SALES ASSOCIATE COURSE

CHAPTER 5

Brokerage Activities and Procedures
Brokerage Offices

• All active brokers must maintain an office
• Requirements
  • Registered with the Department of Business and Professional Regulation (DBPR)
  • At least one enclosed room in a building of stationary construction
  • Negotiations and closings - privacy
  • Books, Records, and files kept there
  • May be in broker's home if Zoning permits
  • May be in another state if broker agrees to cooperate with investigations
  • Keep all records for 5 years
Principal Office

- Main office where business is conducted
- Can be moved by filing a change of Address Form
- Registration is transferable
Branch Offices

• Any additional location where the business is conducted
• Change of location requires a New Registration
  • Registration is not Transferable
• May be reopened at the original location with no further action if the registration has not expired
Temporary Shelter

- Intended only for the protection of customers
- May not:
  - Have sales associates assigned there
  - Maintain sales supplies there
  - Have sales transactions occur there
  - Advertise Location
- Any of the above would require branch office registration
Signs

• All active brokers must display
  • On or about (near) the entrance to the Office
  • Easily observed and read
  • Exterior or interior
  • All Principal and Branch offices
• Temporary shelters
  • Are not branch offices
  • Do not require signs
• Includes
  • Letterhead stationary
  • Business cards
  • Promotional items – key rings, calendars, coffee mugs, etc.
• Must contain the name of the Brokerage Firm
• Licensees name in ad
  • May appear
  • Last name as registered with Commission
Sales Associate's name
• Not required
• If used in the advertising
  • Last Name must appear as registered with DBPR
• E.G. If ABC realty runs the following ad
  • 3 bedroom/2 bath located on a lake only $289,900. call ABC Realty, Inc. (222) 555-4444 ask for John
• To make it legal
  • 3 bedroom/2 bath located on a lake only $289,900. call ABC Realty, Inc. (222) 555-4444 ask for John Brown
Two Types of Advertising

Institutional
• Creates image
• Not for selling a product
• Business cards

Specific
• Sells the product
• Features a particular home
Ads placed online
• Firm or trade name must appear:
  • Immediately above or below point of contact information
• Point of Contact Information
  • Brokerage firm or name:
    • Mailing address
    • Phone number
    • Fax number
    • E-mail address
Blind Ad
- Contains only a phone number or address
- Does not disclose the name of the brokerage firm
- Illegal
- E.G. If ABC realty runs the following ad
  - 3 bedroom/2 bath located on a lake only $289,900. call (222) 555-4444
- To make it legal
  - 3 bedroom/2 bath located on a lake only $289,900. call ABC Realty, Inc. (222) 555-4444
Personal Transactions

• May sell or buy for own benefit
• Should make licensing status known before:
  • Entering into serious negotiations
  • Not when advertising property
  • Disclose status in Purchase & Sale Contract
Team or Group Advertising

• Teams perform licensed activities under the brokers supervision
• Each team designates team member responsible for advertising compliance
• Each month registered broker must maintain current list of all team members
• Teams may include “team” or “group” in name
• Team name cannot be larger than brokerage name in all advertising
• Advertising must be clear that the public is dealing with a team
• Unacceptable words in team names – see FREC Rule 61J2-10.026
Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003

Sets requirements for commercial e-mailers

- “From” and “To” and routing info must be correct
- Sender must be identified
- Must give recipients an “Opt out”
Blind Ad

- Contains only a phone number or address
- Does not disclose the name of the brokerage firm
- Illegal
- E.G. If ABC realty runs the follo
• Earnest money deposit
• Also called: Good Faith Deposit
• Anything of value that can be turned into cash
  • Postdated checks with sellers approval
  • Promissory notes with sellers approval
• Broker not responsible for bounced checks
  • Deposited immediately

Escrow Funds
Escrow (Trust) Accounts with Attorney/Title Company

- An account for the deposit of money held by a third party
- 3 steps:
  - Name, address & phone number of title co./attorney on sales contract
  - Request written verification of deposit with 10 business days
  - Provide seller’s broker or seller with copy of verification within 10 business days
• An account for the deposit of money held by a third party
• Real estate broker’s escrow account must be in a Florida based:
  • Title Company with Trust Powers
  • Commercial Bank
  • Credit Union
  • Savings Association
• May be interest bearing account with written consent of all parties
Commingling
• Illegal practice of mixing the broker’s personal funds with the escrow funds.
  • Exception to open and maintain the account
    • $1,000 for sales escrow accounts
    • $5,000 for property management escrow accounts

