



Unit

# 12

## Property Management and the Florida Residential Landlord and Tenant Act

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### In This Unit

Florida Residential Landlord and Tenant Act • Deposit money or advance rent: Duty of landlord, broker, and tenant • Landlord's notices to tenant • Abandoning the premises • Selling the property • Rights and obligations • Breach and termination of lease agreement • Special rules for members of the armed forces • When to take action • Federal withholding tax for rental income of foreign investors

### Learning Objectives

**When you have completed this unit, you will be able to accomplish the following.**

- Describe which properties are covered under the Florida Residential Landlord and Tenant Act.
- Describe the duties of landlords and real estate brokers when handling rental money and security deposits.
- Understand the duties and responsibilities of landlords and tenants.

### **FLORIDA RESIDENTIAL LANDLORD AND TENANT ACT**

The Florida Residential Landlord and Tenant Act covers only residential tenancies. It describes the rights and the duties of the parties, the requirements for handling deposits and fees, and the enforcement of lease agreements.

#### **Residential Tenancies Covered Under the Law**

A structure or part of a structure that is rented for use as a home, residence, or sleeping place or mobile home is covered. (83.41, F.S.)

### Residential Tenancies NOT Covered Under the Law

1. Nursing homes or other long-term care facilities or transient occupancy in a hotel or other public lodging
2. Occupancy under a contract of sale of a dwelling unit *if*:
  - a. the buyer has paid at least 12 months' rent or
  - b. the buyer has paid at least 1 month's rent and a deposit of at least 5% of the purchase price of the property
3. Occupancy by a holder of a proprietary lease in a cooperative apartment (83.42, F.S.)

### Unfair Rental Agreement or Provision

If a court determines that a portion of a rental agreement was grossly unfair, the court may:

1. refuse to enforce the rental agreement,
2. enforce the remainder of the rental agreement without the unconscionable provision, or
3. limit the application of the unfair provision as to avoid an unfair result. (83.45, F.S.)

### Prohibited Provisions in Rental Agreements

1. A provision in a rental agreement is void and unenforceable if it:
  - a. tries to waive or diminish the rights, remedies, or requirements of the law; or
  - b. tries to limit liability of the landlord or of the tenant
2. If either party suffers actual damages as a result of a void and unenforceable provision in a rental agreement, the aggrieved party may recover damages. (83.47, F.S.)

### Attorney Fees

In any civil action brought to enforce a rental agreement, the winner may collect reasonable attorney fees and court costs. The right to attorney fees in this section may not be waived in a lease agreement. (83.48, F.S.)

### Practice Question

1. A person who operates a hotel for transient occupants must abide by the requirements of the Residential Landlord and Tenant Act.
  - a. True
  - b. False

## DEPOSIT MONEY OR ADVANCE RENT: DUTY OF LANDLORD, BROKER, AND TENANT

A tenant is usually required to give the landlord a security deposit to guarantee that the property will be left in good condition. When money is given to a landlord as a security deposit or advance rent, the landlord must account for such deposits in one of three ways:

1. Put the money in a separate (not commingled) account.
2. Put the money in a separate interest-bearing account. The landlord can elect to pay the tenant either 75% of the interest paid or 5% per year.
3. Post a surety bond with the clerk of the court in the total amount of the security deposits and advance rents or \$50,000, whichever is less. The landlord must pay the tenant interest at the rate of 5% per year. Landlords who choose this method do not have to put the funds into a separate account. (83.49, F.S.)

## IN PRACTICE

### Duties of real estate brokers when handling security deposits and rents

Real estate brokers who manage property must place the money into their property management escrow account and may not commingle the funds. If a tenant vacates the premises upon termination of the rental agreement and the landlord fails to make the proper claim on the security deposit, the broker can disburse the deposit to the tenant without obtaining the landlord's consent.

If the landlord (or the broker as the landlord's agent) makes a proper and timely claim on the security deposit and the tenant doesn't properly object to the claim, the broker may disburse the claimed amount to the landlord without obtaining the tenant's consent.

If both parties claim the security deposit within the legislated time frame, the broker can hold the disputed amount in escrow until the parties settle the matter without having to notify the Florida Real Estate Commission (FREC). Real estate brokers have no duty to notify the FREC of disputes over security deposits and advance rent with regard to residential rental properties. Florida real estate licensees holding security deposits and advance rent may disburse the funds without complying with the Commission's escrow dispute and notification procedures if the brokers have complied with all notice requirements set forth in Section 83.49, F.S. The broker must, however, keep proper records of the account.

