



Unit

3

Other State and Federal Laws Affecting Real Estate

In This Unit

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- Laws regulating real estate finance
- Antitrust

Your Quick Reference
Guide to Many State
and Federal Laws
Affecting Real Estate

Important Changes You Should Carefully Review

- The Building Safety Act requires structural inspections of older condominiums and disclosure of the inspections to buyers.
- Increased homestead exemption is available to surviving spouses, people who are visually impaired, and people with disabilities.

Learning Objectives

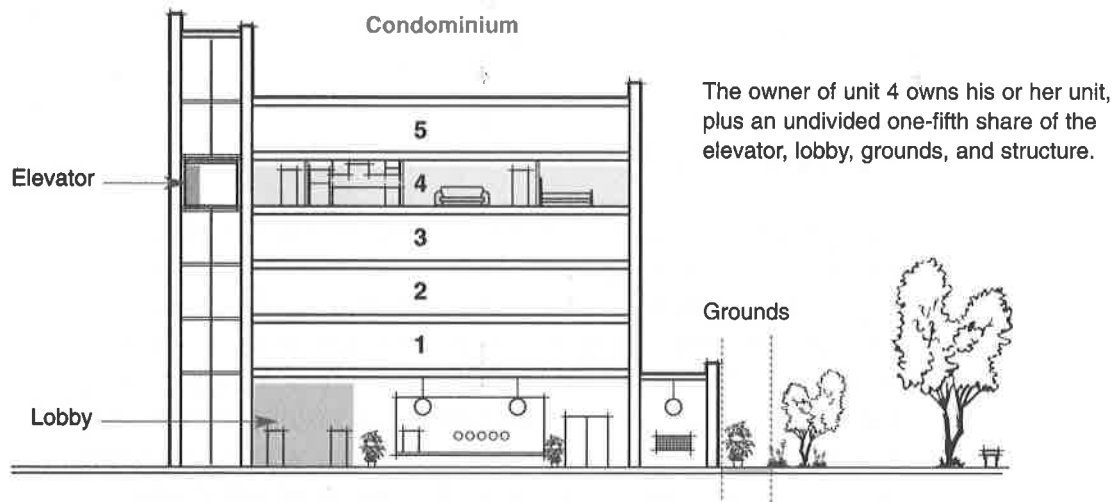
When you have completed this unit, you will be able to accomplish the following.

- Describe the major requirements of the Building Safety Act.
- Describe types and features of tax laws that affect real estate.
- Describe other important issues affecting real estate, including construction laws, subsurface rights, business taxes, and post-claim underwriting.
- Identify the provisions of laws and organizations regulating real estate finance.
- Describe the impact of antitrust laws on commission discussions and decisions.

CONDOMINIUM ACT (CHAPTER 718, F.S.)

Some describe the concept of the condominium as a “cube in the sky.” The cube has a specific legal description, much like a lot-and-block description in a subdivision. The buyer of a condominium purchases title to a unit, usually in fee simple. The owner’s exclusive ownership generally extends to the inside of the wall coverings of the condo and includes a proportional share of the common elements (see Figure 3.1). The cube rests on a structure that is a common element along with the land and other facilities. Each unit can be bought, sold, leased, or mortgaged. Real estate taxes are separately assessed on each unit.

FIGURE 3.1 ■ Condominium Ownership



The Florida Condominium Act prescribes the process by which condominiums are created, marketed, and operated. It defines common elements, describes the maintenance and assessment of common expenses, and requires full disclosure of information before the sale of the property. Strong controls govern advance payments and deposits. Developers must warrant the improvements for three years after completion of construction. For residential condominiums established after April 1, 1992, each unit’s share of common elements maintenance must be related to the unit’s total square footage or on an equal fractional basis.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCTMH) (recent name change) of the Department of Business and Professional Regulation (DBPR) is the agency charged with carrying out the law.

Buying and Selling Condos

Buyers may rescind a purchase contract within 15 days for a new condominium, or three business days for a resale unit. The time period begins when the buyer signs the contract or is given the required condominium documents, whichever is later. The required documents include the declaration of condominiums, articles of incorporation, bylaws, rules of the association, the condominium association’s question and answer sheet, a copy of the most recent year-end financial statement, a copy of the milestone inspection report if appropriate, a copy of the most recent structural integrity reserve study, and a governance form describing the rights and responsibilities of associations and condominium owners.

When a licensee gives the documents to the buyer, the licensee should get a signed, dated receipt and place it in the transaction file.

IN PRACTICE

Get relevant condo information at time of listing

When you are listing a condominium, gather all documents required by the Condominium Act so you'll be ready to give them to the buyer when the parties form a contract.

When you're working with the buyer, you should request information about:

- the dates of recent capital improvements,
- a list of planned capital improvements and the estimated costs of each, and
- a breakdown of how existing and future reserves are allocated.

