

Florida Real Estate Commission

BROKER COURSE SYLLABUS

(FREC COURSE II)

January 1, 2020
(effective date)

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PART I

GETTING STARTED IN THE REAL ESTATE BROKERAGE BUSINESS

SESSION 1

BECOMING A LICENSED REAL ESTATE BROKER

Learning Objectives

- Explain the broker applicant requirements and situations that may cause an application to be denied
- Identify the consequences of failing to disclose a prior conviction
- Describe nonresident applicant requirements and explain mutual recognition agreements
- Explain broker education and experience requirements, and identify exceptions to the course requirements
- Identify the post-licensing and continuing education requirements for brokers
- Explain active and inactive status, and the renewal requirements for members of the U.S. armed forces and their spouses, and how it is unlawful to perform real estate services with an expired real estate license and the consequences of renewing a real estate license without first satisfying the continuing education requirement
- Distinguish between licensure and registration
- Distinguish between multiple licenses and a group license and explain the provisions for issuance of a group license and multiple licenses
- Identify the rules regarding change of address, residency and change of business address
- Identify real estate services that require a license and exemptions from licensure

Key Terms

- | | |
|---------------------------------|-------------------------------|
| ▪ compensation | ▪ nonresident |
| ▪ Florida resident | ▪ multiple license |
| ▪ group license | ▪ mutual recognition |
| ▪ involuntarily inactive status | ▪ registration |
| ▪ licensure | ▪ Summary of applicants |
| | ▪ voluntarily inactive status |

Outline

- I. Licensure
 - A. License requirements for brokers
 - 1. Application process
 - a. Application fees
 - b. Fee waiver for low-income applicants
 - c. Fee waiver for military personnel and their spouses
 - d. Fee waiver for military veterans and their spouses
 - 2. Reasons for denial of a license application
 - 3. Background check and consequences for failing to disclose a prior conviction
 - 4. Nonresident applicants
 - a. Nonresident applicants and Florida resident defined (for application and licensing purposes)
 - b. Mutual Recognition
 - 5. Education requirement
 - a. Regulations pertaining to pre-license courses
 - b. Exceptions to pre-license courses
 - 6. Experience requirement
 - 7. Broker license examination
 - a. Review of exam
 - b. Objections
 - 8. Post-license requirements
 - a. Hardship cases
 - 9. Continuing education requirements
 - a. Core law
 - b. Business Ethics
 - c. Active members in good standing with The Florida Bar
 - B. License renewal
 - 1. License renewal periods
 - 2. Armed forces renewal exemption
 - 3. Failure to complete education requirements
 - 4. Inactive status
 - d. Voluntarily inactive
 - e. Involuntarily inactive
 - f. Reactivation of active status
 - g. Reinstatement of a null and void license
 - h. Broker's license suspension or revocation
 - i. Unlicensed activity
 - C. Registration versus licensure
 - 1. Who must register
 - 2. Registering associates under an owner-developer
 - 3. Brokerage entity registration
 - 4. Failure to register

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- 5. Licensure
- D. Multiple licenses and group license
 - 1. Multiple licenses may be issued to brokers when additional licenses are necessary and are not harmful
 - 2. Discipline of broker's primary broker license may cause disciplinary action against broker's other licenses
 - 3. Purpose of a group license
- E. Change of address
 - 1. Current mailing address defined
 - 2. Change of address procedure
 - 3. Change of residency procedure
 - 4. Change of business address procedure
- F. Services of real estate
 - 1. Services of real estate defined
 - a. Business Opportunities
 - b. Compensation
 - 2. Presumption of acting as a real estate broker s. 475.43, F.S.
 - 3. Exemptions from Licensure

SESSION 2

OPENING A REAL ESTATE OFFICE

Learning Objectives

- Describe the characteristics of the various business structures that may be registered as brokerage entities; the characteristics of officers, directors and partners of real estate brokerage corporations and partnerships; and the statutes/rules pertaining to operating under a broker's own name
- Identify the rules regarding vacancy of office and appointing a temporary broker
- Recognize the various business forms that may not register as real estate brokerage entities
- Identify the requirements associated with registering a trade name with DBPR, requirements of the Fictitious Name Act, exemptions from filing under the Fictitious Name Act, and rules regarding an associate forming a professional association in the associate's legal name
- Identify the rules and requirements regarding real estate brokerage offices, branch offices and temporary shelters
- Identify the rules and requirements related to entrance signs
- Identify the accessibility requirements outlined in the Americans with Disabilities Act pertaining to public accommodations and commercial facilities and the Florida Americans with Disabilities Accessibility Implementation Act
- Explain the statutes and rules pertaining to classified advertising, self-promotion, team advertising, internet sites, unauthorized use of association names, licensees selling property by owner, and rental lists
- Explain the Fair Housing Act and protected classes as it applies to advertising, exemptions for housing for older persons, and the display of the equal housing opportunity poster
- Explain the provisions of the Telephone Consumer Protection Act, Federal Communications Commission's (FCC) do-not-call rules, and describe the applicable exemptions under Florida's Telephone Solicitation Law, and explain the provisions of the CAN-SPAM Act

Key Terms

- blind advertising
- corporation
- Florida Fictitious Name Act
- general partnership
- joint venture (joint adventure)
- limited liability company
- limited partnership
- ostensible partnership (quasi-partnership)
- S corporation
- sole proprietorship
- telephone solicitation
- trade name

Outline

- I. Business structures that may be registered as brokerage entities
 - A. Sole proprietorship
 1. Characteristics
 2. Dissolution
 3. Registration requirements
 - B. General partnership
 1. Characteristics
 2. Forming a general partnership
 3. Registration requirements
 4. Dissolution
 5. Ostensible partnership
 - C. Limited partnership
 1. Characteristics
 2. Forming a limited partnership
 3. Registration requirements
 4. Dissolution
 5. Sales associates and broker-associates as limited partners
 - D. Limited liability partnership
 1. Characteristics
 2. Registration requirements
 3. Dissolution
 - E. Corporation
 1. Characteristics
 - a. Foreign and domestic corporations
 2. Forming a corporation
 - a. For-profit and not-for-profit corporations
 3. Registration requirements
 4. Dissolution
 5. Sales associates as stockholders
 6. S corporation
 - F. Limited liability company
 1. Characteristics, members and/or managers
 2. Registration requirements
 3. Dissolution

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- II. Other business forms that may not register
 - A. Corporation sole
 - B. Joint adventure
 - C. Business trust
 - D. Associations
- III. Ostensible partnership
- IV. Use of trade (fictitious) names
 - A. Registering trade names with FREC
 - B. Fictitious Name Act - requirements
- V. Office requirements
 - A. Principal offices requirements
 - 1. Out-of state brokerage office
 - 2. Rules regarding broker associates and sales associates pertaining to office requirements
 - B. Branch office requirements
 - 1. Branch office registrations
 - 2. Temporary shelters
 - C. Home office
 - D. Entrance signs
 - E. Americans with Disabilities Act (ADA)
 - 1. Access to commercial facilities
 - 2. New construction and renovation
 - 3. Employment practices
 - 4. Florida Americans with Disabilities Accessibility Implementation Act
 - F. Fair Housing
- VI. Advertising and self-promotion
 - A. Requirements for various forms of advertising
 - 1. Classified advertising and blind ads
 - 2. Team advertising and self-promotion
 - 3. Internet sites and point of contact information
 - 4. Unauthorized use of association names
 - 5. Licensees selling property by owner
 - 6. Fraudulent, false, deceptive or misleading advertising
 - 7. Broker responsibilities for sales associate advertising
 - 8. Rental Information and lists
 - B. Fair housing and advertising
 - 1. Protected classes and advertising
 - 2. Housing for older persons
 - 3. Equal Housing Opportunity Poster
 - C. Telephone Consumer Protection Act
 - 1. Prerecorded telemarketing calls
 - 2. Florida Telemarketing Act
 - 3. CAN-SPAM Act and email advertising regulations
 - 4. Junk Fax Prevention Act

SESSION 3

OWNING, MANAGING AND SUPERVISING A REAL ESTATE OFFICE

Learning Objectives

- Describe what considerations are involved in developing a business plan and what types of initial start-up costs are involved in opening a real estate business
- Describe factors to consider when projecting income and expenses of a real estate business and list typical fixed and variable expenses incurred by a real estate business
- Compare the advantages of purchasing a franchise versus remaining an independent broker
- Distinguish between cash basis accounting and accrual basis accounting
- Identify I.R.S. treatment concerning employees versus independent contractors
- Describe considerations when hiring sales managers, personal assistants and recruiting of sales associates
- Identify the equal employment opportunity laws and ADA requirements regarding hiring personnel
- Describe the considerations regarding development of employment agreements, including the various commission structure plans and what fees and payments typically are deducted from the associate's commission
- Identify important topics to include in a training program for sales associates and what should be included in a policy and procedures manual

Key Terms

- | | |
|----------------------------|--|
| ▪ accrual basis accounting | ▪ Employer Identification Number (EIN) |
| ▪ business plan | ▪ franchise |
| ▪ buyer brokerage | ▪ graduated commission |
| ▪ cash basis accounting | ▪ independent contractor |
| ▪ company dollar | ▪ personal assistant |
| ▪ employee | ▪ policy manual |

Outline

- I. Capital and Start-up Costs
 - A. Sufficient capital to cover start-up costs and to supplement income for a given period of time
 - B. Initial start-up costs include:
 1. Attorney and accountant fees
 2. Office
 - a. Purchase

- (1) Down payment and closing costs
 - (2) Advantages to buying an office building
- b. Rental
 - (1) Security deposit and initial rent
 - (2) Advantages of renting office space
- 3. Purchase/rent of office equipment and furniture
- 4. Signs and lock boxes
- 5. Board of Realtors and M.L.S. fees
- 6. Office supplies
- 7. Forms and promotional materials
- 8. Initial promotional (advertising) costs

