

6

**VIOLATIONS OF LICENSE  
LAW, PENALTIES, AND  
PROCEDURES**

1 **LEARNING OBJECTIVES**

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

- 3 ■ Distinguish among the legal terms presented in this unit.
- 4 ■ Explain the procedures involved in the reporting of violations, the elements of a valid complaint, and the investigation of complaints.
- 5
- 6 ■ Describe the composition of the probable-cause panel.
- 7 ■ Describe the hearing process.
- 8 ■ Recognize events that would cause a license application to be denied.
- 9 ■ Distinguish among the various violations and administrative penalties.
- 10 ■ Distinguish among the various penalties that may be issued by a court of law.
- 11 ■ Explain the provisions of the Real Estate Recovery Fund.

12 **KEY TERMS**

breach of trust	legally sufficient	reprimand
citation	material fact	stipulation
complaint	misrepresentation	subpoena
concealment	moral turpitude	summary (emergency)
culpable negligence	notice of noncompliance	suspension order
final order	probable cause	voluntary relinquishment
formal (administrative)	probation	for permanent
complaint	recommended order	revocation
fraud		

## 1 INTRODUCTION

2 This unit details the procedures for investigations and hearings via the complaint  
3 process. The unit describes many types of violations of the laws and rules governing real  
4 estate activities and the possible consequences that may result. Finally, the Real Estate  
5 Recovery Fund is explained regarding its function when damages are suffered in a real  
6 estate transaction due to a wrongful act of a Florida licensee.

## 7 6.1 LEGAL TERMS TO KNOW

8 To assist you in learning important but often difficult-to-understand real estate terms  
9 in the legal realm, the following definitions and examples are presented.

### 10 Breach of Trust

11 A **breach of trust** is defined as any violation or omission of a legal or moral duty. It  
12 is the breaking of a promise or obligation, either by an act of commission or omission,  
13 default, or nonperformance.

14 **EXAMPLE 1:** A sales associate signed a contract for sale in the name of the buy-  
15 ers without the buyers' permission or knowledge. The sales associate indicated that the  
16 buyers were busy, and so the associate signed the contract to save time. According to the  
17 associate, time was an issue because the bank wanted a signed contract right away.

18 The DBPR served the real estate sales associate with an administrative complaint.  
19 Section 475.25(1)(b), F.S., subjects a real estate licensee to discipline for committing  
20 "fraud, misrepresentation, concealment, false promises, false pretenses, dishonest deal-  
21 ings by trick, scheme, or devise, culpable negligence, or *breach of trust* [italics added for  
22 emphasis] in any business transaction."

23 The sales associate violated the statute by signing a contract for sale in the name of  
24 the buyers for the purchase of subject property. The sales associate was fined \$1,000 and  
25 investigative costs of \$700. The sales associate's real estate license was suspended for  
26 60 days. The licensee was further ordered to attend a 45-hour post-license course and a  
27 3-hour ethics course. The education ordered is in addition to any course requirement to  
28 maintain the real estate license.

29 Reference: DBPR Case Number 2011005450

### 30 Concealment

31 **Concealment** is the withholding of information or a material fact. In a fiduciary rela-  
32 tionship, for example, the broker has a duty to speak, unless the principal knows the  
33 information or fact.

### 34 Culpable Negligence

35 **Culpable negligence** involves negligent conduct that, while not intentional, involves  
36 a disregard of the consequences likely to result for one's actions. Brokers may be charged  
37 with culpable negligence if they do not give ordinary, careful attention to their brokerage  
38 and do not exercise reasonable control over the brokerage's agents.

Section  
475.25(1)  
(b), F.S.

## 1 **Fraud**

2 **Fraud** is intentional deceit and reliance on the deception for the purpose of inducing  
3 another person to rely on the deceitful information and for the injured person to part with  
4 something of value or to surrender a legal right. A broker may be charged with fraud when  
5 the broker does not disclose known defects or remains “silent” when the defect is not read-  
6 ily observable. (See “Misrepresentation and Fraud,” Unit 11).

## 7 **Material Fact**

8 A **material fact** is information that is relevant to a person making a decision and that  
9 affects the value of the real property. Information about the condition of a property, such  
10 as known defects or code violations are material facts.

## 11 **Misrepresentation**

12 **Misrepresentation** is an untrue statement of fact or an incorrect or false representa-  
13 tion of the facts. A licensee may be charged with misrepresentation for failing to indicate  
14 in a newspaper that a listed property is advertised by a real estate licensee.

## 15 **Moral Turpitude**

16 **Moral turpitude** involves conduct contrary to honesty, good morals, justice, or  
17 accepted custom. Case law has further defined moral turpitude to mean a depravity against  
18 society. Felonies such as embezzlement, larceny, and robbery are generally considered  
19 moral turpitude.

20 **EXAMPLE 2:** A man’s elderly mother died of cancer at home. In her last days,  
21 the elderly woman was prescribed controlled drugs including morphine and hydrocodone.  
22 The man was a close friend of a real estate sales associate. The friend explained to the  
23 licensee that he had drugs in his home left over from his mother’s care. According to the  
24 licensee, the friend was at a loss regarding what to do with the drugs. The friend asked  
25 the licensee if he would place the drugs in the licensee’s storage unit so that he could get  
26 them out of his house. The licensee agreed and placed a box of drugs in the storage unit.

27 Sometime later the storage unit was burglarized. The police were sent to the unit.  
28 The police found the drugs during their investigation. In circuit court, the licensee was  
29 found guilty of possession and trafficking in morphine, hydrocodone, and other controlled  
30 substances.

31 The licensee timely notified the FREC of the felony conviction. The DBPR served the  
32 real estate sales associate with an administrative complaint. Section 475.25(1)(f), F.S.,  
33 subjects a real estate licensee to discipline for being convicted or found guilty of “a crime  
34 in any jurisdiction which...involves *moral turpitude* [italics added for emphasis] or fraudu-  
35 lent or dishonest dealing.”

36 The sales associate violated Section 475.25(1)(f), F.S., for being convicted or found  
37 guilty of a crime in any jurisdiction that involves moral turpitude. The sales associ-  
38 ate was fined \$1,000 and investigative costs of \$396. The sales associate was given  
39 one year of probation. The licensee was further ordered to attend one two-day FREC  
40 meeting.

41 Reference: DBPR Case Number 2011059856

## Practice Questions

1. In Example 1, the licensee was charged with concealment. What did the licensee conceal?
2. A seller covered several areas of permanently stained wood plank flooring with area rugs and did not mention the damaged wood planks to the listing sales associate. The buyer does not discover the damaged wood flooring until after the closing when the house is vacated and the rugs are removed. The buyer files a complaint with the DBPR against the listing company and sues the seller and the broker. The seller's failure to disclose the permanently stained flooring is considered to be a \_\_\_\_\_ fact.



## THE COMPLAINT PROCESS

Seven steps are involved in the process of dealing with complaints of alleged violations:

1. A complaint is filed with the DBPR.
2. The complaint is investigated.
3. A determination is made as to probable cause.
4. A formal complaint is issued if probable cause is found.
5. An informal hearing or a formal hearing is conducted.
6. The final order is issued.
7. The final order may be appealed to the district court.

## 6.2 FILING THE COMPLAINT

475.25, F.S.  
455.225,  
F.S.

The complaint process begins when a **complaint** (an alleged violation of a law or rule) is filed with the DBPR's Division of Real Estate (DRE). The complaint process is consumer driven, meaning the process is initiated when a written complaint is submitted by a consumer, licensee, or another agency. Complaints are submitted on the Uniform Complaint Form for Real Estate. The form may be downloaded from the DRE website, or the *complainant* (person filing a complaint) can file the complaint online through the online complaint portal (see the following web link). A complaint that is filed in writing and is legally sufficient will be investigated. A complaint is **legally sufficient** if it contains facts indicating that a violation of any of the following has occurred:

- Florida Statute 455 (DBPR and the professions under the Department)
- Florida Statute 475 (real estate license law)
- DBPR rule
- FREC rule

455.225,  
F.S.

Anyone may file a complaint against a licensee, an applicant, or an unlicensed person for actions believed to violate Chapter 455, F.S.; Chapter 475, F.S.; or any existing DBPR or FREC administrative rule. The DRE has its own enforcement section. The DRE's authority to process and investigate complaints is granted by the DBPR's Section 455.225 of the Florida statutes. The DRE's enforcement section oversees the complaint process for both licensed and unlicensed individuals.