This information, while not specifically required by the act, is important so that your buyer can evaluate the likelihood of required special assessments to cover capital expenditures or inadequate reserves. Be sure to get a signed and dated receipt and put it in the transaction file.

BUILDING SAFETY ACT

After the tragic events of the Surfside Condominium collapse, the Florida Legislature made significant changes to Chapters 468, 553, 718, 719, and 720 of the Florida Statutes. The Building Safety Act, Senate Bill 4-D was signed into law in 2022. In 2023, Senate Bill 154 amended the Act. Four important parts of the law are:

- The requirement for milestone inspections for buildings three stories or higher,
- The need for condominium and cooperative associations to prepare a "Structural Integrity Reserve Study" (SIRS) every ten years; and
- That associations and sellers make the inspection reports and the SIRS available to owners of the units and to prospective buyers;
- That associations fully fund the reserves necessary to replace structural items like roof, load-bearing walls, plumbing and other components with a value greater than \$10,000.

Milestone Inspections

Condominium and cooperative associations with buildings that are three or more stories in height must have an architect or engineer make a "milestone inspection" of the buildings' structural integrity by when a building reaches 30 years of age because of proximity to the coastline or other environmental conditions. Teams of inspectors with different areas of expertise are allowed, but must be supervised by the licensed architect or engineer.

Milestone inspections must be made every ten years after the first inspection.

If the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2025. Buildings that are not yet 30 years old must have a milestone inspection before December 31 of the year the building turns 30. Additionally, a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency regardless of the building's age. If an association is unable to obtain the inspection on a timely basis, the association must have a contract to complete the work within one year. The time periods may be extended if local building inspection agencies deem it appropriate.

Additional provisions include the following:

- Milestone inspections may have two phases. During phase 1, the inspector performs a visual examination of both habitable and non-habitable areas of the building. If no signs of substantial structural deterioration are present, then phase 2 is not required.

- “Substantial structural deterioration” is described as substantial structural distress that negatively affects the building’s general structural condition and integrity, requiring phase 2 testing.
- The inspector will deliver a report to the association and to the Building Official of the local government which has jurisdiction.
- The association must notify unit owners within 14 days that the report is available for inspection.
- These reports must be maintained by the association for 15 years, and any unit owner (and any prospective purchaser) has the right to inspect an association’s copy or summary of the report.

It is likely that many associations will find it difficult to meet the deadlines in the law. There are nearly 25,000 condominium buildings in Florida that are more than 30 years old. Meeting these requirements will be a huge task because of a shortage of seasoned professionals available to make the inspections.

Other Features of the Building Safety Act

The Building Safety Act also:

- Specifies the minimum contents of a milestone inspection report;
- Requires inspection report results to be provided to local building officials and the associations, and requires an inspector-prepared summary to be provided to unit owners by mail and/or by email to unit owners who have consented to receive notices by email.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.
- Provides that a willful and knowing failure by an officer or director of an association to have a milestone inspection performed is a breach of the officer’s and director’s fiduciary relationship to the unit owners.
- Gives unit owners the right to inspect and copy, as official records, the milestone inspection report and all other inspection reports relating to structural or life safety, and gives renters the right to inspect the milestone inspection reports.
- Requires associations to report to the Florida Division of Condominiums, Timeshare, and Mobile Homes (DFCTMH) the number of buildings that are three stories or higher in height and the total number of units in such buildings and requires the division to publish that information on its website.
- Requires developer and nondeveloper unit owners to give prospective buyers of a unit a copy of the inspector-prepared summary of the milestone inspection report.
- Extends the jurisdiction of the division to investigate complaints to include complaints related to the procedural completion of milestone inspections.

Structural Integrity Reserve Study (SIRS)

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, the law:

- Requires associations existing on or before July 1, 2022, that are controlled by non-developer unit owners to have a structural integrity reserve study completed by December 31, 2024.

- Defines “structural integrity reserve study” as a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection of the common elements.
- Requires the study to include a visual inspection, state the estimated remaining useful life, and the estimated replacement cost of the roof, structure, including load bearing walls fireproofing and fire protection systems, plumbing, and any item with a deferred maintenance or replacement cost that exceeds \$10,000.
- Requires the visual inspection to be performed by a person licensed as an engineer or an architect. However, any qualified person or entity may perform the other components of a SIRS.
- For budgets prepared after December 31, 2024, an Association must fully fund the reserves for items required to be included in a Structural Integrity Reserve Study (SIRS). The reserves may not later be moved to another category.
- Provides that it is a breach of a board member or officer’s fiduciary duty if an association fails to complete a SIRS.

Condo and co-op owners may experience high special assessments to pay for the inspections and needed structural repairs. Before this year, many associations could vote to waive reserves or fund them at lower rates than necessary. Beginning in 2025, the associations will have to fully fund the money necessary to replace items like roofs, plumbing, fire protection systems, etc. at the end of their useful life. The need to fully fund the reserves may require huge amounts of money for condominium owners where the association has waived the funding of the reserves in the past.