II. Business Plan

- A. Income projections will depend on
 - 1. Scope of company operations
 - 2. Market area and general market conditions
 - 3. Number and projected productivity of sales associates
- B. Income sources
 - 1. Commissions
 - 2. Referral fees
 - 3. Property management fees
 - 4. Other
- C. Operating expense projections will vary based on
 - 1. Size of office
 - 2. Scope of company operations
 - 3. Marketing methods
 - 4. Market conditions
 - 5. Agent/employee compensation
- D. Typical fixed expenses
 - 1. Office rental or mortgage payments
 - 2. Salaries and employer contributions for employees
 - 3. Equipment rental and maintenance
 - 4. Furniture rental
 - 5. Business risk (liability) insurance
 - 6. Property insurance
 - 7. E & O insurance
 - 8. Annual Association and M.L.S. fees
 - 9. Annual Business Tax Receipt
- E. Typical variable expenses
 - 1. Advertising
 - 2. Sales commissions
 - 3. M.L.S. listing fees
 - 4. Telephone
 - 5. Utilities
 - 6. Office supplies

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7. Printing
8. Technology

III. Franchise vs. Independent Firm

- A. Franchise fee programs
- B. Franchise advantages include
 1. Built in referral network
 2. Formal training programs
 3. National recognition
 4. Advertising assistance
 5. Management and sales training program
 6. Technology benefits
- C. Independent advantages include
 1. Lower overhead
 2. Increased operational freedom
 3. Local personality
 4. Reduced start up fees

IV. Tax Considerations

- A. Bookkeeping system (cash vs. accrual method)

V. Personnel Issues

- A. Support staff
 1. Receptionist
 2. Accounting staff
 3. Additional support staff
- B. Real estate sales associates
 1. Number of associates relates to budget
 2. Total transactions needed divided by average sales per agent indicates number of agents required
 3. Space considerations
 4. Hiring part-time associates
 5. Need for a sales manager
 6. Unlicensed personal assistants and clerical assistants
 - a. Permissible activities
- C. Miscellaneous contract services
 1. Janitorial services
 2. Sign delivery and construction
 3. Computer programming and technical support
- D. Recruitment and selection
 1. Set recruiting goals
 2. Recruiting sources include
 - a. Media advertising
 - b. Career nights
 - c. Pre-licensing schools

- d. Support personnel
 - e. Personal contacts
 - f. Referrals from associates
- 3. ADA requirements regarding hiring personnel
- E. Application process
 - 1. Application forms
 - 2. Verifying license status
 - 3. References
 - 4. Interview
- F. Employment arrangements and agreements
 - 1. Tax considerations
 - a. IRS treatment concerning employees vs. independent contractor
 - 1) The nature of the independent contractor relationship
 - 2) Reporting wages to employees
 - 3) Withholding taxes and other costs for employees
 - 4) Reporting income to sales associates as independent contractors
 - 2. Non-compete clauses
 - 3. Hours and working conditions
 - 4. Written understanding of acceptance of company policies
- G. Compensation of sales associates
 - 1. Methods include
 - a. Straight salary
 - b. 100% commission with management fee
 - c. Straight commission with split
 - d. Commission with bonus
 - e. Graduated commission
 - 2. Typical commission reductions
 - a. Fees and payments
 - b. Franchise fees
 - c. Sign fees
- H. Training and supervision of associates
- I. Policy and procedures manual
 - 1. Define the company's function(s)
 - a. Scope of services offered
 - b. Property management function
 - c. Brokerage relationship policy
 - 2. Statement of company's objectives
 - 3. Items to include
 - a. Company status, history, philosophy and goals
 - b. Responsibilities and requirements of associates
 - c. Organizational chart
 - d. Job descriptions
 - e. Office procedures

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- f. Employment policies (including compensation policies and employment agreement)
 - g. Listing and sales policies
 - h. Buyer representation
 - i. Seller representation
 - j. Property management
- J. Broker/sales manager responsibilities
 - 1. Broker liability under Chapter 475 Florida Statutes
 - 2. Supervision and control of sales staff
 - a. Monitoring sales activities and evaluating performance
 - b. Assuring compliance with office policies
 - c. Assisting sales associates with transactional issues
 - d. Supervising advertising
 - e. Assigning floor duty
 - f. Assuring compliance with rules and regulations
 - g. Sales meetings
 - h. Monitor listings and pending contracts

SESSION 4

ESCROW MANAGEMENT

Learning Objectives

- Describe the purpose of escrow accounts, the types of monies that must be held in escrow, and authorized depositories for establishing escrow accounts
- Distinguish between commingling of funds and conversion
 - Describe the requirements for timely deposit of escrow funds, post-dated checks, and interest-bearing escrow accounts
- Describe the requirements for placing escrow deposits with title companies and attorneys
- Calculate the broker's trust liability, reconciled bank balance, and prepare a monthly reconciliation statement

- Key Terms

- | | |
|-----------------------------|---------------------|
| ▪ arbitration | ▪ immediately |
| ▪ commingle | ▪ interpleader |
| ▪ conflicting demands | ▪ mediation |
| ▪ conversion | ▪ post-dated checks |
| ▪ declaratory judgment | ▪ treble damages |
| ▪ escrow account | ▪ trust account |
| ▪ escrow disbursement order | ▪ trust liability |
| ▪ good-faith doubt | |

Outline

- I. Establishing Escrow Accounts
 - A. Purpose of escrow accounts
 - B. Types of monies to be placed in sales or rental escrow
 - 1. Sales escrow accounts
 - 2. Rental escrow accounts
 - 3. Monies paid in advance for performing real estate services
 - a. Florida Vacation Plan and Timesharing Act
 - 4. Commingling of funds
 - 5. Conversion
 - C. Setting up escrow accounts
 - 1. Authorized depositories for escrow accounts
 - 2. Broker must be a signatory
 - D. Timely deposit of escrow funds
 - 1. Time frame for associates to deliver escrow check to broker
 - 2. Time frame for broker to deposit escrow check
 - 3. Post-dated checks and promissory notes
 - 4. Interest bearing escrow accounts
- II. Title Company and Attorney Escrow Accounts
 - A. Consideration regarding whether to hold escrow funds
 - B. Rules regarding placing deposits with a title company or with an attorney
- III. Broker's Records
 - A. Record keeping requirements
 - 1. Retention of business records
 - 2. Retention in event of litigation
 - 3. Storage methods
 - B. Rules regarding placing deposits with a title company or with an attorney
 - C. Broker Trust Liability
 - 1. Trust liability defined
 - 2. Calculating trust liability
 - D. Determining the reconciled bank balance
 - 1. Bank reconciliation example
 - E. Broker's money to maintain escrow account
 - 1. Sales escrow account
 - 2. Property management escrow account
 - F. Broker's monthly statement reconciliation
 - 1. Information to be included
 - 2. Monthly statement reconciliation example
 - 3. Broker must review, sign and date the monthly statement reconciliation
 - 4. Disciplinary guidelines for failure to reconcile escrow account

IV. Escrow Disputes

A. Requirements to notify FREC

1. Conflicting demands
2. Good faith doubt

B. Settlement (escape) procedures

1. Mediation
2. Escrow disbursement order
3. Arbitration
4. Litigation

C. Requesting an escrow disbursement order (EDO)

1. Procedure if FREC denies EDO
2. Procedure if parties resolve matter or choose another settlement procedure

V. Exceptions to Notice and Settlement Procedures under 475, F. S.

A. HUD-owned properties

B. Condominiums

C. Financing contingency

SESSION 5

OFFICE INSPECTIONS, DISCIPLINARY PROCESS AND REAL ESTATE RECOVERY FUND

Learning Objectives

- Describe the office inspection process and what information and records 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
- 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 and second degree misdemeanor, identify which real estate violation is a misdemeanor of the first degree and identify third-degree felonies
- 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 conviction

Key Terms

- | | |
|----------------------|--|
| ▪ appeal | ▪ notice of noncompliance |
| ▪ citation | ▪ probable cause |
| ▪ complaint | ▪ probable cause panel |
| ▪ final order | ▪ recommended order |
| ▪ formal complaint | ▪ self-reporting |
| ▪ formal hearing | ▪ stipulation |
| ▪ informal hearing | ▪ subpoena |
| ▪ judicial review | ▪ emergency suspension (ESO) |
| ▪ legally sufficient | ▪ revocation without prejudice |
| | ▪ voluntary surrender for permanent revocation |

Outline

- I. Office Inspections and Audits
 - A. Inspection of real estate offices of brokers with active licenses

1. Minimum office requirements
2. Office entrance sign
3. DBA/Trade name registration (if applicable)
4. Licenses and registrations of broker, brokerage entity, broker associates, sales associates and branch offices
 - a. Verify licenses are current and valid
 - b. Verify all officers, directors and associates are registered.
5. Brokerage relationship disclosures
- B. Escrow account audit
 1. Monthly reconciliation statements
 2. Bank statements and canceled checks
 3. Checkbook(s), deposit book(s) and bank deposit receipts
 4. Ledger book(s) or computer records for sale and/or property management records
 5. Pending sale contracts (files)
 6. Voided contracts/offers with escrow funds presently being held
 7. Any earnest money deposit disputes
 8. Property management contracts, agreements and leases (files)
- C. Investigator is authorized to:
 1. Issue a Notice of Noncompliance
 2. Issue a Citation
 3. Open a complaint

II. The Complaint Process

- A. Complaint is filed with DBPR
 1. Department confirms jurisdiction
 2. Division determines legal sufficiency
 3. Minor violations defined by rule
 4. Notice of Noncompliance rule
 5. Citation rule
- B. Investigation
 1. The DBPR may:
 - a. Investigate any written complaint that is legally sufficient
 - b. Investigate any anonymous complaint that is in writing and legally sufficient
 - c. Initiate an investigation
 - 1) Audit
 - 2) Complaint
 - 3) Self-report
 2. When activity is a criminal offense
 3. Investigator interviews individuals, exhibits are assembled
 4. Investigative report is prepared and sent to Legal Section for review
 - a. May order supplemental investigation
 5. Confidentiality
 6. Case may be:
 - a. Dismissed
 - b. Sent to probable cause panel

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- c. DBPR issues an emergency suspension order (ESO)
- C. Probable cause panel
 - 1. Composition
 - 2. Function
 - 3. Authority to:
 - a. Find probable cause
 - b. Dismiss case
 - c. Dismiss with a letter of guidance
- D. Formal complaint
 - 1. Issued if probable cause is found to exist
 - 2. Election of rights by licensee
 - a. Formal hearing and recommended order
 - b. Informal hearing
 - c. Stipulation
 - d. Waiver hearing
- E. Final order
 - 1. Probable cause panel excused
 - 2. May be appealed
 - a. Stay of enforcement
 - b. Writ of supersedes
 - 3. Settlement Agreement for Permanent Revocation