If desired, a broker may ask the FREC to issue an escrow disbursement order (EDO) in a landlord-tenant dispute. However, if an EDO is issued, the broker must disburse the funds as the EDO directs.

## LANDLORD'S NOTICES TO TENANT

The landlord must:

- tell the tenant where the tenant's money is being held; and
- tell the tenant if the landlord plans to keep all or part of the security deposit.

### Where's the Money?

If the landlord owns five or more individual dwelling units, the landlord has to give the tenant written notice about the advance rent or security deposit within 30 days after receipt. The written notice must have the name and address of the bank and state whether the tenant is entitled to interest. The notice must be given in person or by mail to the tenant.

### Claims on the Security Deposit

If the landlord does not intend to claim any of the security deposit after the termination of the lease, the landlord must return the deposit and any interest due within 15 days. But if the landlord claims part of the tenant's deposit, the landlord must give written notice by certified mail to the tenant's last known mailing address within 30 days after the tenant vacates the premises. The notice must state the intention to impose a claim on the deposit and the reason for imposing the claim.

A landlord who doesn't give the tenant the required notice within the 30-day period loses the right to keep the security deposit but may later bring suit for damages.

Unless the tenant objects to the landlord's claim within 15 days after receipt of the landlord's notice, the landlord may then deduct the amount of the claim. The landlord must return the balance of the deposit to the tenant within 30 days after the date of the notice.

In case of a lawsuit over the security deposit, the winner is entitled to receive court costs plus a reasonable attorney fee. (83.49, F.S.)

**FIGURE 12.1 ■ Summary of Notice for Claims on Security Deposits**

<b>Situation for Claim</b>	<b>Time limit</b>
No claim by landlord	Return deposit within 15 days
Landlord claims deposit	Notify tenant by certified mail within 30 days or lose rights
Tenant does not dispute claim	Landlord keeps portion of deposit claimed—balance must be returned within 30 days
Tenant disputes claim	Must notify landlord within 15 days or loses rights

## ABANDONING THE PREMISES

A tenant who vacates the premises before the written lease expires, or a tenant who vacates premises that are the subject of an unwritten periodic tenancy, must give at least seven days' written notice to the landlord before vacating. The notice must be made by certified mail or personal delivery and include the address where the tenant may be reached. If the tenant fails to do so, the landlord is excused from giving notice about disposition of the security deposit but may not waive any right the tenant may have to the security deposit. (83.49(5), F.S.)

## SELLING THE PROPERTY

Upon the transfer of the rental property from one owner to another, or upon a change in the designated rental agent, all security deposits, advance rents, and earned interest being held for the benefit of the tenants must be transferred to the new owner or agent. The landlord must give an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt, the transferor is free from the obligation to hold such money on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to one month's rent. This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits. (83.49(7), F.S.)

### Practice Questions

2. A real estate broker who accepts a tenant's rental deposits may, by posting a surety bond, commingle the funds with the broker's operating funds.
  - a. True
  - b. False
3. A landlord has 30 days to notify the tenant about claiming all or part of the security deposit.
  - a. True
  - b. False

## RIGHTS AND OBLIGATIONS

### Landlord's Name and Address

The landlord must disclose in writing to the tenant, at or before the tenancy begins, the landlord's name and address. (83.50, F.S.)

## Landlord's Obligation to Maintain Premises

The landlord must comply with applicable building, housing, and health codes, and keep the structure and plumbing in good repair. Unless agreed otherwise in writing:

1. if the property is a **single-family home or duplex**, the landlord must provide working smoke detectors;
2. if the property is a **dwelling unit other than a single-family home or duplex**, the landlord must provide pest control, locks and keys, clean and safe common areas, garbage removal and receptacles, and facilities for heat, running water, and hot water; and
3. the landlord, at the beginning of a tenancy must ensure that window screens are installed in a reasonable condition. At least once annually, the landlord must repair damaged window screens. (83.51, F.S.)

## Tenant's Obligation to Maintain Premises

The tenant must:

1. comply with all building, housing, and health codes;
2. keep the premises clean and sanitary;
3. remove garbage;
4. use all equipment in a reasonable manner; and
5. refrain from disturbing neighbors unreasonably. (83.52, F.S.)

## Landlord's Right to Enter the Premises

The tenant may not unreasonably withhold consent for the landlord to inspect the premises, make repairs, supply agreed-upon services, or show the apartment. The landlord may not abuse the right to enter to harass the tenant. The landlord may enter the dwelling unit at any time to preserve the premises. The landlord must give at least 12 hours' notice before entering for repairs, and the repairs must be made between 7:30 am and 8:00 pm. If the tenant notifies the landlord of an extended absence, the landlord may enter only with the tenant's consent or to protect the premises.

