SECTION 184 INDIAN HOME LOAN GUARANTEE PROGRAM

Section 184 Indian Home Loan Guarantee Program is a home mortgage product specifically designed for American Indian and Alaska Native families Alaska villages tribes or triballydesignated housing entities Congress established this program in 1992 to facilitate homeownership and increase access to capital in Native American communities

With Section 184 financing borrowers can get into a home with a low down payment and flexible underwriting Section 184 loans can be used both on and off native lands for new construction rehabilitation purchase of an existing home or refinance How Section 184 Works

The Office of Loan Guarantee within HUDs Office of Native American Programs guarantees Section 184 home mortgage loans made to native borrowers The loan guarantee assures the lender that its investment will be repaid in full in the event of foreclosure

The borrower applies for the Section 184 loan with a participating lender and works with the tribe and Bureau of Indian Affairs BIA if leasing tribal land is required The lender then evaluates the necessary loan documents and submits the loan for approval to HUDs Office of Loan Guarantee

The loan is limited to singlefamily housing one to fourunits and fixedrate loans for 30 years or less Adjustable rate mortgages ARMs and commercial buildings are not eligible for Section 184 loans Maximum loan limits vary by county

By encouraging lenders to serve native communities Section 184 is increasing the marketability and value of native assets and strengthening the financial standing of native communities

Other Government Foreclosure Properties

HUD is not the only government agency that oversees the sale of foreclosed or seized properties. The following agencies also offer real estate for sale.

Fannie Mae Owned Property Search Fannie Mae's website for properties that have been foreclosed and are put up for sale.

Federal Deposit Insurance Corporation The FDIC offers properties for sale and auction on their website.

General Services Administration Office of Property Disposal The GSA sells real estate including homes, vacant land, office buildings, military bases, and subdivisions. GSA specializes in real estate that was once used for federal government missions and is therefore usually commercial-type properties.

HomeSales.gov This website lists previously owned homes that are for sale by public auction or other methods, depending on the property.

Small Business Administration An inventory of SBA-acquired properties for sale is listed on their website.

The Department of the Treasury IRS Customs These entities list property for sale that has been seized or acquired for nonpayment of taxes.

US Army Corps of Engineers HAP Properties The Corps of Engineers lists properties offered by the Homeowners Assistance Program (HAP).

United States Department of Agriculture This agency provides a list of pending foreclosures and acquired properties for sale by the USDA.

United States Marshals Service This agency lists seized homes for sale by the Disposing Department of Justice's Asset Forfeiture Program.

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