III. Violations and Penalties

- A. Grounds for denial
- B. Grounds for suspension up to 10 years
- C. Grounds for revocation
 - 1. Permanent
 - 2. Sales associate licenses become inactive when the broker's license is suspended or revoked
 - 3. Revocation without prejudice
- D. Types of penalties
 - 1. Administrative
 - a. Reprimand and/or notice of noncompliance
 - b. Probation
 - c. Fine or citation
 - d. Requirement for additional education
 - e. Suspension
 - f. Revocation
 - 2. Civil penalties
 - 3. Criminal penalties
 - a. Third-degree felony violations
 - b. First-degree misdemeanor violation
 - c. Second-degree misdemeanor violation
 - 4. Unlicensed activity

IV. Real Estate Recovery Fund

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- A. Purpose and requirements
 - 1. Payment and time limits
 - 2. Mandatory suspension
 - 3. Claim resulting from an EDO
 - 4. Licensee as buyer or seller
- B. Individuals who cannot make a claim
- V. Self-Reporting Criminal Violations

PART II

VALUING REAL PROPERTY

SESSION 6

OVERVIEW OF REAL ESTATE VALUATION

In accordance with USPAP

Learning Objectives

- Describe the purpose of an appraisal
- Describe the appraisal certification and licensure classifications
- Recognize which appraisal assignments must be performed by state-certified or state-licensed appraisers and that real estate licensees must comply with the USPAP when conducting appraisals, but not CMAs or BPOs
- Distinguish among value, price and cost
- Distinguish among the various types of value
- Define sources of market value definitions
- Distinguish among the various principles of value and understand how each influences value
- Distinguish between highest and best use as vacant and highest and best use as improved
- Describe the steps in the appraisal process
- Describe the two different types of appraisal reports and describe different reporting

Key Terms

- | | |
|-------------------------------------|-------------------------------|
| ▪ anticipation | ▪ intended user |
| ▪ appraisal | ▪ investment value |
| ▪ assessed value | ▪ insurable value |
| ▪ appraisal report | ▪ liquidation value |
| ▪ client | ▪ market value |
| ▪ conformity | ▪ over-improvement |
| ▪ demand | ▪ reconciliation |
| ▪ external economies | ▪ restricted appraisal report |
| ▪ external diseconomies | ▪ salvage value |
| ▪ federally related transaction | ▪ substitution |
| ▪ FIRREA | ▪ supply |
| ▪ going-concern value | ▪ The Appraisal Foundation |
| ▪ highest and best use | ▪ USPAP |
| ▪ increasing and decreasing returns | ▪ value in use |
| ▪ intended use of an appraisal | |

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Outline

I. Introduction to Appraisal

- A. Appraisal as defined s. 475.611(1)(e), F.S.
 - 1. Purpose of an appraisal – what is the problem to be solved? What type of value to be estimated?
 - 2. Client – the party or parties who engage, by employment or contract, an appraiser in a specific assignment
 - 3. Intended Use of an appraisal – the use or uses of an appraiser’s reported appraisal assignment opinions and conclusions, as identified by the appraiser based on communication with the client at the time of the assignment.(i.e. mortgage loan underwriting, buying decision, selling decision, portfolio analysis, estate tax, establishment of tax basis, short sale evaluation, etc.)
 - 4. Intended User - the client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser on the basis of communication with the client at the time of the assignment
 - 5. CMA vs. appraisal
 - 6. BPO vs. appraisal
- B. Relationship between licensed brokers and professional appraisers
- C. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)
 - 1. Federally related transactions
 - 2. Uniform Standards of Professional Practice (USPAP)
- D. State certification and licensure requirements (overview only)
 - 1. Registered assistant appraisers
 - 2. Licensed appraisers (Note: the FREAB no longer issues a “Licensed Appraiser” credential, however a few individuals continue to hold this category of license)
 - 3. Certified residential appraisers
 - 4. Certified general appraisers

II. Basic Appraisal Concepts

- A. Concepts of value
 - 1. Value vs. cost and price
- B. Types of value estimates
 - 1. Market value
 - 2. Liquidation value
 - 3. Assessed value
 - 4. Insurable value
 - 5. Salvage value
 - 6. Investment value
- C. Market Value definition
 - 1. USPAP
 - 2. Federal Housing Administration
 - 3. Federal Banking Agencies
 - 4. Fannie Mae/Freddie Mac
 - 5. Internal Revenue Service

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D. Basic economic principles of value

1. Supply and demand
2. Anticipation
3. Substitution
4. Increasing and decreasing returns (over-improvement)
5. Conformity
6. External economies and diseconomies
7. Highest and best use
 - a. As though vacant
 - b. As improved

E. Steps in the appraisal process

1. Identify the problem to be solved
2. Determine the Scope of Work necessary to develop a credible appraisal
 - a. Scope of Work includes:
 - i) The extent to which the property is identified
 - ii) The extent to which tangible property is inspected
 - iii) The type and extent of data researched
 - iv) The type and extent of analysis applied to arrive at opinions and conclusions
 - b. Scope of Work acceptability is determined by:
 - i) The expectations of parties who are regularly intended users for similar assignments
 - ii) What an appraiser's peers' actions would be in performing the same or a similar assignment
3. Develop the appraisal according to the Scope of Work
 - a. Identify client and other intended users
 - b. Identify the intended use of the appraisal (the appraiser's opinions and conclusions)
 - c. Identify the type and definition of value
 - d. Identify the effective date of the appraisal
 - e. Identify the subject of the assignment and its relevant characteristics
 - i) Its location and physical, legal, and economic attributes
 - ii) The real property interest to be valued
 - iii) Any personal property that is not real property but included in the appraisal
 - iv) Any known easements, restrictions, encumbrances, leases, contracts, special assessments, or other items of a similar nature
 - v) Whether the subject property is a fractional interest, physical segment, or partial holding
 - f. Identify any extraordinary assumptions necessary in the assignment
 - g. Identify any hypothetical conditions necessary in the assignment
 - h. Identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate and market area trends
 - i. Develop an opinion of the highest and best use of the real estate
 - j. Collect, verify, and analyze all information necessary for a credible appraisal
 - i) When a sales comparison approach is necessary, analyze comparable sales

- data to indicate a value conclusion
- ii) When a cost approach is necessary
 - a. Develop an opinion of site value
 - b. Analyze comparable cost data to estimate the cost new of the improvements
 - c. Analyze comparable data to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation)
- k. When the opinion of value is to be Market Value
 - i) Analyze all agreements of sale, options, and listings of the subject property current as of the effective date
 - ii) Analyze all sales of the subject property that occurred within the three years prior to the effective date
- l. Reconcile the quality and quantity of data analyzed within the approaches used, and reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at a value conclusion

C. Report the appraisal

III. Types of Appraisal Reports

- A. Oral - To the extent possible and appropriate, oral reports must address the same matters as an Appraisal Report (B-1 below)
- B. Written
 - 1. Appraisal Report – When the intended users include parties other than the client, an Appraisal Report must be provided
 - a. Must not be misleading
 - b. Contain sufficient information to enable the intended users to understand the report properly
 - c. State the identity of the client and intended users
 - d. State the intended use of the appraisal
 - e. Summarize information sufficient to identify the real estate involved in the appraisal, including the physical, legal, and economic property characteristics relevant to the assignment
 - f. State the real property interest appraised
 - g. State the type and definition of value and cite the source of the definition
 - h. State the effective date of the appraisal
 - i. Summarize the scope of work used to develop the appraisal
 - j. Summarize the information analyzed and the appraisal methods and techniques employed, and the reasoning to support the analyses, opinions and conclusions, and explain the reasoning to support exclusion of the sales comparison approach, cost approach or income approach
 - k. State the use of the real estate existing as of the date of value, and the use of the real estate reflected in the appraisal
 - l. When an opinion of highest and best use was developed, summarize the support and rationale for that opinion
 - m. State all extraordinary assumptions and hypothetical conditions, and state their use might have affected the assignment results

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2. Restricted Appraisal Report – When the intended users do not include parties other than the clients, a Restricted Appraisal Report may be provided
 - a. Contain sufficient information to enable the intended users to understand the report properly
 - b. State the identity of the client and intended users
 - c. State the intended use of the appraisal
 - d. State information sufficient to identify the real estate involved in the appraisal
 - e. State the real property interest appraised
 - f. State the type and definition of value and cite the source of the definition
 - g. State the effective date of the appraisal
 - h. State the scope of work used to develop the appraisal
 - i. State the appraisal methods and techniques employed, state the value opinion(s) and conclusion(s) reached, and reference the work file. Explain the reasoning to support exclusion of the sales comparison approach, cost approach or income approach
 - j. State the use of the real estate existing as of the date of value, and the use of the real estate reflected in the appraisal
 - k. When an opinion of highest and best use was developed, state the opinion.
 - l. State all extraordinary assumptions and hypothetical conditions, and state their use might have affected the assignment results
 3. Certification – An Appraisal Report and Restricted Appraisal Report must contain a signed certification in compliance with the current USPAP
- C. Appraisal report formats
1. Form
 2. Narrative

SESSION 7

SALES COMPARISON, COST AND INCOME APPROACHES

Learning Objectives

- Describe the assumptions underlying the sales comparison approach
- Construct a sales comparison adjustment grid using the proper sequence of adjustments
- Distinguish among normal sale price, market conditions-adjusted normal sale price, and final adjusted sale price
- Describe considerations regarding the applicability of the cost approach
- Apply the steps in the cost approach
- Distinguish between reproduction cost and replacement cost and describe the three methods for estimating costs
- Distinguish among the three types of accrued depreciation the methods of estimating accrued depreciation
- Perform a GIM analysis
- Develop a reconstructed operating statement
- Calculate a market-derived capitalization rate and estimate value using the income approach formula
- Reconcile the various approaches to value into a final value estimate