**EXAMPLE 1:** A consumer filed a complaint against an unlicensed person who was showing rental units, procuring tenants, and collecting tenant rent and deposits for a fee. The unlicensed person can be charged with unlicensed activity.



1 A person may also file a complaint for an alleged violation that does not pertain to a  
2 real estate transaction or an incident that took place in another state.

3 **EXAMPLE 2:** A consumer filed a complaint against a real estate licensee who  
4 was convicted of a DUI in Alabama.

5 **Anonymous Complaints** The DRE may investigate an unsigned (anonymous) complaint,  
6 or one made by a confidential informant, provided the complaint is in writing and is  
7 legally sufficient; the alleged violation of law or rule is substantial; and the DRE has reason  
8 to believe, after preliminary inquiry, that the alleged violations in the complaint are true.  
9 An anonymous complaint is confidential (even to the unknown complainant that filed it)  
10 until 10 days after probable cause has been found to exist or the subject of the investiga-  
11 tion waives the privilege of confidentiality, whichever occurs first.

12 You can download the Uniform Complaint Form and instructions at  
13 [www.myfloridalicense.com/dbpr/re/documents/re-2200-1.pdf](http://www.myfloridalicense.com/dbpr/re/documents/re-2200-1.pdf).

**WEBLINK**



14 Consumers may also file a complaint online. Go to <http://www.myfloridalicense.com/DBPR/file-a-complaint/>.

### 16 Investigation

17 The DBPR has granted authority to the DRE enforcement section to initiate an  
18 investigation on its own if it has reasonable cause to believe that a licensee has violated  
19 Chapter 455, F.S.; Chapter 475, F.S.; DBPR rule; or FREC rule. Although most investiga-  
20 tions result from a complaint being filed, an investigation may be initiated as a result of  
21 an inspection of a brokerage office (including an audit of the broker's escrow account)  
22 or because a licensee self-reported a criminal matter. If the act under investigation is a  
23 criminal offense, the DRE is authorized to conduct its investigation without notifying the  
24 subject(s) to the investigation.

455.225,  
F.S.

25 If the original complainant decides to withdraw the complaint or otherwise indicates  
26 a desire not to continue with the investigative process, the DRE may continue with the  
27 investigation and the Commission may take the appropriate final action once the case is  
28 prosecuted to completion.

29 The DRE forwards a copy of the complaint to the subject of the investigation or to  
30 the subject's attorney. The subject may submit a written response to the complaint. The  
31 complaint and all information obtained during any resulting investigation must be treated  
32 as confidential until 10 days after probable cause has been found to exist or the subject of  
33 the investigation waives the privilege of confidentiality, whichever occurs first (except for  
34 a criminal violation). If probable cause is not found to exist, the investigative report and  
35 supporting documents never are released to the public. Once a legally sufficient complaint  
36 has been investigated, an investigative report with all supporting documentation is for-  
37 warding to the Department's legal section located in the Division of the General Counsel  
38 to determine what type of violation may have occurred, if any.

120.60(6),  
F.S.  
455.225(8),  
F.S.

39 **Summary Suspension.** In rare situations, during the investigative process, the DBPR  
40 may uncover something so serious that it cannot allow the licensee to continue to endan-  
41 ger the public welfare. For example, the investigator may discover that a broker is stealing  
42 thousands of dollars from the escrow account. In such extreme circumstances, the DBPR  
43 may decide that the licensee cannot be allowed to continue to practice real estate during  
44 the normal disciplinary process. Such situations require emergency action. The DBPR sec-  
45 retary (or a legally appointed designee) has the authority to issue a **summary (emergency)**  
46 **suspension order.**

1 When it has been demonstrated that a summary suspension is necessary, due process  
 2 does not require a hearing before the emergency suspension, provided a formal proceeding  
 3 for suspension or revocation is promptly instituted.

### Practice Questions

3. A complaint is \_\_\_\_\_ if it contains facts indicating that a violation of Florida Statute 475, Florida Statute 455, or administrative rule has occurred.
4. A complaint and the information obtained during the investigation is treated as \_\_\_\_\_ until \_\_\_\_\_ days after probable cause is found to exist.

## 6.3 PROBABLE CAUSE

5 Reasonable grounds for prosecution is called **probable cause**. The determination as to  
 6 whether probable cause exists is made by majority vote of FREC's probable-cause panel.  
 7 The sole responsibility of the probable-cause panel is to determine whether probable cause  
 8 exists.

### Composition

10 The FREC may convene multiple probable-cause panels to handle the volume of  
 11 investigative reports. Each probable-cause panel is composed of two individuals. One of  
 12 the panel members must currently serve on the Commission. Various combinations of cur-  
 13 rent and former commissioners are used on the probable-cause panels:

- 14 ■ At least one of the panel members must be a former or current professional Com-  
 15 mission member. If the probable-cause board member is a former professional  
 16 member of the FREC, the former commissioner must currently hold an active  
 17 valid real estate license (see "Composition and Qualifications," Unit 3).
- 18 ■ The second panel member may be a former or current professional FREC mem-  
 19 ber, or a former or current consumer member of the Commission.

20 **EXAMPLE:** A probable-cause panel may consist of the following:

- 21 1. One current professional member of the FREC and one former consumer FREC  
 22 member
- 23 2. One current consumer member of the FREC and one former professional FREC member  
 24 who holds an active valid real estate license
- 25 3. One current professional member of the FREC and one former professional FREC member  
 26 who holds an active valid real estate license

### Probable Cause Determination

27 Probable-cause proceedings are not open to the public, and the remaining FREC  
 28 members are prohibited from attending. The segregation of Commission members allows  
 29 the probable-cause panel to serve in a "grand jury" type of arrangement. Because the  
 30 remaining commissioners do not participate in the probable-cause proceedings, they are  
 31 able to maintain objectivity in the matter if it comes before the Commission in an infor-  
 32 mal hearing.  
 33

34 The probable-cause panel reviews the investigative report and the staff attorney's  
 35 recommendations. The probable-cause panel must make a decision within 30 days after

455.225(4),  
F.S.

61J2-  
20.009,  
F.A.C.

455.225(4),  
F.S.

1 receipt of the final investigative report, unless an extension is granted by the secretary of  
2 the Department. After a complete review of the record, the probable-cause panel makes a  
3 determination as to whether probable cause exists.

4 If the panel finds that probable cause does not exist, it may simply dismiss the case,  
5 or it may dismiss the case with a *letter of guidance* to the subject. A confidential report  
6 is placed in the licensee's DBPR file describing a minor incidence of misconduct that  
7 resulted in no disciplinary action. If probable cause is found, a formal complaint is filed.  
8 Once the probable-cause proceeding has been concluded, the complainant and the sub-  
9 ject of the investigation are sent written notification of the outcome. The DBPR must  
10 give timely written notice to a licensee's broker or employer when a formal complaint has  
11 been filed against a sales associate or a broker associate.

### Practice Questions

5. At least \_\_\_\_\_ of the probable cause panel members must be a \_\_\_\_\_ member of the Commission.
6. If probable cause is found, a \_\_\_\_\_ is filed.
7. Probable cause proceedings are \_\_\_\_\_ open to the public, and the remaining FREC members are \_\_\_\_\_ from attending the proceedings.

## 6.4 FORMAL COMPLAINT

12  
13 455.225(5),  
14 F.S.  
15 If probable cause is found to exist, the probable-cause panel will direct the Depart-  
16 ment to file a formal complaint against the subject of the investigation (respondent). A  
17 **formal (administrative) complaint** consists of allegations of facts and charges against the  
18 licensee.

### Address of Record

17  
18 455.275,  
19 F.S.  
20 120.60(5),  
21 F.S.  
22 Administrative complaints are sent by email, regular U.S. mail, and certified mail to  
23 the licensee's address of record. Service by regular mail or email to a licensee's last known  
24 mailing address or email address of record constitutes adequate and sufficient notice to  
25 the licensee for most other official DBPR communication to a licensee. For example, final  
26 orders are sent by regular mail. Licensees are solely responsible for notifying the DBPR  
27 in writing of the licensee's current mailing address, email address, and place of practice.  
28 Licensees should regularly check the email address on record.