Florida Association of REALTORS® and the Florida Bar have updated the standard condominium addendum requiring sellers to give buyers a copy of the summary of the milestone inspection report and a copy of the association’s structural integrity reserve study.

Practice Questions

1. The Building Safety Act requires building safety inspections for
 - a. all buildings
 - b. commercial buildings
 - c. residential buildings
 - d. certain condominium and cooperative association buildings
2. A milestone inspection is an inspection of a building’s
 - a. landscape design
 - b. elevator system
 - c. structural integrity
 - d. parking lot
3. Who can conduct a milestone inspection?
 - a. A licensed architect or an engineer authorized to practice in Florida
 - b. Any qualified person or entity
 - c. A licensed plumber
 - d. A licensed electrician
4. What is a SIRS?
 - a. A study of the reserve funds required for future major repairs and replacement of the common elements
 - b. A study of the allocation of condominium association fees among owners.
 - c. A study of the adequacy of the Board of Directors’ attention to property operation based on the previous five-year report of the minutes.
 - d. The study of property management effectiveness of the community associate manager.

VACATION AND TIME-SHARE PLANS (CHAPTER 721, F.S.)

The Florida Real Estate Timesharing Act (FRETSA) prescribes the procedures for the creation, sale, exchange, promotion, and operation of time-share plans. The Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCTMH) administers the law.

Disclosure Required When Listing a Resale Time-Share Period

When listing a resale time-share period, a licensee must disclose in the listing agreement and in all advertising materials that there is no guarantee that the time-share can be sold at a particular price or within any particular time. Other disclosures are required, including the amount of fees, the term of agreement, promotional efforts if any advance fee is to be paid, and a description of the service to be provided by the broker.

Disclosures Required When Selling a Resale Time-Share Period

Licensees must disclose in the purchase contract the current year's assessment and the fact that it may be increased from time to time.

If ad valorem real property taxes are not included in the current year's assessment for common expenses, the licensee must include the amount of taxes, as well as information that failure to pay the taxes may result in loss of the ownership rights.

Disclosures Required When Selling New Time-Share Units

Licensees must have statutory wording in the purchase contract that allows the buyer 10 days to cancel the contract with no penalty. Another disclosure alerts the buyer that the property should be purchased as a "leisure-time activity" rather than an investment for appreciation.

If a licensee fails to disclose all material aspects of a time-share sale, or fails to have a current license as a broker or sales associate while listing or selling one or more time-share periods per year, the recommended FREC penalty is revocation.

COMMUNITY ASSOCIATION MANAGEMENT ACT (CHAPTER 468, F.S.)

The Community Association Management Act requires that certain community association managers (CAMs) obtain a license from the DBPR. A community association is defined as "a residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel."

The term *community association* under this law includes any association that has 10 or more units or has an annual budget greater than \$100,000. A community association manager must be licensed to perform the following functions for compensation: control or disburse funds, prepare budgets or other financial documents, send notices of meetings or conduct meetings, and coordinate maintenance and other services for the association. There are many other duties that require a manager to have a license. Persons who work in this field should be familiar with Chapter 468, F.S. This law does not affect apartment properties and other commercial properties.

Community Association Managers (CAMs)

The law applies to individual managers of residential homeowners associations, as well as companies and corporations that manage such associations. To obtain a community association manager's license, an individual must:

- apply to the DBPR's Division of Florida Condominiums, Timeshares, and Mobile Homes;
- pay appropriate fees;
- be of good moral character;
- successfully pass a prelicensing course that does not exceed 24 classroom hours; and
- pass a state examination.

A CAM may not perform real estate services outside the scope of association management unless that person has a real estate license.

Practice Questions

5. Buyers of a resale condominium have 15 days to rescind a purchase contract.
 - a. True
 - b. False
6. Licensees who list resale time-shares must disclose to sellers in writing that there is no guarantee that the time-share can be sold at a particular price or within any particular time.
 - a. True
 - b. False

CITIZENS PROPERTY INSURANCE NOW REQUIRES FLOOD INSURANCE

Citizens Property Insurance Corp.—Florida's insurer of last resort—now requires policyholders to purchase flood insurance. The reason for the change is to ensure that homeowners are covered whether storm damage is caused by wind or water. The change applies only to properties insured by Citizens.

Following are the deadlines for getting the flood insurance that depend upon your home's location and value:

April 1, 2023: New customers located in a FEMA-designated Special Flood Hazard Area (SFHA) must buy flood insurance.

July 1, 2023: Current customers who live in SFHAs with wind coverage policies need flood insurance before renewing their policies.

January 1, 2024: Current customers with homes insured for \$600,000 or more need flood insurance before their policy renews. New customers must purchase flood insurance.

January 1, 2025: Current customers with homes insured for \$500,000 or more need flood insurance before their policy renews. New customers must purchase flood insurance.