Key Terms

- | | |
|---------------------------------|-------------------------------|
| ▪ accrued depreciation | ▪ market rent |
| ▪ arm's-length transaction | ▪ net operating income |
| ▪ economic life | ▪ personal property |
| ▪ contract rent | ▪ physical deterioration |
| ▪ curable | ▪ potential gross income |
| ▪ effective age | ▪ replacement cost |
| ▪ effective gross income | ▪ reproduction cost |
| ▪ external obsolescence | ▪ reserve for replacements |
| ▪ fixed expense | ▪ subject property |
| ▪ fixture | ▪ trade fixture |
| ▪ functional obsolescence | ▪ vacancy and collection loss |
| ▪ gross income multiplier (GIM) | ▪ variable expense |
| ▪ gross rent multiplier (GRM) | |
| ▪ incurable | |

Outline

- I. Sales Comparison Approach
 - A. Basic concepts and uses of sales comparison approach
 - 1. Usefulness of the approach
 - 2. Rationale for the approach
 - a. Principle of substitution
 - b. Market price as evidence of market value
 - 3. Applicability of approach
 - B. Elements of comparison-transactional and property characteristics
 - 1. Conditions of sale
 - 2. Financing terms
 - a. Types of non-market financing
 - b. Methods of adjustment
 - (1) Market abstraction
 - (2) Cash equivalency
 - 3. Sales Concessions
 - a. Types of concessions
 - b. Methods of adjustment
 - (1) Market abstraction
 - (2) Cash equivalency
 - 4. Market conditions
 - a. Factors causing need for adjustment
 - b. Successive sales analysis
 - 5. Adjusting for personal property
 - a. Distinguish between personal property and real property
 - b. Distinguish between a fixture and a trade fixture
 - 6. Location
 - a. Paired-sales analysis
 - 7. Property characteristics
 - a. Matched pairs analysis
 - b. Depreciated cost
 - c. Capitalized rent differences
 - C. Adjustments
 - 1. Adjustments made to comparable sales on basis of how comparable sale compares to the subject
 - 2. Positive adjustment if the comparable sale is inferior to the subject
 - 3. Negative adjustment if the comparable sale is superior to the subject
 - D. Methods of adjustment
 - 1. Dollar and percentage adjustments
 - 2. Sequence of adjustments
 - a. Normal sale price
 - b. Market conditions-adjusted normal sale price
 - c. Final adjusted sale price

3. Adjustment grid
- E. Reconciliation of adjusted sale prices
 1. The value conclusion

II. Cost Approach

- A. Applicability of the approach
 1. Relationship to other approaches
 2. Basic concepts and uses of the cost approach
- B. Steps in the cost approach
 1. Estimating cost of the improvements
 - a. Reproduction cost new and replacement cost of the improvements
 - b. Estimating reproduction/replacement cost
 - (1) Quantity survey method
 - (2) Unit-in-place method
 - (3) Comparative-unit method
 2. Estimate depreciation and deduct from cost
 - a. Basic theory and concepts
 - b. Types of depreciation
 - (1) Physical deterioration
 - (a) Curable
 - (b) Incurable
 - (2) Functional obsolescence
 - (a) Curable
 - (b) Incurable
 - (3) External obsolescence
 - c. Estimating depreciation
 - (1) Breakdown method
 - (2) Market extraction method – Residual
 - (3) Age-life method (straight line)
 - (a) Effective age
 - (b) Economic life
 3. Estimate site value and non-structural site improvements value as if vacant at site's highest and best use
 4. Add site value and site improvements value to the depreciated cost new to obtain an indication of value

III. Income Approach

- A. Basic concepts and uses of the income approach
- B. Steps in the income approach
 1. Estimate potential gross income
 - a. Contract rent
 - b. Market rent
 2. Estimate projected vacancy and collection losses
 3. Subtract vacancy and collection loss to derive effective gross income (EGI)
 4. Estimate operating expenses
 - a. Fixed expenses – define

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- b. Variable expenses – define
 - c. Reserve for replacements
 5. Deduct operating expenses yielding net operating income (NOI)
 6. Estimate an overall capitalization rate from market data
 7. Apply the overall capitalization rate to derive an indication of value
 - C. Reconstructed operating statement
 1. Types of expenses included and excluded
- IV. Reconciliation and Final Value Estimate
- A. Evaluation of factors affecting reliability of value indications derived by the various approaches
 - B. Weighting of value indications

SESSION 8

COMPARATIVE MARKET ANALYSIS (CMA)

Learning Objectives

- Distinguish between a formal appraisal and a comparative market analysis (CMA) and broker price opinion (BPO)
- Explain the three major sections of a typical CMA report form
- Identify what information is necessary to prepare a CMA or BPO
- Identify the best sources to find the information necessary to prepare a CMA or BPO
- Explain the major elements of comparison between the comparable property and the subject property
- Calculate the square footage of a building
- Prepare a CMA which would allow a seller or buyer to understand values in the neighborhood
- Prepare a BPO which would allow a lender or asset manager to understand the subject property and market area

Key Terms

- Broker price opinion
- comparative market analysis
- curb appeal
- gross living area
- opinion of value

Outline

- I. The Comparative Market Analysis (CMA)
 - A. Defined

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- B. Purpose
- C. Distinctions between a CMA and an appraisal
- II. The Broker Price Opinion (BPO)
 - a. Defined
 - b. Purpose
 - c. Distinctions between a CMA and an appraisal
- III. Preparation of a Comparative Market Analysis
 - A. Sample CMA form
 - B. Categories of comparables
 - 1. Currently on the market
 - 2. Recently sold
 - 3. Recently expired
 - C. Information needed for comparative market analysis
 - 1. Names and address of owners
 - 2. Adequate description of the property
 - 3. Lot size (frontage and depth)
 - 4. Number and size of rooms and total square footage
 - 5. Construction and age of the building
 - 6. Information relative to the neighborhood (schools, churches, transportation)
 - 7. Current taxes
 - 8. Amount of existing financing
 - 9. Utilities and average payments
 - 10. Appliances to be included in the transaction
 - 11. Zoning classification (especially important for vacant land)
 - 12. Personal property and fixtures included in sale
 - 13. Environmental hazards
 - D. Obtaining comparables
 - E. Common elements of comparison
 - 1. Location
 - 2. Size/shape of lot
 - 3. Landscaping
 - 4. Construction quality
 - 5. Style
 - 6. Design
 - 7. Age
 - 8. Square feet of gross living area
 - a. Measure the structure
 - 9. Number of rooms
 - 10. Number of bedrooms
 - 11. Number of bathrooms
 - 12. Kitchen
 - 13. Other space
 - 14. Condition of exterior
 - 15. Condition of interior
 - 16. Garage
 - 17. Other improvements

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- F. Adjusting for differences
- G. Reconciliation
- H. Computerized CMAs
 - 1. Use of Computer/Internet in Data Collection/Analysis
- I. Customized CMAs
- J. Attachments to CMA

IV. Case Study: A Comparative Market Analysis and/or BPO

SESSION 9

BUSINESS VALUATION

Learning Objectives

- Distinguish between real property valuation and business valuation
- Describe the characteristics of the various business entities
- Explain the business appraisal process
- Describe the problems associated with accounting principles
- Describe the steps in the analysis of financial statements
- Describe the elements of a balance sheet and an income statement
- Describe and calculate current ratio, quick ratio, inventory turnover ratio, debt-to-worth ratio and net-profit-to-owner capital ratio
- Describe the various approaches to business valuation
- Distinguish among the different types of intangible assets and the techniques used to value intangible assets

Key Terms

- | | |
|----------------------------|----------------------------|
| ▪ accrual basis accounting | ▪ income statement |
| ▪ balance sheet | ▪ intangible asset |
| ▪ book value | ▪ inventory turnover ratio |
| ▪ cash basis accounting | ▪ liquidation value |
| ▪ current ratio | ▪ market value |
| ▪ debt-to-worth ratio | ▪ quick ratio |
| ▪ going concern value | ▪ S corporation |
| ▪ goodwill | |

Outline

- I. Fundamentals of Business Appraisal
 - A. Similarities to real estate appraisal
 - B. Business appraisal definitions
 - 1. Proprietorship
 - 2. Partnership
 - 3. Corporation
 - 4. Other forms
 - C. Reasons for a business appraisal
 - 1. Contemplated sale or purchase of a business
 - 2. Allocation of value to specific assets
 - 3. Financial reporting purposes
 - 4. Buy-sell agreements
 - 5. Liquidation of a business
 - 6. Divorce
 - 7. Estate and inheritance taxation
 - 8. Condemnation proceedings
 - 9. Employee benefit plans
 - 10. Determination of insurable value
 - D. Business appraisal process
 - 1. Definition of the assignment
 - 2. Establish the date of the appraisal
 - 3. Data collection
 - 4. Analysis of data
 - 5. Determine final estimate of value
 - 6. Preparation of the appraisal report
- II. Understanding and Using Financial Statements
 - A. Overview of financial statements
 - B. Some problems
 - 1. Estimates are necessary
 - 2. Assets are reported at cost
 - 3. Valuation accounts do not reflect value
 - 4. Assets and liabilities may be missing
 - 5. Differences in accounting methods are permitted
 - C. Analyzing financial statements
 - 1. Construct historical series
 - 2. Calculate financial ratios over time
 - a. Quick ratio
 - b. Inventory turnover
 - c. Debt-to-worth ratio
 - d. Net profit-to-owner
 - 3. Investigate unusual items and results

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D. Preparing financial statements for valuation purposes

1. Adjusted balance sheet
2. Market balance sheet
3. Adjusted income statement
4. Pro forma income statement

III. Valuation Methods

A. Approaches to valuation

1. Sales comparison approach
2. Cost-depreciation approach
3. Income capitalization approach
4. Liquidation value approach

B. Valuation of intangible assets

1. Definitional problem with intangible assets
 - a. Business goodwill
 - b. Personal goodwill
 - c. Separable intangible assets
2. Methods of valuation
 - a. Excess profits approach
 - b. Market residual approach

