UNIT

5 REAL ESTATE BROKERAGE ACTIVITIES AND PROCEDURES

LEARNING OBJECTIVES

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

- Identify the requirements for a broker's office(s) and explain what determines whether a temporary shelter must be registered as a branch office.
- List the requirements related to sign regulation.
- List the requirements related to the regulation of advertising by real estate brokers.
- Explain the term *immediately* as it applies to earnest money deposits.
- Describe the four settlement procedures available to a broker who has received conflicting demands or who has a good-faith doubt as to who is entitled to disputed funds.
- Describe the regulations regarding lien rights for unpaid sales commission.
- Contrast the features and requirements of the various types of business organizations.

KEY TERMS

arbitration
blind advertisement
commingle
conflicting demands
conversion
corporation
deposit
earnest money
escrow account
escrow disbursement order (EDO)
failure to account or deliver
general partnership
good-faith doubt
immediately
interpleader
kickback
limited liability company (LLC)
limited liability partnership (LLP)
limited partnership
litigation
mediation
ostensible partnership
personal assistant
point of contact information
professional association (PA)
sole proprietorship
team or group advertising
trade name

INTRODUCTION

This unit concerns the day-to-day operations of a real estate brokerage office, including principal office and branch office regulations, rules governing signs, advertising, record-keeping, and conduct. The broker's role as an expert and the proper handling of escrow funds, rental lists, and compensation are discussed. The unit also describes the various forms of business entities that may be encountered and that are permitted to engage in real estate brokerage activities in Florida.

5.1 BROKERAGE OFFICES

475.22, F.S.
61J2-10.022, F.A.C.

All active Florida real estate brokers are required to have an office and to register the office with the Department of Business and Professional Regulation (DBPR). A broker's office must consist of at least one enclosed room in a building of stationary construction that will provide privacy to conduct negotiations and closings of real estate transactions. Florida law does not regulate the specifics of a broker's office. For example, Florida law does not require brokers to have a telephone, desk, business checking account, or an escrow account. The tools needed to conduct business are the broker's decision. Florida law, however, does require that the broker's accounting books, records, and real estate transaction files are to be kept in the office. Brokers may store the files in an electronic format that can be readily accessible by the broker.

If local zoning allows, the broker's office may be located in the broker's residence. However, the broker must comply with all office and brokerage signage requirements. The broker should also consult applicable homeowners association rules or restrictive covenants and rules. A broker may have an office or offices in another state, provided the broker agrees in writing to cooperate with any investigation initiated under Chapter 475, F.S.

Sales associates are not permitted to open offices of their own. They must be registered from and work out of an office maintained and registered in the name of their employer.

Branch Offices

A broker who desires to conduct business from additional locations must register each additional location as a branch office and pay the appropriate registration fees.

Branch Office Registrations. The Florida Real Estate Commission (FREC) may insist that a broker open and register a branch office whenever the FREC decides that the business conducted at a place other than the principal office is of such a nature that the public interest requires registration of a branch office. Further, any office will be considered a branch office if the advertising of a broker, who has a principal office elsewhere, is such that it leads the public to believe that the office of concern is owned or operated by the broker in question.

Registrations Issued to Branch Offices Are Not Transferable. If a broker decides to close one branch office and open a new branch office at a different location, the registration of the closed office may not be transferred to the new location. This is true even though these actions may take place at the same time. The new branch office location must be registered with the DBPR and the branch office registration fee paid before business is conducted there. A broker may reopen a branch office in the same location during the same license period by requesting a reissue of the branch office license without paying an additional fee.

Temporary Shelters. A *temporary shelter* in a subdivision being sold by a broker is not a branch office if the shelter is intended only for the protection of customers and sales associates. But if sales associates are permanently assigned there and sale transactions are closed there, then the temporary structure must be registered as a branch office. The permanence, use, and character of activities customarily conducted at the office or shelter determine whether it must be registered.

Practice Questions

1. A brokerage office must be at least _____ enclosed room that will provide _____ to conduct negotiations and close real estate transactions.
2. A broker may have an office in the broker's residence provided local _____ allows such activity and the broker's _____ is displayed at the entrance to the office.
3. Registrations issued to branch offices are _____ transferable to a different _____.
4. Sales associates are _____ permitted to open offices of their own. They must be registered from and work out of an office maintained and registered in the name of their _____.

5.2 OFFICE SIGNS

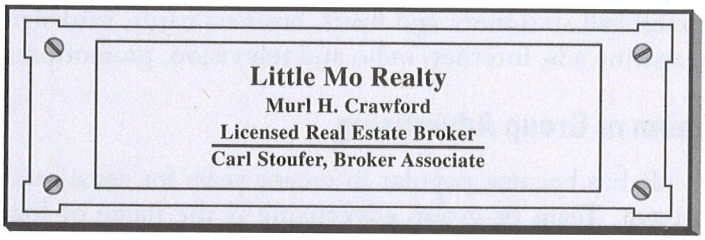
475.22, F.S.
61J2-10.022, F.A.C.

Active real estate brokers must display an official sign on either the exterior or the interior of the entrance to their principal office and all branch offices. The sign(s) must be easily observed and read by anyone entering the office. The sign must contain the following information:

- Trade name (if one is used)
- Broker's name
- The words "Licensed Real Estate Broker" or "Lic. Real Estate Broker"

Refer to the example of an office sign in Figure 5.1. The registered trade name is Little Mo Realty, the broker's name is Murl H. Crawford, and the required wording "Licensed Real Estate Broker" appears on the sign.

FIGURE 5.1 ■ Example of a Sole Proprietor With a Trade Name Sign



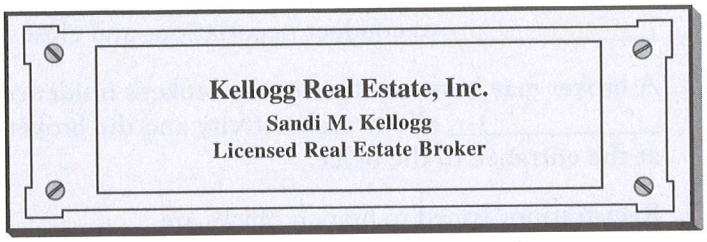
61J2-10.025, F.A.C.

The names of the sales associates and broker associates are not required on the entrance sign. However, if the associates' names appear on the sign, the names must not appear misleading, false, deceptive, or fraudulent. In Figure 5.1, the office sign clearly identifies Carl Stoufer as the broker associate.

If the brokerage entity is a partnership, corporation, limited liability company (LLC), or limited liability partnership, the sign must contain the following information (see Figure 5.2):

- Name of the firm or corporation (or trade name, if one is used)
- Name of at least one active broker
- The words "Licensed Real Estate Broker" or "Lic. Real Estate Broker"

FIGURE 5.2 ■ Example of a Brokerage Corporation Sign



Practice Questions

5. List three items that must be on all real estate office entrance signs.
   1. _____
   2. _____
   3. _____

6. Active brokers must display an official sign on either the _____ or the _____ of the entrance to all of their registered offices.

5.3 ADVERTISING

475.01(1), F.S.
61J2-10.025, F.A.C.

Anyone who advertises or claims to be providing real estate services is acting as a real estate broker. Therefore, under Florida law, advertising is considered a broker activity. All advertising must be in the name of the brokerage and under the supervision of the broker. Sales associates may not advertise real estate services in their own names. If sales associates create promotional materials, such as refrigerator magnets and notepads, they must include the licensed name of the brokerage firm on them. The broker is accountable for all advertising, regardless of who actually prepares the advertisement. Advertising includes letterhead stationery and flyers, business cards, yard signs and billboards, newspaper and magazine ads, internet, radio and television, promotional materials, and so forth.

Team or Group Advertising

61J2-10.026, F.A.C.

It has become popular in recent years for associates within a brokerage firm to form a team. **Team or group advertising** is the name or logo used by one or more licensees who represent themselves to the public as a team or group. The concept of teams or groups allows sales and broker associates to specialize in their area of expertise and to join forces to serve a wider group of customers more efficiently. Teams or groups must perform licensed activities under the supervision of the same registered broker or brokerage.

Each team or group must file with their registered broker the name of the licensee whom the team or group designates to be responsible for ensuring that the advertising

of the team or group complies with Florida license law and administrative rules. At least monthly, the registered broker must maintain a current written record of each team or group's members. The team or group must advertise in the name of the brokerage. All advertising must be in a manner in which reasonable persons would know they are dealing with a team or group. The team or group name in advertisements may be no larger than the name of the registered broker.

The administrative rule for team or group advertising lists what words are prohibited from being used within a team or group name to prevent misrepresentation to the public (see Figure 5.3). The rule regarding team or group advertising applies to all forms of advertising the team or group uses.

FIGURE 5.3 ■ Words That May Not Be Used in Team or Group Names

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Agency	Brokers	LP, LLP, or Partnership
Associates	Company	Properties or Property
Brokerage	Corporation, Corp., Inc., or LLC	Real Estate or Realty

ADVERTISING KEY CONCEPTS

All advertisements must include the name of the brokerage firm.

If a licensee inserts a personal name in the ad, the licensee's last name as registered with the DBPR must also be included.

Licensees may use their nickname in advertisements provided they also include their last name as registered with the DBPR.

The brokerage firm's address and phone number are not required to be included in the advertisement (note the exception regarding internet advertisement, as discussed later).

A team or group name in an advertisement shall not be in larger print than the name of the registered broker or brokerage.

Blind Advertisements

61J2-10.025, F.A.C.

All advertising must be worded so that reasonable people will know that they are dealing with a real estate licensee. A licensee may not advertise real estate services in such a way as to mislead the public that the offer is being made by a private individual rather than a real estate licensee. Advertisements must clearly reveal the licensed name of the brokerage firm. Advertisements that fail to disclose the license name of the brokerage firm are **blind advertisements**. For example, an advertisement that provides only a post office box number, telephone number, and/or street address is a blind ad and is prohibited.

Including Personal Information

61J2-10.025(2), F.A.C.

Licensees may insert their personal names in ads, provided the advertisement includes the name of the brokerage and the licensees include their last name as registered with the DBPR. Advertisements created by associates must be supervised directly by their broker. Licensees may use their nickname in combination with their last name on business cards and in advertisements, but must be mindful that the advertising rule states that advertisements must not be misleading. Sales associates should get their broker's approval

of the advertisement to ensure that the ad meets current advertising rules. Sales associates and their brokers should review advertisements for accuracy and also make certain the ad is canceled when, due to sale or listing expiration, the property is no longer on the market. Sales associates may indicate their cell phone number or other alternate number and/or address on their business cards, provided the card also includes the name of the brokerage firm. FREC does not require that the brokerage firm's phone number or address be included in ads.