January 1, 2026: Current customers with homes insured for \$400,000 or more will need flood insurance before their policy renews. New customers must purchase flood insurance.

January 1, 2027: All Citizens' policy holders must buy flood insurance.

The National Flood Insurance Program

The National Flood Insurance Program (NFIP) is a federal program designed to reduce losses to individuals and businesses from flooding. Under the program, the Federal Emergency Management Agency (FEMA) identifies most flood hazard areas in the United States and its territories on Flood Insurance Rate Maps. The maps also include special flood hazard areas (SFHAs), which are defined by FEMA as “the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year.” This is also called the base flood or 100-year flood.

Flood insurance premiums used to depend on the 100-year floodplain maps and the building’s elevation. FEMA changed its data to what it calls Risk Rating 2.0. The new rating system restructures premiums to better reflect actual risk. If policy premiums increase significantly on a property, FEMA limits the annual increase to 18 percent until the actual risk premium is attained. The premium can be very substantial for properties near the coast that have flooded in the past. In the Florida Keys, for example, FEMA says that more than 90% of their annual flood insurance premiums have increased, sometimes by thousands of dollars. Many private flood insurance companies have entered the market and may be more competitive than the NFIP. The increased costs to Florida residents in high-risk areas from wind insurance combined with expensive flood insurance rates may make it prohibitive to purchase homes in those areas.

HOMESTEAD EXEMPTION

A homeowner who is a permanent resident may be eligible to receive a homestead exemption up to \$50,000. The first \$25,000 applies to all property taxes, including school district taxes. The additional exemption up to \$25,000 applies to the assessed value between \$50,000 and \$75,000 and only to non-school taxes. (See section 196.031, Florida Statutes.)

EXAMPLES

Examples include the following:

Assessed Value \$45,000: The first \$25,000 of value is exempt from all property tax and the remaining \$20,000 of value is taxable.

Assessed Value \$65,000: The first \$25,000 of value is exempt from all property tax, the next \$25,000 of value is taxable, and the remaining \$15,000 of value is exempt from non-school taxes.

Assessed Value \$85,000: The first \$25,000 of value is exempt from all property tax, the next \$25,000 of value is taxable, the third \$25,000 of value is exempt from non-school taxes, and the remaining \$10,000 of value is taxable.

Additional Homestead Exemptions

The law provides the following exemptions from homestead properties:

- A surviving spouse who has not remarried—\$5,000
- A visually impaired person—\$5,000
- A totally and permanently disabled person—\$5,000.
- A totally and permanently disabled quadriplegic—100% exempt
- A totally and permanently disabled first responder—100% exempt. Also applies to spouse.

The law provides the following exemptions from homestead properties:

- At least 10% disabled—\$5,000

- Service connected totally disabled—100% exempt
- Surviving spouse of veteran who died on active duty—100% exempt

Portability of the Save Our Homes Benefit

Assessment increases for homesteads under the Save Our Homes (SOH) amendment were capped at the lower of 3% of the previous year's assessment or the percentage change in the consumer price index. Portability of the SOH benefit is available for homeowners who had homestead exemptions on their old home and who purchase a new homestead. Homeowners can transfer their SOH benefit to a new home if they had the homestead exemption on the old home in any of the previous three years.

The maximum benefit a homeowner can transfer is \$500,000. A person who moves to a more expensive home will transfer the dollar amount. A person moving to a less expensive home transfers the percentage value.

Ad Valorem Tax Disclosure (Chapter 689, F.S.)

Because the caps on assessment increases on the SOH amendment reduces the taxable value on a homestead, when the property is sold, it is reassessed at full market value. Many buyers are shocked when their first tax bill is much higher than they expected.

Before the buyer signs a contract to purchase, Florida real estate licensees must give a property tax disclosure that includes the following wording:

Property Tax Disclosure Summary.

Buyer should not rely on the seller's current property taxes as the amount of property taxes that the buyer may be obligated to pay in the year subsequent to purchase. A change of ownership or property improvements triggers reassessments of the property that could result in higher property taxes. If you have any questions concerning valuation, contact the county property appraiser's office for information.

ANNUAL ASSESSMENT LIMITATION FOR NON-HOMESTEAD PROPERTY

All non-homesteaded property tax assessments may increase no more than 10% of the just value of the property in the prior year. The cap on annual assessment increases is automatic if the ownership did not change in the previous calendar year. If ownership changed in the previous year, the property is assessed at just value, and a new 10% assessment increase limitation begins in the next calendar year. If a non-homestead property is sold and a deed is not recorded, the new owner must file a Change of Ownership or Control notification with the property appraiser within 60 days of the change.

In years when the just value remains the same, it is still possible that the 10% increase could be used to change the assessment if the current just value is higher than the prior year's assessment.

RESTRICTIONS AND PROHIBITIONS REGARDING FOREIGN BUYERS OF REAL PROPERTY IN FLORIDA

Governor Desantis signed Senate Bill 264 in May, 2023. The bill does the following:

- Prohibits foreign principals from owning or acquiring agricultural land in the state.

