

SLIDE 20 - Real Estate Brokerage

In this section we'll look at Real Estate Brokerage business topics including:

- Sales and Leasing
- Property Management
- Appraising
- Financing
- Counseling

SLIDE 21 - Real Estate Brokerage – Sales and Leasing

A real estate brokerage is a business in which real estate license-related activities are performed under the authority of a real estate broker.

The broker acts as an agent or intermediary between two or more people in the negotiation of the sale, purchase or rental of real estate.

A sales associate works for the broker, providing services to prospective buyers and sellers.

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Real estate brokers and salespersons require a depth of knowledge of expert information that the average layperson does not possess.

In reality, it is more efficient to acquire this information through a real estate professional.

Real estate brokers and sales associates often specialize in a particular geographic area or property type. This method of target marketing is often called "farming".

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The five major sales specialties are:

1. Residential
2. Commercial
3. Industrial
4. Agricultural
5. Businesses

SLIDE 24 - Real Estate Brokerage – Property Management

With the proliferation of condominium and apartment complexes, coupled with an array of commercial properties, the need for experienced property managers has never been greater.

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Most rental properties, whether residential or commercial, is managed by a property management company on behalf of an absentee owner.

In the case of residential property that owner is likely an individual, whereas larger commercial or industrial properties could be owned by a corporation.

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Services provided by a property management company include:

- Manage rental leasing – Daily coordination between tenants and leased units.
- Tenant screening and selection – Background checks and income verification
- Collect rents
- Managing move-in/outs – Lease contracts - Rekey locks on move outs
- Property evaluation – Understand rental rates in the area and price accordingly
- Marketing – Managing ads and working with other leasing agents
- Maintenance and inspection – Perform scheduled inspections to ensure property is safe and holding value.
- Income and expense accounting – Accountable to owner for financial performance.

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Where property managers deal primarily with rental units like an apartment complex, a Community Association Manager manages a condominium or homeowners' association (including single-family home subdivisions, townhouses, or mixed-use development).

The state of Florida requires community association managers to hold a license. Performing duties as a CAM without a license is a violation of Florida Statutes.

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The services provided by a property manager are typically defined by the property management agreement, which is not a formality – it's a legal necessity.

It protects the property owner, the property management firm, and the property being managed.

Section 1 - Part 2

SLIDE 1

There are dozens of boilerplate agreements out there with a wide range of terms and conditions.

At a minimum four key areas should be found within any valid property management contract:

- Responsibilities and Representations
- Contract Termination
- Indemnification
- Boiler Plate legalese

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Responsibilities and Representations

It's common for the property manager to be the exclusive Agent of the owner of the property described on the agreement.

Section 1.1 of the sample reads:

1.1 Appointment and Acceptance

Owner hereby appoints Agent as sole and exclusive Agent of Owner to lease and manage the property described in paragraph 1.2 upon the terms and conditions provided herein. Agent accepts the appointment and agrees to furnish the services of its organization for the leasing and management of the Premises; and Owner agrees to pay all expenses in connection with those services.

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The property affected by the agreement is described in the agreement in a very specific manner.

Section 1.2 of the sample reads:

1.2 Description of Premises

The Property to be managed by Agent under this Agreement is known as _____, located at _____, consisting of the land, buildings, and other improvements located at _____, in the State of _____.

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The document will always dictate the term and renewal requirements of the agreement.

Section 1.3 of the sample reads:

1.3 Term

The term of this Agreement shall be for an initial period of _____ year(s) (the "initial term") from the _____ to _____ and including the last day of _____, and thereafter shall be automatically renewed from year to year unless terminated as provided in sections 21 or 27 herein.

Each of said one-year renewal periods is referred to as a "term year."

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The agreement will also spell out how the Agent will be compensated for the property management.