PART III

LISTING AND SELLING REAL PROPERTY

SESSION 10

BROKERAGE RELATIONSHIPS AND DISCLOSURE REQUIREMENTS

Learning Objectives

- Describe which provisions of the Brokerage Relationship Disclosure Act apply only to residential real estate sales and list types of real estate activities that are exempt from the disclosure requirements
- Describe the required content and format of the various disclosure forms
- Describe the procedure for giving No Broker Relationship Notice
- Distinguish among the three forms of authorized brokerage relationships
- List and describe the duties owed in the various authorized relationships
- Describe the disclosure procedures for the various authorized relationships
- Identify the procedure for transition from a single agent to a transaction broker
- Describe the disclosure requirements for non-residential transactions where the buyer and seller have assets of \$1 million or more
- Describe the events that will cause an brokerage relationship to be terminated

Key List

- | | |
|------------------------------|-----------------------------|
| ▪ agent | ▪ no brokerage relationship |
| ▪ customer | ▪ principal |
| ▪ designated sales associate | ▪ residential sale |
| ▪ dual agent | ▪ single agent |
| ▪ fiduciary | ▪ transaction broker |
| ▪ limited representation | |

Outline

- I. Concept of agency
 - A. Historical perspective of agency relationships
 - 1. Statutory law
 - 2. Common law
 - II. Disclosure Requirements
 - A. Applies to residential sales only
 - 1. Section 475.278(5)(a) defines **residential sales** as the sale of improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or less, or the sale of agricultural property of 10 acres or less
 - B. Disclosure requirements do not apply per s. 475.278(5)(b):
 - 1. Nonresidential transactions
 - 2. The rental or leasing of real property, unless an option to purchase all or a portion of the property improved with four or less residential units is given
 - 3. Auctions
 - 4. Appraisals
 - 5. Dispositions of any interest in business enterprises or business opportunities, except for property with four or less residential units
 - C. Record keeping requirements
-

Exhibit 10.1 Notice of Non-representation Form

NO BROKERAGE RELATIONSHIP NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

As a real estate licensee who has no brokerage relationship with you, (insert name of Real Estate Entity and its Associates) owe to you the following duties:

- 1. Dealing honestly and fairly;
 - 2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer
 - 3. Accounting for all funds entrusted to the licensee
- (Date) (Signature)
-

III. Authorized Brokerage Relationships

A. No brokerage relationship

1. Disclose the no brokerage relationship (non-representation) notice in writing before the showing of property (Section 475.278(4)(b), F.S.)
2. **Customer** means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship
3. Duties include:
 - a. Dealing honestly and fairly
 - b. Disclose all known facts that materially affect the value of property which are not readily observable to the buyer
 - c. Accounting for all funds entrusted to the licensee

B. Single agent relationship

1. **Single agent** is a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction
2. The party with whom a real estate licensee has entered into a single agent relationship is the **principal**
3. Duties include:
 - a. Dealing honestly and fairly
 - b. Loyalty
 - c. Confidentiality
 - d. Obedience
 - e. Full disclosure
 - f. Accounting for all funds
 - g. Skill, care and diligence in the transaction
 - h. Presenting all offers and counteroffers in a timely manner
 - i. Disclosing all known facts that materially affect the value of residential real property that are not readily observable
4. Give the single agent disclosure before, or at the time of, entering into a listing agreement or an agreement for representation
5. Required information (see Exhibit 10.2)
6. Required format

Exhibit 10.2 Single Agency Disclosure Form

SINGLE AGENT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, (insert name of Real Estate Entity and its Associates) owe to you the following duties:

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. Obedience;
5. Full disclosure;
6. Accounting for all funds;
7. Skill, care, and diligence in the transaction;
8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

Date

Signature

C. Transaction broker relationship

1. **Transaction broker** means a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent
2. Transaction brokers provide a limited form of non-fiduciary representation to a buyer, a seller, or both in a real estate transaction
3. Duties include:
 - a. Dealing honestly and fairly
 - b. Accounting for all funds
 - c. Using skill, care, and diligence in the transaction
 - d. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer
 - e. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing
 - f. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or any other information requested by a party to remain confidential
 - g. Any additional duties that are mutually agreed to with a party
4. Presumption of transaction broker
5. No requirement for written transaction broker notice

IV. Transition From Single Agent to Transaction Broker

- A. A single agent relationship may be changed to a transaction broker relationship at

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any time during the relationship between an agent and principal, provided the agent gives the transition disclosure and the principal consents to the transition before a change in relationship

B. Procedure

1. Give the single agent disclosure before, or at the time of, entering into a listing agreement or an agreement for representation
2. Give transition disclosure and secure consent (signature) from party

C. Required information (see Exhibit 10.34)

D. Required format

1. The disclosure must be in writing either as a separate and distinct disclosure or included as part of another document such as a listing agreement or other agreement for representation
2. When incorporated in other documents the required notice must be of the same type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a single agent, except that the first sentence of the disclosure statement must be printed in uppercase and bold type

V. Designated Sales associate

- A. Non-residential transaction limitations
- B. Disclosure requirements
- C. Single agent duties (see Exhibit 10.4)

VI. Ways to Terminate a Brokerage Relationship

Exhibit 10.3 Transition to Transaction Broker Disclosure

CONSENT TO TRANSITION TO TRANSACTION BROKER

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

As a transaction broker, (insert name of Real Estate Firm and its Associates), provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

Exhibit 10.4 Designated Salesperson Disclosure

FLORIDA LAW PROHIBITS A DESIGNATED SALESPERSON FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALESPERSON IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED SALESPERSON TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED SALESPERSON TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.

SESSION 11

CONTRACTS

Learning Objectives

- Describe the characteristics of the various types of listings and describe at least three statutory requirements for listing agreements
- Identify the four types of legal contracts that licensees may prepare
- Explain the requirements of the statute of frauds and the exceptions allowed under the law
- Explain the various components of a Contract for Sale and Purchase
- Distinguish between specific performance and liquidated damages
- Describe the differences between an option contract and a right of first refusal
- Explain the provisions of Chapters 689 and 760, F.S. regarding occupants infected with HIV or AIDS
- Describe the effects of Johnson v. Davis Supreme Court and Rayner v. Wise Realty Co. rulings on real estate practice in Florida
- Describe the requirements under Chapters 718 and 720, F.S. regarding disclosure of condominiums and homeowner associations

Key Terms

- compensatory damages
- contingency
- earnest money deposit
- effect a sale
- find a purchaser
- joint tenancy
- lease-option agreement
- lease-purchase agreement
- liquidated damages
- procuring cause
- right of first refusal
- specific performance
- statute of frauds
- tenancy by the entireties
- tenancy in common
- time is of the essence

Outline

- I. Brokerage Compensation
 - A. Listing agreements
 1. Written
 2. Oral (parole)
 3. Differences types of agreements
 - B. Entitlement to commission
 1. Find a ready, willing, and able buyer vs. effect of sale
 2. Referral fee
 3. Commercial lien law
 - C. Buyer brokerage agreement
 - D. Procuring cause
- II. Purchase and Sale Contract
 - A. Unauthorized practice of law
 - B. Statute of Frauds
 - C. E-Sign Act
- III. Documents for Preparing To Write the Contract
 - A. Seller documents
 1. Deed
 - a. Who owns property (and must sign listing agreement and purchase and sale contract)
 - b. Property interest held
 - c. Legal description
 2. Survey

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- a. Encroachments
- 3. Mortgage
 - a. Documents related to existing loan(s)
- 4. Zoning, zoning variances and nonconforming uses

IV. Provisions of Real Estate Contracts

- A. Dates
 - 1. Date contract is prepared
 - 2. Date parties sign
 - 3. Effective date
- B. Parties to the contract
- C. Earnest money deposit
 - 1. Amount and wording to insert in earnest money blank
 - 2. Buyer financial statement for seller to review
 - 3. Form of funds
 - a. Third-party checks
 - b. Subsequent additional earnest money
 - c. Notes as earnest money
 - d. Old earnest money for new contract
 - e. Failure to pay deposit
 - f. When a licensee is the buyer or seller
 - g. Verification of deposit
- D. Legal description
 - 1. Importance of including accurate legal in sales contract
 - a. When the legal becomes known to the buyer at a later date, and if it is inconsistent with other information relied on by the buyer (for example, the total area of the lot) the buyer may use this as a basis to invalidate the contract
- E. Street address
- F. Purchase price
 - 1. How price is to be paid
- G. Financing terms
 - 1. Time limit for loan approval and loan application
 - 2. Owner occupied as principal residence
 - 3. Conditional on buyer obtaining a loan
 - 4. Specify types of financing
 - a. Cash sale
 - b. Seller to carry first mortgage
 - (1) Purchase money mortgage liens
 - (2) Due on sale or assumable
 - (3) Installment sale
 - (4) Balloon payment
 - (5) Tax and insurance reserves
 - (6) Judgment and tax liens
 - (7) Assignment of rent
 - c. New conventional first mortgage
 - (1) Interest rate, LTV ratio, term of loan
 - (2) Conditional on obtaining loan

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- d. New conventional first mortgage plus seller to carry second mortgage
 - e. New VA loan
 - (1) Maximum loan amount
 - (2) Seller's concessions and non-allowables
 - (3) VA escape clause
 - f. New FHA loan
 - (1) FHA/VA amendatory clause
 - g. Adjustable-rate loans
 - h. Loan assumptions
 - (1) Lender consent but no loan changes
 - (2) No lender consent required
 - (3) Lender consent plus loan changes
 - H. Chattel and fixture inclusions
 - 1. Sales tax on personal property in contract
 - I. Evidence of title
 - 1. Time to examine title
 - 2. Days to perform
 - 3. Quality of seller's title
 - J. Date and place for closing
 - K. Proration of taxes, rent, etc.
 - L. Possession of property
 - 1. Immediate possession
 - 2. Delayed possession
 - 3. Possession when tenant-occupied
 - M. Time allowed for acceptance
 - N. Type of deed to be delivered
 - O. Specific performance versus liquidated damages
 - 1. Division of forfeited earnest money
 - P. Miscellaneous
 - 1. Special assessments
 - 2. Agent as buyer or seller
 - 3. Conditional on sale of buyer's property
 - 4. Property inspections
 - 5. Conditional on spouse's approval
 - 6. Right of first refusal
 - Q. Signatures and copies
- V. Disclosure
 - A. Psychologically impacted or stigmatized property
 - B. Occupant infected with HIV or AIDS
 - 1. Section 689.26, F.S.
 - C. Statutory duties of disclosure
 - 1. Brokerage relationship
 - 2. Radon gas
 - 3. Ad Valorem tax disclosure summary
 - 4. Energy efficiency
 - D. Duty of seller to disclose

