

WHAT TO EXPECT WHEN FREC INSPECTS

Presented by the Law Office
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STATISTICS

- January 2015 to February 2015
- Complaints Received – 690
- Cases Opened and Investigated – 548

- 2012
- Complaints Received – 4,495
- Cases Opened and Investigated – 1,593

STATISTICS - Continued

- As of February 2015
- 344,559 Real Estate Licensees
- 147,707 Active sales associates
- 18,777 Active Broker sales associates
- 38,605 Active Brokers

FREC AUDIT & INSPECTION

- Random Audits started in Fall 2011
- Letter
- What are they looking for

ESCROW ISSUES

- No reconciliations
- Reconciliations not signed
- Broker's trust liability not calculated
- Bank account not reconciled to broker's trust liability
- Reconciling items not properly identified
- Reconciling items not cleared timely
- Broker not signatory on bank account

SLOPPY FILES INVITE PROBLEMS

- No Specific Rule of what has to be in File
- Section 475.5015, states:

Brokerage business records.—Each broker shall keep and make available to the department such books, accounts, and records as will enable the department to determine whether such broker is in compliance with the provisions of this chapter. Each broker shall preserve at least one legible copy of all books, accounts, and records pertaining to her or his real estate brokerage business for at least 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker or, in the event no funds are entrusted to the broker, for at least 5 years from the date of execution by

SECTION 475.5015 - Continued

any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker. If any brokerage record has been the subject of or has served as evidence for litigation, relevant books, accounts, and records must be retained for at least 2 years after the conclusion of the civil action or the conclusion of any appellate proceeding, whichever is later, but in no case less than a total of 5 years as set above. Disclosure documents required under ss. [475.2755](#) and [475.278](#) shall be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.

SALES FILES

- What should be in your sales files
- Fully executed contract
- All pages of contract
- Escrow verification letter
- Proof you provided inspection reports and termite reports to buyer
- Proof of disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer
- Proof deposits timely made in compliance with contract terms

LISTING FILES

- What should be in your listing files
- Fully executed listing contract
- Public record showing ownership
- All owners sign listing
- Proof fully executed listing provided seller signed by broker or authorized agent
- Definite expiration date
- Proof all offers presented

ALL FILES

- Phone Logs
- Emails
- File can be Stored Electronically as long as Hard Copy can be Printed
- The more Documentation the Better

LICENSE ISSUES

- License valid active and current
- Involuntary inactive
- No commission if license involuntary inactive
- Address correct

Most Common Violations FREC Prosecuting

- Failure to Timely Disclose Criminal History
- 455.227(1)(t), Florida Statutes, States: 30 Days from Finding of Guilty or Plea of any Crime, Regardless of Whether Adjudication was Withheld or Not
- Penalty
 - \$250 to \$1,000 Fine
 - Suspension to Revocation

Most Common Violations FREC Prosecuting - Continued

- Escrow Account Issues
- FREC Randomly Auditing Property Management Accounts – Section 475.5016, Florida Statutes.
- Broker Responsible for Escrow Accounts, Section 475.25(1)(v), Florida Statutes.
- Emergency Suspension Orders
Section 120.60(6), Florida Statutes

Most Common Violations FREC Prosecuting - Continued

- Broker not Properly Performing Monthly Escrow Account Reconciliation 61J2-14.012
- Reconciliation not Signed by Broker
- No Corrective Action when there are Shortages or Overages in Escrow Account
- Not Comparing Trust Liability with Reconciled Bank Balance
- Not Handling Deposit Disputes Correctly

Most Common Violations FREC Prosecuting - Continued

- Failing to Notify FREC within 15 Business Days of Deposit Dispute
- Failing to Institute Settlement Procedure Within 30 Days
- Failing to Notify FREC within 10 Days of Dispute Settled

USE TITLE COMPANY OR ATTORNEY

- Rule 612-14.008
- Licensee who Prepares Contract has 10 Days to Request Verification
- Must Provide Seller's Agent Written Verification of Deposits Made or Not Made
- Failure to Timely Collect Additional Deposits

