

# Larson

EDUCATIONAL SERVICES

Florida Real Estate, CAM and Mortgage School



# 14 Hour Florida Real Estate CE eBook

Correspondence  
Course



**Rick Larson**

2020 Edition

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## **Real Estate Courses at Larson Educational Services**

Welcome to Larson Educational Services. It is our goal to make your experience with us both educational and enjoyable. Please take a moment to review the following Frequently Asked Questions, course completion requirement, as well as the information about school policies.

### **What is my continuing education requirement?**

you are required to complete 14 hours of Florida real estate continuing education during every two-year license period thereafter.

Three hours must be *Florida Core Law*, three hours must be *Business and Real Estate Ethics*, and eight hours can be from Specialty Credit courses.

### **Must I pass an exam in order to complete my continuing education requirement?**

The passing of an exam is only required when completing continuing education either online or via correspondence. There is NO EXAM when completing continuing education in the classroom.

### **How do I renew my license once I have completed the Continuing Education?**

Larson Educational Services is required to notify the DBPR within 30 days of course completion. You will receive a Certificate of Completion at the conclusion of each course and we report completion to DBPR electronically on Monday, Wednesday and Friday of every week.

Prior to your initial license expiration date, you will need to visit [www.myfloridalicense.com](http://www.myfloridalicense.com) and follow the directions to renew your license.

### **How much does it cost to renew my license?**

The typical cost to renew is \$64 for Sales Associates and \$72 for Brokers. However, effective July 1, 2019 renewal fees have been reduced to \$32 for Sales Associates and \$36 for Brokers. This temporary reduction will be effective through March 31, 2021. To renew your license, visit the DBPR website-[www.myfloridalicense.com](http://www.myfloridalicense.com).

### **Can I carry over continuing education credits between renewals?**

No. After each renewal you must complete 14 hours of continuing education in the following 2-year license period. Any credits earned over 14 hours will be forfeited upon license renewal.

### **What happens if I do not complete the required continuing education prior to the expiration date?**

Your license status will become involuntarily inactive. During the inactive period you may not perform real estate services. To activate the license, you will need to complete the 14 hours of continuing education and renew your license with the DBPR by paying the license renewal fee (\$32 for Sales Associates and \$36 for Brokers) and a \$25 late fee within 12 months from the date of your license expiration date.

## **IMPORTANT TELEPHONE NUMBERS AND WEBSITES:**

### **Larson Educational Services**

[www.Larsoned.com](http://www.Larsoned.com)

Fort Myers telephone..... 239-344-7510

Toll-free telephone..... 1-866-373-4436

**Dept. of Business & Professional Regulation** 1-850-487-1395

To reach an operator quickly press: 4, 4, 2, 1

## **LARSONTRAK:**

**Visit: [www.Larsoned.com](http://www.Larsoned.com) and click the 'LarsonTrak Student Login' link.**

The LarsonTrak student portal gives you access to:

- Your current and past classes
- Attendance records
- Course completion certificates
- Automatic personalized reminders for future education and license renewal requirements
- And much more!

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# Unit 1

## FLORIDA CORE LAW

### Key topics in this unit:

- Legislative Issues
- Statewide Water Policy
- Homestead and Save Our Homes Portability

## UNIT 1 Core Law

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### Florida Resources for Licensees

**Division of Real Estate** <http://www.state.fl.us/dbpr/>

This Web site features information regarding records, licensing, education and enforcement of Chapter 475, F.S. You'll also find disciplinary activity reports.

**Online Sunshine** <http://www.leg.state.fl.us>

This official Web site of the Florida government offers additional contact information about your legislators, along with the Legislature's daily calendars and journals, statutes, the Florida Constitution, a list of government agencies, and economic and demographic information. The site also offers text of all bills, staff summaries and general information about the governor, Cabinet, judicial branch, House and Senate.

**Legislative Information Division** <http://leg.info@leg.state.fl.us>

E-mail your questions about Florida government. The division promises to respond within three working days. You may also call the division toll-free at 800.342.1827.

**State government** <http://www.myfloridalicense.com>

The State of Florida's place in cyberspace offers an array of information and services—from downloadable forms (including applications for a real estate license and government appointments) to contact information for every state agency, legislative news and a link to the governor's office.

**Chapter 475** <http://www.leg.state.fl.us/statutes>

This official website of the state legislature includes all Florida statutes. Chapter 475 is located in Title XXXII.



# Legislative Update

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## Remote Online Notarization

Effective January 1, 2020

Anyone can now buy or sell real estate, sign and notarize documents, or set up Wills to protect their loved ones entirely online.

Provides a convenient, on-demand closing experience for buyers and sellers located anywhere in the world.

Specifically, the bill provides:

- Definitions for online notarization and the required technology;
- Procedures, standards, and requirements for online notarization;
- Minimum technology requirements
- Registration requirements for online notaries;
- High threshold of authentication
- Minimum technology requirements
- Registration requirements for online notaries;
- High threshold of authentication
- An online notary may charge a fee of up to \$25, in addition to the regular notary fee

The authorized remote notary public must be located within the State of Florida  
No other locational requirements

## Building Permits

### Complications From Expired Permits

- Problems with unpermitted work and the existence of expired permits.
- Permits often expire because the required inspections have not been completed even though the work is completed.
- These expired permits can prevent the homeowner from selling their property, obtaining new permits to do additional construction, or subject the owner to possible fines.