### Election of Rights

25  
26 An Election of Rights form is sent with the administrative complaint. The licensee  
27 is instructed to select one of three options in the Election of Rights and return the com-  
28 pleted Election of Rights form to the DBPR on or before the 21st day after receipt of the  
29 administrative complaint. The licensee may choose to:

- 30 1. not dispute the allegations of fact and request an informal hearing,
- 31 2. dispute the allegations of fact and request a formal hearing, or
- 32 3. not dispute the allegations of fact and waive the right to be heard.

## 1 Settlement Stipulation

2 Sometimes a licensee-respondent and the licensee's attorney (if the licensee has legal  
3 counsel) will meet with an attorney from the DBPR General Counsel before a hearing to  
4 discuss a possible settlement and enter into a stipulation. A **stipulation** is an agreement  
5 as to the facts of the case and the penalty reached between the attorneys for the General  
6 Counsel and the licensee or licensee's attorney. The stipulation must be approved by the  
7 FREC for it to be effective. The licensee and the licensee's legal counsel, where there is  
8 one, are encouraged to appear before the FREC to defend the stipulation. The FREC will  
9 approve or deny the stipulation during a Commission meeting. If the FREC denies the stip-  
10 ulation, it usually provides guidance or a counteroffer to the General Counsel concerning  
11 additional penalties it believes appropriate in order for it to support a revised stipulation.

## 12 Voluntary Relinquishment for Permanent Revocation

13 Sometimes a licensee-respondent will choose to avoid a disciplinary hearing and  
14 relinquish the real estate license in lieu of discipline. **Voluntary relinquishment for per-  
15 manent revocation** is an affidavit signed by the licensee relinquishing the license from  
16 further discipline while agreeing the license status will show revoked. A revocation is a  
17 permanent action against the license.

## 18 Case Presented in Either an Informal Hearing or a Formal Hearing

19 If the licensee-respondent's case was not resolved with a stipulation, the respondent's  
20 case will either be heard by the FREC in an informal hearing or the case may be heard  
21 before an administrative law judge in a formal hearing. If there is no dispute of mate-  
22 rial fact, the case is presented in an informal hearing before the FREC. If the licensee-  
23 respondent disputes the alleged facts noted in the complaint, the licensee-respondent's  
24 case must be heard by an administrative law judge in a formal hearing. The licensee-  
25 respondent must be given at least 14 days' notice of a hearing.

26 **Informal Hearing.** An informal hearing is an expedited way of resolving the disciplin-  
27 ary case provided the licensee does not dispute the alleged facts stated in the complaint.  
28 During an *informal hearing*, normally held at a regular Commission meeting, the licensee-  
29 respondent is given an opportunity to explain the details of the case with supporting  
30 evidence and/or witnesses. Any Commissioners who served on the probable-cause panel  
31 for the particular complaint may not participate in this informal hearing. If any party  
32 raises an issue of disputed fact during an informal hearing, the hearing is terminated and a  
33 formal hearing will be scheduled before an administrative law judge. The FREC will deter-  
34 mine, based on the admitted facts, whether the licensee is guilty of the charges alleged  
35 in the complaint. If the licensee is found guilty of the charges, the FREC will determine  
36 which penalties are appropriate based on the details of the case, taking into consideration  
37 any *mitigating* circumstances (reasons to reduce the impact of the violation), and it will  
38 issue a final order (see "Final Order," later in this unit).

39 **Waiver Hearing.** If the subject of an administrative complaint fails to timely respond to  
40 the Election of Rights, the licensee-respondent is considered to have waived the election  
41 of rights. The case proceeds and is heard by the FREC in an informal hearing.

42 **Formal Hearing.** If the licensee-respondent requests a *formal hearing* or if the licensee-  
43 respondent disputes the allegations, the DBPR requests that the case be prosecuted under  
44 Chapter 120, F.S. Hearings under Chapter 120 are conducted by full-time Florida admin-  
45 istrative law judges who are employed by the *Division of Administrative Hearings (DOAH)*.  
46 The DOAH may legally employ only those persons who have been members of The Florida

455.225(5),  
F.S.

120.57(2),  
F.S.

120.569,  
F.S.

120.57(3),  
F.S.

455.2273(5),  
F.S.

120.52, F.S.

455.225,  
F.S.

120.60(5),  
F.S.

120.57(1),  
F.S.

Ch 28,  
Sections  
101-110,  
DOAH  
Rules,  
F.A.C.

120.57(1),  
F.S.



1 Bar in good standing for the preceding five years. Administrative law judges are not sub-  
 2 ject to control, supervision, or direction by any party, commission, or department of state  
 3 government. Once an administrative law judge is assigned, the DBPR may take no further  
 4 action except as a litigating party.

5 The administrative law judge has the power to swear witnesses, to take their testimony  
 6 under oath, and to issue subpoenas. A **subpoena** is a command to appear at a certain time  
 7 and place to give testimony or to produce records. Failure to comply with a subpoena  
 8 could result in a finding of contempt of court.

455.2273(5),  
 F.S.

120.57(3),  
 F.S.

120.52, F.S.

**WEBLINK**



9 The administrative law judge prepares and submits to FREC a **recommended order**  
 10 that includes the administrative law judge's findings of fact and conclusions of law and  
 11 the recommended penalty, if any, in accordance with the Commission's range of penalties  
 12 as set forth in rule. Any party of record in the case may submit (within the statutory time  
 13 limit) written exceptions to the administrative law judge's recommended order.

14 To learn more about the formal hearing process, visit the Florida Division of Admin-  
 15 istrative Hearings website at [www.doah.state.fl.us/ALJ/](http://www.doah.state.fl.us/ALJ/). Click on "Statutes and Rules."

16 **Final Order**

17 The FREC (with the members who served on the probable-cause panel excused) issues  
 18 the final order in each disciplinary case. The **final order** is FREC's final decision as to  
 19 innocence or guilt and the determination of the appropriate penalty. The FREC issues a  
 20 final order at the conclusion of an informal hearing. If the matter was heard by an adminis-  
 21 trative law judge in a formal hearing, the FREC must review and consider the administra-  
 22 tive law judge's findings and recommended order before issuing its final order.

475.31, F.S.

455.225,  
 F.S.

120.57, F.S.

61J2-

24.001,  
 F.A.C.

23 The Commission members who did not serve on the probable-cause panel consider  
 24 the administrative law judge's report and recommended order, plus any filed exceptions  
 25 to the report and the accused party's final arguments, if any. After all final arguments are  
 26 heard, the Commission members make a determination and issue the final order, conclud-  
 27 ing the quasi-judicial process.

28 A copy of the final order is mailed to each party in the case. The notice must inform  
 29 the recipient of the appeal process. The final order becomes effective 30 days after it has  
 30 been entered. A licensee has the right to practice real estate during the complaint process  
 31 and up until the final order becomes effective.

32 **Judicial Review (Appeal)**

33 The licensee-respondent may challenge the final order within 30 days by filing an appeal.  
 34 The petition of judicial review (notice of appeal) must be filed with the DBPR and with the  
 35 appropriate district court. The licensee may request a *stay of enforcement*. A stay of enforce-  
 36 ment, if granted, stops the enforcement of the final order pending the outcome of the appeal  
 37 process. To obtain a stay of the final order, the district court of appeals must issue a *writ of*  
 38 *supersedeas*. The writ is an order issued by a court that supersedes the action of the Commis-  
 39 sion and allows the licensee to continue to practice until the case can be heard on appeal.

475.37, F.S.

120.68, F.S.

67

40 If the reviewing court finds that a material error in procedure by the FREC has affected  
 41 the fairness of the hearing or the correctness of the action taken, the case will be sent  
 42 back to the FREC for corrective action. Unless the court finds legitimate grounds to set  
 43 aside, modify, remand for further FREC proceeding, order additional action by the FREC,  
 44 or order some auxiliary relief under Florida Statute 120.68, the court is required to affirm  
 45 (support) the action taken by the Commission.

- 1 If a FREC final order is affirmed, reversed, or set aside, a mandate (copy) is filed  
2 with the Commission attesting to that event. The respondent's rights and privileges as  
3 a licensee will be restored as of the date of filing, if the final order is reversed. When the  
4 inquiry or proceeding is in reference to an application to become licensed, the application  
5 must be approved and processed. If a court reverses or sets aside a final order, the court may  
6 award attorney's fees and costs to the aggrieved prevailing party.