ESCROW AND PROPERTY MANAGEMENT

- Failure to Place Security Deposits and Rental Proceeds in Escrow Account
- Failure to account and deliver to seller
- Sales associates collecting rents and not giving it to broker
- Repairs accounted for

SHORT SALES COMPLAINTS

- Not Presenting all Offers

SHORT SALES

- Keep all Offers to Purchase in File
- Have Seller Sign Indicating Offer Rejected
- Keep Detailed Notes/Equator
- Return Receipt

MORTGAGE FRAUD

- Licensee being Charged with Aiding and Abetting Mortgage Fraud
- Manipulating Sales Price on MLS
- Buyer incentives not disclosed on HUD

ADVERTISING

- Brokers Be Careful Of Agent Branding
- Name in Advertising must be as Registered with FREC
- Website – Name of Brokerage by Point of Contact i.e. Phone Number

REFERRAL FEES

- Allowed if Person Properly Licensed
- If not Licensed in Florida must be Allowed to Perform Real Estate Services in their County
- No Real Estate Activity in Florida

UNLICENSED ASSISTANTS

- FREC Sting Operations
- Permissible Activities of an Unlicensed Assistant
- Unlicensed assistant is defined as support staff for a real estate corporation or other licensed individuals.
- Answer the phone and forward calls
- Fill out and submit listings and changes to any multiple listing service
- Follow-up on loan commitments after a contract has been negotiated and generally secure the status reports on the loan progress
- Assemble documents for closing
- Secure documents (public information) from courthouse, utility district, etc.
- Have keys made for company listings, order surveys, termite inspections, home inspections and home warranties with the licensed employer's approval

DUAL EMPLOYMENT

- Sales Associates can Work for one Broker
- Sales Associate cannot have own Property Management Company if Company is Performing Real Estate Service

BROKER LIABILITY

Broker Liability 475.25(1)(u), Florida Statutes states:

- Broker Responsible for Sales Associates Actions
- Policy and Procedure Manual/Signed by Agent
- E&O Insurance
- Independent Contractor Agreement

LLC's and PA's FOR SALES ASSOCIATES

Section 475.161, Florida Statutes states:

- Only in the Name of the Individual as Licensed with FREC
- Broker cannot Pay Commission to Unlicensed Corporation

FREC COMPLAINT PROCESS

- Complaint Received by Consumer or Other Licensee Against Another Licensee Alleging Violation of FREC Rules or Statute
- Random Audit
- Legal Sufficiency
- Letter from Investigator with Copy of Complaint

FREC COMPLAINT PROCESS - Continued

- Response
- Request in Writing Copy of Investigator's Report
- Respond to Investigator's Report

MINOR VIOLATION

- If a Minor Violation, Investigator can Issue:
- Citation Public Record
- Notice on Noncompliance Confidential

LEGAL REVIEW

- Attorney's Review Complaint, Investigators Report, and Responses
 - Attorney has 3 Options to Resolve Case
1. Dismiss Case – Remains Confidential
 2. Dismiss with Letter of Guidance – Remains Confidential
 3. File a Formal Complaint

LEGAL REVIEW - Continued

- Attorney's Decision must be Approved by FREC Probable Cause Panel
- Formal Complaint Becomes Public After 10 Days from the Finding of Probable Cause

FORMAL COMPLAINT

If Formal Complaint Filed there are 3 Options

Dispute Facts and Request Formal Hearing before
an Administrative Law Judge

- FREC must prove Allegation by Clear and Convincing Evidence
- Informal Hearing
- Admit Factual Allegations and FREC decides Violation and Penalty

FORMAL COMPLAINT - Continued

- Stipulated Agreement
- Neither Admit or Deny Allegation
- Agreed to Sanctions
- Must be Approved by FREC

APPEAL

FREC's Final Orders Appealed to District Court

- Stay of Suspension or Revocation
- Reverse FREC's Final Order
- Affirm FREC Final Order