False Advertising

Publication of false or misleading information by means of radio, television, or written matter for the purpose of inducing someone to buy, lease, rent, or acquire an interest in title to real property is illegal. If a sales associate prepares a misleading ad, both the broker and the sales associate can be disciplined. False advertising is a misdemeanor of the second degree.

FALSE ADVERTISING

A person may not disseminate or cause to be disseminated by any means any false or misleading information for the purpose of offering for sale, or for the purpose of causing or inducing any other person to purchase, lease, or rent, real estate located in the state or for the purpose of causing or inducing any other person to acquire an interest in the title to real estate located in the state.

Reference: 475.42(1)(n), F.S.

475.42(1)(n), F.S.
475.25(1)(c), F.S.
61J2-10.025, F.A.C.

FREC rules mandate that real estate advertisements must not be fraudulent, false, deceptive, or misleading. For example, it would be considered false and misleading advertising for a broker associate to use the title, "broker" on the associate's business card. Even though the broker associate is qualified to operate as a broker, the broker associate is not working in a broker capacity with the brokerage firm.

Licensees must take care when constructing real estate advertisements to make certain they are not misleading. Take a look at these examples and consider if they are misleading.

EXAMPLE 1: Luxurious 5-bedroom home with private pool and ocean view in prime Florida neighborhood. Top-of-the-line appliances and finishes. Schedule a viewing today! Call me, your number one real estate agent in Florida, at 444-111-2222.

What are some of the things you see that could be misleading in this advertisement? The first item would be the contact information. A licensee must use at least their last name as it is shown in the state licensing records along with the brokerage's name in any advertisement. Secondly, what makes this agent number one in Florida? Identifying yourself as the best or number one may be misleading if you cannot back it up. Lastly, using enticing words in an advertisement could be misleading to a potential buyer if the property is not all that is advertised. Is the ocean view accurate, or can you see it when you stand on the roof of the home? Are the top-of-the-line appliances new or in good condition? It is best to speak to the facts of a property and use proper contact information when advertising. Therefore, a better constructed advertisement follows:

EXAMPLE 2: This luxurious 5-bedroom home in a prime Florida neighborhood has a private pool and a full ocean view. It has new top-of-the-line appliances and finishes. Schedule a viewing today! Call me, Zippy Thomas, Quality Service Real Estate, mobile (444) 111-2222.

Internet Sites

61J2-10.025, F.A.C.

When advertising on an internet site, the name of the brokerage firm must appear adjacent to or immediately above or below the point of contact information. **Point of contact information** refers to any means by which to contact the brokerage firm or individual licensee, including mailing address(es), physical street address(es), email address(es), telephone number(s), or facsimile (fax) telephone number(s).

Unauthorized Use of Association Names

61J2-24.002(2)(x), F.A.C.

61J2-10.027, F.A.C.

A licensee cannot use an association's name or an organization's designation unless the licensee is currently a member in good standing of the association (dues are up-to-date). Active and inactive real estate licensees can be disciplined by FREC for false advertising for using the name or designation of an association (such as on business cards) to lead people to believe the licensee is a member of the association.

Licensee Selling Property By Owner

The rules regarding advertising real property do not prevent real estate licensees from selling their own property. Real estate licensees who own property and are selling the property "by owner" may place their own classified advertisements. Licensees may include their personal contact information in the ads, such as the home phone number and street address of the property. It is not necessary for a licensee to indicate in the advertisement that the seller is a real estate licensee. However, because a licensee has superior knowledge and expertise in real estate, to reduce liability the "by owner" licensee-seller should disclose before entering into serious negotiations that the seller is a real estate licensee. Disclosure of this fact should also be documented in the sale contract. Licensees considering selling property that they own "by owner" should first consult with their broker and review the office policy manual. Some brokers expect the licensee to list the property through the brokerage office.

Telephone Solicitation

A **telephone solicitation** is the initiation of a telephone call for the purpose of encouraging the purchase of, or investment in, property, goods, or services. Telemarketing is regulated at the federal and state level. The Telephone Consumer Protection Act (TCPA) established a National Do Not Call Registry for consumers who wish to avoid telemarketing calls. The Federal Trade Commission (FTC) maintains the registry. Consumers at no charge may request to have their residential and mobile phone numbers added to the registry. Telemarketers must first search the national registry before making telemarketing calls. Calls are restricted to the hours between 8:00 am and 9:00 pm. Violators of the federal law may be fined for each illegal call.

Prerecorded Telemarketing Calls. *Robocalls* are unsolicited, prerecorded telemarketing calls to landline home telephones and all autodialed or prerecorded calls or text messages to wireless numbers. FCC rules ban text messages sent to mobile phones using an auto dialer unless the consumer previously gave consent to receive the message. The ban applies even if the consumer has not placed the mobile phone number on the National Do-Not-Call List. FCC rules require a business to obtain written consent, on paper or through electronic means, before it may make a prerecorded telemarketing call to a residential phone number or make an autodialed or prerecorded telemarketing call or text to a wireless number.

Cold Calls. Oftentimes, real estate sales associates will make unsolicited calls to prospective buyers or sellers to introduce themselves and solicit listings. Real estate associates should follow the FTC rules and regulations closely when making cold calls. Violations of FTC rules and regulations could result in the FTC fining the sales associate and the associate's registered broker.

501.604 (25), F.S.

501.059, F.S.

State Regulation. Florida's telemarketing law is administered through the Department of Agriculture and Consumer Services (FDACS). The FDACS maintains a "no sales solicitation calls" registry for consumers who do not wish to receive telephone solicitation calls on their residential and mobile telephones. Consumers may apply online to be included on the state registry. The Florida statute mandates that the FDACS include in the Florida registry listings from the national registry that relate to Florida. Violators of Florida's Telemarketing Act may be fined for each illegal call.

A major difference between the state and federal telemarketing laws is that the Florida law exempts real estate licensees who solicit listings in response to a "For Sale" yard sign (see Figure 5.4). However, the federal law does not exempt calls to for sale by owners (FSBOs) whose numbers are on the national registry. If a phone number is on both the national and the state registry, the FCC ruled that real estate licensees must comply with the national registry, regardless of the Florida exemption. Florida's law which provides an exemption for real estate licensees who wish to solicit listings from FSBOs is considered less restrictive and is therefore preempted by the federal law. The federal law provides the following exceptions:

- A sales associate representing a potential buyer may call the FSBO seller, but only if the associate has an actual buyer interested in the property and for purposes of negotiating a sale.
- A sales associate may contact individuals with whom the associate has had an established business relationship, even if those customers' numbers are on the national registry. For example, the company that previously listed a property may contact the former customer to solicit new business for up to 18 months after the business transaction has been concluded.
- Sales associates may contact a customer for three months after a business inquiry or application (such as a customer who registered at an open house or a FSBO seller who requested information from a sales associate).

FIGURE 5.4 ■ Telephone Solicitation

Florida Law	Federal Law
No solicitation calls registry	National Do Not Call Registry
Calls restricted to 8:00 am to 9:00 pm	Calls restricted to 8:00 am to 9:00 pm
FSBO exception	No FSBO exception—must check registry (federal law supersedes state law)

If a sales associate calls a FSBO or an expired listing under the exceptions listed previously and the homeowner requests not to be called, the sales associate must comply. Telemarketers must state their names, the business name, and the business telephone number. Telemarketers may not block their phone numbers. Businesses that use telemarketing must develop and adhere to written procedures regarding the firms' calling policies. Businesses must advise and train their personnel and independent contractors engaged in telephone solicitation regarding do-not-call list maintenance and procedures. Real estate companies that wish to use telemarketing in their business strategy must obtain the list of

phone numbers in the registry. Licensees must search the national registry at least quarterly and delete from their call lists the phone numbers of consumers who have registered.

Electronic Mail Advertising

The CAN-SPAM Act is a federal law that sets national standards for commercial electronic mail messages. The law applies to any business that uses electronic mail messaging in its marketing program. FCC rules restrict sending unwanted commercial electronic mail messages (spam) to computers and wireless devices, including cell phones. All commercial electronic messages must allow the consumer to opt out of receiving future messages. Senders have 10 business days to honor requests to opt out. To be CAN-SPAM compliant when sending electronic messages, the sender must do the following:

1. Provide no false or misleading header information
2. Ensure that subject lines are not deceptive
3. Include a valid physical postal address in every message
4. Provide a clear and obvious way to opt out on every electronic message sent and honor the unsubscribe request within 10 business days
5. Use clear "From," "To," and "Reply to" language that accurately reflects the person or business sending the message, as well as the domain name and email address
6. Identify the message as an advertisement or solicitation

WEBLINK

To learn more about the National Do Not Call Registry, visit the FCC website at www.donotcall.gov.

To find out more regarding the Florida Do Not Call Program, visit https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call. A CAN-SPAM compliance guide for businesses is available at https://www.ftc.gov/business-guidance/resources/can-spam-act-compliance-guide-business.

Practice Questions

7. Kimberly is a sales associate with Fast Results Realty. Kimberly is bilingual and she wants to use her language skills to attract international customers. Kimberly decides to form an international team within her broker's company. She and two other sales associates refer to themselves as Your International Team. Your International Team has business cards designed with the team member's names, contact information, and the name Your International Team. Open house signs are designed with the name Your International Team and the team member's contact information. A disgruntled sales associate who was not invited into the team files a complaint with the DBPR. What is the likely result of the complaint?

   The DBPR will agree that the advertising by Your International Team is a violation of the team advertising rule because the name of the _____ _____ is not included on the business cards and open house signs.

8. Circle the corresponding letter(s) to indicate which information must be included in an advertisement for a listed property.
   a. Name of the listing agent
   b. Address of the brokerage office
   c. Name of the brokerage firm

9. Jed Smith, Ziggy Thomas, and Maybelle Simons are members of the Results Team at Quality Service Real Estate. Circle the corresponding letter(s) to indicate which advertising requirements are required by the DBPR when advertising by a team name.
   a. Must advertise in the name of the registered brokerage.
   b. Team name should be larger font than the registered brokerage name.
   c. The brokerage firm's address and phone number are not required in the advertisement.
   d. The team's phone number and name are sufficient for all advertisements.
   e. Internet advertisement requires the brokerage name to be adjacent to or immediately above or below the point of contact information.
   f. Only the team's name is required on promotional materials such as pens, cups, shirts, etc.

10. False advertising is a misdemeanor of the _____ degree.

11. When advertising on an internet site, the _____ of the brokerage firm must appear adjacent to or immediately above or below the _____ _____ _____ information.

12. A sales associate licensee chooses NOT to become a member of the NAR. The licensee uses the designation REALTOR® on her business cards. The FREC can discipline the licensee for _____ _____.