## C A S E S T U D Y

### STIPULATION CASE

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#### *Florida DBPR v. R. G. Hansen, Respondent*

What follows is information concerning an actual case (DBPR 2009006963). This case was resolved in a stipulation. The information has been summarized for education purposes.

#### *Stipulation:*

Petitioner, Florida DBPR, Division of Real Estate (DBPR), and Respondent, R. G. Hansen, hereby stipulate and agree that the Florida Real Estate Commission issue a Final Order adopting and incorporating the provision of this Stipulation as final agency action in this case.

#### *Stipulated Facts and Conclusions of Law:*

1. Respondent at all times held a valid active sales associate license.
2. Respondent admits that the DBPR served the Respondent with an Administrative Complaint charging Respondent with violation of provisions of Chapter 455 and 475, Florida Statutes.
3. Respondent neither admits nor denies the factual allegations in all counts of the Administrative Complaint.
4. Respondent was found guilty of having failed to advertise property or services in a manner in which reasonable persons would know they are dealing with a real estate licensee. Respondent failed to include the licensed name of the brokerage firm in an advertisement, and having placed or caused to be placed an advertisement that is fraudulent, false, deceptive, or misleading in form or content, in violation of Rule 61J2-10.025, Florida Administrative Code, and Section 475.25(1)(c), Florida Statute.

#### *Stipulated Disposition:*

1. Respondent shall pay a fine of \$500 and \$650 in costs.
2. Respondent shall attend one two-day FREC general meeting. Respondent is placed under probation for a period of two years. Respondent must pass the 28-hour reactivation course. The education herein is in addition to any requirement for respondent to maintain his real estate license.
3. Noncompliance with the terms of this Stipulation shall result in the suspension of Respondent's license without notice to Respondent or further hearing, until Respondent submits satisfactory proof of compliance to the DBPR. The suspension period shall not exceed 10 years.



4. A summary of the action of Final Order shall be published in the FREC News and Report.
5. The parties understand that this Stipulation is subject to the approval of the DBPR and of the FREC.
6. Respondent executes this Stipulation to avoid further administrative action with respect to these causes.

The FREC has not taken prior disciplinary action against Respondent.

### Practice Questions

8. A \_\_\_\_\_ is a possible settlement between a licensee-respondent and the DBPR General Counsel that is reached before a hearing.
9. If a licensee-respondent does not dispute the material facts of the case, the case is heard in an \_\_\_\_\_ hearing.
10. An \_\_\_\_\_ presides over formal hearings.
11. The administrative law judge prepares and submits to the FREC a \_\_\_\_\_.
12. The licensee-respondent may challenge the final order within \_\_\_\_\_ days by filing an appeal.

## 6.5 ADMINISTRATIVE PENALTIES

Three types of penalties may be imposed for violations of the real estate license law: administrative, civil, and criminal. The powers of the FREC are limited to administrative matters and do not extend to criminal actions. The Commission may impose administrative penalties for violations of Florida statute and administrative rules and regulations.

The primary purpose of the administrative jurisdiction granted to the Commission is to enforce duties and obligations as they apply to individuals and firms actively engaged in the real estate business. Thus, the FREC may not impose imprisonment as a penalty. Imprisonment is a criminal punishment that must be ordered by a court. Furthermore, the FREC does not have the authority to order restitution to an injured party. If the acts of a licensee harm a consumer, the injured party may seek damages in a court of law.

### Denial of a License Application and Refusal to Recertify a License for Renewal

Some application denials are the result of a deficient application. When an application is deficient, the applicant may correct the deficiency and submit an amended application or file a new application. Examples of a deficient application are:

- neglecting to answer completely all questions on the application;
- neglecting to forward the proper fees with the application request; and
- neglecting to correct errors or omissions on applications returned.

47

475.17, F.S.

1 Grounds for denial of a license application are more serious and result in an applicant  
2 being denied licensure. A denied application requires a decision by the FREC during a  
3 Commission meeting. Examples of cause for license denial are that the applicant:

- 4 ■ lacked minimum qualifications;
- 5 ■ did not possess the character required by the provisions of Florida Statutes 455  
6 and 475;
- 7 ■ did not possess the general competence to deal with the public or complaints  
8 against the applicant were received by the FREC or the DBPR;
- 9 ■ was guilty of acts that would have resulted in revocation or suspension of a  
10 license had the applicant already been licensed;
- 11 ■ acted in violation of any provision of F.S. 475.42 or was at the time subject to  
12 discipline under F.S. 475.25; and
- 13 ■ received assistance or cheated while taking a state license exam.

### Practice Questions

13. Circle the actions which are cause for an application to be denied.
- a. Cheated on the state license exam
  - b. Applied for a license online
  - c. Failed the prelicense end-of-course exam
  - d. Was guilty of acts that would have resulted in license suspension if the applicant had already been licensed
14. An application for licensure may be denied if the applicant is guilty of acts that would have resulted in the license being \_\_\_\_\_ or suspended if the applicant were already a Florida licensee.

## 6.6 VIOLATIONS AND ADMINISTRATIVE PENALTIES

15 The Commission has set forth administrative rule guidelines that apply to each specific  
16 disciplinary action that it may impose. The purpose of these disciplinary guidelines is to inform  
17 licensees of the range of penalties that normally will be imposed for each count (offense)  
18 during a formal or informal hearing. A finding of *mitigating* (less severe) circumstances or  
19 *aggravating* (more severe) circumstances allows the Commission to impose a penalty other  
20 than those provided. Two types of administrative penalties are issued by the DBPR/DRE:  
21 (1) a notice of noncompliance and (2) citations. A summary suspension (discussed earlier in  
22 this unit) is issued by the DBPR secretary. There are a variety of administrative penalties that  
23 the Commission may impose. Combinations of administrative penalties may be imposed. For  
24 example, the Commission may impose attendance at a FREC meeting or completion of an  
25 educational course, in addition to a fine and costs of the investigation. The various types of  
26 penalties that may be imposed by the DRE and the Commission are summarized in Figure 6.1.

27 **Notice of Noncompliance.** The FREC has set forth in administrative rule a list of vio-  
28 lations that are considered to be minor violations. The DRE may only issue a **notice of**  
29 **noncompliance** for a first offense of a minor violation listed in the rule. A *minor violation*  
30 is defined in rule as one that does not create a significant threat of harm; result in eco-  
31 nomic or physical harm to a person; or adversely affect public health, safety, or welfare.  
32 The licensee must take corrective action within 15 calendar days of being issued a notice  
33 of noncompliance. A notice of noncompliance does not involve a fine. Failure to comply  
34 with a notice of noncompliance may result in a citation. A notice of noncompliance does  
35 not appear on the licensee's public records (see Figure 6.1).

455.2273,  
F.S.

61J2-  
24.001(1),  
F.A.C.

455.225(3),  
F.S.

120.695,  
F.S.

61J2-  
24.003,  
F.A.C.

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1 The administrative rule, Notification of Noncompliance, can be downloaded at  
2 <https://www.flrules.org/gateway/RuleNo.asp?id=61J2-24.003>.

3 **Citation.** The FREC has set forth in administrative rule a list of violations that are of no  
4 substantial threat to the public health, safety, and welfare. Each violation listed in rule indi-  
5 cates the fine that is imposed. Licensees receiving a citation have 30 days to accept or reject  
6 the alleged violation(s), as specified in the citation. If the licensee accepts the alleged vio-  
7 lation, the licensee must pay the fine within 30 calendar days from the date the citation  
8 becomes a final order. For licensees who do not dispute the matter, the citation penalty will  
9 become effective (a final order) and the case will be closed. Licensees who dispute the alleged  
10 violation(s) must file a written objection. An investigation is opened for licensees who dis-  
11 pute the allegations and for licensees who fail to respond to the citation. After the investi-  
12 gation is complete, the investigative report and supporting documents will go to the DBPR  
13 General Counsel so that the documents can be presented to the probable cause panel. A  
14 citation is considered public discipline and will appear on public records against the licensee  
15 (see Figure 6.1).

455.228(3),  
F.S.

455.224,  
F.S.

