

SLIDE 28 – Violations and Penalties

Remember the old adage, “Ignorance of the law is no excuse”? That applies in spades to the real estate business. To ensure you are above board and within law in everything you do, it’s crucial that you familiarize yourself with the applicable statutes and codes that regulate the industry.

In this section we’ll take a quick look at some violations and possible penalties that could be imposed—some very severe.

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Grounds for license denial— F.S 475.17; 475.25; 455.227

- Failure to meet basic licensure requirements: age, education, good character, honest, fair, competent
- Acting as broker or sales associate in the year prior to applying for license
- Failure to complete/correct application
- Failure to pay applicable fees
- Failure to successfully complete exam
- Cheating on exam
- Violations of F.S. 475 or F.S. 455

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Refusal to renew license— F.S 475.17; 475.25; 455.227

- Failed to file proper renewal application within time limits
- Failure to pay fee
- Failed to meet educational requirements
- Being investigated in another state for an act that would be a violation of Florida law.
- Violations of F.S. 475 or F.S. 455

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License suspension— F.S 475.17; 475.25; 455.227

The commission can suspend a license for up to 10 years for a first-offense violation of any provision of F.S. 455.227(1); 475.25 or 475.42.

This would include things like:

- Misleading, deceptive, or fraudulent real estate practices
- Crime related to practice of real estate
- Failure to comply with certain educational requirements
- Filing false complaint against another licensee
- Fraud or bribery in obtaining or renewing license

- Dishonesty or trickery in business transaction
- Violation of practice duties
- False, deceptive advertising
- Failure to deliver personal property at agreed-upon time

Licensees may not engage in any practice of real estate with a suspended license.

The licensee is obligated to complete education requirements and renewals during the suspension period.

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License revocation– F.S 475.17; 475.25; 455.227

In more serious cases the FREC is authorized to revoke a license which is a permanent action.

There are exceptions:

1. Filed for renewal without complying with the continuing or post- licensing education requirement.
2. Filed an application for licensure which contained false or fraudulent information.

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License revocation– F.S 475.17; 475.25; 455.227

Licensees covered by the exceptions may not apply for a sales associate's license for a period of five years after the revocation.

The commission has the discretion to decree a lesser period should there be mitigating circumstances provided.

This is referred to as **revocation without prejudice**.

If the license of an active broker is revoked all sales associates and broker associates licenses will be moved to involuntarily inactive status.

If a partnership or corporation, they must re-qualify with a new broker partner. In the interim no real estate business may be conducted.

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Citations – F.A.C. 61J2-24.002

For minor infractions the Division of Real Estate (DRE) may issue a simple citation.

The licensee has 30 days to pay the citation or request a hearing.

If the licensee doesn't pay the fine within 30 days the DRE may impose additional penalties.

Example from 61J2-24.002(e)

| Violation | Penalty |
|--|------------|
| 475.22(2) Failed to register an out of state Florida broker's office | \$500 fine |

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Fines – F.S. 475 and 455

The commission may impose an administrative fine not to exceed \$5,000 for each count or separate offense to the applicable 475 and 455 statutes.

All moneys collected from fines imposed by the commission and collected by the department shall be transferred into the Real Estate Recovery Fund.

F.S. 475.482(4)

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Probation – F.S. 475 and 455

The commission may order probation as a penalty. The probation period is for 90 days and should start within 30 days of the final order issuance.

The commission may also add requirements to the probation such as training and/or audits which must also be completed within the probation period.

The licensee on probation is prohibited from performing any real estate business during the probation period.

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Notice of non-compliance – F.A.S 61J2-24.003

A violation is considered a minor violation 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.

This section spells out the specific violations considered to be minor where the DBPR can send out a notice of noncompliance for an initial offense.

The notice shall be delivered by certified mail, restricted delivery or personal service. .

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Mediation – F.A.S 61J2-24.004

“Mediation” is a process, pursuant to F.S. 455.2235, whereby a mediator, appointed by the DBPR, acts to encourage and facilitate resolution of a legally sufficient complaint.

Mediation is an acceptable method of dispute resolution for these violations:

- Failure to maintain office or sign (F.S. 475.22)
- Failure to register branch office (F.S. 475.24)
- Failed to deliver to a licensee a share of a real estate commission if the licensee has obtained a civil judgment (F.S. 475.25(1)(d))

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Disciplinary Guidelines – F.A.S 61J2-24.001

The Commission sets forth in this section of the administration code a set of disciplinary guidelines for penalties to be imposed upon licensees guilty of violating F.S. 455 or 475.

These rules do not preclude any discipline imposed upon a licensee pursuant to a stipulation or settlement agreement.

The range of penalties set forth in this guideline shall not preclude the Probable Cause Panel from issuing a letter of guidance.

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Consider this examples from 61J2-24.001(d)

| Violation | First violation | Second violation |
|--|---|--|
| Section 475.25(1)(c) False, deceptive or misleading advertising | \$250 to \$1,000 administrative fine and 30-90 day suspension | \$1,000 to \$5,000 administrative fine and 90 day suspension to revocation |

Suppose for a minute you knew another agent in your brokerage violated a 475 statute.

Per 475.42(1)(k) the FREC would be within their legal right to fine you up to \$1,000 and suspend your license for failing to disclose that information. Do it a second time and you could permanently lose your license.

| Violation | First violation | Second violation |
|---|---|---|
| Section 475.42(1)(k) No person shall knowingly conceal information relating to violations of Chapter 475, F.S. | \$250 to \$1,000 administrative fine and suspension | \$1,000 to \$5,000 administrative fine and suspension to revocation |

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Penalties for violation of law– F.S. 775.082 and 775.083

The DRE and FREC cannot impose prison sentences. However, the commission is responsible for informing the legal authority of jurisdiction of criminal violations of the statutes relating to real estate practice.

A court of law would then decide if further criminal penalty is warranted.

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Penalties for violation of law– F.S. 775.082 and 775.083

Most violations of Chapter 475 are considered **Second Degree Misdemeanors**.

The listed penalties are:

- Imprisonment not exceeding 60 days (775.082)
- Fine of \$500 (775.083)

These fines are criminal, not administrative.

Note that an imprisonment penalty cannot be imposed on a corporation. – only the criminal fines.

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Penalties for violation of law– F.S. 775.082 and 775.083

Any licensee who fails to provide accurate and current rental information for a fee is guilty of a **First Degree Misdemeanor**.

The listed penalties are:

- Imprisonment not exceeding 1 year (775.082)
- Fine of \$1,000 (775.083)

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Civil Penalties –

Buyers and/or Sellers may file a civil action against real estate brokers should they believe they have been victimized by that broker.

The commission lacks the authority to force brokers to return commissions paid to sales agents, however the courts can and do make such orders.

Additionally, courts may decide that the broker is liable and must pay additional damages.

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Third degree felony – F.S. 475.42(1)(a)

A person may not operate as a broker or sales associate without being the holder of a valid and current active license.

Violation of this rule is a third degree felony punishable by:

- Imprisonment not exceeding 5 years (775.082)
- Fine of \$5,000 (775.083)

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Third degree felony – F.S. 455.2275

A person may not knowingly give false information with the intent to mislead to department in the course of applying for or obtaining a license.

Violation of this rule is a third degree felony punishable by:

- Imprisonment not exceeding 5 years (775.082)
- Fine of \$5,000 (775.083)