13. The law that prohibits real estate licensees from soliciting listings from prospects whose numbers are listed in the national registry in response to For Sale yard signs is the _____ _____ _____ Act.

14. Telephone solicitation calls are restricted to the hours between _____ and _____.

5.4 ESCROW OR TRUST ACCOUNTS

475.25(1)(k), F.S.
61J2-14.008, F.A.C.

Typically, when a buyer makes an offer on real property, the buyer includes with the offer a deposit to show good faith that the buyer is serious about purchasing the property. A **deposit** is a sum of money, or its equivalent, delivered to a real estate licensee as **earnest money** or a payment, or partial payment in connection with a real estate transaction. Earnest money deposits are also called *good-faith deposits* or *binder deposits*.

An **escrow account** is an account for the deposit of money a disinterested third party (i.e., not a party to the contract) holds in trust for others; hence the term *trust funds*. Trust funds include cash, checks, money orders, and items that can be converted into cash, such as deeds and personal property. In addition to earnest money deposits associated with sale transactions, some brokers hold in trust for others money associated with leasing property, such as rent deposits and security deposits. Brokers are not required to keep earnest money deposits separate from rental deposits. However, tracking trust funds is easier when separate escrow accounts are established for funds associated with sales and funds associated with rentals.

Acceptable Depositories

61J2-14.010(1)

Brokers may maintain their escrow accounts in a Florida commercial bank, credit union, or savings association. Florida law does not require brokers to open an escrow account. However, without an escrow account, a broker cannot hold funds belonging to customers and clients. A broker who does not want the responsibility and liability of maintaining escrow accounts may choose to have a Florida-based title company with trust powers to maintain the escrow funds, or alternatively, if designated in the sale contract, a Florida attorney may escrow the funds.

Immediately Defined

61J2-14.009, F.A.C.

Florida law mandates the time frame for depositing escrow funds. Sales associates and broker associates who receive a binder deposit from a buyer or a rental deposit from a tenant must deliver it to their broker-employer no later than the end of the next business day. Saturdays, Sundays, and legal holidays are not counted as business days. When a sales associate or an employee (such as a receptionist) of the brokerage company accepts funds on behalf of the broker, the broker is liable for those funds. Therefore, it is extremely important that brokers train their personnel regarding the importance of turning over all earnest money in a timely manner.

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61J2-14.008, F.A.C.

Brokers must place trust funds into an escrow account **immediately**, which is defined in administrative rule as no later than the end of the third business day following receipt by the brokerage (such as an associate or a receptionist) of the item to be deposited. The first day of the three-business-day period is the day that the sales associate must deliver the deposit to the broker.

EXAMPLE: A sales associate receives a deposit from a buyer on Tuesday (no legal holidays are involved).

- The sales associate has until the end of the next business day (Wednesday) to deliver the deposit to the broker.
- The broker has until the end of the third business day following receipt of the item to be deposited (Friday).

FIGURE 5.5 ■ Time Line to Deposit Escrow Funds

Tuesday (Day 0)	Wednesday (Day 1)	Thursday (Day 2)	Friday (Day 3)
Sales associate receives escrow deposit	Sales associate must deliver deposit to broker by end of day		Broker must deposit funds by end of the day

EXAMPLE: A sales associate receives a rental deposit from a tenant on Saturday (no legal holidays are involved).

- The sales associate has until the end of the next business day (Monday) to deliver the deposit to the broker.
- The broker has until the end of the third business day following receipt of the item to be deposited (Wednesday).

FIGURE 5.6 ■ Time Line to Deposit Rent Funds

Saturday (Day 0)	Monday (Day 1)	Tuesday (Day 2)	Wednesday (Day 3)
Sales associate receives rent deposit	Sales associate must deliver deposit to broker by end of day		Broker must deposit funds by end of the day

When computing the deadline for the broker to deposit the funds, it must start the next business day after the sales associate receives the funds from the buyer (or tenant), regardless of whether the sales associate fails to deliver the funds timely to the broker. A broker must deposit the funds no later than the third business day; this is the deadline for making the deposit. The broker can also make the deposit earlier.

Brokers must keep records of all transactions, escrows, and property management funds and make such books, accounts, and records available to the DBPR to enable the DBPR to determine whether the broker complies with Chapter 475. If requested, the broker must make all ledgers, bank statements, and other records available for inspection to the DBPR.

KEY CONCEPTS REGARDING ESCROW ACCOUNTS

- Brokers may open an escrow account in a Florida bank, savings association, or credit union.
- If a broker chooses not to maintain an escrow account, the funds may be held by a title company or in a Florida-licensed attorney's trust account.
- Sales associates (and broker associates) must deliver escrow deposits to their broker by the end of the next business day following receipt of the funds.
- Brokers must deposit escrow funds by the end of the third business day following the day that the funds are accepted by the brokerage.

Personal Checks, Postdated Checks, and Insufficient Funds

If an escrow check is made out to the sales associate personally, the best course of action is to ask the prospective buyer to write a new check payable to the broker's escrow account. However, if this is not practical, the sales associate should immediately endorse the check and include the words, "For Deposit Only to the (name of the escrow account)" and turn it over to the broker.

673.1131, F.S.
61J2-14.008(1), F.A.C.

Postdated Checks and Insufficient Funds. Occasionally, a licensee may be given a postdated check (considered a promissory note) as an earnest money deposit. Extreme caution should be taken in handling such deposits. The seller's approval must be obtained before accepting the postdated check. Once accepted, the broker should secure the instrument in a proper place, such as an office safe, until the date on the check becomes current, and then immediately deposit the check into the broker's escrow account. A broker will not be held responsible for the nonpayment of an escrow check, provided the broker timely deposits the check into the escrow account and the broker's own carelessness (culpable negligence) did not cause the check not to be honored.

Management of Escrow Accounts

61J2-14.010(1), F.A.C.

Signatory on Escrow Account. FREC rules require brokers to be a signatory on all their brokerage escrow accounts. The escrow accounts must be properly reconciled each month, and the broker must review, sign, and date the monthly bank reconciliations. The broker may designate another person, such as a bookkeeper, to sign checks on the account in the ordinary course of business. Brokers should use caution when delegating escrow responsibilities to another person. Florida law holds the broker accountable for reviewing the brokerage firm's escrow accounting procedures to ensure compliance with Florida license law.

61J2-14.014, F.A.C.

Interest-Bearing Escrow Accounts. A broker's escrow account may be an interest-bearing or a non-interest-bearing account. If the broker's escrow account is an interest-bearing account, the broker must get written permission from all parties before placing the funds in this type of account. The written authorization must specify who is entitled to the interest earned. The broker may receive the interest earned, but only if it is specifically agreed to by all parties. A broker can be disciplined by the FREC for failure to secure the written permission of all interested parties prior to placing trust (escrow) funds in an interest-bearing escrow account.

61J2-14.010(2), F.A.C.
475.5015, F.S.

Money to Maintain Escrow Account. Commission rules allow a broker to have up to $1,000 of personal money or business operating funds in an escrow account for sales transactions. You may ask, isn't that commingling? The Commission realized that if you have only trust funds in an escrow account and you do not have any sales pending at a particular time during a month, the escrow account balance would be zero and the bank could potentially close the account or charge low-balance fees. Therefore, the Commission decided that it was prudent to allow a broker to keep up to $1,000 of the broker's personal funds or business operating funds in a sales escrow account for maintenance purposes, such as check printing, bank fees, and so forth. The money to maintain the account is not considered to be commingling and must be accounted for in the broker's monthly accounting records.

The FREC rules also allow brokers to keep up to $5,000 of their own monies in an escrow account for property management. The Commission allows a larger amount of funds for maintenance purposes in a property management escrow account because many tenants' monthly rent checks are deposited each month. If a tenant's rent check were to be returned for nonsufficient funds, the broker cannot use the funds of another property owner to pay repairs on the property that had the rent check returned for NSF.

It is advisable that brokers keep sales escrow funds separate from property management escrow funds to simplify the accounting process. However, Florida law does not require separate sales escrow accounts and property management escrow accounts. If a broker maintains sales escrow funds and property management escrow funds in a single escrow account, the amount of personal funds or brokerage funds in the account cannot exceed $5,000.

Recordkeeping and Retention. Brokers must keep business records, books, and accounts in compliance with Florida law and Commission rules and make them available for audit or spot checks by the DBPR at any reasonable time. Records must be preserved for at

least five years from the date of receipt of money, funds, deposits, or checks entrusted to the broker. Furthermore, records must be retained for at least five years from the date of any executed agreement, including buyer brokerage agreements, listing agreements, offers to purchase, rental property management agreements, rental or lease agreements, or any other written or verbal agreement that engages the services of the broker. If a broker's records have been the subject of litigation or have served as evidence for litigation, the relevant records must be preserved for two years beyond the conclusion of the civil action or the conclusion of an appellate proceeding, but in no case for less than five years.

KEY CONCEPTS REGARDING ESCROW ACCOUNT MANAGEMENT

Brokers must be a signatory on their escrow account.

Brokers must review, sign, and date the monthly reconciliation statements.

Brokers must review the brokerage's escrow accounting procedures.

Brokers must maintain records of real estate transactions for five years, regardless of whether escrow funds were pledged or who was the escrow agent (two years after the completion of litigation if beyond the five-year period).

Mishandling of Escrow Funds

Conversion. All trust funds deposited in an escrow account must be kept in the escrow account until the transaction is closed or other fulfillment of an escrow condition occurs or until otherwise disposed of legally. An escrow account is an account where deposits are held in trust for the owner until the transaction is closed. Brokers may not use earnest money funds for their personal or business expenses, even if they intend to pay the money back. A violation has occurred at the moment of a withdrawal for these purposes. Misappropriation of another's property will expose the broker to charges of conversion, dishonest dealing, and fraud. **Conversion** is the unauthorized use of another person's funds or property for one's own use.

EXAMPLE: Broker Bob has $50,000 in the escrow account. Broker Bob has a separate business operating account with a current balance of $500. He had an unexpected bill to pay because of the need to install plexiglass partitions and hand-sanitizing areas; $1,100 is due upon completion of the work. Bob has a closing next week, at which time the brokerage will receive a $10,000 commission check. Bob transfers "an advance" of $1,000 from the escrow account to the business operating account. When the closing occurs next week, Bob will reimburse the escrow account for the $1,000 advance.

Bob committed conversion because he used trust funds that belonged to a customer to pay for a business expense.

Commingling. Brokers may not mix escrow deposits with other types of funds. To **commingle** funds means to mix the money or other personal property of a buyer or a seller, or a tenant or landlord, with the broker's own money or property or to combine escrow money with the broker's personal funds or business operating funds, except for funds allowed by law to maintain the account (see "Money to Maintain an Escrow Account").