Section 17.1 of the sample reads:

17.1 For Management Services

The greater of (i) \$ _____ per month or (ii) _____ % of the total monthly gross receipts from the Premises, payable by the 25th day of the current month for the duration of this Agreement. Payments due Agent for periods of less than a calendar month shall be prorated over the number of days for which compensation is due. The percentage amount set forth in (ii) above shall be based upon the total gross receipts from the Premises during the preceding month.

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Some Property Management Agreements may specify that the Agent is responsible for opening bank accounts for operating and reserve funds and another account for security deposits.

If the owner requires the agent to be bonded this will also be specified.

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The agreement will usually be very specific about the agent's responsibilities for rent collection, security deposits and the property operating expenses.

Section 3.1 of the sample reads:

3.1 Agent's Authority

Agent shall collect (and give receipts for, if necessary) all rents, charges and other amounts receivable on Owner's account in connection with the management and operation of the Premises. Such receipts (except tenant's security deposits and advance rentals, which shall be handled as specified in paragraphs 2.2 and 3.3 hereof; and special charges, which shall be handled as specified in paragraphs 3.2 hereof) shall be deposited in the Operating (and/or) Reserve Account(s) maintained by Agent for the Premises.

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Property owners typically define their needs for financial and operational reporting from the property manager.

Section 6 of the sample reads:

SECTION 6 FINANCIAL AND OTHER REPORTS

By the tenth day of each month, Agent shall furnish Owner with a statement of cash receipts and disbursements from the operation of the Premises during the previous month. In addition, Agent shall, on a mutually acceptable schedule, prepare and submit to Owner such other reports as are agreed on by both parties.

It is important for the Owner to review these statements each month. Monthly reports are held open to correct errors for 90 days, and then become final, subject to an annual audit that may be required by the Owner per paragraph 6.1.

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It's also common to find verbiage that will allow the owner to audit the finances periodically to ensure complete disclosure of income and expenses.

Section 6.1 of the sample reads:

6.1 Owner's Right To Audit

Owner shall have the right to request periodic audits of all applicable accounts managed by Agent, and the cost of such audit(s) shall be paid by Owner.

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Property managers are normally given responsibility over any advertising necessary for the rental and leasing of property.

Section 7 of the sample reads:

SECTION 7 ADVERTISING

Agent is authorized to advertise the Premises or portions thereof for rent, using periodicals, signs, plans, brochures, or displays, or such other means as Agent may deem proper and advisable. Agent is authorized to place signs on the Premises advertising the Premises for rent, provided such signs comply with applicable laws. The cost of such advertising shall be paid out of the Operating (and/or) Reserve Account(s). All advertising shall make clear that Agent is the manager and NOT the Owner of the Premises. Newspaper ads that share space with other properties managed by the Agent shall be prorated based on: **Actual lineage of the ad devoted to the Owner's property plus a prorated share of any headlines and/or signature lines.**

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Duties of property rental and tenant management are inherent to any property management agreement.

Section 8.1 of the sample reads:

8.1 Agent's Authority to Lease Premises

Agent shall use all reasonable efforts to keep the Premises rented by procuring tenants for the Premises. Agent is authorized to negotiate, prepare, and execute all leases, including all renewals and extensions of leases (and expansions of space in the Premises, if applicable) and to cancel and modify existing leases. Agent shall execute all leases as agent for the Owner. All costs of leasing shall be paid out of the Operating (and/or) Reserve Account(s). No lease shall be in excess of _____ year(s) without written approval by Owner. The form of the lease shall be agreed upon by Owner and Agent.

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The Agent is generally given the responsibility of hiring, supervising and terminating employees necessary to the daily operation and maintenance of the property.

Section 9.1 of the sample reads:

9.1 Agent's Authority to Hire

Agent is authorized to hire, supervise, discharge, and pay all servants, employees, contractors, or other personnel necessary to be employed in the management, maintenance, and operation of the Premises. All employees shall be deemed employees of the Owner, and Agent shall not be liable to Owner or others for any act or omission on the part of such employees.