The landlord may enter the premises:

1. with the consent of the tenant;
2. in case of emergency;
3. when the tenant unreasonably withholds consent; or
4. if the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, the landlord may enter the premises only with the consent of the tenant or for the protection of the premises. (83.53 F.S.)

## Retaliatory Conduct

It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to evict 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. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

1. the tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation;
2. the tenant has organized, encouraged, or participated in a tenant organization;
3. the tenant has complained to the landlord about maintenance deficiencies;

4. the tenant is a service member who has legally terminated a rental agreement;  
or
5. the tenant has exercised rights under local, state, or federal fair housing laws.

Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against the tenant for possession. (83.64, F.S.)

### **Prohibited Practices**

- A landlord may not interrupt any utility service furnished to the tenant.
- A landlord may not change the locks or prevent the tenant's entry into the unit.
- A landlord may not discriminate against a service member in offering a dwelling unit for rent or in any of the terms of the rental agreement.
- A landlord may not prohibit a tenant from displaying a United States flag.
- A landlord may not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement.
- The landlord may not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant, or a lawful eviction.

A landlord who violates any provision of this section is liable to the tenant for actual and consequential damages or three months' rent, whichever is greater, and costs, including attorney's fees. (83.67, F.S.)

### **Practice Question**

4. At least once annually, the landlord must repair screens.
  - a. True
  - b. False

## **BREACH AND TERMINATION OF LEASE AGREEMENT**

### **Right of Action for Damages**

If either the tenant or the landlord violates the terms of the lease, the aggrieved party may sue for damages. (83.55, F.S.)

### **Breach by Landlord—Tenant Remedies**

If the landlord does not comply with the lease requirements within seven days after written notice from the tenant, the tenant may terminate the rental agreement. (83.56, F.S.)

### **Breach by Tenant—Failure to Pay Rent**

A tenant who doesn't pay rent by three business days after the due date is in default. The landlord must make written demand for payment of the rent or that the tenant vacate the premises within three days, in a form similar to the one in Figure 12.2.

**Figure 12.2 ■ Landlord Demand to Pay Rent or Vacate**

THREE-DAY NOTICE			
You are hereby notified that you are indebted to me in the sum of _____ dollars for the rent and use of the premises at			
_____ , Florida,			
Number	Street	City	County
now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before			
_____	_____	_____	_____
month	day	year.	
Landlord's name: _____			
Landlord's address: _____			
Landlord's phone number: _____			

The delivery of the written notices must be by mail, in person, or by leaving a copy at the residence. The notice requirements may not be waived in the lease.

**Landlords can't harass.** If the tenant is late in paying rent, the landlord may not cut off utility services, change the locks, or remove outside doors, locks, roofs, or windows in an effort to force the tenant to move. Such actions leave the landlord liable for actual damages or three months' rent, whichever is greater.

**Landlord regaining possession.** If the tenant fails to pay rent after receiving a three-day notice, the landlord must give written notice to demand possession of the premises. If the tenant does not vacate the premises, the landlord must file a complaint to recover possession in county court. A landlord's agent, such as a real estate broker, may not take any action other than filing the initial complaint unless the agent is an attorney.

**Court awards possession and enter money judgment.** If the court finds the rent is due to the landlord, the court, in addition to awarding possession of the premises to the landlord, may give a judgment with costs to the landlord and against the tenant. The winner in the action may also be awarded attorney's fees and costs. (83.625, F.S.)

**Writ of possession.** At this point, the clerk will issue a writ commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

**Landlord removes tenant furnishings.** At the time the sheriff executes the writ of possession or at any time thereafter, the landlord may remove any personal property found on the premises to or near the property line. The landlord may request that the sheriff stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. The sheriff may charge a reasonable hourly rate to the landlord. Neither the sheriff nor the landlord nor the landlord's agent will be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed. (83.62, F.S.)

## Breach by Tenant Noncompliance—for Reasons Other Than Failure to Pay Rent

**Types of noncompliance causing termination.** If the tenant is not complying with the lease by actions such as damaging or destroying the property or making a continued disturbance, the landlord may deliver a written notice to the tenant specifying the noncompliance and that the landlord is terminating the lease. The tenant will have seven days to vacate the property.