- Restricts foreign principals from Russia, Iran, North Korea, Cuba, Venezuela, and Syria from owning or acquiring any interest in real property within 10 miles of any military installation or critical infrastructure in the state. Property buyers or sellers who violate the restriction could face up to 60 days in prison and a \$500 fine.
- Prohibits China, Chinese Communist Party, or other Chinese political party officials or members, Chinese business organizations, and persons domiciled in China, but who are not citizens or lawful permanent residents of the U.S. from purchasing or acquiring any interest in real property in the state. Property sellers who knowingly violate the law could face up to one year in prison and a \$1,000 fine. Chinese nationals who violate the law could face up to five years in prison, a \$5,000 fine, and forfeiture of the property.
- Provides limited exceptions from the ownership restrictions for the purchase of one residential property that is not on or within 5 miles of any military installation in the state. The Department of Economic Opportunity, the Florida Real Estate Commission, and the Department of Agriculture and Consumer Services are required to implement specific portions of the bill.
- Provide a signed affidavit, at the time of purchase, that complies with the requirements of the act. Sellers and buyers should seek legal counsel regarding their respective obligations and liabilities under the act. The Florida Real Estate Commission must develop rules to implement the law and prepare the affidavit for statewide use.

Florida REALTORS® has issued a new contract form with the following wording in a box directly above the signature line:

ATTENTION: SELLER AND BUYER

CONVEYANCES TO FOREIGN BUYERS: Part III of Chapter 692, Sections 692.201–692.205, Florida Statutes, 2023 (the “Act”), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers who are associated with a “foreign country of concern,” namely: the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. It is a crime to buy or knowingly sell property in violation of the Act.

At time of purchase, Buyer must provide a signed Affidavit which complies with the requirements of the Act. Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.

This is a complex new law. Licensees should advise buyers and sellers to consult an attorney to learn how the law may affect their legal rights and responsibilities. Licensees will have to tell customers about the law and the requirement to sign an affidavit, but should avoid covering any other details that are not in the contract notice or the affidavit.

To avoid running afoul of the Fair Housing Act, licensees should be certain to state that it’s not their intent to discriminate against buyers based upon any protected classes. Licensees should never ask buyers questions about their national origin.

The Department of Justice has filed suit in the courts to invalidate the law, stating it violates the federal Fair Housing Act and the Equal Protection Clause of the Constitution. The courts will decide the issue.

OTHER RECENT STATE LAW CHANGES RELATED TO REAL ESTATE

Live Local Act. Senate Bill 102 is an affordable housing bill that will do the following:

- Invest \$1.5 billion over 10 years to build new affordable rental units.
- Expand the Hometown Heroes Housing Program's eligibility requirements.
- Ease local restrictions on where affordable housing can be built.
- Stop cities and counties from passing any type of rent control in their jurisdictions.

Regulation of Residential Tenancies.

House Bill 1417 preempts regulation of residential tenancies to the state retroactively. This means the bill voids all current or future local ordinances that expand beyond what state law allows.

Reduction of the Business Rent Tax.

House Bill 7063 reduces the business rent tax from 5.5%–4.5%. A further reduction to 2% will be effective in August 2024.

Establishing a Statute of Limitations for Lawsuits Against Appraisers.

House Bill 213 establishes a statute of limitations for lawsuits against appraisers by setting a maximum of four years after an appraisal is performed in which a civil cause of action can be brought against a real estate appraiser or appraisal management company.

Allowing Businesses to Fight Local Ordinances.

Senate Bill 170 would make local governments show the impact of a new ordinance on businesses and suspend enforcement of an ordinance while it is being challenged in court.

Fees in Lieu of Security Deposits.

House Bill 133 provides the option for a landlord to offer a tenant to pay a fee in lieu of a security deposit. This type of product is typically for a prospective tenant who cannot pay a security deposit, and it is currently an allowed business practice. The bills provide conditions a landlord must follow to offer such a payment option.

Licensing Fee Relief.

House Bill 1091 instructs the Florida Department of Professional and Business Regulation (DBPR) to waive 50% of a licensee's initial licensing fee and 50% of the licensee's renewal fee for the 2023–2024 and 2024–2025 fiscal years. Real estate licensees, real estate school instructors, and appraisers are included in this waiver.

HOA Transparency and Accountability.

House Bill 919 contains measures that help improve the transparency and accountability of homeowners associations (HOAs). Specifically, the bill creates an HOA Bill of Rights and provisions to reign in kickbacks fraudulent voting activities, and conflicts of interest. It also allows for the removal of officers and directors under certain circumstances, and prevents fines from becoming a lien against homeowners.