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1. Johnson versus Davis, 480 So. 2d 265 (Florida 1985)
 2. Lead paint disclosure
 - E. Transaction fees
 - F. Restrictive covenants
 1. Community Development Districts (CDDs)
 - G. Other disclosures
- VI. Other contracts
- A. Lease-purchase agreements
 - B. Option contracts
 - C. Agreement for deed

SESSION 12

FINANCING REAL ESTATE

Learning Objectives

- Distinguish between a mortgage and a note and list the essential elements of each
- Describe Florida's statutory foreclosure process
- Identify mortgage priorities and the concept of subordination
- Identify the characteristics of a conventional mortgage and calculate a mortgage payment on a new loan using financial tables and/or a financial calculator
- Identify the provisions of FHA-insured mortgage loans and Veterans Affairs (VA) loans and calculate the maximum loan amount and required investment for an FHA residential mortgage loan
- Explain the calculation of the interest rate on an adjustable rate mortgage (ARM) and describe the features of graduated payment, reduction option, early payment, 15-year and 3 percent down mortgages
- Identify the characteristics of purchase money, participation, blanket and package mortgages
- Describe the types of discrimination prohibited by the Equal Credit Opportunity Act (ECOA) and identify the provisions of the Truth-in-Lending Act and Regulation Z
- Identify the provisions of the Consumer Financial Protection Bureau of Closing Requirement regarding the loan estimate
- Calculate the minimum qualifying ratios for conventional and FHA mortgages and estimate the approximate yield to the lender based on the number of points charged

Key Terms

- buy down
- conforming loan
- contract for deed
- discount points
- fully amortized mortgage
- home equity loan
- lien theory
- loan estimate
- nonconforming loan
- partially amortized mortgage
- reverse annuity mortgage
- sale and leaseback financing
- secured note
- term mortgage
- title theory
- unsecured note
- yield

Outline

- I. Mortgage Concepts and Practices
 - A. Promissory note
 1. Essential elements of the note
 - B. Mortgage
 1. Parties to the mortgage
 2. Essential elements of a mortgage
 3. Special provisions
 - a. Acceleration clause
 - b. Prepayment (penalty) clause
 - c. Due-on-sale clause
 - C. Mortgage theory
 1. Title theory
 2. Lien theory
 - D. Mortgage priorities
 1. Effect and importance of chronology of recordation
 2. Subordination of mortgages
 - E. Rights of mortgage lenders
 1. Right to foreclose
 - a. Foreclosure procedure in Florida
 - b. Foreclosure sale – Section 702.015, F.S.
 - c. Deficiency judgment
 - d. Junior lien holders
 2. Right to transfer (assign) the mortgage
 - a. Right of possession
 - b. Equity of redemption
- II. Types of Mortgage Loans
 - A. Mortgages by method of payment
 1. Fully amortized
 2. Partially amortized
 - B. Mortgages by payment or yield variability

Broker Course Syllabus (FREC Course II)

1. Adjustable rate mortgage (ARM)
 2. Graduated payment mortgage (GPM)
 3. Reduction option mortgage
 4. Early payment mortgage
 5. 15-year mortgage
 6. New 3 percent down mortgage
 7. Mortgage programs currently being offered
 8. Buy downs
- C. Mortgages by purpose
1. Purchase money mortgage
 2. Participation mortgage
 3. Blanket mortgage
 4. Reverse annuity mortgage
 5. Package mortgage
 6. Home equity loan
- D. Conforming vs. Nonconforming loans
- E. Conventional mortgage loans
1. Definition and availability
 2. General characteristics and interest rates
 3. Computation of maximum loan amount and minimum down payment
 4. Calculation of mortgage payment (use of financial calculator and mortgage tables)
 5. Assumption of conventional mortgages
 6. Private mortgage insurance
 - a. Purpose and importance
 - b. Typical coverage and conditions
- F. Governmental originated, insured or guaranteed mortgage loans
1. FHA-insured mortgage loans
 - a. FHA mortgage insurance concept
 - b. Maximum loan amounts/minimum down payment computations
 - c. Interest rates
 - d. Assumption of FHA loans
 - e. Basic FHA loan programs—characteristics and underwriting guidelines
 - (1) Section 203(b)—home mortgage
 - (2) Section 203(k)—construction loan
 - (3) Section 234(c)—condominium mortgage
 - f. Direct endorsement program for lenders
 2. Veterans Administration (VA) loan
 - a. Mortgage guarantee concept
 - b. Eligibility and loan guaranty entitlement
 - c. Characteristics of FHA mortgage loans
 - 1) Loan insurance
 - 2) Lending source
 - 3) Discount points
 - 4) Amount of down payment
 - 5) Loan limit
 - 6) Insured commitment

Broker Course Syllabus (FREC Course II)

- 7) Insurance premium
 - (a) UFMIP
 - (b) MIP
- 8) Qualifying ratios
- 9) Interest rate
- 10) Appraisal
- 11) Closing costs
- 12) Assumption
- 13) Prepayment
3. Rural Housing Services Administration loan
 - a. Basic characteristics and restrictions
 - b. Qualification requirements

III. Other Techniques Used in Financing Real Estate

- A. Contract for deed
- B. Sale and leaseback
- C. Installment sale contract

IV. Laws concerning fair lending and credit procedures

- A. Consumer Financial Protection Bureau (CFPB)
 1. Equal Credit Opportunity Act (ECOA)
 2. Truth-in-Lending Act and Regulation Z
 3. Real Estate Settlement Procedures Act (RESPA)

V. Residential Loan Underwriting

- A. Initial interview and loan application
- B. Borrower analysis
 1. Credit history
 2. Adequacy of assets
 3. Stability of income
 4. Income/expense ratios
 - a. Conventional
 - b. FHA
 - c. VA
- C. Property analysis
 1. Appraisal
 2. Title examination
 3. Flood Insurance
- D. Loan analysis
 1. Loan-to-value ratio
 2. Interest rate and discount points
 - a. Yield calculations
 3. Loan term
 4. Availability of mortgage insurance
- E. Loan fees and calculations

Broker Course Syllabus (FREC Course II)

- F. Underwriting decision and loan commitment
 - 1. Firm
 - 2. Conditional
 - 3. Takeout commitment
- G. Automated underwriting

SESSION 13

CLOSING REAL ESTATE TRANSACTIONS

Learning Objectives

- Describe the preliminary steps to closing a transaction
- Describe the objective of a pre-closing inspection
- Identify the provisions of the Consumer Financial Protection Bureau of Closing Requirement as they relate to the Closing Disclosure
- Identify RESPA prohibitions
- Identify IRS reporting provisions concerning foreign investors
- Describe the various sections of the Closing Disclosure
- Prorate property taxes, mortgage interest and prepaid rent
- Understand Closing Disclosure

Key Terms

- Closing Disclosure Statement
- Real Estate Settlement Procedures Act

Outline

- I. Preliminary Steps Prior to a Closing
 - A. Loan application
 - B. Contingencies
 - C. Loan Approval
 - D. Property survey
 - E. Title search
 - 1. Chain of title
 - 2. Opinion of title
 - 3. Title insurance
 - F. Release of existing liens and encroachments
 - G. Examination of zoning and private restrictions by buyer's attorney
 - 1. Condo documents, if applicable
 - 2. Homeowner's association restrictions, if applicable
 - 3. Apply for HOA or condo approval
 - 4. Existing leases, if applicable

Broker Course Syllabus (FREC Course II)

- H. Wood-destroying termite inspection
 - I. Closing Documents reviewed by parties prior to closing
 - J. Municipal Lease search
 - 1. Verify no open permits
 - K. Homeowner's or hazard insurance
 - L. Deed, mortgage and other closing documents
 - 1. Recording acts
 - M. IRS reporting requirements
 - N. Broker transmits EMD to closing agent, if applicable
 - O. Final inspection of the property
- II. Preparation of the Closing Disclosure
- A. The contract for sale agreement
 - B. Parts of the Closing Disclosure
 - 1. Delivery
 - 2. Content
- III. Prorating Procedures
- A. Items typically prorated
 - 1. Property taxes
 - 2. Interest on mortgages
 - a. New
 - b. Assumed
 - 3. Rents and/or security deposits
 - 4. Other, as agreed between the parties
 - B. Principles of prorating
 - C. Prorating calculations
- IV. Documentary Stamp Calculations
- A. Documentary stamps on deeds
 - B. Documentary stamps on notes
 - C. Documentary stamps on tangible taxes
- V. Sample Cases and Calculations

SESSION 14

FEDERAL INCOME TAX LAWS

Learning Objectives

- Identify the major features of the 2018 Tax Cuts and Jobs Act
- Describe the income tax treatment for principal and second homes regarding real estate property taxes, mortgage interest deductions, and prepayment penalties
- Describe the requirements for mortgage interest deductions and understand the requirements for deducting points
- Explain the features for first-time homebuyers regarding the IRA deduction for the down payment and related expenses
- Identify the special rules for tax deductions on vacation homes
- Identify the special rules that apply for persons who deduct expenses for a home office
- Identify the tax incentives for low-income housing
- Identify the requirements for excluding tax on the gain on sale of a principal home
- Itemize the steps required to calculate net operating income, before-tax cash flow, after-tax cash flow, and net taxable income from the operations of an investment property and describe the process used to allocate the acquisition costs of a property between land and improvements
- Calculate after-tax cash flow; taxable income for an investment property; and the depreciation (cost recovery) for residential and nonresidential investment property
- Distinguish between passive and non-passive income and list four principal tax classifications of real property
- Describe the IRS tax treatment regarding the sale of investment property, including determination and taxing of gain or loss, short-term gain vs. long-term gain, and after-tax reversion
- Describe the advantages of the installment sale method and like-kind exchanges, including a Section 1031 Exchange

Key Terms

- | | |
|-------------------------|--------------------------|
| ▪ active participant | ▪ long-term gain |
| ▪ after-tax cash flow | ▪ non-passive income |
| ▪ capital gain | ▪ passive income |
| ▪ home acquisition loan | ▪ qualified intermediary |
| ▪ home equity loan | ▪ reversion from sale |
| ▪ home office | ▪ short-term gain |
| ▪ installment sale | ▪ tax credit |
| ▪ investment interest | ▪ vacation homes |
| ▪ like-kind exchange | |