61J2-  
24.002,  
F.A.C.

**WEBLINK**

16 The administrative rule, Citation Authority, can be downloaded at <https://www.flrules.org/gateway/RuleNo.asp?id=61J2-24.002>.  
17

**FIGURE 6.1 ■ Types of Administrative Penalties**

TYPES OF ADMINISTRATIVE PENALTIES				
Penalty	Severity Level	Who Issues	Action Required by Licensee	Example
<b>Notice of Noncompliance</b>	First offense only of a minor violation that did not cause economic or physical harm or affect the public health, safety, or welfare	DBPR/ DRE	Corrective, show proof action corrected within 15 calendar days	A sales associate was serving as an officer of a registered brokerage corporation. He must remove himself as an officer and show proof of removal.
<b>Citation</b>	No substantial threat to the public	DBPR/ DRE	Pay a fine, corrective action of the violation, show proof action was corrected (fines range from \$250 to \$1,000), 30 calendar days to accept or reject the allegations specified in citation.	A licensee failed to timely notify the DBPR of the current mailing address or any change in the current mailing address or email address. The licensee was fined \$1,000 for a first-time failure to notify.
<b>Reprimand</b>	Violation found but not cause to affect economic or physical harm to the public health, safety, and welfare of another	FREC	Stay out of trouble and do not repeat offense. Take corrective action if not already done so. May mandate additional education outside of normal CE.	A broker failed to register a branch office.
<b>Denial</b>	Administrative action	FREC	Loss of license, must start initial licensing procedures and take and pass the state exam	An applicant is denied an application for licensure due to attempting to cheat on the state exam.

FIGURE 6.1 ■ Types of Administrative Penalties (Cont.)

TYPES OF ADMINISTRATIVE PENALTIES				
Penalty	Severity Level	Who Issues	Action Required by Licensee	Example
<b>Probation</b>	Violation found that may have caused economic or physical harm or affected the public health, safety, and welfare of another	FREC	Complete the terms of the discipline. Probation issued with penalties such as fines, costs, and education. Once the fines and other terms are completed, the probation period ends.	A licensee uses false advertising to entice prospective tenants. The licensee is placed on probation until all fines, attendance at FREC meetings, suspension, and costs are satisfied.
<b>Fine</b>	May have caused economic or physical harm or affected the public health, safety, and welfare of another	FREC	Complete the terms of their discipline, pay fine within time period. Maximum fine of \$5,000 per offense.	A licensee advertised in a false, deceptive, or misleading manner.
<b>Suspension</b>	May have caused economic or physical harm or affected the public health, safety, and welfare of another	FREC	Not to practice real estate during suspension period. The maximum suspension period is 10 years. Keep renewal requirements current; timely complete all other terms of discipline.	A broker failed to deposit escrow funds timely or did not deposit them in a trust account.
<b>Revocation</b>	Economic or physical harm to public health, safety, and welfare has been affected	FREC	Stop practicing real estate; no longer licensed. May also be assessed fine and costs.	A broker failed to account for or deliver an escrow check.

1 **Reprimand.** The least severe penalty that the FREC can issue is a **reprimand**. A legally  
 2 sufficient complaint is received by the DRE and an investigation is conducted. The DBPR  
 3 General Counsel will present to the probable-cause panel the charging documents with  
 4 the investigation report and supporting documents. Probable cause is found to exist, and a  
 5 formal complaint is issued against the licensee. The case is heard in an informal hearing.  
 6 Sometimes, the evidence indicates that the licensee's actions did not harm the public;  
 7 however, the violation of law does not fall within the guidelines in administrative rule  
 8 that would allow for a notice of noncompliance or a citation. In such situations, the FREC  
 9 hears the case and may decide that a reprimand is an appropriate penalty. A reprimand  
 10 appears in public records as a violation of license law. The reprimand generally does not  
 11 come with a fine; however, the licensee could be ordered to complete education or attend  
 12 Commission meetings and would be required to pay the investigative costs (see Figure 6.1).

13 **Denial.** In the event an applicant commits a license law violation prior to being licensed,  
 14 FREC has the authority to issue a denial of an application for licensure. The DBPR has the  
 15 authority to initiate an investigation on its own if it has reasonable cause to believe that  
 16 the applicant has violated license law. Once legal sufficiency is determined, the DBPR  
 17 opens an investigation. The DRE investigator would follow the same procedures for inves-  
 18 tigating a licensed complaint (see Figure 6.1).



**EXAMPLE:** An individual submitted his application for a real estate sales associate license that met all of the requirements for licensure. During the state exam, the applicant is caught cheating by having answers written on the inside of his shirt. The applicant is subject to all license laws as is a current holder of a license. The actions were a violation under Chapter 455, F.S., relating to examination.

61J2-  
24.001,  
F.A.C.

**WEBLINK**



475.42, F.S.  
475.25, F.S.

475.31, F.S.  
475.25, F.S.  
455.227,  
F.S.

475.25(2),  
F.S.

**Administrative Fine.** The FREC may impose a maximum fine of \$5,000 per violation of Chapter 455, F.S., and Chapter 475, F.S. The Commission has established by rule a list of violations and a range of recommended fines for each violation (see the following web link).

The administrative rule 61J2-24.001, Disciplinary Guidelines, can be downloaded at <https://www.flrules.org/gateway/ruleNo.asp?id=61J2-24.001>.

**Suspension.** The maximum period for which the FREC may suspend a license is 10 years. Florida statutes refer to many acts that are unlawful, any one of which may result in license suspension. Each unlawful act constitutes grounds for suspension or revocation of licensure, depending on the seriousness attached to the offense by the Commission. A second suspension for the same or a different violation may result in revocation of the license. Licensees must continue all renewal requirements during the period of suspension.

**Revocation.** The most severe type of administrative penalty that the FREC is authorized to impose is revocation of a license. The FREC treats revocation of a license as permanent. At its discretion, the FREC is empowered to revoke a licensee's license for any of the causes that constitute grounds for suspension or denial.

When a real estate broker's license is suspended or revoked, all licenses issued to sales associates and broker associates who work for the penalized broker are in jeopardy of becoming inactive. Sales associates and broker associates have the options to go inactive, move their licenses to another registered broker, or remain with the current brokerage if another qualifying broker is registered. If the revoked or suspended broker is a qualifying broker for a partnership or corporation, affected sales and broker associates may not be affected if the brokerage has another qualifying broker in place (see "Vacancies of Office" in unit 5).

**Revoke without prejudice.** A license may be revoked or canceled if it was issued through the mistake or inadvertence of the Commission. Such revocation or cancellation shall not prejudice any subsequent application for licensure filed by the person against whom such action was taken.

**Probation.** The FREC may, in addition to other disciplinary penalties, place a licensee on probation. **Probation** is an administrative penalty imposed by the FREC that allows the licensee to continue to practice real estate while completing conditions specified in a final order and while being monitored by the FREC for a specified period of time. The Commission is empowered to set the time period and conditions of probation. Probationary conditions may include, for example, requiring the licensee to attend a prelicense or post-license course or other educational offering, attend one or more Commission meetings, submit to and successfully complete the state-administered examination, or to be subject to periodic inspections by a DBPR/DRE investigator.



## LICENSURE REISSUE

The Department shall reissue the license of a licensee against whom disciplinary action was taken upon certification by the Commission that the licensee has complied with all of the terms and conditions of the final order imposing discipline.

Reference: Section 475.25(3), F.S.

### Practice Questions

15. If a license is issued by mistake, the license will be revoked without \_\_\_\_\_.
16. The FREC may suspend a real estate license for up to \_\_\_\_\_ years.
17. The LEAST severe administrative penalty that the FREC can impose is a \_\_\_\_\_.
18. Revocation of a license is \_\_\_\_\_.
19. A notice of noncompliance may be issued for a minor \_\_\_\_\_ offense.
20. A \_\_\_\_\_ may be issued for a licensee's first-time failure to timely notify the DBPR of a change in current mailing address or email address.

## 6.7 CIVIL AND CRIMINAL PENALTIES

### Civil Penalties

In civil court, one person files a case against another person because of a dispute between two parties. If a person is sued in civil court and loses the case, that person may be ordered to pay money to the other party. Civil cases generally have to do with disputes over money or property. The results of a court ruling in favor of the plaintiff (the person bringing a suit) could allow the individual to file a complaint with the DRE against the licensee, leading to possible discipline of the real estate licensee.