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Due to the legalities of labor management there is usually language in the agreement that defines Agent and Owner responsibilities and liabilities.

Section 9.5 of the sample reads:

9.5 Hold Harmless, Labor Laws

Agent shall be responsible for compliance with all applicable state or federal labor laws. Owner shall indemnify, defend, and save Agent harmless from all claims, investigations, and suits, or from Owner's actions or failures to act, with respect to any alleged or actual violation of state or federal labor laws. Owner's obligation with respect to such violation(s) shall include payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, litigation expenses, and attorneys' fees.

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The Agent's duties regarding property maintenance are typically spelled out in the agreement.

Section 10 of the sample reads:

SECTION 10 MAINTENANCE AND REPAIR

Agent is authorized to make or cause to be made, through contracted services or otherwise, all ordinary repairs and replacements reasonably necessary to preserve the Premises in its present condition and for the operating efficiency of the Premises, and all alterations required to comply with lease requirements, governmental regulations, or insurance requirements. Agent is also authorized to decorate the Premises and to purchase or rent, on Owner's behalf, all equipment, tools, appliances, materials, supplies, uniforms, and other items necessary for the management, maintenance, or operation of the Premises. Such maintenance and decorating expenses shall be paid out of the Operating (and/or) Reserve Account(s). This section applies except where decorating and/or maintenance are at tenants' expense as stipulated in a lease.

Other subsections regarding maintenance may be very specific about limits of expenditure, utilities, contracts and liability for personal injury claims.

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The agreement usually sets the legal relationship between the Owner and the Agent. It's common to confirm that the Agent acts on behalf of the Owner and is not an employee.

Section 12 of the sample reads:

SECTION 12 RELATIONSHIP OF AGENT TO OWNER

The relationship of the parties to this Agreement shall be that of Principal and Agent, and all duties to be performed by Agent under this Agreement shall be for and on behalf of Owner, in Owner's name, and for Owner's account. In taking any action under this Agreement, Agent shall be acting only as Agent for Owner, and nothing in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement except that of Principal and Agent, or as requiring Agent to bear any portion of losses arising out of or connected with the ownership or operation of the Premises. Nor shall Agent at any time during the period of this Agreement be considered a direct employee of Owner. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement, except that Agent is authorized to act with such additional authority and power as may be necessary to carry out the spirit and intent of this Agreement.

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Another important section relates to the Owner representations and warranties to the current legal status of the property and the Owners role in the agreement.

Section 18 of the sample reads:

SECTION 18 REPRESENTATIONS

Owner represents and warrants: That Owner has full power and authority to enter this Agreement; that there are no written or oral agreements affecting the Premises other than tenant leases, copies of which have been furnished to Agent; that there are no recorded easements, restrictions, reservations, or rights of way which adversely affect the use of the Premises for the purposes intended under this Agreement; that to the best of Owner's knowledge, the property is zoned for the intended use; that all leasing and other permits for the operation of the Premises have been secured and are current; that the building and its construction and operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the like (including, but not limited to, those pertaining to hazardous or toxic substances); that the building does not contain any asbestos, urea, formaldehyde, radon, or other toxic or hazardous substance; and that no unsafe condition exists.

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Contract termination

It's critical that the property management agreement has very specific language regarding how and under what circumstances the agreement is terminated.

Some of these reasons to terminate include.

- Termination without cause
- Termination with cause
- Termination compensation
- Owner responsibilities
- Sale of Property

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The ability for either party to terminate the contract at any time for any reason is normally written into these agreements which usually includes a time component.

Section 21.1 of the sample reads:

21.1 Termination by Either Party

This Agreement may be terminated by either Owner or Agent, with or without cause, at the end of the initial term or of any following term year upon the giving of 30 days' written notice prior to the end of said initial term or following term year.

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Should either party breach the agreement, or fail to act as required, the agreement shall terminate.