Practice Questions

7. All non-homesteaded property tax assessments may increase no more than 10% of the just value of the property from the prior year.
 - a. True
 - b. False
8. Homeowners can transfer their Save Our Homes benefit to a new home if they had the homestead exemption on the old home in any of the previous five years.
 - a. True
 - b. False

UNLICENSED CONSTRUCTION ACTIVITY AND BUILDING CODE VIOLATIONS

Unlicensed Contractors

The contractor's law allows unlicensed persons to perform any work of a minor nature in which the total contract prices for labor, materials, and all other items are less than \$1,000. The exemption does not apply if the construction or repairs are part of a larger operation with several bills from the same or a different person for the purposes of evading this limitation. The unlicensed worker may not do work that requires a contractor's license or a building permit.

Real estate licensees should be aware that such workers generally do not carry liability insurance or workers' compensation insurance. This could expose the seller or buyer to substantial liability in case of an accident [489.103(9), F.S.].

Real Estate Licensees' Exemptions from the Contractor's Law

When a licensee, as agent for an owner, contracts for repairs, maintenance, remodeling or improvements that total more than \$5,000, the licensee must either have a contractor's license or employ a contractor. Dividing the work will not avoid this requirement. If the amount is \$5,000 or less, however, the licensee is exempt from the contractor's license requirement. When the work requires a licensed contractor, the licensee must hire licensed persons [489.013(17), F.S.].

Disclosure of Building Code Violations

Sellers who have been cited for building code violations, or who have citations pending, must disclose the facts in writing to buyers prior to closing a sale. The disclosure must:

- state the existence and nature of the violations and proceedings;
- provide a copy of the pleadings, notices, and other materials received by the seller; and
- state the buyers agreement to be liable for correcting the code violation.

Within five days after transfer of the property, the seller must provide the code enforcement agency with the name and address of the new owner, and provide copies of the disclosure notices given to the buyer. A seller who violates this provision is guilty of fraud [125.69(2)(d)].

Practice Questions

9. A real estate sales associate is authorized by an owner to hire several contractors to perform repairs on a listed home. The total of all bids is \$4,250. The sales associate must have a general contractor's license before hiring subcontractors to complete the work.
 - a. True
 - b. False

10. The contractor's law allows unlicensed persons to perform work in which the total contract price is less than \$1,000.
- True
 - False

FEDERAL TAX LAWS AFFECTING REAL ESTATE

Customers don't expect real estate licensees to be tax experts, but most believe licensees should be knowledgeable about taxes that relate to real estate ownership. The information in this section helps licensees provide general information about advantages and disadvantages of taking certain actions. A licensee should advise a consumer to seek professional tax advice. This section describes the following:

- Taxation of gain from sale of real estate
 - Exclusion of gain from the sale of a personal residence
 - Federal withholding taxes for foreign sellers
 - Exclusion of taxation from mortgage debt forgiveness
- Reporting cash payments greater than \$10,000
- Deductibility of expenses
- Deducting the home office
- Taxation of independent contractors

Exclusion of Gain from the Sale of a Personal Residence

An individual filer may exclude up to \$250,000 of the gain on the sale of a principal residence. Joint filers are entitled to a \$500,000 exclusion. The home must be owned and used as a personal residence for a period of two of the past five years to qualify; the two years do not need to be consecutive. There is no limit on the number of times homeowners may use this exclusion.

- **Example:** The Wilsons bought their home in 1982 for \$250,000. In 1992, they added a family room, deck, and pool for a total of \$50,000. They lived in the home until they sold it for \$900,000 this year. Selling costs were \$60,000.

Selling price	\$900,000
Less selling expenses	<u>– 60,000</u>
Equals net selling price	\$840,000
Basis	
Original cost	\$250,000
Plus improvement	<u>+ 50,000</u>
Equals cost basis	<u>\$300,000</u>
Gain on sale (\$840,000 – \$300,000)	\$540,000
Less exclusion on sale of residence	<u>– \$500,000</u>
Taxable capital gain	\$40,000

The exclusion is available only once every two years, but there are several exceptions. If the home has been held fewer than two years, and if the move is job-related or health-related or there were other unforeseen circumstances, the taxpayer was allowed a prorated portion of the exclusion. The IRS ruled that unforeseen circumstances could include:

- divorce, legal separation, or death of a spouse;
- becoming eligible for unemployment compensation;
- a change in employment that makes it impossible to pay the mortgage or basic living expenses;
- multiple births resulting from the same pregnancy;

- damage to the home from a natural disaster, act of war, or terrorism; and
- condemnation, seizure, or involuntary conversion of the property, such as foreclosure.

Deductibility of Expenses

Homeowners can deduct payments of interest and property taxes from their income from federal income taxes if they itemize their deductions. These deductions have made residential real estate an attractive investment, but for these deductible items to provide a tax benefit, the total of the taxpayer's deductions, including property taxes and mortgage interest, must exceed the standard deduction. For example, for 2023, the standard deduction was \$27,700 for a married couple filing jointly. Obviously, if tax deductions for interest and property taxes, added to all other deductions, are less than the standard deduction, the couple would not itemize.