EXAMPLE: A broker received a deposit in the amount of $5,000 for a pending transaction on a listing. The broker's procedure was to deposit all funds received into her general operating account. The broker would always enter into her ledger the amount of each deposit and confirm she had the funds available to transfer at closing. The broker also used the account to pay brokerage expenses, commissions, and miscellaneous items that would occur unexpectedly at the brokerage. Three days before closing the pending

transaction, the broker wrote a check from her general operating account payable to the title company.

The broker commingled the trust funds with her operating account. The trust funds should have immediately been deposited and held in the escrow account until the closing.

475.25(1)(d), F.S.

Failure to Account or Deliver. A licensee who fails to deliver any personal property, such as money, legal documents, or real estate commission, to a person entitled to receive it can be disciplined for **failure to account or deliver**. A broker who fails to pay an earnest money deposit at the title closing, in accordance with the contract for sale and purchase, may be charged with failure to account or deliver trust funds.

EXAMPLE: A broker received an earnest money check for $5,000 payable to John Stetson, Attorney Trust Account. The broker placed the check in his desk drawer with the intent to take it to the attorney's office the next day. When the broker received a copy of the Closing Disclosure before the closing, the buyer noticed that the earnest money was not mentioned. The attorney had no record of an earnest money deposit.

Because the broker did not deliver the check to the attorney, the broker can be disciplined by the FREC for failing to account for or deliver escrowed property.

61J2-14.008(2)(b), F.A.C.

Title Company and Attorney Escrow Accounts

A broker may choose to avoid the paperwork and accounting responsibilities of handling escrow funds associated with sale contracts. To do so, the broker must have someone else act as the escrow agent. If the broker does not have an escrow account, the broker must place escrow funds with a title company or an attorney who will serve as the escrow agent. The broker is required under Chapter 475, F.S., to deliver the funds to the escrow agent within the same time frame required for depositing the funds into the broker's escrow account. Therefore, brokers who choose to use a title company or an attorney as escrow agent must turn the funds over to the escrow agent no later than the end of the third business day following the day the funds are accepted on behalf of the brokerage.

When a deposit is placed with a title company or with an attorney, the following procedure must be used:

- The real estate licensee who prepared or presented the sale contract must indicate on the purchase and sale agreement the title company's name (or attorney's name, if applicable), address, and telephone number.
- No later than 10 business days after each deposit is due under the terms of the sale contract, the licensee's broker must request a written verification of receipt of the deposit. The broker's request to the title company (or to the attorney) must be in writing. If the deposit is held by a title company or by an attorney nominated in writing by the seller or the seller's agent, the verification is waived.
- No later than 10 business days after the date the broker made the written request for verification of the deposit, the broker must provide the seller's broker with a copy of the written verification. If the title company (or attorney) failed to provide the broker with a written verification, this information must be given to the seller's broker no later than 10 business days after the request for verification of the deposit. If the seller is not represented by a broker, the licensee's broker must notify the seller directly.

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Sometimes, the purchase and sale contract will require the buyer to make more than one earnest money deposit. For example, the contract may state that the buyer is to make a $5,000 earnest money deposit at the time the contract is accepted by the seller and then a $15,000 second deposit 30 days after the date the contract is signed by the seller. When

the contract requires more than one earnest money deposit, the procedure described earlier must be employed for every deposit specified in the purchase and sale agreement.

Real estate license law governs only broker's escrow accounts. A broker may be subject to administrative discipline for failing to follow the procedure described in this section. However, because real estate license law governs only broker escrow accounts, the FREC has no jurisdiction over the title company or the attorney used as an escrow agent.

Many brokers view having an attorney or title company maintain escrow funds as a benefit. However, if the broker is not the escrow agent and the transaction fails to close and both the seller and buyer claim the escrow funds, the FREC will not issue an Escrow Disbursement Order (EDO). The buyer and seller will need to take their concerns to the holder of the escrowed monies (title company or attorney) and will likely be left with the financial expense of going to court to resolve the dispute (see "Notice and Settlement Procedures," in this unit).

KEY PROVISIONS PERTAINING TO TITLE COMPANY AND ATTORNEY ESCROW ACCOUNTS

- Indicate the name, address, and telephone number of the title company or attorney on sale contract
- Buyer's broker must make a written request within 10 business days to the title company (or attorney) to provide written verification of the deposit (unless the deposit is held by a title company or by an attorney nominated in writing by a seller or seller's agent)
- Within 10 business days after the written request, buyer's broker must provide seller's broker with either a copy of the verification or written notice that no verification was received

Reference: Section 61J2-14.008(2)(b), F.A.C.

Practice Questions

15. A sales associate receives a deposit from a buyer on Thursday (no legal holidays are involved). The contract states that the escrow deposit will be held by ABC Title Company.
    a. The sales associate has until the end of business on _____ to deliver the deposit to the broker.
    b. The broker has until the end of business on _____ to deliver the funds to ABC Title Company.

16. The broker must be a _____ on the escrow account.

17. If the broker chooses not to open an escrow account, the funds may be held by a _____ _____ or in an _____ _____ _____.

18. Sales associates must deliver escrow deposits to their broker by end of the _____ _____ _____.

19. Brokers must deposit escrow funds by the end of the _____ _____ _____.

20. On Monday afternoon, a buyer gave XYZ Brokerage $1,000 in cash as a binder deposit with an offer. The broker made the nightly deposit by placing all the funds collected for the day, including the binder deposits, in the broker's operating account. The FREC can discipline this broker for _____.

21. A broker is the property manager for a duplex that rents $1,000 per unit. Last month, he collected the rent from each tenant at the beginning of the month. Because the broker was having trouble making his mortgage payments, he used the $2,000 from rent collections to pay his lender instead of sending the funds to the absentee owner. The broker can be disciplined by the Commission for failure to _____ or _____.

5.5 NOTICE AND SETTLEMENT PROCEDURES

When a broker holds escrow funds in the broker's trust account (the escrow agent) in a real estate transaction, the deposit belongs to and is under the control of the depositor (for example, a prospective buyer) until another party (for example, the seller) accepts the offer and acquires some interest or equity in the deposited funds. At this point, both the buyer and the seller have an interest in the deposit. The broker must not deliver the deposit to the other party until the transaction is closed, except as otherwise directed and agreed to in writing by all parties to the transaction. Chapter 475, F.S., provides a dispute resolution process when there are conflicting demands between the parties or a broker has a good-faith doubt as to who is entitled to receive the escrowed funds.

Good-Faith Doubt

If a broker has a **good-faith doubt** as to which party should receive the escrowed property, the broker must notify the FREC, in writing, within 15 business days after having such doubt and institute one of the settlement procedures (described earlier) within 30 business days after having such doubt. The term *good faith* is used to describe a party's honest intent to transact business, free from any intent to defraud the other party, and generally speaking, each party's faithfulness to the duties or obligations set forth by contract. Therefore, if the broker doubts the parties' good faith, the law requires that the broker abide by the notice requirement and initiate one of the settlement procedures in a timely manner. Individuals must look to case law for interpretations of what specific circumstances constitute a good-faith doubt. Situations that may constitute good-faith doubt by the broker include the following:

- The transaction closing date has passed, and the broker has not received identical instructions from both the buyer and the seller regarding how to disburse escrowed funds.
- The transaction closing date has not passed, but one or more parties have expressed the intention not to close and the broker has not received identical instructions from the buyer and the seller regarding how to disburse escrowed funds.
- One party to a failed transaction does not respond to a broker's inquiry about escrow disbursement. In this situation, the broker may send a certified notice letter, return receipt requested, to that nonresponding party stating that a demand has been made on the escrowed funds and that failure to respond by a designated date will be regarded as authority for the broker to release the funds to the demanding party. (*Note*: Although not required by law, to limit the broker's potential liability, it is advisable before releasing the trust funds to secure the postal return receipt as proof the notice was delivered.)

61J2-10.032(1)(c), F.A.C.

Conflicting Demands

475.25(1)(d)1, F.S.

61J2-10.032(1)(a), F.A.C.

Conflicting demands occur when the buyer and the seller make demands regarding the disbursing of escrowed property that are inconsistent with the other party's request and cannot be resolved. If a broker who maintains an escrow account receives conflicting

demands on escrowed property, the broker must notify the FREC, in writing, within 15 business days of receiving the conflicting demands unless specifically exempted.

Settlement Procedures

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The broker must institute one of the four settlement (or escape) procedures within 30 business days from the time the broker received the conflicting demands. For example, if a broker waits 10 business days to report the conflicting demands, the broker has just 20 business days remaining to implement one of the settlement procedures.

The four settlement procedures are as follows:

455.2235, F.S.

1. *Mediation.* If all parties give written consent, the dispute may be mediated. **Mediation** is an informal, nonadversarial process intended to reach a negotiated settlement. An independent third party works with the disputing parties to help them resolve their differences. If an agreement is reached between the parties, the mediation is reduced to an enforceable written agreement. If the mediation process is not successfully completed within 90 days following the party's last demand for the disputed funds, the licensee must employ one of the other three settlement procedures.

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2. *Arbitration.* **Arbitration** is a process whereby, with the prior written consent of all parties to the dispute, the matter is submitted to a disinterested third party. Each side presents its case to a third party, who makes a *binding* judgment in favor of one side or the other. The parties must agree in advance to abide by the arbitrator's final decision.

475.25(1)(d), F.S.

61J2-10.032(2), F.A.C.

3. *Litigation.* If the disputing parties cannot agree, a disputing party may file a lawsuit so that the matter can be resolved in a court of law. Such a legal process is called **litigation**. The litigation can involve either of two court procedures:
   a) *Interpleader.* If the broker does not have a financial claim to the disputed escrow funds, the funds can be deposited with the court registry. The broker is then excused from the case, and the disputing parties argue their case in court. This court procedure is called **interpleader**.
   b) *Declaratory judgment.* Brokers who believe they are entitled to a portion of disputed funds can file a court action called a declaratory judgment. In this court procedure, the judge declares each party's rights to the disputed escrow funds.

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4. *Escrow disbursement order (EDO).* The broker may request that the Commission issue an **escrow disbursement order (EDO)**, a determination of who is entitled to the disputed funds. Because real estate license law governs only broker escrow accounts, the Commission has no jurisdiction over the title company or the attorney used as an escrow agent. The FREC will not issue an EDO if the funds are held in an attorney's escrow account or by a title company. An EDO procedure is only available if the disputed deposit does not exceed $50,000 and the funds are held in a brokerage escrow account. In the event the broker is informed in writing that the Commission will not issue an EDO, the broker must use one of the other settlement procedures. The broker must notify the Commission which settlement procedure will be used. In the event the broker has requested an EDO and the dispute is subsequently settled or goes to court before the EDO is issued, the broker must notify the FREC within 10 business days that the dispute has been settled or that litigation is being commenced.