Section 21.2 of the sample reads:

21.2 Termination for Cause

Notwithstanding the foregoing, this Agreement shall terminate in any event, and all obligations of the parties hereunder shall cease (except as to liabilities or obligations which have accrued or arisen prior to such termination, or which accrue pursuant to paragraph 21.3 as a result of such termination, and obligations to insure and indemnify), upon the occurrence of any of the following events:

The items that would breach the contract would always be spelled out in the agreement.

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The termination clause usually defines compensation to be paid to the agent under the circumstances of the termination.

Section 21.3 of the sample reads:

21.3 Termination Compensation _____ Month Minimum

If (i) Owner terminates this Agreement before the end of the initial term of any subsequent term year as provided in paragraph 21.1 above for any reason other than for a breach by Agent under paragraph 21.2(a) above, or if (ii) Agent terminates this Agreement for a breach by Owner under paragraph 21.2(a) above or pursuant to the provisions of paragraphs 21.2(b) or 21.2(d) above, then in any such event, Owner shall be obligated to pay Agent as liquidated damages an amount equal to the management fee earned by Agent, as determined under paragraph 17.1 above, for the calendar month immediately preceding the month in which the notice is given to Agent or to Owner, multiplied by the number of months and/or port....

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The termination generally dictates that the owner assumes any obligations in place at the time of termination and his responsibility to compensate agent for those obligations.

Section 21.4 of the sample reads:

21.4 Owner Responsible For Payments

Upon termination of or withdrawal from this Agreement, Owner shall assume the obligations of any contract or outstanding bill executed by Agent under this Agreement for and on behalf of Owner and responsibility for payment of all unpaid bills. In addition, Owner shall furnish Agent security, in an amount satisfactory to Agent, against any obligations or liabilities which Agent may have properly incurred on Owner's behalf under this Agreement.

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Should the owner sell the property during the management agreement that contingency should also be planned for in the termination clauses.

Section 21.5 of the sample reads:

21.5 Sale of Premises

In the event that the Premises are sold by Owner during the period of this Agreement, Agent shall have exclusive rights of representation in the sale as stated in a specific sales agreement to be negotiated separately. Upon transfer of ownership, this Agreement shall terminate by mutual consent of Owner and Agent under the terms and conditions set forth below. **In the event of any sale, the Agent shall receive a _____% sales commission based on the gross sales price. This exclusive right-to-sell shall survive the termination of this agreement for 120 days.**

Section 1 – Part 3

SLIDE 1

Indemnification

All property management agreements will include sections that address what the management company can and cannot be held liable for.

Indemnify: *To compensate for loss or damage; to provide security for financial reimbursement to an individual in case of a specified loss incurred by the person.*

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It's important that indemnification clauses are included within the agreement. Liability could quickly overtake any benefit of the contract.

Section 13 of the sample reads:

SECTION 13 SAVE HARMLESS

Owner shall indemnify, defend, and save Agent harmless from all loss, damage, cost, expense (including attorneys' fees), liability, or claims for personal injury or property damage incurred or occurring in, on, or about the Premises.

SLIDE 3

Boiler plate legalese

In addition to specific information found in the agreement you will also find standard clauses related to legal protections for activities that could arise out of the performance of the contract.

We'll look at a sampling of those found within the sample agreement. You may see many more in use throughout property management agreements.

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You may find a section that covers indemnification after termination.

Section 22 of the sample reads:

SECTION 22 INDEMNIFICATION SURVIVES TERMINATION

All representations and warranties of the parties contained herein shall survive the termination of this Agreement. All provisions of this Agreement that require Owner to have insured or to defend, reimburse, or indemnify Agent (including, but not limited to, paragraphs 2.1, 2.3, 5, 8.4, 9.2, 9.5, 13, 14, 15, 16, 17.7, 20, 21.3, and 21.4) shall survive any termination; and if Agent is or becomes involved in any proceeding or litigation by reason of having been Owner's Agent, such provisions shall apply as if this Agreement were still in effect.

