Chapter 5
Broker
Office Inspections and the Disciplinary Process
Learning Objectives

- Describe the office inspection process and the information and records that must be made available to the inspector during a routine office inspection and escrow account audit
- Describe the steps involved in the complaint process
- Explain the grounds for denial of an application and the result of a revocation without prejudice
Learning Objectives

- Explain the various types of administrative penalties, the use and purpose of a notice of noncompliance, and describe the grounds and penalties for suspension and revocation of a real estate license
- Distinguish between a first-degree misdemeanor and a second-degree misdemeanor, identify which real estate violation is a misdemeanor of the first degree, and recognize third degree felonies
Learning Objectives

- Describe the purpose and requirements associated with the Real Estate Recovery Fund, including payment limits for claims, assessment of fees, and persons not qualified to make a claim
- Explain the requirements for self-reporting criminal convictions
Office Inspections and Audits

- Office requirements
- Office entrance sign
- Office records
- Licenses
- Brokerage relationship disclosures
- Escrow account audit
- Reconciliation statements
- Broker’s trust liability
- Penalties for violations discovered during the audit
Complaint Process

Seven Steps

1. Complaint
2. Investigation
3. Probable Cause
4. Formal (Administrative) Complaint
5. Informal/Formal Hearing
6. Final Order
7. Appeal (judicial review)
Complaint Process

Step 1: Complaint

- Complaint is filed with DBPR
- Must be Legally Sufficient - a violation of
  - Florida Statute
  - FREC rule
  - DBPR rule
- Notice of Noncompliance - a minor violation
  - Initial offense only
  - If not corrected within 15 days it may result in issuance of a Citation
Complaint Process

Step 2: Investigation

- DBPR investigates through DRE
- When complete a report is sent to FREC’s Probable Cause Panel along with a recommendation
Complaint Process

Step 3 Probable Cause

- 2 members of FREC (may use one former member if necessary)
- Operates similar to a grand jury
- Possible outcomes are
  - Dismiss the Case
  - Letter of Guidance
  - Formal (Administrative) Complaint
A Formal (Administrative) Complaint is an outline of the charges. Must be answered within 21 days or the license is usually revoked. Respondent files Election of Rights Form:

- No dispute of facts – Informal Hearing
  - Stipulation
    - Negotiated settlement
- Dispute of facts – Formal Hearing
## Complaint Process

### Step 5 Informal Hearing

- Probable Cause Panel Members are excluded
- Issue resolved and penalty assessed unless there is disagreement over material facts

<table>
<thead>
<tr>
<th>Step</th>
<th>Process</th>
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<tbody>
<tr>
<td>5</td>
<td>Informal Hearing</td>
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Complaint Process

Step 5  Formal Hearing

- Conducted similar to court by an Administrative Law Judge
  - Member of the Florida Bar Association at least 5 years
  - May issue Subpoenas, Swear Witnesses and Take Testimony
  - Issues a Recommended Order to all parties involved
Complaint Process

Step 6 Final Order

- Members of FREC not on the Probable Cause Panel issue a Final Order which may Accept, Reject or modify the recommended order.
- Take effect in 30 days.
- Summary Suspension may be issued by the Secretary of DBPR in situations posing an immediate danger to the public.
Complaint Process

Step 7 Judicial Review

- A Judicial Review (Appeal) may be filed with the District Court of Appeal within 30 days
  - Writ of Supersedeas – suspends enforcement of the Final Order pending appeal
Denial Without Prejudice

- Normally a result of not following procedure
- Applicant may reapply by fixing problem such as
  - Not Answering All Questions on Application
  - Not Paying Application Fee
  - Not Correcting Errors or Omissions on Application
  - Did Not Pass State Exam
Denial With Prejudice

- Applicant may not be licensed without judicial review or further action by FREC
  - Lacked Qualifications
  - Did Not Possess Character Necessary
  - Did Not Possess Competence Necessary
  - Guilty of Acts that Would Have Resulted in Suspension or Revocation
  - Cheated on State Exam
Types of Administrative Penalties

- Denial
- Letter of reprimand
- Notice of noncompliance
- Citation
- Probation
- Fine
- Suspension
- revocation
Notice of Noncompliance

- First time offense
- Minor violation
- 15 days to correct
- Not corrected within 15 days could result in disciplinary action
Citation

- Violation of no substantial threat to public
- Fines from $100 - $500
- 30 days for licensee to accept or reject
- Not disputed – final order, case closed
Probation

- Licensee continues to practice real estate
- Completes conditions specified by FREC
- Satisfies all terms of penalty
  - Education courses
  - Attend FREC meeting
  - Pays fines
Fine

- Up to $5,000 for each violation
- F.S. 455
- F.S. 475
Suspension

- Suspension is a Temporary penalty
  - Maximum of 10 years
- Second suspension
  - Likely result in Revocation
Revocation

- Most severe penalty that FREC can administer
- Broker’s license suspended or revoked
- Sales and broker associates working under broker
  - Licenses place in involuntary inactive status
Civil Penalties

- Administered by Court
- Penalties are in terms of Dollars (Judgment)
Criminal Penalties

- Administered by criminal court
- Violation of FS 475 or any lawful rule
  - 1 Third degree felony
    (5 years AND/OR $5,000 fine)
    - Operating without a current valid license
  - 1 First degree misdemeanors
    (1 year in jail AND/OR $1,000 fine)
    - Rental List Violations
  - Second degree misdemeanor
    - 60 days in jail, AND/OR $500 fine
## Criminal Penalties

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Unlicensed Practice of Real Estate

- Secretary of DBPR assigns probable cause panel
- Fines up to $5,000 per count
- DBPR issues a “cease and desist” order to unlicensed persons
- Circuit court issues writ of mandamus
  - Order for unlicensed activity to stop
- DBPR refers criminal matters to State attorney’s office
Civil Penalties

- Administered by Court
- Penalties are in terms of Dollars (Judgment)
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Real Estate Recovery Fund

- **Purpose**
  - Reimburse members of the public for Monetary (Compensatory) damages
    - As a result of an act by licensee.
    - Not punitive damages
    - Does not include legal fees or court costs.
  - Reimburse a broker for damages
    - Resulting from complying with an Escrow Disbursement Order (EDO)
    - May include legal fees or court costs.
Real Estate Recovery Fund

- In the case of licensee wrong doing
  - The Claimant must
    - First win a Civil Judgment against a licensee in a Florida court
    - Collect as much as possible from licensee
    - Make a claim for the unsatisfied portion up to a maximum of
      - $50,000 for a single transaction
      - $150,000 for multiple transactions against one licensee
Real Estate Recovery Fund

- Persons not covered
  - Judgment debtor or spouse
  - Licensee unless buyer or seller
Real Estate Recovery Fund

- Payment from the fund for wrong doing results in
  - Immediate Suspension until repaid with interest,
  - Except, if suspension would conflict with Federal Bankruptcy Law
Real Estate Recovery Fund

- Collection of fees for the fund are stopped when it reaches $1,000,000 and not resumed unless fund drops below $500,000
  - Broker - $3.50 per year ($7.00 with renewal)
  - Sales Associate - $1.50 per year, ($3.00 with renewal)
Self-Reporting Criminal Convictions

- Found guilty of a crime, enters a plea of not contender (no contest), or guilty plea
- Must self-report to DBPR
  - Within 30 days