CLEAN SLATE

- Minor Violation can be Expunged, Section 455.2255, Florida Statutes
- 2 Years from Date of Final Order must Pass Before you can Apply

INVESTIGATOR CONTACTS YOU

What to do when an Investigator Contacts You

- Give them Only what is Requested
- Have Procedures Established
- Sales Associates Should not be Talking to Investigator
- Due Process Rights
- Must Cooperate but not Immediately
- Give Yourself Time to get Information Ready and Formulate a Response

Helpful Risk Reduction Tips

- Obtain a written Seller's Disclosure
- Never Act Outside the Scope of Your Expertise
- Follow Pre-established office procedures
- Disclose all conflicts in writing
- Familiarize yourself with Fair housing laws
- If not sure of something ASK
- Know the Realtor Code of Ethics
- Avoid overstated adjectives

FAIR CREDIT REPORTING ACT

- Model Letter
- Tenant Applicant:
- Our decision to not (rent/lease space) to you was based wholly or in part on a credit report. We are hereby informing you of certain information pursuant to the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., as amended by the Consumer Credit Reporting Reform Act of 1996 (Public Law 104-208, the Omnibus Consolidated Appropriations Act for the Fiscal Year 1997, Title II, Subtitle D, Chapter 1).
- 1. We have denied your applications based on information contained in a consumer credit report obtained from the following consumer credit reporting agency(ies):
- [Insert name, address and toll-free telephone number of all consumer credit reporting agencies that provided information]
- 2. Pursuant to Section 615 of the Fair Credit Reporting Act, we are notifying you that the above-noted agency(ies) only provided information about your credit history. It took no part in making the decision to reject your rental application, nor can it explain why the decision was made.
- 3. You have certain rights under federal law, as explained in more detail in paragraphs 4 and 5 below. Pursuant to the Fair Credit Reporting Act, you have a right to obtain a copy of your credit report, dispute its accuracy, and provide a consumer statement describing your position if you dispute the credit report. If you believe your report is inaccurate or incomplete, you may call the consumer credit reporting agency at its toll-free number listed above or write to it at the listed address.
- 4. Pursuant to Section 612 of the Fair Credit Reporting Act, you have the right to obtain a free copy of your consumer report from the consumer credit reporting agency(ies) listed above. You must request the copy within 60 days of the date you receive this letter.
- 5. Pursuant to Section 611 of the Fair Credit Reporting Act, if you dispute any of the information in your report, you have the right to put into your report a consumer statement of up to 100 words explaining your position on the item under dispute. Trained personnel are available at the consumer credit reporting agency to help prepare consumer statements.
- Sincerely,
- ABC Management Company.

FAIR HOUSING ISSUES

- Avoid using words and phrases in a discriminatory context in conversations or advertising
- Never work with a discriminatory buyer or seller, tenant or landlord
- Equal Service to ALL

Words to avoid using

- able bodied
- adult living
- adult community
- adults only
- African
- agile
- alcoholics, no
- Asian
- bachelor
- blacks, no
- board approval required
- Catholic
- Caucasian
- Chicano
- Chinese
- children, no
- colored
- couple
- couples only
- crippled, no
- deaf, no
- drinkers, no
- employed, must be
- empty nesters
- (ethnic references)
- handicapped, not for
- healthy only
- Hispanic
- impaired, no
- independent living
- Indian
- Irish
- integrated
- Jewish
- landlord (description of)
- Latino
- married
- mature couple
- mature individual
- mature person(s)
- membership approval required
- mentally handicapped, no
- mentally ill, no
- Mexican-American
- Mormon Temple
- mosque
- (nationality)
- newlyweds
- (#of) children
- older person(s)
- one child
- one person
- Oriental
- physically fit
- Polish
- Puerto Rican
- retarded, no

- The 1988 Fair Housing Act Amendments established the handicapped, which includes people diagnosed with AIDS, as a new protected class. It is now illegal to discriminate against people with handicaps just as it is illegal to discriminate on the basis of race, color, religion, sex, national origin or familial status.

QUESTIONS

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