

SLIDE 1 – COVER PAGE

SLIDE 2 – TOPICS

In this section we will cover the following topics:

- I. Disciplinary Procedure
- II. Commission meeting
- III. Violations and Penalties
- IV. Real Estate Recovery Fund

SLIDE 3 – LEARNING OBJECTIVES

Upon completion of this lesson, you should be able to:

- Explain the procedures involved in the reporting of violations, the investigation of complaints and the conduct of hearings
- Define the elements of a valid complaint
- Discuss the composition of the probable-cause panel
- Recognize events that would cause a license application to be denied
- Distinguish actions that would cause a license to be subject to suspension or revocation
- Identify individuals who would be eligible and the procedure to seek reimbursement from the Real Estate Recovery Fund

SLIDE 4 – LEARNING OBJECTIVES – (continued)

- Identify individuals who are not qualified to make a claim from the Real Estate Recovery Fund
- Describe the monetary limits imposed by law on the Real Estate Recovery Fund
- Explain the penalty for a first and second degree misdemeanor and what real estate activities are first degree misdemeanors
- Provide Examples of Unlicensed Practice of Law
- Illustrate Presumptions for a Party Performing Real Estate Services

SLIDE 5 – KEY TERMS

Here are some key terms we'll encounter in this lesson:

- **Breach of trust** – Failure to carry out fiduciary duties
- **Citation** – Issued to subject of complaint; includes statement of complaint, law violated, imposed penalty, with option to dispute; becomes final order if lack of dispute
- **Complaint** – A claim of dissatisfaction against a real estate professional
- **Commingle** – Mix broker's personal funds with funds belonging to someone else in escrow account
- **Concealment** – Not disclosing information or material facts

SLIDE 6

- **Conversion** – Broker's personal use or misuse of money belonging to others
- **Culpable negligence** – Criminal offense of gross acts of negligence that expose others to harm or threat of harm
- **Formal or administrative complaint** – Contains allegations of facts and related charges against a broker
- **Fraud** – Deceit, trickery, breach of confidence for profit or to gain unfair advantage
- **Legally sufficient** – Containing ultimate facts that violation occurred

SLIDE 7

- **Mediation** – Informal process conducted by unbiased third party to reach an agreeable settlement of a complaint
- **Misrepresentation** – A false statement that induces a party to enter into a contract
- **Moral turpitude** – Conduct contrary to community standards of justice, honesty, or good morals
- **Notice of noncompliance** – Issued by DBPR as first response to a minor violation by a licensee, such as failure to maintain the office entrance sign as required and others listed in 61J2-24.003
- **Probable cause** – Reasonable grounds for prosecution

SLIDE 8

- **Recommended order** – Issued by administrative law judge to include findings and recommended penalty
- **Stipulation** – DRE attorneys and licensee agree to case facts and penalty
- **Subpoena** – Direct written order to appear at a certain time and place to testify
- **Summary suspension order** – Issued when serious violation justifies immediately suspending licensee prior to hearing
- **Voluntary relinquishment for permanent revocation** – Method of settlement offered in response to or anticipation of charges filed against licensee

SLIDE 9 – Disciplinary Procedure

In this section we'll look at the procedures the DRE must undertake to address consumer complaints through investigation and determination of violations and penalties. Complaints against brokers and sales people happen frequently and the statutes are specific as to the steps necessary to bring each to a legal and administrative conclusion.

SLIDE 10

The Complaint – 455.225(1)(a)

Complaints against real estate licensees must be filed with the Department of Business and Professional Regulation.

Complaints must be filed in writing and be legally sufficient.

In other words, the complaint must allege that some violation of Florida Statute, DBPR or FREC rule has occurred.

SLIDE 11

The Complaint – F.A.C. 61J2-24.003(1)

In cases where the complaint is a minor violation, the DBPR may simply issue a Notice of Non-Compliance for first-time offenders.

A violation is considered a minor if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. F.A.C. 61J2-24.003(1)

The statute gives very specific examples of minor infractions such as “Failure to register Trade name” and “failure to maintain the office entrance sign as required.”

SLIDE 12

DBPR conducts investigation– 455.225(1)(a)

The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true.

SLIDE 13

DBPR conducts investigation– F.S. 455.225(1)(a)

In some cases, a complainant may withdraw their complaint.

The department has the discretion to continue with the investigation if they suspect violations have occurred.

SLIDE 14

DBPR conducts investigation– F.S. 455.225(1)(c)

When an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject’s attorney a copy of the complaint or document that resulted in the initiation of the investigation.

The department may conduct the investigation without notification to any subject if the act under investigation is a criminal offense.

SLIDE 15

DBPR conducts investigation– F.S. 455.225(2)

When its investigation is complete and legally sufficient, the department shall prepare and submit to the FREC the department’s investigative report.

The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause.

SLIDE 16

Probable Cause Panel– F.S. 455.225(4)

The chairperson of the department shall appoint two FREC members to a probable cause panel to review the investigative report and determine if probable cause exists and further action on the complaint is warranted.

Of the two members, one may be a former board member. That member must hold a current real estate license.

SLIDE 17

Probable Cause Panel– F.S. 455.225(4)

Should the panel determine further investigation is needed, it must make the request within 15 days of receiving the investigative report.

The panel shall make its determination of probable cause within 30 days of receiving the investigative report.

SLIDE 18

Letter of Guidance – F.S. 455.225(4)

Should the panel determine that no probable cause exists it has two options:

1. Dismiss the case
2. Issue a letter of guidance to the subject of the investigation

SLIDE 19

Administrative complaint is filed – F.S. 455.225(4)

Should the panel determine there is probable cause, the department will file an administrative (or formal) complaint against the licensee.

The licensee is entitled to an informal or formal hearing.

A formal hearing is before an administrative law judge where an informal hearing is before the FREC, normally held during a regular meeting of the commission.

The department will notify the licensee of the formal complaint and issue an Election of Rights form that spells out the hearing process and the subject's rights.

SLIDE 20

Administrative complaint is filed – F.S. 455.225(4)

If there is no dispute of material fact the case can be presented in an informal hearing before the FREC.

If the licensee disputes any of the material facts of the complaint, he or she must request a formal hearing to present their case.

The licensee is entitled to have legal counsel at these proceedings.

SLIDE 21

Administrative complaint is filed – F.S. 455.225(4)

The licensee may agree to the case being ended by stipulation.

This is where the DRE attorneys and the licensee agree to the facts of the case and subsequent penalty.

The licensee may also choose to do a Voluntary Relinquishment for Permanent Revocation.