TO REMEMBER: FOUR SETTLEMENT PROCEDURES

M	Mediation (negotiated settlement)
A	Arbitration (binding)
L	Litigation
E	Escrow disbursement order

If the real estate broker promptly employs one of the four settlement procedures and abides by the resulting order or judgment, a complaint may not be filed against the broker for failure to account or deliver escrowed property (the broker has immunity from disciplinary action).

KEY REPORTING DEADLINES REGARDING ESCROW ACCOUNTS

- Brokers must notify the FREC in writing of receiving conflicting demands or of having a good-faith doubt within 15 business days.
- Brokers must institute one of the settlement procedures within 30 business days of receiving conflicting demands or of having a good-faith doubt.
- If a broker requests an EDO and the escrow dispute is either settled or goes to court before the EDO is issued, the broker must notify the FREC within 10 business days that the dispute has been settled or that litigation is being commenced.

718.503, F.S.
475.25(1)(d), F.S.
61J2-10.032(4), F.A.C.

Exceptions to Notice and Settlement Procedures

Chapter 475, F.S., and FREC 61J2, F.A.C., provide three specific exceptions to the notice and settlement procedures for sales escrow accounts. Under these three situations, the broker holding the escrow deposit is not required to notify the FREC of conflicting demands and does not need to institute a settlement procedure.

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1. Brokers who are entrusted with an earnest money deposit concerning a residential sale contract used by HUD in the sale of HUD-owned property are required to comply with the earnest money deposit requirements for the specific HUD contract.
2. If a buyer of a residential condominium unit timely delivers to a licensee written notice of the buyer's intent to cancel the contract as authorized by the Condominium Act, the broker may return the escrowed property to the purchaser (see "Disclosures and Cancellation Period" and Figure 8.7, Unit 8).
3. If a buyer of real property in good faith fails to satisfy the terms specified in the financing clause of a contract for sale and purchase, the broker may return the escrowed funds to the purchaser. Although not required by law, licensees are cautioned that they may be exposing themselves to civil liability if they release escrowed funds without first getting the parties to agree as to who is entitled to the funds. Florida Realtors® has developed preprinted forms that can be used to obtain the written permission of all parties to release escrowed funds.

In all other situations, where a buyer and seller or a landlord and tenant make demands for escrowed funds that cannot be resolved between the parties and the broker, it is prudent for the broker to consult an attorney. If the parties are still unable to resolve the conflicting demands, the broker should timely notify the Commission of the conflicting demands.

Title Company or Attorney as Escrow Agent. If a title company or an attorney is the escrow agent, the broker has no obligation to report an escrow dispute to the FREC or to institute a settlement procedure. Generally, a title company or the attorney will not disburse funds without authorization from the parties to the transaction. Usually, if the parties cannot come to an agreement regarding the funds, the matter is submitted to a court of law for resolution.

Monies Paid in Advance for Performing Real Estate Services

721.20(6), F.S.

Sometimes a broker will receive commission or partial compensation before completing the real estate service. When this occurs, the broker is entrusted with funds that must be placed into the broker's escrow or trust until the services are completed. Once the service is completed, the broker has earned the compensation and may at that time transfer the funds into the broker's operating account. However, the Florida Vacation Plan and Timesharing Act (721 F.S.) prohibits a real estate licensee from collecting an advance fee for the listing of a time-share unit.

Practice Questions

22. List the four settlement procedures.
    1. _____
    2. _____
    3. _____
    4. _____
23. Brokers must notify the Commission in _____ of conflicting demands or of a good-faith doubt within _____ _____ days.
24. A broker must institute one of the settlement procedures within _____ _____ days from the time the broker _____ the conflicting demands.

5.6 BROKER'S COMMISSION

Sales Associate's Commission

Sales associates (and broker associates) must work under the supervision of a broker or an owner-developer. Sales associates may not operate as a broker or operate independently. Sales associates may not open their own offices. All customers, clients, commissions, referral fees, listing contracts, rental management agreements, and sale contracts are property of the broker. The amount of commission to be paid is negotiable, and it is arrived at by agreement between the broker and the buyer or the seller. Florida law does not establish or regulate the amount of commission paid.

The sales associate's share of the total commission is determined by agreement with the associate's employer. Sales associates are compensated by receiving a share of the commission paid to their employer. The amount that is retained by a broker and the amount that is received by a sales associate is agreed upon in the sales associate's independent contractor agreement. The details of the various commission structures offered by the broker should be part of a broker's policy manual.

All monies earned by sales associates for real estate services must be paid to the sales associates by their employer and not directly by the buyer or the seller. Sometimes a buyer or seller may want to thank the sales associate with extra compensation. In such cases, a sales associate should never accept extra compensation directly from the buyer or the seller. The better course of action would be to ask the customer or client to send a letter to the broker commending the associate and sending the extra compensation to the broker on behalf of the associate. Even gift cards and theater tickets should only be accepted with the broker's knowledge and consent.

61J2-10.028(2), F.A.C.

Sharing Commission with a Party to the Transaction. Generally, brokers may only share real estate compensation with another broker. However, the FREC provides an exception for sharing brokerage compensation with a party to the real estate transaction, with full disclosure to all interested parties. The transaction may involve residential or commercial real estate and be either a contract for sale or a lease. The key to compliance with FREC rules and license law is that the arrangement is disclosed in writing to all interested parties in the lease or the sale contract.

EXAMPLE: A sales associate wants to give the associate's split of the commission to the buyer because the buyer is the associate's nephew. The commission rebate must be disclosed to the seller and to the buyer's lender (the rebate could impact the lender's loan calculations).

Antitrust Laws

542, F.S.

Antitrust laws protect competition. Brokers risk their assets and their careers by attempting to get other brokers to fix commissions. The Sherman Antitrust Act, the Clayton Antitrust Act, and the Federal Trade Commission deal with preserving competition and ensuring against restraint of trade. It is illegal for real estate brokers to conspire to fix commissions or fees for the services they perform. Local real estate boards and multiple listing services may not fix commission rates or splits between cooperating brokers. A violation of antitrust laws is a criminal offense. Two prohibited acts are the following:

- *Price-fixing* occurs when competing brokers conspire to establish a standard commission rate rather than letting the rate be set by the open market. Even if a price fix is lower it is still a violation of the law. A broker's office can establish a commission rate, but it must do so independently of any other brokerage. Licensees should never make statements such as "the going rate" or a "normal commission rate" to avoid even the impression of price fixing.
- *Market allocation* occurs when brokers agree to split up competitive market areas among themselves and not compete in each other's areas.

Liens on Real Property for Unpaid Sales Commission

Recall that listing agreements and sales commission are the property of the broker. Therefore, only the broker can initiate an action for unpaid commission. Sales associates cannot sue a customer or client for unpaid commission. Sales associates can seek compensation only from their broker. Rules regarding sales commission due but not paid to the broker depend on whether the real estate involved in the transaction is residential or commercial.

475.42(1)(i), F.S.

61J2-24.001(3)(dd), F.A.C.

Residential Property. A broker may place a lien on residential real property for nonpayment of commission only if the broker is expressly authorized to do so in the listing agreement, the buyer representation agreement, or the sale contract. Otherwise, when a buyer or a seller refuses to pay a broker's commission after the commission has been earned, the broker must file a lawsuit and obtain a judgment for the commission owed. The FREC is authorized to suspend or revoke a real estate license for the unauthorized recording of a lis pendens or a lien or other instrument that affects the title of real property or that encumbers real property.

Brokers and their associates may not place on the public records false or unauthorized information that affects the title to real property. For example, a lis pendens (notice of pending legal action) or a lien for unpaid commission is unauthorized information that encumbers the title to real property, unless the seller had previously agreed in writing to give the broker such authority. A licensee found guilty of placing a lis pendens or lien on real property without authorization, may be issued an administrative fine and be subject to license suspension or revocation.

475, Part III, F.S.

Commercial Real Estate Sales. Chapter 475, Part III, called the Commercial Real Estate Sales Commission Lien Act, gives a broker lien rights for nonpayment of earned commission. This act applies only to commercial property. Commercial real estate is any real estate that is not defined as residential property in Chapter 475, Part I.

The Commercial Real Estate Sales Commission Lien Act gives the broker lien rights to the seller's net proceeds for the commission earned by the broker in accordance with the listing agreement to sell commercial property. The lien is against the owner's net proceeds (personal property) from the sale and in contrast with a residential sale, does not attach to the real property. The broker must disclose to the owner (seller) at the time executing the listing agreement (referred to as brokerage agreement in the statute) and the subsequent sale of the property, that the agreement creates lien rights for commission earned and that the owner (seller) cannot waive the lien rights once the owner has agreed to the broker's lien right (see the following text box).

475, Part IV, F.S.

Commercial Real Estate Leasing Commission Lien Act. Chapter 475, Part IV, called the Commercial Real Estate Leasing Commission Lien Act, gives a broker lien rights for earned commission associated with a brokerage agreement to lease commercial real estate. If the landlord is the person obligated to pay the leasing commission, the broker's lien attaches to the landlord's interest in the commercial real estate. If the tenant is the person obligated to pay the leasing commission, the broker's lien attaches to the tenant's leasehold estate.

REQUIRED COMMERCIAL REAL ESTATE SALES COMMISSION DISCLOSURE

The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

Reference: 475.703(5)

FIGURE 5.7 ■ Key Points Regarding Residential and Commercial Lien Rights

Residential	Commercial
Broker cannot place a lien on real property unless owner gives express authority in the listing agreement, buyer representation agreement, or sale contract	Broker must include in the brokerage agreement the required disclosure regarding the broker's lien rights at or before the time the owner (seller) enters into the brokerage agreement
Unless a lien right is authorized, the broker must seek relief in a court of law and obtain a judgment for the amount owed	If the disclosure is included in the brokerage agreement and signed by the owner, the broker has a lien right on owner's net sale proceeds for any unpaid commission
It is a violation of law to place a lien or lis pendens on property unless the broker is expressly authorized to do so	The owner cannot waive the broker's lien right once agreed to

Kickbacks

475.25(1)(h), F.S.

61J2-10.028(1), F.A.C.