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A common boilerplate clause is – **Force Majeure**

Frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or an event described by the legal term act of God.

SECTION 24 FORCE MAJEURE

Any delays in the performance of any obligation of Agent under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Agent, and any time periods required for performance shall be extended accordingly.

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Another very common clause is the "COMPLETE AGREEMENT" clause. It effectively means: *anything the parties may actually have agreed upon, but is not written down in the contract, is null and void.*

SECTION 25 COMPLETE AGREEMENT

This Agreement, including any specified attachments, constitutes the entire agreement between Owner and Agent with respect to the management and operation of the Premises and supersedes and replaces any and all previous management agreements entered into or/and negotiated between Owner and Agent relating to the Premises covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Agent

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Most contracts include a “NOTICES” clause. This effectively states that any obligations and reports required by the contract must be in writing, who is to receive it and at what address it is to be sent.

SECTION 28 NOTICES

Any notices, demands, consents, and reports necessary or provided for under this Agreement shall be in writing and shall be addressed as follows, or at such other address as Owner and Agent individually may specify hereafter in writing:

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This has been a small sampling of clauses you will likely see in contracts.

Other common boiler plate items you might see include:

- Assignment
- Attorney Fees
- Governing Law and Venue

Waivers

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To sum up the discussion on Property Management you should understand that the primary duty of the property manager is to protect the owner's investment and maximize the return on the owner's investment.

SLIDE 10 - Real Estate Brokerage – Property Management, Appraisal

If you recall from the key words:

Appraisal - Appraisal is a valuation of property by the estimate of an authorized person.

For the appraisal to be valid, the appraiser must maintain a license from the regulatory body having jurisdiction where he/she operates.

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There are many circumstances that would drive the need for a property to be appraised:

- Residential and Commercial valuation estimates
- Estate planning and estate settlements
- Tax assessment review and advice
- Eminent domain transactions - this might include property condemnation actions
- Dispute resolution - including divorce, estate settlements, property partition suits, foreclosures, and zoning issues
- Expert witness testimony
- Market rent and trend studies

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State-certified, licensed and registered appraisers are regulated by the Florida Real Estate Appraisal Board.

Per 475.612(1) of the Florida Statutes:

A person may not use the title “certified real estate appraiser,” “licensed real estate appraiser,” or “registered trainee real estate appraiser,” or any abbreviation or words to that effect, or issue an appraisal report, unless such person is certified, licensed, or registered by the department under this part.

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Real estate licensees may appraise real property provided they do not represent themselves as state-certified, registered or licensed appraisers.

Per 475.612(2) of the Florida Statutes:

This section does not preclude a Florida licensed real estate broker, sales associate, or broker associate who is not a Florida certified or licensed real estate appraiser from providing valuation services for compensation. Such persons may continue to provide valuation services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.

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Uniform Standards of Professional Appraisal Practice (USPAP) can be considered the quality control standards applicable for real property, personal property, intangible assets, and business valuation appraisal analysis and reports in the United States and its territories.

Real estate licensees must comport to USPAP when conducting appraisals of real property.

USPAP website [link](#).

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Comparative Market Analysis (CMA)

A CMA is an estimate of a property's value done by a licensed real estate broker to establish a listing or offer price for a seller.

The Primary difference between a CMA and a real estate appraisal is that one is done by your real estate broker and the other is done by a licensed real estate appraiser.

CMAs are exempt from USPAP.

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Broker Price Opinion (BPO)

Much like a CMA a BPO is also an estimate of a property's value by a licensed real estate broker.

A BPO is initiated by a financial institution, banks or mortgage companies, to determine the potential selling price or estimated value of a real estate property.

A BPO is a lower cost alternative to a full appraisal report.

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Ethics rule of USPAP

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics.

The rule is divided into four sections:

- Conduct
- Management
- Confidentiality
- Record Keeping

For specific reading of the USPAP Ethics rule go to uspap.org and turn to page 8.