Outline

- I. 2018 Tax Cuts and Job Act
 - A. Increased standard deduction and impact on itemizing deductions
 - B. Reduction of state and local tax deduction
 - C. Cap on home interest deductions
 - D. Interest on home equity loans
- II. Income Tax Treatment – Principal and Second Homes
 - A. Real estate property taxes
 - 1. Principal residence
 - 2. Second home
 - B. Mortgage interest deductions
 - 3. Home acquisition loans
 - 4. Home equity loans
 - 5. Home construction mortgages
 - 6. Home improvement loans
 - 7. Refinanced loans
 - 8. Other types of loans
 - a. Reverse mortgage
 - b. Shared appreciation mortgage
 - 9. Deductibility of points
 - C. Prepayment penalties
 - D. Other benefits
 - 10. The IRA deduction for down payment
- III. Special Rules
 - A. Vacation homes (basic rules)
 - B. Office in home (basic rules)
- IV. Tax Incentives for Low Income Housing
- V. Sale of principal residence
 - A. Exclusion of gain on sale or exchange of principal residence
 - B. Reporting requirements to IRS
 - 1. Home sale related to change in employment
 - 2. Home sale related to health
 - 3. Home sale based on “unforeseen circumstances”
- VI. Real Estate Investment Operations
 - A. Accounting methods
 - B. Determination of net (taxable) income
 - 1. Reserves for replacements
 - 2. Interest
 - 3. Depreciation
 - a. Methods of calculating depreciation

- 4. Losses
- C. Taxes from operations
 - 1. Passive vs. non-passive income
 - 2. Tax classifications of investment
 - 3. Tax status of investor
- VII. Sale of Investment Real Estate
 - A. Determination of gain or loss
 - B. Taxation of gain or loss
 - C. Estimating tax liability (basic concepts)
- VIII. Methods of Deferring Taxes Upon Disposition (Special Rules)
 - A. Installment sales (basic concept)
 - B. Like-kind exchange (basic concept)
 - C. Section 1031 exchange
 - D. Real estate property taxes
 - 1. Principal residence
 - 2. Second home
 - E. Mortgage interest deduction
 - 1. Home acquisition loans
 - 2. Home equity loans
 - 3. Home construction mortgages
 - 4. Home improvement loans
 - 5. Refinanced loans
 - 6. Other types of loans
 - a. Reverse mortgage
 - b. Shared appreciation mortgage
 - 7. Deductibility of points
 - F. Prepayment penalties
- Other benefits
 - 1. The IRA deduction for down payment
- IX. Special Rules
 - A. Vacation homes (basic rules)
 - B. Office in home (basic rule)
- X. Tax Incentives for Low Income Housing
- XI. Sale of Principal Residence
 - A. Exclusion of gain on sale or exchange of principal residence
 - B. Reporting requirements to IRS
 - 1. Home sale related to change in employment
 - 2. Home sale related to health
 - 3. Home sale based on “unforeseen circumstances”

XII. Real Estate Investment Operations

- A. Accounting Methods
- B. Determination of net (taxable) income
 - 1. Reserves for replacements
 - 2. Interest
 - 3. Depreciation
 - a. Methods of calculating depreciation
 - 4. Losses
- C. Taxes from operations
 - 1. Passive vs. non-passive income
 - 2. Tax classifications of investment
 - 3. Tax status of investor

PART IV

SPECIALTIES

SESSION 15

INVESTMENT REAL ESTATE

Learning Objectives

- List the characteristics that affect the value of an investment site
- Describe the structural components of an income property building and the types of problems that might be observed by the broker
- Explain the use of expense stops, caps and rent concessions and calculate the additional rent required from financing a tenant improvement
- Describe the various methods an investor can use to reduce the annual debt service on a mortgage
- Describe the priorities of leases compared with mortgages on the same property
- Describe the most common problem areas that the broker must scrutinize when reviewing an owner's operating statement and construct an annual operating statement for an income property
- Calculate the appropriate financial and investment ratios for an evaluation of the one-year statement
- Describe the process used to estimate the after-tax equity reversion
- Calculate the present value of a series of unequal cash flows and the net present value of an investment
- Describe the differences between net present value and the internal rate of return

Key Terms

- | | |
|---------------------------------|-------------------------|
| ▪ add-on interest | ▪ net lease |
| ▪ discounted cash flow analysis | ▪ net present value |
| ▪ expense stops and caps | ▪ nominal interest rate |
| ▪ gross leasable area | ▪ percentage rents |
| ▪ gross lease | ▪ rent concession |
| ▪ internal rate of return | ▪ simple interest |
| ▪ rentable vs. usable | ▪ triple-net lease |

Outline

- I. Matching Investment Properties with Investor Needs
 - A. Determine the investment needs of potential clients (buyers and sellers), and what properties best fit those needs
 - B. Basic investor situation
 - 1. Existing asset portfolio (anything valuable that affects the investor's interest in real estate investment)
 - 2. Liabilities (debts and existing obligations)
 - 3. Contingent liabilities (retirement needs, education for children, weddings, etc.)
 - 4. Risk preferences
 - 5. Earning potential
 - 6. Real estate management capability
 - 7. Specific investment goals
 - 8. Indirect effects on investor (ego, experience, reputation)
 - C. Basic property characteristics
 - 1. Return
 - 2. Risk level (variability of potential return)
 - a. Business risk
 - b. Financial risk
 - c. Capital risk
 - d. Regulatory risk
 - e. Inflation risk
 - 3. Liquidity
 - 4. Income tax consequences
 - 5. Management requirements
- II. Leases and Lease Terminology
 - A. Rent determination
 - 1. Area determination
 - a. Gross leasable area
 - b. Net usable vs. rentable areas or space
 - 2. Determination of base rent charge
 - a. Treatment of common areas
 - b. Common area maintenance fee (CAM)
 - c. Importance of explicit dollar rental charges
 - 3. Percentage (overage) rent
 - a. Sales thresholds
 - b. Problem of specifying monitoring provisions
 - c. Problem of defining sales
 - d. Break Point
 - 4. Rent concessions
 - B. Expenses
 - 1. Expense stops and caps
 - 2. Pass-throughs

- 3. Reimbursable vs. non-reimbursable expenses
 - 4. Pro-rata expenses
 - a. Based on tenant's percentage of total building space
 - b. Based on tenant's percentage of occupied space
 - 5. Exam explicit lease provisions rather than relying on the terms "gross" vs. "net" lease, or "full service lease"
 - C. Tenant improvement allowances
 - 1. New tenant
 - 2. Renewal tenant
 - D. Options
 - 1. Renewal option
 - 2. Expansion option
 - 3. Right of 1st refusal and 1st offer
- III. Mortgages (existing or stipulated as part of the transaction)
- A. Basic terms
 - 1. Interest computation
 - 2. Balloon date
 - 3. Amortization term
 - 4. Other terms affecting the payment
 - 5. Amortization
 - 6. Term/Balloon mortgage
 - B. Recourse vs. Non-recourse provisions
 - C. Legal priority of leases relative to mortgages
 - D. Effect of foreclosures on leases
 - E. Prepayment clauses
 - F. Importance of estoppel for existing mortgage
- IV. Structural Knowledge
- A. Type and condition of roof
 - B. Type and condition of HVAC system
 - C. Nature and capacity of electrical systems
 - D. Nature and capacity of telephone systems
 - E. Internet services/bandwidth capacity
 - F. Nature and condition of elevators
 - G. Insulation level
 - H. Sources of utilities
 - I. Adequacy of storm drainage system
 - J. Condition of appliances and special equipment
 - K. Condition and needs of drives and parking areas
 - L. Survey of land and buildings
 - 1. Importance of verifying structure sizes
 - 2. Importance of easements and encroachments
 - M. Environmental

- V. Property Expenses
 - A. Identify and verify all current property expenses
 - B. Identify imminent capital expenditure needs
- VI. Investment Analysis
 - A. Analyze investment needs and investment decisions, accounting for the following considerations:
 - B. The creation of investment pro forms
 - 1. Potential gross income
 - 2. Effective gross income
 - 3. Operating expenses
 - 4. Net operating income
 - 5. Expenses after NOI
 - 6. Debt service
 - 7. Before tax cash flow
 - 8. Before tax cash flow at sale
 - 9. Vacancy
 - C. The projection of after tax cash flows
 - 1. Taxable income and taxes from operations
 - 2. After tax cash flow (from operations)
 - 3. Taxable income and taxes at sale
 - D. Financial and investment ratios
 - 1. Loan to value ratio over time
 - 2. Debt service coverage ratio
 - 3. Operating expense ratio
 - 4. Expenses per square foot
 - 5. Price per square foot
 - 6. Rent per square foot
 - 7. Break-even ratio
 - 8. Equity dividend rate
 - 9. Capitalization rate
 - 10. Loan constant
 - E. The computation and interpretation of IRR and NPV
 - 1. Before tax
 - 2. After tax
 - 3. Importance of possible tax advantaged returns in real estate
 - F. Basic risk analysis
 - 1. Evaluation of debt coverage ratio and break-even ratio relative to property type
 - 2. Sensitivity analysis (worst case scenario)

SESSION 16

ZONING AND PLANNING, SUBDIVIDING OF LAND, AND SPECIAL ISSUES

Learning Objectives

- Describe the major provisions of Florida's Community Planning Act and explain the purpose of the concurrency provision
- Identify when a development of regional impact review is needed
- Explain the purpose of the concurrency provision
- Distinguish among a variance, special exception and a nonconforming use
- Describe the characteristics of a planned unit development and a community development district
- Distinguish between zoning and subdivision regulations
- Explain the use of impact fees and dedication of land
- Explain the basic provisions of the Interstate Land Sales Full Disclosure Act
- Briefly describe the purpose of the Clean Water Act and the Coastal Zone Management Act