A **kickback** (or *rebate*) is an unearned fee paid to a licensee associated with a real estate transaction for non-real-estate services (payment for something other than one of the eight services of real estate). Kickbacks are legal only under limited conditions. Here is a list of important facts regarding kickbacks and rebates:

- *The parties to the transaction must be fully informed of the kickback.* Before payment and receipt of the kickback, the buyer and the seller must be fully informed of all facts regarding the kickback. For example, assume a broker refers buyers to Nifty Blinds and receives $25 for each buyer who purchases window treatments from Nifty. The broker, before payment and receipt of the $25, must fully advise all parties in the transaction of the arrangement the broker has with Nifty Blinds.
- *The kickback must not be prohibited by other law.* The Real Estate Settlement Procedures Act (RESPA) prohibits the payment of a kickback or unearned fee associated with a settlement (closing) service, including title searches, title insurance, attorney services, surveys, credit reports, and appraisals. A person paid a fee regarding settlement services must have actually rendered (performed) the service (see "Real Estate Settlement Procedures Act [RESPA]," Unit 13).
- *It is unlawful to share a commission with an unlicensed person other than the seller or the buyer in the transaction.* Florida law allows the sharing of the commission with the buyer or the seller in a real estate transaction, provided the rebate is disclosed to all interested parties. Sharing a portion of the commission with a party to the transaction is an example of a legal (permissible) kickback or rebate.
- *It is unlawful for a licensee to pay an unlicensed person for performing real estate services.* Florida law prohibits a real estate licensee from paying an unlicensed person money for the referral of real estate business. However, Florida license law does provide that a property management firm or the owner of an apartment complex may pay a finder's fee (or referral fee) of no more than $50 to an unlicensed person who is a tenant of the apartment complex for the referral of a prospect who becomes a tenant of the apartment complex.

Practice Questions

25. A sales associate wants to pay for an FHA-required repair to the property which neither party to the transaction is willing to cover. The shared commission with a non-real estate licensee must be _____ to the buyer, the seller, and the lender.

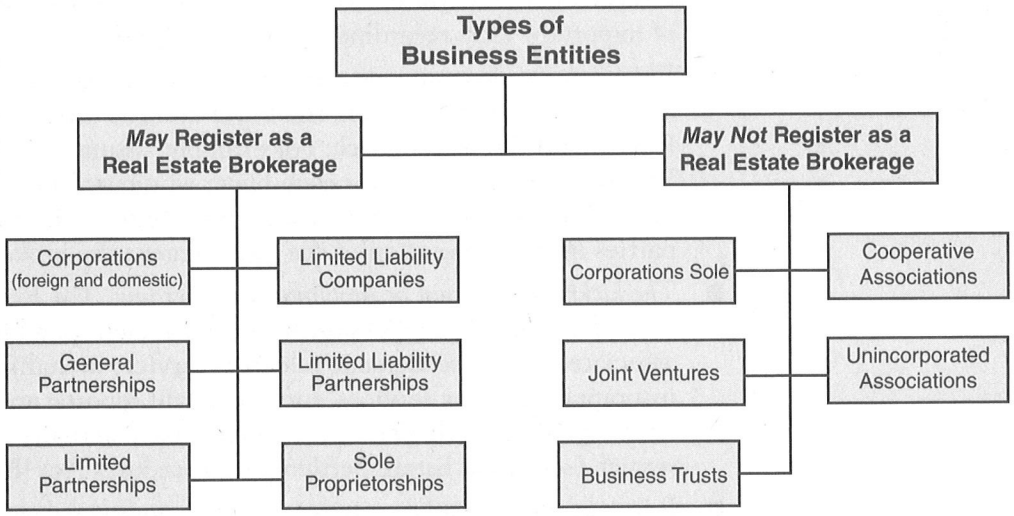
26. The Commercial Real Estate Sales Commission Lien Act gives the broker lien rights to the seller's _____ _____ for the commission earned by the broker in accordance with the listing agreement to sell _____ property.

5.7 TYPES OF BUSINESS ENTITIES THAT MAY REGISTER AS BROKERAGE ENTITIES

475.161, F.S.
475.15, F.S.
475.01(1)(a), F.S.

A broker may choose from a variety of business entities (see Figure 5.8). Sole proprietorships, partnerships (both general and limited), limited liability partnerships, corporations, and limited liability companies may be registered as real estate brokers and/or brokerage entities. Chapter 475.01, F.S., defines the term *broker* to include any person who is a general partner of a partnership or an officer or a director of a corporation that acts as a real estate broker.

FIGURE 5.8 ■ Business Entities



All real estate brokerage entities must register with the DBPR. Registration includes the names of every licensed and unlicensed general partner of a real estate brokerage general partnership or limited partnership and every officer and director of a real estate brokerage corporation. Every member of a member-managed real estate brokerage limited liability company must also register. A person licensed as a sales associate or broker associate may not register as a general partner of a brokerage partnership, a member of a member-managed real estate limited liability company, a member or a manager of a manager-managed real estate limited liability company, or an officer or a director of a brokerage corporation.

Sole Proprietorships

A **sole proprietorship** is a business owned by an individual. Sole proprietorships are the simplest form of business organization; however, they provide no legal protection for the broker's personal assets. Sole proprietors are personally liable not only for their own actions but also for the actions of any employees acting within the scope of their employment. For this reason, many brokers choose a business structure that reduces personal liability. A sole proprietorship can be formed without a written document, and it does not require filing with the Florida Department of State (DOS).

Sole Proprietor Real Estate Brokerage. A sole proprietor who holds a current active and valid broker's license can operate a real estate brokerage business. The broker must register the business address with the DBPR. Brokers may use their own name or a trade name. A sole proprietorship may be dissolved by ceasing business activities and notifying the DBPR, or by expiration of the license, court order, or death of the owner.

Partnerships

620, F.S.
475.15, F.S.

A **general partnership** is an association of two or more persons for the purpose of jointly conducting a business. Every general partner equally shares in the profits and losses of the business (unless a different share is specified in a written agreement). Each general partner has unlimited personal liability because each is responsible for all the debts incurred in conducting that business and each has the power to bind the other(s). All general partners are joint and severally liable for damages resulting from lawsuits. General partners are agents for one another. If one partner enters into an agreement, the other partners are also bound to the agreement. A general partnership is created by a contract that may be written, oral, or implied from the conduct of the parties.

Real Estate Brokerage General Partnerships. Brokers may choose to form a general partnership. In addition to complying with all laws governing general partnerships, requirements regarding real estate brokerage partnerships include the following:

- The partnership must register with the DBPR under the partnership name.
- At least one partner must be licensed as an active broker.
- Partners who will deal with the public and perform services of real estate must be licensed as active brokers.
- Sales associates and broker associates may not be general partners in a real estate brokerage partnership.

61J2-5.019, F.A.C.
61J2-4.009, F.A.C.

It is the responsibility of every active broker in the real estate brokerage partnership to see that the partnership and all of its partners and associates have current and appropriate registration and licenses. Only one partner must be licensed as an active broker. (See "Vacancies of Office" later in this unit for the procedure in the event of a vacancy of the only active broker.)

Limited Partnerships. A **limited partnership** is created by a written instrument filed with the Florida DOS. There must be one or more general partners and one or more limited partners to qualify under the law. The limited partners have no managerial control; they make an investment of cash or of property, but not of services (limited partners are investors only).

620, F.S.
475.15, F.S.

The liability of the general partner(s) is nearly the same as in a general partnership. Limited partners are not liable for debts of the partnership unless the limited partners' names appear in the partnership name (with certain exceptions) or the limited partners take part in the management of the business. Limited partners are liable only for any unpaid part of their pledged contribution, any assets of the partnership in their hands, and any distribution made to them while the partnership is insolvent.

Real Estate Brokerage Limited Partnerships. In addition to complying with all the laws governing any limited partnership, requirements regarding real estate brokerage limited partnerships include the following:

- The limited partnership must register with the DBPR under the limited partnership name.
- General partners who will deal with the public and perform services of real estate must be licensed as active brokers.
- At least one general partner must be licensed as an active broker.

- All other general partners must register (names and addresses are disclosed) with the DBPR for identification purposes.
- Sales associates and broker associates may not be general partners in a real estate brokerage limited partnership; however, they may be limited partners. (Limited partners are investors and are regarded in the same light as stockholders in a corporation.)
- Limited partners are not required to register with the DBPR.

Limited Liability Partnerships (LLPs)

The partners in a **limited liability partnership (LLP)** enjoy protection from personal liability in much the same way as limited partners in a limited partnership. Limited liability partners are not liable for obligations or liabilities of the partnership arising from contract, errors or omissions, negligence, malpractice, or wrongful acts committed by another partner or by an employee, agent, or representative of the partnership. A limited liability partner is liable for any errors, omissions, negligence, malpractice, or wrongful acts committed by that partner, or any person under the partner's direct supervision and control in any activity in which the wrongful act occurred, or for any debts for which the partner agreed in writing to be liable. The partners in a limited liability partnership are not subject to the limitations imposed on limited partners in a traditional limited partnership. Registered limited liability partnerships must file with the Florida Department of State. The name of a registered limited liability partnership must include the words "Registered Limited Liability Partnership" or the abbreviation "L.L.P." or the designation "LLP" as the last words or letters of its name.

Corporations

607, F.S.
475.15, F.S.
61J2-24.002(2)(s–t), F.A.C.
61J2-5.012-5.020, F.A.C.

A **corporation** is a legal entity created by law and consists of one or more persons. The corporation is an artificial person considered to have an existence of its own, separate from the corporation's officers and directors. A corporation is formed by filing articles of incorporation with the Florida DOS. The abbreviation *Inc.* is often used to mean an incorporated legal entity. A corporation has the legal capacity to make contracts and incur debts when an officer signs documents on behalf of the corporation.

Both foreign and domestic corporations may register as brokerage entities. A *foreign corporation* is organized under the laws of another state but does business in Florida. *Domestic corporations* are incorporated in Florida and do business in Florida. The owners of the corporation are the stockholders. The stockholders elect the board of directors to manage the corporation. The officers—president, vice president, secretary, and treasurer—carry out the directives of the board.

In Florida, a corporation may be formed as a real estate brokerage firm after providing proof of legal corporate existence. Requirements regarding real estate brokerage corporations include the following:

- The corporation must register with the DBPR under the corporation name; this is accomplished by completing the brokerage corporation application. (If the brokerage is going to operate under a trade name, that information is also entered on the application.)
- At least one of the officers or directors must be licensed as an active Florida broker (the *principal broker* or *qualifying broker*).
- Active Florida brokers, inactive Florida brokers, and unlicensed people may serve as officers and directors of a real estate brokerage; however, officers and directors who will deal with the public and perform services of real estate must be licensed as active brokers.

- All officers and directors who are not licensed must be registered with the DBPR for identification purposes; this is accomplished by submitting each individual's name, residence address, office held, and percentage of ownership when completing the management information section of the brokerage corporation application.
- Inactive brokers and unlicensed individuals may perform managerial functions for the brokerage corporation that do not involve real estate functions, such as administrative matters, bookkeeping, and accounting duties.
- Sales associates and broker associates may not be an officer or a director in a real estate brokerage corporation; a sales associate or broker associate may be issued a citation and fined for serving as an officer or a director of a brokerage corporation.
- Sales associates and broker associates may be shareholders of a real estate brokerage corporation.