Conversion
• Unauthorized control or use of another person’s personal funds.
  • E.G. shortage in escrow account
Escrow (Trust) Deposits

Deposits must be placed in escrow account immediately defined as:

Day Deposit Received

Day 1: Check to Employing Broker

Day 2: 1 Business Day

Day 3: 3 Business Days

Check in Escrow Account or Title Company or Attorney

Day not counted
• Records must be kept available for inspection
  • At least 5 years
  • At least 2 years beyond court proceeding
• Must be reconciled Monthly
  • Reconciliation statement signed by the broker
Escrow Disputes (Conflicting Demands)

• Buyer and seller both make demands on escrow funds
  • Step 1 – Notify FREC in writing within 15 business days
  • Step 2 – Institute one of the following settlement procedures within 30 business days
    • Mediation
    • Arbitration
    • Litigation
      • Interpleader
      • Declaratory decree
    • Escrow Disbursement Order
Escrow Disbursement Exceptions

- Condominium purchase rescission period
- Finance contingency
- HUD owned property
• Requirement to avoid offering an opinion of title
• Misrepresentation of value
• Avoid exaggeration
Payment of Commission

- Licensees can only be paid by broker
- Licensees can only work for one broker at a time
- Licensee not paid – can only sue broker
- Broker can place a lis pendens or a lien to collect a commission only with a prior contractual agreement (F.S. 475.42)
• Sherman-Clayton Antitrust Act
  • No uniform price or fee
  • Competing brokers cannot discuss
  • Commissions are Negotiable
  • No “price fixing”
Illegal Commissions

- Overage/Secret Profit/Unjust Enrichment
• **Real Estate Settlement Procedures Act (RESPA)**
  • Must perform a service
  • Have appropriate license
  • Disclose to all parties
Referral Fees

• Real Estate Settlement and Procedures Act (RESPA)
• Referral received from a licensee in another State or country
  • Referring licensee cannot participate
  • If real estate services are provided by referral licensee, cannot pay referral fee
  • Disclosure of referral fee is not required
• Compensation includes:
  • Gifts, expenses
Referral Fees

• Licensee may share compensation
• Parties to the transaction
• Full disclosure to all interested parties
Rental Information

- Must receive written contract or receipt
- Refund within 30 days
  - 75% if rental is not obtained
  - 100% if not current or is inaccurate
Rental Information

Violation Would be a First Degree Misdemeanor
Sales Associate Duties

- **Compensation**
  - Work for one broker or owner-developer at a time
  - Can only be paid by broker
  - Can only sue broker for unpaid commission

- **Change of Employer address**
  - Must report within 10 days to the DBPR
  - Become Nonresident – 60 days to notify FREC
  - May not take files without permission
  - Take original files – may be charged with larceny
Real Estate Corporation vs Real Estate Brokerage Corp

- Real estate corporation may buy and sell real estate for its own purposes
- Do not have to file with the State
- Real estate brokerage corporation may buy and sell real estate for and on behalf of others (provide real estate services)
- Corporate veil
Sole Proprietorship
• Individual business
• Can buy & sell real estate for personal use
• Do not have to file with the State

Sole Proprietor Broker
• Must register with DBPR
• Can operate as a real estate broker
• Needs broker license
• Use own name or trade name
General Partnership
• Two or more people
• Agree to share profits/losses
• Implied, oral, in writing
• Buy & sell for partnership not public
• Do not need to register with State

Real Estate Brokerage Partnership
• Must register with the DBPR
• Must have at least one active broker
• All partners providing real estate services to public must be licensed
• Sales/broker associates cannot be partner
**Business Formations**

- Real Estate Brokerage Partnership
- Must register partnership with DBPR
- Can buy & sell real estate for public
- At least 1 partner must be an active broker
- Sales/broker associate may not be partner
- Partners providing services to the public must hold a brokers license
  - Active broker leaves:
  - Vacancy must be filled within 14 calendar days
  - Finish up old business, not write new
  - Registration cancelled if broker not replaced within 14 calendar days
Business Formations