**EXAMPLE:** A buyer sues their broker for culpable negligence (carelessness) and misrepresentation in a residential real estate transaction because the broker failed to inform them that a new extension of a major highway would take a portion of their property. The buyer claimed the broker lives in the same subdivision as the property in dispute and the broker was sent a letter from the city months earlier informing the broker of the highway extension. The court ruled in favor of the buyer, ordering the broker to pay monetary damages and court costs to the buyer. The buyer may file an administrative complaint with the Division of Real Estate stating the broker violated license law per the court order.

### Criminal Penalties

Criminal penalties are issued by criminal courts. All imprisonment penalties or fines (except administrative fines) must be obtained in a court of law because the Commission lacks the authority to assess such penalties. The DBPR must refer any criminal matters to the state attorney general's office for investigation and possible prosecution. If a licensee

775.083,  
F.S.

455.2277,  
F.S.



1 gets arrested for a criminal violation that is not related to real estate, in most situations,  
2 the Commission cannot take disciplinary action against the licensee until the case has  
3 gone to court and a court decision has been entered. Figure 6.2 shows common criminal  
4 penalties.

775.082, F.S.

775.083, F.S.

455.2277, F.S.

5 **Second-Degree Misdemeanor.** Misdemeanors of the second degree are the least serious  
6 misdemeanor crimes in Florida. If the Florida legislature fails to classify a misdemeanor,  
7 then it is punishable as a misdemeanor of the second degree. Therefore, a criminal vio-  
8 lation of real estate license law (Chapter 475) is a misdemeanor of the second degree  
9 unless specifically deemed in statute to be a more severe violation. For example, it is a  
10 misdemeanor of the second degree to advertise property or services in a fraudulent, false,  
11 deceptive, or misleading manner. The maximum criminal penalty for a second-degree  
12 misdemeanor is a fine of \$500 and/or imprisonment for 60 days (see Figure 6.2).

475.453(3)  
(a), F.S.

13 **First-Degree Misdemeanor.** A first-degree misdemeanor is the most severe type of mis-  
14 demeanor crime in Florida, which, therefore, has harsher penalties. For example, Florida  
15 Statute 475.453, F.S., states it is a first-degree misdemeanor to fail to provide accurate and  
16 current rental information for a fee. Though this may not be a practice used much today  
17 with the ability of the internet to advertise rentals, it is still a law that could be applied  
18 should a licensee violate it. Other examples include simple battery, driving on a suspended  
19 license (second offense), and some theft offenses. The maximum penalty for a first-degree  
20 misdemeanor is a fine of \$1,000 and/or one year in jail (see Figure 6.2).

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

455.228, F.S.

455.2175, F.S.

455.2275, F.S.

21 **Third-Degree Felony.** Felonies are the most serious type of crimes. A first-degree felony is a  
22 more serious type of felony crime than a second-degree felony or a third-degree felony. If the  
23 Florida legislature does not designate the degree of felony, the crime is a third-degree felony.  
24 The maximum penalty for a third-degree felony is a fine of \$5,000 and/or five years in jail.  
25 Three third-degree felonies associated with license law are listed as follows:

- 26 1. Making misleading statements or giving false information on a DBPR license  
27 application
- 28 2. Conducting unlicensed activity, including providing real estate services for com-  
29 pensation without a real estate license
- 30 3. Theft or reproduction of a DBPR license exam

31 The DBPR maintains a website dedicated to unlicensed activity at [http://www](http://www.myfloridalicense.com/DBPR/unlicensed-activity/)  
32 [.myfloridalicense.com/DBPR/unlicensed-activity/](http://www.myfloridalicense.com/DBPR/unlicensed-activity/). Consumers may call 866-532-1440  
33 to report unlicensed activity.

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FIGURE 6.2 ■ Maximum Criminal Penalties

Criminal Penalty	Fine	Incarceration
Second-degree misdemeanor	\$500	60 days
First-degree misdemeanor	\$1,000	1 year
Third-degree felony	\$5,000	5 years

### Requirement to Self-Report

34 Florida Statute requires licensees to inform the Commission, in writing, within 30 days  
35 of being convicted or found guilty of a crime. The requirement for written notification  
36 also applies to licensees who have entered a plea of nolo contendere (no contest) or a plea  
37 of guilty, regardless of adjudication, to a crime, regardless of where the event occurred.  
38 Crimes that must be reported include misdemeanor offenses and felonies. To report the  
39 crime, the licensee should download and print the Criminal Self-Reporting Document,  
40 and mail the completed form to the Division of Real Estate.  
41

455.227(1)  
(t), F.S.

**C A S E S T U D Y****FAILURE TO NOTIFY THE COMMISSION OF A CRIME**

What follows is information concerning an actual disciplinary proceeding (Case No. 2015-017374). The information has been summarized for education purposes.

*Facts:*

A real estate sales associate was convicted in 2014 of three separate counts: criminal mischief (misdemeanor), battery (misdemeanor), and domestic battery (felony). The sales associate did not report the crimes to the DBPR.

Another licensee who received uninvited sexual advances from the sales associate conducted a background check of the sales associate and discovered the criminal offenses. A complaint was filed against the sales associate (herein referred to as Respondent).

The DBPR investigated and the FREC panel found probable cause. The Respondent appeared before the Commission in an informal hearing in February 2016.

*Order:*

Administrative fine of \$1,500 and investigative costs of \$172.

License was suspended for six months, beginning 30 days after the filing date of the final order.

Licensee was placed on probation for six months, during which time the Respondent must complete the 28-hour Reactivation course and attend two 2-day Commission meetings.

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The DBPR's Criminal Self Reporting Document can be downloaded from the Department's website at <http://www.myfloridalicense.com/DBPR/criminal-self-reporting/>.

**Practice Questions**

21. List three real estate violations that are third-degree felonies.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

22. Failing to provide accurate and current rental information for a fee is a misdemeanor of the \_\_\_\_\_ degree.

23. False and misleading advertising is a misdemeanor of the \_\_\_\_\_ degree.

**6.8 REAL ESTATE RECOVERY FUND**

The Real Estate Recovery Fund reimburses consumers who have been financially injured by a licensee. The recovery fund is available as a last resort to individuals who have been found by a Florida court to have suffered monetary damages from an act committed by a Florida real estate licensee.

475.482,  
F.S.  
215.37, F.S.

1 **Licensee Requirements.** A licensee who has violated real estate license law and whose  
2 actions cause a consumer to seek reimbursement from the recovery fund must:

- 3 ■ have a current, valid, active real estate license at the time the real estate activity  
4 occurred;
- 5 ■ not have been a buyer, seller, landlord, or tenant in the transaction (nor an offi-  
6 cer, director, member, or partner of a business entity that was the seller, buyer,  
7 landlord, or tenant); and
- 8 ■ have acted solely in the capacity of a real estate licensee in the transaction.

9 **Claimant Requirements.** The injured consumer (claimant) seeking reimbursement from  
10 the recovery fund must meet certain specific requirements.

- 11 ■ The claimant must have filed a civil suit and received a judgment against the  
12 individual licensee (not against a real estate brokerage entity) based on a real  
13 estate transaction (real estate sale contract or lease agreement).
- 14 ■ The claimant must secure a *writ of execution* issued on the judgment and make a  
15 diligent attempt to satisfy the judgment from the assets of the licensee by con-  
16 ducting an asset search and showing that there were insufficient assets available  
17 to satisfy the judgment.
- 18 ■ If the licensee files bankruptcy and the bankruptcy court obstructs obtaining a  
19 judgment, the Commission may waive the requirement for a final judgment.
- 20 ■ The claimant must execute an affidavit stating the final judgment is not on  
21 appeal. (In the event the judgment was appealed, the claimant must state in an  
22 affidavit that the appellate proceedings have concluded and provide the outcome  
23 of the appeal.)
- 24 ■ The claimant cannot be the spouse of the offending licensee (the judgment  
25 debtor).

26 A real estate licensee who was the buyer or the seller (lessor or lessee) in a real estate  
27 transaction may also make a claim against the fund, provided the licensee did not act in  
28 the capacity of a real estate agent. In other words, if a licensed person is the buyer or the  
29 seller of real property and suffers monetary damages as a result of an act committed by  
30 another licensed broker or sales associate who acted in the capacity of an agent, the fact  
31 that the victim is licensed will not prevent the victim from seeking reimbursement from  
32 the fund.