617, F.S.
61J2-5.012-.020, F.A.C.

Nonprofit Corporations. A *nonprofit* (or *not for profit*) *corporation* is organized in substantially the same manner as a corporation for profit. Chapter 475, F.S., does not make a distinction between profit and nonprofit corporations. However, any broker who is considering forming a nonprofit corporation for real estate brokerage activity should consult a tax advisor before proceeding.

Limited Liability Companies

605, F.S.

A **limited liability company (LLC)** is a business structure allowed by state statute. An LLC offers the best features of a corporation and a partnership. It provides the owners protection from personal liability for business debts in the same way a corporation does. Income is taxed only once, as in a partnership. An LLC has great flexibility in how it passes income and deductions to its members. Limited liability companies are formed in Florida under Chapter 605, F.S.

Vacancies of Office

61J2-5.018(2), F.A.C.
61J2-4.009, F.A.C.
61J2-5.019, F.A.C.

Recall that every brokerage company and partnership (brokerage entity) must be registered with the DBPR and have at least one active broker qualifying the brokerage entity. The brokerage entity must immediately notify the FREC if the only active broker of a brokerage entity dies, resigns, or is unexpectedly unable to remain in the position as active broker. In such a case, the vacancy must be filled within 14 calendar days. The vacancy may be filled with either a permanent or temporary broker. Failure to appoint another permanent or temporary broker within the 14-day deadline will result in the automatic cancellation of the brokerage registration, and the licenses of all people associated with the brokerage will become inactive. New brokerage business may not be performed by the brokerage or by a licensee registered with the brokerage until a new permanent broker or a temporary broker is appointed and registered with the DBPR. However, business that is currently in progress (such as existing listings) can continue to be managed during the 14-day period. A temporary broker may be registered with the DBPR for up to 60 days without the need to comply with the Florida DOS registration requirements. No later than 60 days after the DBPR registration of the temporary broker, the brokerage must file with the DBPR proof that a new permanent broker is properly registered with the Florida DOS.

If the brokerage entity has more than one active broker and one of the brokers dies, resigns, or is unexpectedly unable to remain in the position as an active broker, the brokerage registration and the licenses of the broker associates and sales associates are not affected by the vacancy.

BUSINESS ARRANGEMENTS AND ENTITIES THAT MAY NOT REGISTER AS A BROKERAGE

Ostensible Partnerships

An **ostensible partnership** (or quasi partnership) is not intentionally created. Rather, the conduct of two or more persons creates the "appearance" that a partnership exists. It is considered fraudulent and deceitful if the public is led to believe that those with whom they are working are partners when they are not. In such a situation, the courts may consider that a partnership exists. Under the law, the parties can be held liable for each other's debts and torts (wrongful acts). Real estate licensees who operate as ostensible partners may be subject to license suspension.

Brokers sometimes do business in the same office building. This is permissible provided each broker displays their own office sign and sets up each brokerage so that it is clear to the public that the brokers are separate businesses. If such is the case, they cannot operate under the same name or use their joint names or the same trade name. Brokers should indicate their true statuses by using separate telephone listings, letterheads, business cards, and so forth. Advertisements reflecting that a properly registered broker is a franchisee do not fall under the definition of ostensible partnership.

Corporation Sole

A *corporation sole* is a nonprofit entity that is designed to ensure continuity of ownership of property dedicated to the benefit of a legitimate religious organization. A corporation sole should not be confused with a sole proprietorship or a corporation. A broker should consult an experienced attorney with knowledge of a corporation sole's structure and title. A corporation sole cannot be registered as a real estate brokerage.

Joint Venture

A *joint venture* (or joint adventure) is a temporary form of business arrangement often encountered in the real estate business. The joint venture structure is normally used when two or more parties combine their efforts to complete a single business transaction or a fixed number of business transactions. No written agreements are required for the formation of a joint venture. The rights, duties, and obligations of joint venturers are similar to those of partners in a partnership, except that they are restricted to the transaction for which the joint venture was formed.

609, F.S.
475.011(2), F.S.

Real estate brokers often combine their efforts in real estate transactions to create a joint venture. A joint venture, when composed of separate real estate brokers, can provide real estate services. In such a case, the joint venture would not be required to register with the DBPR because each of the individuals is registered and licensed. If two parties form a joint venture to provide real estate services for compensation, both parties must be licensed real estate brokers.

Business Trust

A *business trust* is a form of business entity that may be created to engage in transactions involving its own real property. A business trust is formed by any number of persons who make an investment at a stipulated amount per unit. The monies collected in this manner are then used to buy, develop, and/or sell real estate. Title to real property acquired by a business trust is taken in the name of a trustee or group of trustees. Although

brokerage activities take place within the trust, a business trust cannot be registered with the DBPR as a real estate broker. However, any employee who buys or sells real property for a trust and is compensated on a transaction basis must be licensed.

Cooperative Association

A *cooperative association* is permitted to conduct commercial business and to convey, sell, or buy its own property, but it cannot be registered as a real estate broker.

Unincorporated Association

Unincorporated associations are generally recognized as groups of people associated for some noncommercial common purpose. They are not regarded as partners and are not incorporated. An example is a group of property owners in a subdivision who organize for such purposes as beautification, planning, maintenance, or even the performance of services such as garbage removal. Such associations can incur liabilities, and members are liable for debts to creditors in the same manner as partners. For example, each member is liable for all the debts, but as to one another, the members are liable only for their individual proportionate share. Unincorporated associations sometimes buy or sell their own real property through a trustee or board of trustees. Unincorporated associations may not be registered as real estate brokers.

TRADE NAMES

865.09, F.S.
475.42(1)(j), F.S.
61J2-10.034, F.A.C.
61J2-9.007, F.A.C.

A **trade name** (or fictitious name) is a business name other than the legal name of a person or a business entity. For example, if a broker is a sole proprietor and the broker operates under a name other than the broker's personal name, the broker is operating under a trade name. The DBPR uses the term *trade name* in rule and statute. *Fictitious name* refers to the name registered with the Florida Department of State (DOS). The letters *T/A* are used to indicate *trading as*. The letters *D/B/A* refer to *doing business as*. Sole proprietorships and business entities may choose to operate under these designations.

DBPR Registration of a Trade Name

An individual broker or brokerage entity who desires to use a trade name must register the trade name with the DBPR. The DBPR will not allow a broker or a brokerage entity to register a trade name if another business entity has previously registered the same trade name with the DOS or the DBPR. An individual broker or brokerage entity may register only one trade name. Sales associates and brokerage associates may not use a trade name. Associates must register under their legal name.

EXAMPLE 1: If Broker Julia Moy desires to do business as Orange Park Realty, Julia must register with the DBPR the fictitious name Orange Park Realty.

EXAMPLE 2: If New Towne Realty, Inc., desires to do business as Towne Realty, then the business New Towne Realty, Inc., must register with the DBPR the D/B/A Towne Realty as a fictitious name.

DOS Registration of a Fictitious Name

621.12, F.S.
475.161, F.S.

Individuals licensed by the DBPR are exempt under the Fictitious Name Act from registering a fictitious name with the DOS. In Example 1, Broker Moy does not have to register the name "Orange Park Realty" with the DOS. Brokerage corporations, limited partnerships, limited liability companies, and limited liability partnerships that have registered the business entity with the DOS and are in good standing with the DOS are considered to have met the requirements for fictitious name registration, provided they do not transact business under any other name. Additionally, if an owner's first and last names are included in the business name, the business is exempt from filing a fictitious name.

TRADE NAMES

No person shall operate as a broker under a trade name without causing the trade name to be noted in the records of the Commission and placed on his license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless such partnership or corporation is the holder of a valid current registration.

Reference: Section 475.42, F.S.

FORMING A PROFESSIONAL ASSOCIATION IN ASSOCIATE'S LEGAL NAME

475.161, F.S.
621.12 (2) (b), F.S.

Florida license law provides that broker associates and sales associates may be licensed in only their legal name or in their legal name as a professional corporation, limited liability company, or professional limited liability company. Becoming licensed as one of these professional associations makes it possible for one's employing broker to pay a commission to the professional association rather than to the individual licensee. Florida license law further requires that the associate's license be issued in the licensee's legal name and may include the entity designation. Forming a professional association for income tax purposes (after consultation with a CPA or an attorney) should not be confused with forming a brokerage business entity to conduct real estate services. Recall that broker associates and sales associates must work under a broker or an owner-developer.

Florida Statute 621 designates the term *professional association* to mean a professional corporation (PA), limited liability company (LLC), or a professional limited liability company (PLLC). In the case of a professional corporation, F.S. 621 designates that the abbreviation P.A. is to be used. For the purposes of this text, we will use the term *professional association* to refer to any of the three legal entities mentioned here. To register one's legal name with a professional association, a licensed broker associate or sales associate must first register a professional association with the Florida DOS.

EXAMPLE: A sales associate's legal name is Jane Doe. Jane forms a professional association with the DOS and requests that her real estate license be issued in the name Jane Doe, PA. Jane would be required to provide the DBPR proof of the creation of a professional association that is registered with the Florida DOS. Jane's broker could then make her commission checks payable to Jane Doe, PA.

475.161, F.S.

Florida license law requires that an associate's professional association be made up of only one individual. Therefore, a married couple (both licensed real estate sales associates) would not be allowed to form a professional corporation. Each spouse would be required to form a separate professional corporation.

PERSONAL ASSISTANTS

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Personal assistants are hired by licensees to perform administrative tasks associated with real estate transactions. Whether a personal assistant must be a real estate licensee is determined by the tasks the assistant performs. Unlicensed personal assistants help with routine office activities, such as mass mailings, writing ads, and preparing market analyses. Licensees who use personal assistants do so to increase their customer base and improve service.

A sales associate who employs an unlicensed personal assistant must be certain that the assistant only performs tasks that do not require a real estate license. Unlicensed personal assistants may not be paid commission or compensated on a transactional basis. Unlicensed personal assistants are considered employees of the sales associate. They are under the control of their employer (the sales associate). Employing sales associates must comply with all state and federal employment laws.

Some sales associates prefer to use licensed personal assistants because licensed assistants can perform services of real estate, including showing listed property. A licensed personal assistant must be registered under the employing broker, and the broker must pay the assistant for brokerage activities. A sales associate may pay the licensed personal assistant for nonbrokerage activities on a salaried or an hourly basis. A sales associate may not compensate a personal assistant for brokerage activities that require a license.

Practice Questions

27. Circle the types of business entities that may register as a real estate brokerage.
    a. Limited liability company
    b. Corporation sole
    c. Business trust
    d. Sole proprietorship
    e. Limited partnership

28. In the event a brokerage has only one active broker, and the broker is unable to remain the active broker of the corporation, the vacancy must be filled within _____ calendar days. The corporation may appoint a _____ broker for up to _____ days.