Limited Partnership
• Register with Secretary of State
• One general partner
• One limited partner
  • May not actively participate in management of business
  • Limited to investment in event of loss

Real Estate Brokerage Limited Partnership
• Must register with the DBPR
• One general partner
• One limited partner
  • May not actively participate in mgt. of business
  • Limited to investment in event of loss
  • Can act as sales/broker associate
Business Formations

Joint Venture (joint adventure)
• May not register with DBPR
• Temporary business arrangement
• One or predetermined # of transactions
• May act as brokerage if all parties are brokerages
Business Formations

**Corporation for Profit - Domestic**
- Register with Secretary of State
- Artificial person created by law
- Corporate veil
- Organized under Florida law

**Foreign**
- Register with Secretary of State
- Organized under laws of another State

**Alien**
- Register with Secretary of State
- Organized under laws of another country
Real Estate Brokerage Corporation
- Must be registered with DBPR
- One corporate officer must have active brokers license
  - Active broker leaves:
    - Vacancy must be filled within 14 calendar days
    - Finish up old business, not write new
    - Registration cancelled if broker not replaced within 14 calendar days
- May have more than one registered broker
- Active broker leaves – appoint another to be designated broker – no effect on business
- Sales/broker associate – may not be officer or director
Business Formations

Not-For-Profit Corporation
• Buy and sell real estate for its own use
• Employees may provide real estate services
  • For the corporation use
  • Without real estate license
  • Paid salary

Cooperative Association
• Buy and sell real estate for its own use
• May not register with DBPR

Corporation Sole
• Formed for religious purposes
• May not register with DBPR
Ostensible Partnership

- Not a true partnership
- Public believes a partnership exists
- Members of “ostensible partnership” treated as if a true partnership existed
  - May be liable
  - FREC can take disciplinary action
Brokerage Entities

- **Corporation**
  - Registered as brokerage
  - Active or inactive broker or registered
  - Sales associate may not be
  - Sales associates may be stockholders

- **General Partnership**
  - At least one active broker
  - Officers & Directors
  - General Partners

- **Limited Partnership**
  - 14 Calendar days to replace loss of only active broker
  - General Partners

- Sales associate may be limited partner
**Business Trust**
- May not register with DBPR
- Must have an active real estate license when performing real estate services

**Unincorporated Association**
- May not register with DBPR
- Example:
  - HOA
  - Community improvement association
  - Members are treated like partners – liable
Licensed Personal Assistants
• Can be paid commission/transaction-based fee or salary
  • Paid commission/transaction-based fee – broker must pay
  • Paid salary – either broker or hiring licensee may pay

Unlicensed Personal Assistants
• Can be paid salary only
  • Either broker or hiring licensee may pay
Activities Unlicensed Personal Assistants May Perform
Listed in a November, 2018 FREC Meeting

• Answer the phone and forward calls
• Submit listings and changes to any multiple listing service
• Follow up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress
• Assemble documents for closing
• Secure documents (public information) from courthouse, utility district, etc.
Activities Unlicensed Personal Assistants May Perform Listed in a November, 2018 FREC Meeting

- Have keys made for company listings
- Write ads for approval of licensee and supervision broker, and place advertising (newspaper ads, etc.); prepare flyers and promotional information for approval by licensee and supervising broker
- Receive, record and deposit earnest money, security deposits, and advance rents
- Type contract forms for approval by license and supervising broker
Activities Unlicensed Personal Assistants May Perform Listed in a November, 2018 FREC Meeting

- Monitor licenses and personnel files
- Compute commission checks
- Place signs on property
- Order items of repair as directed by the licensee
- Prepare flyers and promotional information for approval by licensee and supervising broker
- Act as a courier service to deliver documents
Activities Unlicensed Personal Assistants May Perform
Listed in a November, 2018 FREC Meeting

• Place routine telephone calls on late rent payments
• Schedule appointments for license to show listed property
• Be at an open house for:
  • a) security purposes
  • b) hand out materials (brochures)
• Answer questions concerning a listing from which the answer must be obtained from licensed employer-approved printed information and is objective in nature (not subjective comments)
Activities Unlicensed Personal Assistants May Perform
Listed in a November, 2018 FREC Meeting

- Gather information for a CMA
- Gather information for an appraisal
- Hand out objective, written information on a listing or rental. The broker shall foster the education
Coffee Break
15 Minutes