**Tenant noncompliance that can be corrected.** If the tenant should be given an opportunity to correct a noncompliance, the landlord should deliver a written notice to the tenant specifying the issue. The tenant has seven days to correct it or the lease will be terminated. Examples of noncompliance that the tenant should have the opportunity to cure include permitting unauthorized pets or vehicles to be on the property.

## Property Foreclosure—Lease Termination

If a tenant is occupying residential premises that are the subject of a foreclosure sale, the purchaser takes title to the residential premises subject to the rights of the tenant under this section. The tenant may remain in possession of the premises for 30 days following the date of the purchaser's delivery of a written 30-day notice of termination. The form of the 30-day notice of termination is prescribed in the statute. (83.561, F.S.)

## Termination of Tenancy Without Specific Term

A tenancy without a specific duration may be terminated by either party by giving written notice as indicated in Figure 12.3. (83.57, F.S.)

**FIGURE 12.3** ■ Notice Required by Length of Tenancy

Tenancy Period	Notice Required
Year to year	60 days
Quarter to quarter	30 days
Month to month	15 days
Week to week	7 days

## Termination of Tenancy With Specific Duration

If a rental agreement requires the tenant to give notice to the landlord before vacating the premises at the end of the rental agreement, it must also require landlord to notify the tenant if the rental agreement will not be renewed. The rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

If a rental agreement penalizes a tenant who fails to give the required notice before vacating the premises at the end of the rental agreement, the landlord must give written notice to the tenant specifying the tenant's obligations under the notification provision. The landlord must give notice to the tenant no later than 15 days before the start of the notification period contained in the lease. The written notice must list all fees, penalties, and other charges applicable to the tenant under this subsection.

For example, assume John is renting an apartment to Sally. The lease requires each party to give at least 30 days' written notice before the lease ends that the lease will not be renewed. Because Sally might have to pay penalties, John has to notify Sally at least 15 days before her notice period so that she won't forget to give her required notice.



If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give the required notice, the tenant is liable to the landlord for an additional one month's rent. (83.575, F.S.)

### **Tenant Holding Over After Lease Expiration**

If the tenant stays in possession of the dwelling unit after the expiration of the rental agreement without the permission of the landlord, the landlord may retake possession of the property as described in the next section. The landlord may also recover double the amount of rent due on the dwelling unit for the period after the lease expired. (83.58, F.S.)

### **Landlord's Choice of Remedies Upon Breach or Early Termination by Tenant**

If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

1. retake possession and release the tenant from further liability;
2. retake possession and try to relet the property. The tenant is liable for the difference between the rent required under the rental agreement and what the landlord is able to recover from a reletting. The landlord has a duty to exercise good faith in attempting to relet the premises. Any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant;
3. Stand by and do nothing, holding the lessee liable for the rent as it comes due; or
4. Charge liquidated damages or an early termination fee, if agreed in the rental agreement. The amount may not exceed two months' rent. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee in an addendum. (83.595, F.S.)

### **Casualty Damage**

If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent will be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord will return the security deposits held by the landlord. (83.63, F.S.)

### **Practice Questions**

5. If the tenant is late in paying rent, the landlord may change the locks until the rent is paid.
  - a. True
  - b. False
6. If a tenant holds over without the landlord's agreement, the landlord may recover double the amount of rent due on the dwelling unit for the period after the lease expired.
  - a. True
  - b. False

## SPECIAL RULES FOR MEMBERS OF THE ARMED FORCES

### Quickly Process Rental Application by a Service Member

If a landlord requires a service member to complete a rental application, the landlord must process the application within seven days and notify the service member in writing of the application's approval or denial. If denied, the landlord must give the reason. If the landlord fails to notify the service member within seven days, the landlord must lease the rental unit to the service member. This rule is also applicable to condominium associations, cooperative associations, or homeowners associations that require a prospective tenant to complete a rental application. These provisions may not be waived or modified even if agreed to by the parties. (83.683 F.S.)

### Service Member May Terminate Lease

A service member may terminate a rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. One of the following conditions must be met. The service member:

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

The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the service member's commanding officer.

### Death of Service Member

In the event a service member dies during active duty, an adult member of the service member's immediate family may terminate the service member's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the service member was on active duty or a written verification signed by the service member's commanding officer and a copy of the service member's death certificate.

Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days before occupancy, no damages or penalties of any kind will be assessable.

The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances. (83.682 F.S.)

## WHEN TO TAKE ACTION

As a property manager and under the Florida Residential Landlord and Tenant Act, various notices must be given and actions must be completed in a certain amount of time. Figure 12.4 summarizes these actions and their required time for completion.