33 **Time Limit to File a Claim.** A claim must be made within two years of either the alleged  
34 violation or discovery of the alleged violation. However, in no case may a claim for recov-  
35 ery be made more than four years after the date of the alleged violation.

36 **Maximum Payment from the Fund.** Florida Statute sets limits on the maximum payment per  
37 real estate transaction and the maximum payment against a real estate licensee for multiple  
38 claims for recovery from the fund.

- 39 ■ Payment from the fund may not exceed \$50,000 for a claim resulting from a real  
40 estate transaction, or the unsatisfied portion of the judgment claim, whichever is  
41 less, regardless of the number of claimants.
- 42 ■ Total payments for claims based on judgments against one real estate licensee  
43 may not exceed, in the aggregate, \$150,000.

44 **Recovery Fund Fee.** Recovery claim funds are accumulated by charging active and inac-  
45 tive licensees a recovery fund fee when a new license is issued or an existing license is  
46 renewed. A fee of \$3.50 per year for brokers and \$1.50 per year for sales associates is added

475.483,  
F.S.

475.484,  
F.S.

475.482(3)  
and (4), F.S.

1 to the license fee for both new and renewed licenses. The collection of these special fees  
 2 stops when the fund reaches \$1 million. Collection of fees begins again when the fund  
 3 drops below \$500,000. Disciplinary fines imposed by the FREC and collected by the DBPR  
 4 are also transferred into the fund. The chief financial officer makes all payments from the  
 5 fund following receipt of a voucher signed by the DBPR secretary.

6 475.484(1)  
 7 (a), F.S.

8 **Compensatory Damages Only.** The recovery fund will reimburse a claimant for com-  
 9 pensatory damages. Compensatory damages are actual monetary damages incurred by the  
 10 claimant as opposed to punitive damages, which are awarded as punishment by the court.  
 The fund will not reimburse a claimant for attorney's fees, court costs, interest, treble  
 (triple) damages, or punitive damages.

11 475.484(7),  
 12 F.S.

13 **Mandatory Suspension.** Suspension of a licensee's license is mandatory on payment of  
 14 any amount from the Real Estate Recovery Fund in settlement of a claim to satisfy a judg-  
 15 ment against any licensee as described in 475.482(1), F.S. The license is automatically  
 suspended on the date of payment from the recovery fund and will not be restored until  
 the licensee has repaid the amount paid from the fund in full (plus interest).

### 16 Recovery Fund Claims Resulting From an EDO

17 475.482(2),  
 18 F.S.  
 19 475.483(3),  
 20 F.S.  
 21

Recall from Unit 5 that when the parties to a real estate transaction make conflict-  
 ing demands for escrowed funds that cannot be resolved, the broker must initiate one of  
 four settlement procedures. One of the settlement procedures is to request an escrow dis-  
 bursement order (EDO). In this settlement procedure, the Commission determines who is  
 entitled to the disputed funds.

22 If a broker who complied with an escrow disbursement order (EDO) is later sued by  
 23 the buyer or the seller, and as a result is required by a court of law to pay damages, the  
 24 FREC is authorized to order reimbursement for the amount of the judgment against the  
 25 broker up to \$50,000. Furthermore, in cases involving compliance with an EDO, Florida  
 26 statute provides for the Commission to pay the broker-defendant's reasonable attorneys'  
 27 fees and court costs and, if the plaintiff prevails in court, the plaintiff's (person who filed  
 28 the lawsuit) reasonable attorney's fees and court costs. However, punitive damages and  
 29 interest are never paid by the recovery fund.

30 To be eligible for reimbursement, the broker must notify the FREC of the court case and  
 31 the broker-defendant must diligently defend in court the disputed actions concerning the  
 32 transaction. No disciplinary action will be taken against a broker who previously requested  
 33 an EDO and followed its instructions. The broker's license will not be suspended, and no  
 34 repayment to the fund is required.

35 **EXAMPLE:** A broker complied with an escrow disbursement order (EDO). The  
 36 buyer was awarded the earnest money deposit of \$12,000. The seller in the trans-  
 37 action sued the broker. The seller prevailed, and a judgment was filed against the  
 38 broker that resulted in \$12,000 actual monetary damages (earnest money deposit),  
 39 \$2,500 court costs, and seller's attorney fees of \$3,500. The broker incurred attorney  
 40 fees totaling \$5,000. How much can the Commission authorize to disburse from the  
 41 recovery fund?

42 \$12,000 monetary damages + \$2,500 court costs + \$5,000 attorney fees + \$3,500  
 43 seller's attorney fees = \$23,000.

44 A broker who complies with an EDO may be reimbursed the amount of the EDO  
 45 (\$12,000 monetary damages), attorney fees (\$5,000), and court costs (\$2,500). Because  
 46 the plaintiff (seller) prevailed in court, the fund is also authorized to pay the plaintiff's  
 47 attorney fees of \$3,500.

76





## KEY CONCEPTS OF RECOVERY FUND CLAIMS

- The maximum payment from the fund for a single transaction is \$50,000.
- The maximum payment in aggregate against one licensee is \$150,000.
- The fund can never reimburse for punitive damages, treble damages, or interest.
- License suspension is mandatory upon payment from the fund (EDO exception).
- A broker who complies with an EDO may be reimbursed the amount of the EDO, attorney fees, and court costs; if the plaintiff prevails in court, the fund will reimburse the plaintiff's attorney fees and court costs.

## C A S E S T U D Y

### REAL ESTATE RECOVERY FUND CASE

*P. Warner, Claimant v. D. Hughes, Licensee*

What follows is information concerning an actual Real Estate Recovery Fund Claim (RFC 2010018090). The information has been summarized for education purposes.

*Findings of Fact:*

1. Claimant is a nonlicensee and is unrelated to the licensee.
2. Licensee held a valid real estate license at the time of the transaction.
3. Hughes acted solely as a broker in accepting earnest money deposits totaling \$44,800 related to claimant's purchase of three parcels of Florida real property.
4. None of the transactions closed, and the licensee failed to account for or return the deposits upon claimant's demand, and converted said sums to licensee's own use.
5. Claimant notified the FREC of his intention to make a claim against the licensee and the recovery fund, within two years of the date the claimant became aware of the licensee's misappropriation of escrow funds.
6. A final judgment against the individual licensee arising from the violation of his duties as a real estate licensee was entered in circuit court and the time for appeal of the judgment has passed.
7. Claimant has attempted to execute on the judgment but after reasonable inquiry has been unable to locate assets of the licensee.
8. The claim does not exceed the \$50,000 cap imposed by Florida statute and total claims paid based on judgments against licensee do not exceed, in total, \$150,000.

*Order:*

1. The FREC ordered payment from the recovery fund in the amount of \$44,800 be made to the claimant.

2. The license of the licensee shall be automatically suspended upon the date of payment from the recovery fund and may not be reinstated until the licensee has repaid in full, plus interest, the amount paid from the recovery fund.
3. Within 30 days of the filing date of this order, the licensee may institute a review proceeding by filing the Notice of Appeal with the appropriate district court of appeals.

### Practice Questions

24. List the types of costs that may be reimbursed to a broker who complies with an EDO and is later sued in court.
  1. \_\_\_\_\_
  2. \_\_\_\_\_
  3. \_\_\_\_\_
25. The maximum payment from the fund for a single transaction is \_\_\_\_\_.
26. The maximum payment based on multiple transactions against a single licensee is \_\_\_\_\_.
27. The recovery fund can never reimburse for \_\_\_\_\_ damages or \_\_\_\_\_.
28. At the time of payment from the Real Estate Recovery Fund resulting from a licensee's misconduct, the license is \_\_\_\_\_ until the licensee \_\_\_\_\_ the fund for the claim (plus interest).
29. A claimant has obtained a judgment against a licensee in the amount of \$30,500. The judgment includes a \$10,000 escrow deposit (liquidated damages) and \$10,000 in punitive damages. The remaining balance of the judgment is for the claimant's attorney fees and court costs. The claimant can be awarded \_\_\_\_\_ from the recovery fund.
30. A broker complied with an EDO. The buyer later sued the broker and was awarded a judgment of \$25,000. Actual compensatory damages totaled \$20,000. The judgment also included the buyer's attorney fees and court costs totaling \$5,000. The real estate broker incurred attorney fees of \$3,000. The FREC can authorize payment of \_\_\_\_\_ from the recovery fund.