Deducting the Home Office

Many brokers and sales associates work from their homes. If the office is qualified, they may deduct proportionate shares of heating, cooling, and maintenance expenses of the home. To qualify, the home office must be an area used exclusively for business activity, and it must be the principal location used to conduct business or to meet with customers. The homeowner may prefer to use the simpler method of claiming \$5 per square foot of the home office, with a maximum deduction of \$1,500. If the broker uses this location to meet with customers, it should be registered with the DBPR as the main office or a branch office. A broker must comply with local zoning regulations. The IRS is very strict in granting the home office deduction and has disallowed the deduction when it determined that a taxpayer kept personal correspondence in the same area used for the business. Because sales associates are furnished an office by the broker, they are not allowed to take home office deductions. Licensees should seek professional advice or review IRS Publication 587.

Taxation of Independent Contractors

Most real estate brokerage firms contract with their sales associates to be independent contractors. If the broker meets all requirements, this results in substantial savings, primarily from the employer's share of Social Security taxes, workers' compensation insurance, unemployment taxes, and other fringe benefits. There are three major requirements to qualify for independent contractor status:

- The sales associate must hold a real estate license.
- The sales associate's gross income must be based on production rather than on the number of hours worked.
- The sales associate's work must be done based on a written contract that states, among other things, that the sales associate will not be considered an employee for federal tax purposes.

However, if the broker reimburses the sales associate for business costs, such as automobile expenses, and pays for business cards, insurance plans, or licensing or board dues, the IRS may determine that the sales associate is an employee. The broker would then be liable for Social Security and Medicare taxes, and income taxes.

For more information, visit www.irs.gov.



Federal Withholding Taxes for Foreign Sellers

To ensure tax collection from foreign taxpayers, the Foreign Investment in Real Property Tax Act (FIRPTA) requires buyers of U.S. real property interests to withhold 15% of the sales price. The seller may apply to the Internal Revenue Service

(IRS) to reduce this 15% to the amount of tax estimated to be due. The IRS routinely and quickly approves such seller applications.



For more information, visit www.irs.gov/Individuals/International-Taxpayers/FIRPTA-Withholding/.

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

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 and search under “U.S. withholding agent.”



IN PRACTICE

Avoid a large 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.

Reporting Cash Payments Greater Than \$10,000

If a broker receives more than \$10,000 in cash for a single real estate transaction, or two or more related transactions, the broker must report the event to the IRS within 15 days on Form 8300. Cash is U.S. or foreign currency. Brokers selling real property need not report funds received by bank check or wire transfer when cash was not physically transferred.

Geographic Targeting of High-End Cash Buyers

The Financial Crimes Enforcement Network (FinCen) previously focused on the purchase of luxury real estate in Miami and New York in cash sales over \$1 million.

Its purpose was to stop the illegal practice of money laundering by foreigners who use shell companies to hide their identity. FinCen has now dramatically increased the reporting requirement for title insurance companies handling the purchase by shell companies of real estate involving cash or wire transfers of \$300,000 or more. The requirement covers Miami-Dade, Broward, and Palm Beach counties, as well as cities or counties in eight other states.

Practice Questions

11. Under the Foreign Investment in Real Property Tax Act of 1980, when a foreign person sells real property, the purchaser may be required to withhold up to 15% of the sale price.
 - a. True
 - b. False
12. A married couple who have owned their home for seven years sell it and have a gain on the sale of \$350,000. They must pay capital gains tax on \$100,000.
 - a. True
 - b. False

LAWS REGULATING REAL ESTATE FINANCE

Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau (CFPB) regulates consumer credit, banking, and mortgage lending. It writes and enforces bank rules, conducts bank examinations, monitors and reports on markets, and collects and tracks consumer complaints.

Equal Credit Opportunity Act

The Equal Credit Opportunity Act (ECOA) protects consumers against discrimination when they apply for mortgages to purchase, refinance, or make home improvements.

The ECOA prohibits discrimination in any aspect of a credit transaction based on race or color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the applicant's receipt of income derived from any public assistance program, or the applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act (the umbrella statute that includes the ECOA).

Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA), enforced by the Federal Trade Commission, is designed to promote accuracy and ensure the privacy of the information used in consumer reports. Companies that gather and sell credit information are called *consumer reporting agencies (CRAs)*. The most common type of CRA is the credit bureau.

Credit scoring. Credit scoring uses statistical samples to predict how likely it is that a borrower will pay back a loan.

The most commonly used credit score today is the FICO score. FICO scores range from 400 to 900. Low scores predict that the borrower is more likely to default on a loan.

A person's FICO score consists of the following components:

- Payment history—35% (of the total score)

- Debt utilization—30%
- Credit history—15%
- Recent credit searches—10%
- Types of credit—10%

Truth In Lending Act

The Truth in Lending Act (TILA) requires creditors to disclose the cost of borrowing in plain language so consumers can understand the charges, compare costs, and shop around for the best credit deal.