29. Circle the activities for which a personal assistant would need a real estate license.
    a. Present an offer to the seller.
    b. Place a phone call to a tenant who is late in paying monthly rent.
    c. Negotiate and prepare a listing agreement with a property owner.
    d. Update social media sites with approved promotional information.

5.8 SUMMARY OF IMPORTANT POINTS

- To have active status, a real estate broker is required to open an office and register it with the DBPR.
- The brokerage office sign must contain (1) the trade name (if applicable), (2) the broker's name, and (3) the words "Licensed (or Lic.) Real Estate Broker."
- A team or group may advertise provided they are registered with the same broker or brokerage, they don't use the prohibited words listed in the administrative rule, and the name is no larger than their registered broker or brokerage's name.
- Blind advertising fails to disclose the license name of the brokerage firm and provides only a post office box number, telephone number, and/or street address.
- *Point of contact information* refers to the information provided on the internet for contacting a brokerage firm or individual licensee, including mailing addresses, physical street addresses, email addresses, telephone numbers, and FAX telephone numbers. The brokerage firm name must be above, below, or adjacent to point of contact information.
- Licensees who include their personal name in advertisements must use their last name as registered with the DBPR.
- A *telephone solicitation* is a telephone call placed for the purpose of encouraging the purchase of, or investment in, property goods, or services. Telemarketers (including real estate licensees) must search the National Do Not Call Registry before making telemarketing calls.
- An *escrow account* is an account for the deposit of money held by a third party in trust for another for safekeeping. Brokers may open escrow accounts in a Florida bank, a savings association, or a credit union. The broker must be a signatory on the escrow account. If the broker chooses not to open an escrow account, the funds may be held by a title company or in a Florida-licensed attorney's trust account.
- Sales associates must deliver binder deposits to their broker-employer no later than the end of the next business day. Brokers must deposit the funds into their escrow account no later than the end of the third business day after the brokerage receives the funds.
- If the broker's escrow account is an interest-bearing account, the broker must get written permission from all parties before depositing the funds. The written authorization must specify who is entitled to the interest earned. The broker may receive the interest.
- Brokers must maintain records of real estate transactions for five years, regardless of whether escrow funds were pledged (or two years after litigation, if beyond the five-year period).
- *Commingling* is the illegal practice of mixing a buyer's, seller's, tenant's, or landlord's funds with the broker's own money or mixing escrow money with the broker's personal funds or brokerage funds.
- *Conversion* is the unauthorized control or use of another person's personal property.
- Brokers are allowed to place up to $1,000 of personal or brokerage funds in a sales escrow account or up to $5,000 of personal or brokerage funds in a property management escrow account.

- Brokers must notify the FREC in writing of conflicting demands or of a good-faith doubt within 15 business days. Brokers must institute one of the settlement procedures within 30 business days of receiving conflicting demands or of having a good-faith doubt. The four settlement procedures are (1) mediation, (2) arbitration, (3) litigation, and (4) escrow disbursement order.
- The penalty for a first-degree misdemeanor is a fine of not more than $1,000 and/or up to one year in jail.
- A *kickback* occurs when a broker receives money from someone other than the buyer or the seller, such as for referring a buyer or a seller to a particular vendor for services. Buyers and sellers must be fully informed before the payment.
- Florida law prohibits a real estate licensee from paying money to an unlicensed person for the referral of real estate business.
- Florida law allows the sharing of part of the commission with the buyer or the seller in a real estate transaction, provided the rebate is disclosed to all interested parties.
- Types of business entities that may register as a brokerage entity include the following: sole proprietorship, general partnership, limited partnership, limited liability partnership, corporation, and limited liability company.
- An *ostensible partnership* (or quasi-partnership) is created when the actions of two or more persons create the appearance that a partnership exists. Licensees who operate as ostensible partners may be subject to license suspension.
- Sales associates and broker associates may not be members of the board of directors or officers of a real estate brokerage corporation.
- Sales associates and broker associates are not allowed to register as general partners of a real estate brokerage general or limited partnership.

UNIT 5 EXAM

1. John Anderson is a licensed real estate sales associate. Under which name may he register and be licensed?
   a. Complete Real Estate Sales Services
   b. John Anderson Brokerage
   c. John Anderson, LLC
   d. John Anderson and Partners

2. A sales associate receives a binder deposit from a buyer on Monday. By the end of business on what day of the week must the broker deposit the funds into the escrow account?
   a. Tuesday
   b. Wednesday
   c. Thursday
   d. Friday

3. Real estate sales associates who receive checks payable to them as deposits on the purchase of real property must
   a. endorse the checks, deposit them in their employers' accounts, and maintain good records.
   b. endorse the checks and immediately turn them over to their employers.
   c. deposit the checks immediately in their own accounts and notify their employers of the transactions.
   d. deposit the checks immediately and give their employers the equivalent amounts in the form of checks or cash.

4. Which statement is FALSE regarding escrow accounts?
   a. The escrow account may be either interest-bearing or non-interest-bearing.
   b. A broker may choose to have an attorney or a Florida title company maintain the escrow account.
   c. It is illegal for the broker to keep any earned interest even if the buyer and the seller give written permission.
   d. A broker must get written authorization from the buyer and the seller before placing escrow funds in an interest-bearing escrow account.

5. A dispute arises between the buyer and the seller as to which one is entitled to escrowed property. The broker should first
   a. mediate the matter.
   b. arbitrate the matter with the consent of both parties.
   c. notify the FREC in writing, unless exempted from the notice requirements.
   d. submit the matter to a court of law for adjudication.

6. When a deposit is placed with a title company, what information regarding the title company must be included on the purchase and sale agreement?
   a. Telephone number
   b. Name of the title company
   c. Address of the title company
   d. All of these

7. An active broker associate wants to form an entity to be paid commissions. Which is the broker associate NOT legally allowed to form?
   a. Sandy Jones, LLC
   b. Sandy Jones, PLLC
   c. Sandy Jones, Inc.
   d. Sandy Jones, PA

8. The Excellence Team is ordering For Sale signs. The team works for broker Bob Sloane at Sunshine Realty. Which statement is FALSE regarding the team advertising requirements?
   a. The advertisement must include the name Sunshine Realty.
   b. The brokerage office phone number must be included in the ad.
   c. The name Excellence Team may be no larger than the name of the brokerage.
   d. The Excellence Team must file with Sloane a designated licensee to be responsible for ensuring that the team advertising complies with Florida license law and administrative rules.

9. A sales associate employs an unlicensed personal assistant to help with real estate property management. The unlicensed assistant may NOT
   a. collect rent payments from tenants.
   b. deposit rent payments in the bank.
   c. place For Rent signs on properties.
   d. show a rental property to a potential tenant.

10. Which statement is TRUE regarding a lien filed by a broker under the Commercial Real Estate Sales Commission Lien Act?
   a. The lien applies to commission only and does not include other fees the owner agrees to pay in the brokerage agreement.
   b. The lien is filed against the real property covered in the brokerage agreement.
   c. The lien takes priority as of the date of the brokerage agreement.
   d. The broker must disclose to the owner at the time of signing, or before the owner signs the brokerage agreement, that Chapter 475, Part III, creates lien rights for commission earned by the broker.

11. One difference between a general partnership and a limited partnership is that
   a. only a general partnership may be registered as a real estate broker.
   b. limited partners must make a cash or property investment.
   c. while both have general partners, there must be two or more general partners in a limited partnership.
   d. limited partners must be licensed as either active or inactive sales associates.

12. Which business entity may be registered as a real estate broker?
   a. Corporation sole
   b. Cooperative association
   c. Limited partnership
   d. Business trust

13. A broker is preparing to open Sunnyside Realty as a sole proprietorship and is placing an order to have an entrance sign made. Which wording does NOT need to be included on the sign?
   a. Sunnyside Realty
   b. The broker's legal name
   c. Licensed real estate broker
   d. 1000 Sunset Blvd.

14. A licensed real estate broker and an attorney who specializes in contract law form a joint venture for the purpose of locating and selling to investors raw land that is suitable for commercial development. Which statement is TRUE regarding this arrangement?
   a. The attorney is exempt from the requirement to hold a broker's license because she is an attorney.
   b. They have formed an illegal ostensible partnership.
   c. Because they are performing real estate services for compensation, both must be licensed real estate brokers.
   d. A joint venture is not required to register with the DBPR; therefore, there is no need for both parties to hold real estate licenses.

15. A broker receives conflicting demands concerning a roof inspection report. Both the buyer and the seller claim the earnest money deposit. The broker must
   a. provide written notification to the FREC within 10 business days.
   b. follow the written instructions of the broker's buyer or seller.
   c. institute one of the statutory settlement procedures within 30 business days from the time the broker received conflicting demands.
   d. request an escrow disbursement order from the DBPR.

16. The sales commission rates applicable to the various types of property sold in Florida are determined by
   a. FREC rules and regulations.
   b. agreement between each broker and buyer or seller.
   c. the local associations and multiple listing services.
   d. agreement between each seller and buyer.

17. A real estate brokerage has one active broker who resigns unexpectedly due to a cancer diagnosis. Which statement regarding the vacancy of the only active broker is FALSE?
    a. The vacancy must be filled within 14 calendar days.
    b. A temporary broker may be registered with the DBPR for up to 90 days without the need to comply with the Secretary of State registration requirements.
    c. New brokerage business may not be performed by a sales associate registered with the brokerage until a new active or temporary broker is registered with the DBPR.
    d. Failure to appoint another active or temporary broker within the required deadline will cause the automatic cancellation of the brokerage entity's registration.

18. In Florida, listings obtained and any commissions paid by the buyer or the seller are
    a. legally the sales associate's property.
    b. jointly owned by the sales associate and the sales associate's employer.
    c. legally classified as the property of the employing property owner.
    d. legally the property of the sales associate's employer.

19. Which statement is FALSE concerning the payment of an unearned fee or kickback?
    a. A real estate licensee may be paid a fee for referring buyers to a title company, provided the buyer is informed in advance of the facts concerning the fee.
    b. A real estate licensee may share part of the commission with the buyer or the seller in a real estate transaction.
    c. A real estate licensee must also be licensed as a mortgage loan originator to be legally paid a fee for referring buyers to a mortgage lender.
    d. The payment of a kickback must not violate RESPA.

20. Two brokers from different brokerages agree to work with one another to market a prestigious marina in Naples, Florida. One broker is particularly knowledgeable regarding marinas and the other is an expert on the Naples real estate market, so they decide to combine their expertise on this particular listing. This business arrangement is called
    a. an ostensible partnership.
    b. a general partnership.
    c. a joint venture.
    d. a limited partnership.