## 6.9 SUMMARY OF IMPORTANT POINTS

### ■ Seven steps comprise the complaint process:

1. A complaint (an alleged violation of a law or rule) is filed with the DBPR's Division of Real Estate (DRE).
2. If the complaint is legally sufficient, the DRE conducts an investigation and notifies the licensee-respondent. The complaint and the information obtained during the investigation are kept confidential until 10 days after probable cause has been found to exist. The investigative report is forwarded to the probable-cause panel. In rare situations deemed to be too serious to allow the licensee to continue to practice real estate while the complaint process proceeds, the DBPR secretary may issue a summary (emergency) suspension.



- 1 3. The probable-cause panel consists of two FREC members. The probable-cause  
2 panel determines whether probable cause exists.
- 3 4. If probable cause is found, the DBPR issues a formal (administrative) complaint.  
4 An Election of Rights is mailed with the complaint to the licensee. The licensee  
5 has 21 days to (1) not dispute the allegations of fact and request an informal hear-  
6 ing, (2) dispute the allegations of fact and request a formal hearing, or (3) not  
7 dispute the allegations of fact and waive the right to be heard. The licensee-  
8 respondent may enter into a stipulation (an agreement as to the facts of the case  
9 and the penalty reached between the attorneys for the DRE and the licensee).  
10 Stipulations must be approved by the FREC for them to become effective.
- 11 5. If there are no disputed facts, the Commission (probable-cause panel members  
12 are excused) decides the case and imposes the penalty in an informal hear-  
13 ing held during a regular FREC meeting. If the licensee-respondent requests a  
14 formal hearing or if the respondent disputes the allegations, the case is heard by  
15 a Florida administrative law judge in a formal hearing. The administrative law  
16 judge prepares a recommended order.
- 17 6. The FREC imposes the final order (members of the probable-cause panel do not  
18 participate). The final order becomes effective 30 days after it has been entered.
- 19 7. The licensee-respondent may appeal the final order.
  - 20 ■ The FREC may impose an administrative penalty for violations of law or rules  
21 and regulations. The DRE may issue a citation for violations that are of no  
22 substantial threat to the public. Such citations carry fines ranging from \$100  
23 to \$500. The DRE may issue a notice of noncompliance as a first response to a  
24 minor violation. The FREC may punish more serious offenses by issuing fines of  
25 up to \$5,000 for each violation of Chapters 455 and 475 and/or a suspension of  
26 up to 10 years. In extreme cases, the FREC may revoke a license.
  - 27 ■ First degree misdemeanors are punishable in a court of law by a fine of up to  
28 \$1,000 and/or by imprisonment of up to one year.
  - 29 ■ Misdemeanors of the second degree are punishable by a fine of up to \$500 and/or  
30 by imprisonment of up to 60 days.
  - 31 ■ Falsifying a license application, unlicensed activity, and theft or reproduction of  
32 a license exam are felonies of the third degree. The penalty, per offense, is a fine  
33 of up to \$5,000, up to five years in jail, or both.
  - 34 ■ Individuals can be reimbursed from the Real Estate Recovery Fund for monetary  
35 damages as a result of license law violations by a licensee. Claims are limited to  
36 \$50,000 per transaction or the unsatisfied portion of a judgment claim, which-  
37 ever is less, and no more than \$150,000 in the aggregate against one licensee  
38 involving multiple transactions. The license is automatically suspended upon  
39 payment from the fund until the fund is reimbursed (unless EDO exception).

# UNIT 6 EXAM

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1. A person is eligible to seek recovery from the Real Estate Recovery Fund if that
  - a. person received a final judgment against a licensee in a legal action and the case was based on a real estate brokerage transaction (assuming no specific exceptions apply).
  - b. person is a licensed broker who acted as the agent in the transaction that is the subject of the claim.
  - c. person's claim is based on a real estate transaction in which the broker did not hold a valid, current, and active license at the time of the transaction.
  - d. person's claim is based on a licensee who was the seller of the property.
2. The decision as to whether probable cause exists is made by a majority vote of the
  - a. Commission.
  - b. Commission or the Department, as appropriate.
  - c. administrative law judges.
  - d. probable-cause panel.
3. Which action would cause a license to be revoked without prejudice?
  - a. A licensee accepted an earnest money deposit on a property that he knew was encumbered by an undisclosed lien.
  - b. The broker obtained his license by means of fraud, misrepresentation, or concealment.
  - c. A sales associate received her license as a result of an administrative error by the Division of Real Estate.
  - d. For the referral of real estate business, a licensee shared a commission with a person (not party to the transaction) who did not have a real estate license.
4. Which statement is TRUE regarding the denying of an application for licensure?
  - a. Received assistance or cheated while taking a state license exam
  - b. Applicant's residence is outside the state of Florida
  - c. Applicant previously held a license that went null and void for nonrenewal for failure to complete post-license education
  - d. Applicant had not completed prelicense education before submitting the application
5. Who prepares and submits a recommended order of findings and conclusions in a complaint case?
  - a. Court of law
  - b. Administrative law judge
  - c. Probable-cause panel
  - d. The DBPR
6. Any order issued by the DBPR secretary or a legally appointed designee that results from circumstances posing an immediate danger to the public's health, safety, or welfare is called a
  - a. petition for review.
  - b. stay of enforcement.
  - c. summary or emergency suspension.
  - d. license revocation.
7. A buyer gives the broker a \$47,500 earnest money deposit. The broker defrauds the buyer of the \$47,500. The buyer sues the broker and is awarded a judgment in the amount of \$62,500 for the original \$47,500 deposit plus \$15,000 for punitive damages. Because the buyer was unable to collect the judgment from the broker, the buyer requests relief from the Florida Real Estate Recovery Fund. How much can the buyer receive from the recovery fund?
  - a. \$15,000
  - b. \$47,500
  - c. \$50,000
  - d. \$62,500

8. The DRE is authorized to investigate a written complaint filed against a licensee
  - a. if the alleged complaint is legally sufficient.
  - b. only if the claimant has been harmed by the actions of the licensee.
  - c. only if the alleged violation was committed in the state of Florida.
  - d. only if all of these conditions have been met.
9. Which administrative penalty is issued by the Division of Real Estate?
  - a. Citation
  - b. Probation
  - c. Suspension
  - d. Reprimand
10. A sales associate was issued a formal administrative complaint following a probable-cause determination. The associate was frightened after receiving the complaint and chose to avoid responding to the Election of Rights form. What is the likely outcome of failing to respond to the Election of Rights form?
  - a. The case will be heard in a formal hearing before an administrative law judge.
  - b. The case will proceed in an informal waiver hearing before the Commission.
  - c. A subpoena will be issued by the DBPR to require the licensee to appear before the Commission.
  - d. The DRE will send a notice of noncompliance to the licensee's address of record.
11. A licensee received a citation for \$1,000 for operating as a sales associate without a registered employer. The sales associate feels the citation was issued in error. How should the sales associate proceed?
  - a. File a written objection within 30 days
  - b. File a written objection within 15 days
  - c. Request a hearing before the FREC within 30 days
  - d. Request a civil court hearing within 15 days
12. When payment from the Real Estate Recovery Fund is made to satisfy a claim against a licensee and the claim was not the result of the broker complying with an escrow disbursement order, the Commission's action against the licensee must be
  - a. a citation.
  - b. probation.
  - c. mandatory suspension.
  - d. emergency suspension.
13. Florida Statute 455 requires real estate licensees to notify the DBPR of a conviction, plea, or adjudication of a crime within how many days?
  - a. 10
  - b. 15
  - c. 30
  - d. 60
14. The Florida Real Estate Commission may NOT impose which disciplinary penalty?
  - a. Imprisonment
  - b. Probation
  - c. Administrative fine
  - d. Denial of a license application
15. The collective amount to be paid from the Real Estate Recovery Fund as a result of any one real estate transaction may NOT exceed
  - a. \$25,000.
  - b. \$50,000.
  - c. \$75,000.
  - d. \$150,000.