Real Estate Settlement Procedures Act

The Real Estate Settlement Procedures Act (RESPA) protects buyers by requiring disclosure of the amounts and types of charges they must pay at closing.

The six principal areas of the RESPA are as follows: (1) Loan Estimate, (2) Settlement cost booklet, (3) Selection of the closing agent, (4) Purchase of title insurance, (5) No kickbacks, and (6) Closing Disclosure.

TILA-RESPA Integrated Disclosure

The two important forms used in the TILA-RESPA Integrated Disclosure (TRID) are the Loan Estimate and the Closing Disclosure.

The Loan Estimate helps borrowers better understand loan costs and compare lenders. It requires the lender to be accountable for the exact loan charges; other charges must be within 10% of the final costs.

The Closing Disclosure must be received by the borrower at least three days before the closing. If the forms are mailed, they must be mailed at least seven days before closing.

Practice Questions

13. The two most important forms used in the TILA-RESPA Integrated Disclosure are the Loan Estimate and the Settlement cost booklet.
 - a. True
 - b. False
14. The most important part of a credit score is the applicant's payment history.
 - a. True
 - b. False

ANTITRUST

There are several antitrust laws, beginning with the Sherman Act in 1890, which prohibit competitors from conspiring to fix prices, segment the market, engage in illegal boycotts, and other practices that unreasonably restrain trade.

Real estate brokers and their associates should be aware of these various violations. Brokers should discuss these illegal practices as part of their associate training programs. There is one particular action that tends to be more tempting to violate than the others—price fixing.

If two or more brokerages conspire to fix prices, such as real estate commission rates, or any of the other terms or conditions of the broker-client relationship, a violation of antitrust laws has occurred. In addition, listing brokers may not agree on the portion of the commission to be shared to compensate cooperating brokers



who work with the buyers. *All* commissions, including the percentage to be shared, must be negotiable.

To learn more about this topic, please visit <https://www.nar.realtor/antitrust>.

Branch Offices vs. Franchises

Brokers may always discuss the commissions they charge with the sellers and buyers with whom they work. However, one point of confusion that often arises is understanding which brokers may or may not discuss the commissions to be charged. If a brokerage has a main office and branch offices, the brokers and associates that are registered with those offices may discuss commissions—how much to charge, when exceptions can be made, and who can approve these exceptions without violating antitrust laws. The reason for this is that the offices and all the parties are part of the *same* brokerage.

However, a question that sometimes arises is the legality of discussing commission policy with different brokerages who have selected to be part of the *same* franchise. For example, ABC Brokerage has decided to purchase a Speedy Realty franchise. ABC Brokerage adopts the trade name of Speedy Realty Downtown. XYZ Brokerage, a completely different brokerage than ABC Brokerage, also joins the Speedy Realty family of franchises and becomes Speedy Realty West Side. Can Speedy Realty Downtown and Speedy Realty West Side discuss commissions? **NO!** They are not part of the same brokerage; these are two different brokerages who happen to have both purchased a Speedy Realty franchise. To discuss commissions under this scenario would be a violation of the Sherman Act.

Practice Questions

15. Since the Sherman Act was passed in 1890, federal sunset provisions have invalidated this law.
 - a. True
 - b. False

16. Associates of the same brokerage, regardless of which of the brokerage's offices they are registered with, are permitted to discuss commission rates to be charged by their brokerage.
 - a. True
 - b. False

Case Study

NOTIFY FREC PROMPTLY IN CASE OF GOOD-FAITH DOUBT ABOUT AN ESCROW DEPOSIT

● **Facts:** Maxine, a licensed real estate broker, received a \$1,000 good-faith deposit from Clifford, a buyer, who was to purchase a home owned by Ralph. The contract was contingent upon Clifford's obtaining financing for the purchase through a bank, and the closing date was set for June 30.

Clifford failed to obtain the loan, so the closing did not take place. In October, Maxine disbursed the deposit to Ralph without Clifford's consent. When Clifford requested the return of his deposit, Maxine told him that he had forfeited the deposit because of his failure to obtain the required loan.

In November, three years later, Maxine notified the DRE that there was a dispute over who should get the deposit. The Division brought an administrative complaint against Maxine.

● **Practice Questions:**

17. Which charge was most likely levied against Maxine?
 - a. She shared a commission with an unlicensed person.
 - b. She disbursed funds without an escrow disbursement order of the FREC.
 - c. She engaged in fraudulent or misleading advertising.
 - d. She failed to promptly notify the FREC about conflicting demands or a good-faith doubt about an escrow deposit.

18. What do you believe should be the recommended order of the administrative law judge?
 - a. Dismissal of all charges
 - b. Fine and probation
 - c. Suspension
 - d. Revocation

● **What Really Happened?** The administrative law judge recommended that Maxine be fined \$1,000 and placed on probation for one year. The FREC affirmed the recommended order.