SLIDE 18 - Real Estate Brokerage – Financing

There is a separate but essential business integral to real estate sales.

Financing!

Buying a home is likely the most financially traumatic experience a prospective homeowner will endure.

The marketplace is diverse with banks and mortgage companies ready to provide residential or other property purchase funds to qualified buyers.

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With modern homes pricing in the hundreds of thousands of dollars, a solid source of financing is crucial.

In Florida, mortgage financing can be found in many places:

- Commercial Banks
- Mortgage Lenders
- Mortgage Brokers
- Loan Originators

Lenders are able to assist real estate brokers, agents, buyers and sellers, navigate the complexity of mortgage financing.

In a later lesson we will expand on the mortgage lending business and look at the various financing programs including FHA, VA, USDA, Fannie Mae, Ginnie Mae and Freddie Mac.

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The mortgage lending business is a service industry that deals with a very complex subject.

It's imperative that practitioners understand the business and are able to counsel real estate professionals and consumers accordingly.

Training and experience is fundamental to developing expertise in the subject.

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The Division of Consumer Finance licenses and regulates non-depository financial service industries and individuals and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

For mortgage providers these include:

- Loan Originators
- Mortgage Brokers
- Mortgage Lenders

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Loan Originators - Chapter 494, Florida Statutes:

The license is required for an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a non-institutional investor for compensation or gain.

The term includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Mortgage Licensing Act of 2008.

The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.

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Mortgage Broker/Branches - Chapter 494, FL. Statutes:

The license is required for an entity conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.

Mortgage Broker Branch: This license is required for mortgage broker licensees who conduct business at locations other than their principal place of business:

- The address of which appears on branch business cards, advertising or stationary for the location.
- Advertising materials suggest mortgage loans are originated, negotiated or funded at that location.
- Where mortgage loans are originated or negotiated by a licensee.

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Mortgage Lender - Chapter 494, FL. Statutes:

This license is required for an entity making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a non-institutional investor.

"Making a mortgage loan" means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.

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Mortgage Lender - Chapter 494, FL. Statutes:

Mortgage Lender Servicer: The mortgage lender servicing license is required for any mortgage lender licensee who services a mortgage loan.

"Servicing a mortgage loan" means to receive, cause to be received, or transferred for another, installment payments of principal, interest, or other payments pursuant to a mortgage loan.

The servicing license authorizes a mortgage lender to service a loan for more than 4 months.

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Mortgage Lender Branch - Chapter 494, FL. Statutes:

This license is required for mortgage lender licensees who conduct business at locations other than their principal place of business:

- The address of which appears on branch business cards, advertising or stationary for the location.
- Advertising materials suggest mortgage loans are originated, negotiated or funded at that location.
- Where mortgage loans are originated or negotiated by a licensee.

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Mortgage Lender Servicer Branch – Chapter 494, FL. Statutes:

This license is required for mortgage lender servicer licensees who conduct business at locations other than their principal place of business:

- The address of which appears on branch business cards, advertising or stationary for the location.
- Advertising materials suggest mortgage loans are originated, negotiated or funded at that location.
- Where mortgage loans are originated or negotiated by a licensee.

SLIDE 28 - Real Estate Brokerage – Counseling

Real estate counseling requires specific technical competency coupled with thoughtful analysis, and discriminating inquiry, with the end goal of achieving the best results for a client of the service.

A Real Estate Counselor is the junction between defining and understanding the problem, and developing a solid solution with measurable economic value.

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Being a real estate counselor demands extensive knowledge and expertise in many areas including:

- Financing
- Valuation and appraisal
- Acquisitions and dispositions
- Brokerage
- Public/Private Partnerships
- Eminent domain
- Asset management
- Tax consulting
- Corporate real estate strategy
- Joint ventures

This is only a small sampling of the expertise required to be a real estate counselor. If you are considering counseling as something to pursue as a career, go to The Counselors of Real Estate website: <http://www.cre.org/>