Key Terms

- | | |
|----------------------------------|------------------------------|
| ▪ community development district | ▪ sub-divider |
| ▪ Community Planning Act | ▪ subdivision |
| ▪ concurrency | ▪ subdivision plat map |
| ▪ dedication | ▪ subdivision regulations |
| ▪ development of regional impact | ▪ variance |
| ▪ hardship | ▪ wetlands |
| ▪ impact fees | ▪ zoning |
| ▪ nonconforming use | ▪ zoning board of adjustment |
| ▪ planned unit development | |
| ▪ special exception | |
| ▪ special flood hazard area | |

Outline

- I. Zoning
 - A. Historical perspective
 - 1. Growth Management Act
 - 2. Florida's Community Planning Act
 - a. Concurrency
 - B. Appeals and exceptions to zoning code
 - 1. Nonconforming use
 - 2. Variance
 - 3. Special Exception
 - C. Variations and special uses of traditional zoning
 - 1. Planned Unit Development (PUD)
 - 2. Community Development Districts (CDD)
 - D. Subdivision regulations
- II. Subdividing and Development of Land
 - A. Concurrency
 - B. Impact fees
- III. Flood zones
 - A. National Flood Insurance Program (NFIP)
 - 1. Can qualify for Federal Flood insurance program
 - 2. "Special Flood Hazard Areas" are delineated according to NFIP criteria
 - 3. Development within SFHAs must be restricted in a manner so as not to obstruct the natural flow of flood waters
 - B. Residential structures in the SFHA must have the first floor above the "Base Flood Elevation"
 - C. Non-residential structures must meet the residential requirement, or be water-tight below the Base Flood Elevation
 - D. Over 40 percent of purchasers of National Flood Insurance are in Florida
- IV. Wetlands and Ecological Issues
 - A. Federal Water Pollution Control Act (Clean Water Act)
 - 1. Army Corp of Engineers administers permitting process
 - 2. Requires authorization to deposit dredged or fill matter onto wetlands
 - B. Coastal Zone Management Act
 - 1. To protect wetlands, beaches, dunes and barrier islands
 - 2. Coastal Construction Control Line Program (CCCL) – Section 161.053, Florida Statutes
 - C. Federal regulation of interstate sales of subdivided land
 - 1. Registration requirement
 - 2. Property Report
 - D. Florida regulations regarding developments of regional impact

SESSION 17

ENVIRONMENTAL ISSUES AFFECTING REAL ESTATE TRANSACTIONS

Learning Objectives

- Explain the purpose and provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Explain the provisions of the Superfund Amendment and Reauthorization Act (SARA)
- List the criteria for the innocent landowner defense
- Explain the purpose and use of the National Priority List
- Describe the information contained in Environmental Assessment Phases I - IV
- Describe the disclosure requirements for radon gas
- Identify the provisions of the Residential Lead-Based Paint Hazard Reduction Act
- Explain the disclosure requirements for lead-based paint
- Identify environmental issues unique to Florida
- Identify exceptions to the Lead Based Paint Hazard Reduction Act
- Describe the federal and state regulation of asbestos

Key Terms

- | | |
|----------------------------------|--|
| ▪ asbestos | ▪ innocent landowner defense |
| ▪ brown fields | ▪ lead-based paint |
| ▪ CERCLA | ▪ national priorities list |
| ▪ environmental due diligence | ▪ phase I – IV assessment |
| ▪ environmental impact statement | ▪ potentially responsible person (PRP) |
| ▪ environmental site assessment | ▪ radon gas |

Outline

- I. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
 - A. Purpose and scope
 - B. Superfund Amendment and Reauthorization Act (SARA)
 1. Potentially responsible persons
 2. Innocent landowner defense
 - C. National priorities list
 - D. Environmental due diligence
 1. Environmental site, Phases I - IV assessments
 - E. Reducing liability

II. Environmental Hazards

A. Asbestos

B. Radon

1. Florida disclosure law, Section 404.056, F.S.
2. Required radon disclosure statement

C. Lead-based paint

1. Residential Lead-Based Paint Hazard Reduction Act
 - a. Information pamphlet
 - b. Disclosure of known lead-based paint and all test results
 - c. 10-day period for testing allowed for purchaser
 - d. Warning statement and acknowledgment attached to purchase and sale agreement with required language
 - e. Exemptions from law
 - f. Seller responsibilities
 - g. Landlord responsibilities
 - h. Federal lead-based paint abatement program
 - i. Landlord responsibilities

III. Environmental Issues Unique to Florida

A. Sinkholes

B. Mold

C. Dockage

D. Beach Management Fund Assistance Program

E. Florida Aquatic Weed Control Act, Section 369.20, F.S.

SESSION 18

PROPERTY MANAGEMENT

Learning Objectives

- Explain the licensing requirements for property managers and list the exemptions from the requirements
- Explain the definition of a community association and the employment situations which require a community association manager's license
- Describe the skills required of a property manager
- Describe the steps involved in analyzing the market and the property
- Describe the methods required by Chapter 475, F.S. to handle security deposits
- Identify which lease forms may be completed by a real estate licensee
- Distinguish among the various types of leases and between a tenancy at will and a tenancy at sufferance
- Identify the protective classes under the Federal the Civil Rights Acts and the Fair Housing Act
- Explain the Americans with Disabilities Act
- Identify the provisions of the Florida Landlord and Tenant Act

Key Terms

- | | |
|---------------------------------------|--------------------------|
| ▪ Americans with Disabilities Act | ▪ sublease |
| ▪ assignment | ▪ ground lease net lease |
| ▪ Civil Rights Act of 1866 as amended | ▪ percentage lease |
| ▪ community association | ▪ tenancy for years |
| ▪ Fair Housing Act | ▪ tenant at sufferance |
| ▪ fixed lease | ▪ tenant at will |
| ▪ Florida Landlord and Tenant Act | ▪ three-day notice |
| ▪ graduated lease | ▪ writ of possession |
| ▪ gross lease | |

Outline

- I. The Residential Landlord/Tenant Act
 - A. Landlord's statutory duties
 - B. Tenant's statutory duties
 - C. Tenant remedies for breach by landlord
 - D. Tenant security deposits and advance rent
 1. Accounting to tenant
 2. Pet deposits
 - E. Landlord's right to enter during lease term
 - F. Eviction proceedings

- II. Non-residential Landlord Tenant Act
 - A. Landlord's statutory duties
 - B. Tenant's statutory duties
 - C. Tenant remedies for breach by landlord
 - D. Tenant security deposits and advance rent
 - 1. Accounting to tenant
 - 2. Pet deposits
 - E. Landlord's right to enter during lease term
 - F. Eviction proceedings
- III. Applicable Federal and State Laws
 - A. Federal and state fair housing laws
 - B. Americans with Disabilities Act
 - C. Application of Statute of Frauds
 - 1. Recordation of leases
 - D. Environmental hazards
- IV. Introduction to Property Management
 - A. Scope of property management
 - 1. Property management firms
 - 2. Affiliate of full-service real estate company
 - 3. On-site management
 - B. Licensing requirements and exemptions
 - 1. Activities requiring a real estate license
 - 2. Rental activities exempt from requirement for a real estate license
- V. Property Management Markets
 - A. Office building management
 - B. Retail management
 - C. Residential management
 - D. Condominiums and cooperatives
 - E. Community association relationships
- VI. Skills Required of a Property Manager
 - A. Supervise others
 - B. General accounting principles (GAP), monthly and yearly reports
 - C. Building systems
 - D. Handle landlord-tenant relations and have a working knowledge of applicable laws
 - E. Lease space including space planning, area design, and building layout
 - F. Advertise and market space
 - G. Codes and regulations (local, state and national)
 - H. Purchasing
 - I. Appraisal, finance, money markets, depreciation techniques, financial trends, local market conditions

- J. Have a general construction knowledge
- K. An understanding of ecology issues

VII. The Rental Process

- A. Evaluating the rental market
 - 1. Regional analysis
 - 2. Neighborhood analysis
- B. Property analysis
 - 1. Evaluate interior and exterior's condition and utility
 - 2. Examine locational characteristics
 - 3. Analyze the income
 - 4. Analyze the operating expenses
 - 5. Project the cash flows
 - 6. Rate of return for property
 - 7. Determine recommendations for the property
- C. Marketing rental units
 - 1. Advertising space
 - a. Signs
 - b. Internet and social media
 - c. Newspapers
 - d. Broadcast advertising
 - e. Direct mail
 - 2. Image
 - 3. Promotional programs
 - 4. Showing the property to prospective tenants
 - 5. Screening applicants in accordance with appropriate laws and regulations
- D. Tenant policies
 - 1. Tenant relations
 - 2. Tenant complaints and conflicts among tenants
 - 3. Fees, security deposits and rental collection
 - a. Rental collection policy
 - b. Delinquency procedure
 - c. Trust accounts
- E. The lease agreement
 - 1. Florida Supreme Court-approved leases
 - 2. Lease with option to purchase
 - a. Residential
 - b. Commercial
 - 3. Commercial leases and provisions
 - a. Must be attorney prepared
 - b. Fixed lease
 - c. Graduated lease
 - d. Gross lease
 - e. Ground lease
 - f. Net lease

- g. Percentage lease
- 4. Proration of rents
- 5. Assignment, sublease and subordination of space
- 6. Tenancy for years
- 7. Periodic tenancies
- 8. Tenancy at will
- 9. Tenancy at sufferance
- F. Maintenance for:
 - 1. Physical integrity
 - 2. Functional performance
 - 3. Housekeeping and cleanliness
 - 4. Merchandising
- G. Staff versus contract maintenance
- H. Schedules and inspections
- I. Supervising security
- J. Accounting, record keeping and insurance
 - 1. The operating budget
 - 2. Record keeping
 - 3. Property insurance
 - 4. Statement of operations

VIII. The Owner-Manager Relationship

- A. Responsibilities to owner
- B. Owner's financial statement
- C. Management associations
- D. Management agreement provisions
 - 1. Identification of the parties and the property
 - 2. Duration of agreement
 - 3. Responsibilities and obligations of the manager and owner
 - 4. Reporting
 - 5. Accounting responsibilities
 - 6. Insurance and risk management
 - 7. How and why agreement may be terminated
- E. Negotiating the property management agreement
- F. Compensation for management services
- G. Personal communications
- H. Evaluating management performance

IX. Staffing and Employee Relations

- A. Hiring qualified personnel
 - 1. Recruitment and selection
 - 2. Training
 - 3. Retaining personnel
 - 4. Job descriptions