**FIGURE 12.4** ■ When to Take Action

Number of Days	Required Action
24 hours	Sheriff's notice for tenant to vacate
3	Notice to tenant to vacate or pay rent
7	If tenant leaves early, must give landlord notice before vacating or landlord is excused from giving notice about disposition of security deposit
7	Landlord must comply with lease requirements after notice by tenant
7	Tenant must comply with lease requirements after notice by landlord
7	Notice required by either party to terminate week-to-week occupancy
7	Landlord must process service member's application and notify approval or denial
14	Notice required by service member to void rental agreement before occupancy with no penalty
15	Landlord must return security deposit if no claims are made
15	Tenant must protest landlord's claim on security deposit or lose rights to the deposit
15	Landlord must give tenant written notice before the tenant is required to give notice that the tenant will not renew the lease.
15	Notice required by either party to terminate month-to-month occupancy
30	Landlord must give tenant written notice about where the security deposit is held
30	Landlord must give notice to tenant by certified mail to claim security deposit
30	Landlord must return balance of security deposit if tenant does not dispute claim
30	Tenant must vacate premises after landlord notice following foreclosure
30	Notice required by either party to terminate quarter-to-quarter occupancy
30	Termination notice by service member because of duty station change or death
60	Notice required by either party to terminate year-to-year occupancy

## FEDERAL WITHHOLDING TAX FOR RENTAL INCOME OF FOREIGN INVESTORS

Persons who disburse to any nonresident alien items such as dividends, rent, salaries, wages, and other such income must withhold taxes. If the income is from passive rents, a property manager must withhold from such income a tax equal to 30%. This applies to brokers who manage property. The broker must remit the funds to the IRS by electronic transfer and file IRS Form 1042.

The property manager is a *withholding agent*, defined by the IRS as "a real property manager who collects rent on behalf of a foreign owner of real property. A withholding agent is personally and primarily liable for any tax that must be withheld. The liability of the withholding agent includes amounts that should have been paid plus interest, penalties and, where applicable, criminal sanctions."

### Exception to the Withholding Requirement

There are two steps that must be taken to avoid the 30% withholding tax. The investor must do the following:

1. Make an election to treat the rental income as not passive, because it is effectively connected with a U.S. business, by attaching a declaration to a timely filed tax return. Once made, the election may not be revoked without permission from the IRS.
2. Notify the property manager by submitting Form W-8ECI with a valid U.S. tax identification number. Generally, a Form W-8ECI will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year.



For more information, go to [www.irs.gov](http://www.irs.gov) and search under “U.S. withholding agent.”

### IN PRACTICE

#### **Avoid a huge financial hit!**

If you manage property for a foreign investor, you are the withholding agent. Get your tax advisors involved early and withhold 30% of the gross receipts. The only way to avoid the 30% withholding obligation (and your own personal liability) is to have Form W-8ECI in the file. Don't assume the form has been properly prepared and filed unless you have checked with a tax professional.

## Case Study

### A SALES ASSOCIATE'S CREATIVE AD ATTRACTS BUYERS

● **Facts:** Prospective buyers responded to an ad promoting homes in “beautiful Oak Grove Estates” with statements of “\$1 down moves you in” and “all closing costs paid.” When the buyers contracted to purchase a home, licensed sales associate Dave required a deposit of \$500, even though the ad stated that only \$1 was needed to close. Dave said their \$499 would be returned at closing, and that was shown in the contract.

Dave told the buyers they could get their mortgage with a Farmer’s Loan. The buyers said there was an income cap on those loans, but Dave assured them there would be no problem. The buyers were not approved for the loan and had to get financing from another source.

Before closing, the buyers learned that Dave would not be returning the \$499 because of higher costs from the new lender. The buyers agreed to close only after Dave promised to have a specific model garage door opener installed. After the buyers moved in, the wrong door opener was installed. After they complained, the door opener was removed and not replaced.

● **Practice Question:**

7. Which is TRUE about this situation?
- Dave did the best he could for the buyers and should not be charged.
  - Dave can be charged with economic discrimination, a violation of the fair housing laws.
  - Dave has falsely advertised property and has committed fraud and dishonest dealing in a transaction.
  - Dave should be charged with conversion because he did not replace the door opener.

● **What Really Happened?** The administrative law judge prepared a recommended order to the FREC finding that sales associate Dave violated 475.25(1)(b) and (c), F.S., by falsely advertising property or services and by committing fraud, concealment, and dishonest dealing in a business transaction. The FREC accepted the recommended order: imposing a fine of \$1,000 and requiring a 45-hour sales associate post-licensing course.