### NABOR Contract

i. **PERMITS AND VIOLATIONS:** SELLER does not know of any improvements to the Property which were made without proper permit(s) or certificate(s) of occupancy/substantial completion (where required), of any existing violations of local ordinances or codes, or of any pending code enforcement violations or proceedings affecting the Property. If the Property is located in unincorporated Collier County, SELLER and BUYER acknowledge receipt of the Collier County Code Compliance Residential Program brochure.

### FAR/BAR Contract

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

Effective October 1, 2019 local governments MAY:

- *Notify the owner of the property listed on a building permit, and the contractor who was issued the permit, that a building permit is about to expire.*
- *If the local government decides to send the notice, it must send the notice no less than 30 days before the permit expires.*
- *Close a building permit 6 years after the issuance of the permit, and even in the absence of a final inspection, if the local enforcement agency determines that there are no apparent safety hazards*

Effective October 1, 2019 local governments MUST:

- *Close a permit in accordance with the building code in effect when the building department received the permit application regardless of whether the permit has expired*

Effective October 1, 2019 local governments MAY NOT:

- *Penalize an arms-length purchaser solely because a previous owner failed to close a building permit for the property.*
- *Deny a contractor a permit solely because the contractor has expired building permits.*



## RESIDENTIAL BUILDING PERMIT APPLICATION

New  Replacement

Property Owner: \_\_\_\_\_ Permit #: \_\_\_\_\_  
 STRAP #: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Unit: \_\_\_\_\_  
 Job Address: \_\_\_\_\_ Subdivision: \_\_\_\_\_

Directions to job: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Contractor Business Name / Applicant Name : \_\_\_\_\_  
 License Number: \_\_\_\_\_ Phone : \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 Permit Requested: \_\_\_\_\_  
 Construction Value: \$ \_\_\_\_\_ \*If over \$2500 a NOC and Building Addendum is required.  
 Estimated Sq.Ft: \_\_\_\_\_

Are you using Private Provider services for Plan Review?  No  Yes Inspections?  No  Yes

### SUB INFORMATION

Elec. Amps: _____	A/C: Seer: _____	KW: _____	Tons: _____
Plumbing: <input type="checkbox"/> No <input type="checkbox"/> Yes	A/C Duct Only: <input type="checkbox"/> No <input type="checkbox"/> Yes	Construction Details Mastered? <input type="checkbox"/> No <input type="checkbox"/> Yes	
<input type="checkbox"/> Water <input type="checkbox"/> Well / <input type="checkbox"/> Septic: <input type="checkbox"/> Sewer	Master #: _____		
Shutters: <input type="checkbox"/> No <input type="checkbox"/> Yes	Aluminum Construction: <input type="checkbox"/> No <input type="checkbox"/> Yes	County-Maintained Road: <input type="checkbox"/> No <input type="checkbox"/> Yes	
Roof: _____	Driveway: <input type="checkbox"/> Single or <input type="checkbox"/> Double		
Fire Sprinklers/Alarm: <input type="checkbox"/> No <input type="checkbox"/> Yes			
LPG / Natural Gas: <input type="checkbox"/> No <input type="checkbox"/> Yes			

### SITE FILL GRADING AFFIDAVIT

If this project is not in a subdivision subject to a current (active) Development Order, will the final grade of the lot on this project exceed 18 inches above the crown of the road or any adjacent developed lot?

YES  NO

If YES, a Site Grading Plan complying with the LDC Section 34-3104 must accompany the permit application.

### DUPLEX RULES FOR DRIVEWAYS, LANDSCAPING & IRRIGATION

Permits for a duplex (two family or single family attached), and not in a subdivision subject to a current (active) Development Order, will be required to comply with the LDC Section 34-3107 & 34-3108, paved driveways, landscaping and irrigation.

Owner/Authorized Agent: \_\_\_\_\_ Date: \_\_\_\_\_

THIS PERMIT IS VOID IF THE FIRST INSPECTION IS NOT MADE WITHIN SIX (6) MONTHS FROM THE DATE ISSUED OR IF NO INSPECTION HAS BEEN MADE FOR A PERIOD OF SIX (6) MONTHS FROM THE MOST RECENTLY PASSED INSPECTION. THE PERMIT IS VOID IF THE ZONING CLASSIFICATION IS VIOLATED. APPLICANT AGREES TO COMPLY WITH THE SANITARY REGULATIONS AND UNDERSTANDS THAT THE PROPOSED STRUCTURE MAY NOT BE USED OR OCCUPIED UNTIL AN APPROVED CERTIFICATE OF OCCUPANCY IS ISSUED. APPLICANT FURTHER UNDERSTANDS THAT FAILURE TO OBTAIN PERMIT OR MISREPRESENTATION OF THE IMPROVEMENTS IS A MISDEMEANOR AND UPON CONVICTION, APPLICANT CAN BE PUNISHED AS PROVIDED BY THE LAW. FAILURE TO COMPLY WITH THE MECHANICS LIEN LAW CAN RESULT IN THE PROPERTY OWNER PAYING TWICE FOR IMPROVEMENTS.

I hereby certify that to the best of my knowledge, the information submitted for this permit is true & correct, & complies with Deed of Restrictions.

Signature Authorization: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

### **License renewal fees cut in half**

Effective from September 30, 2019 renewal through March 31, 2021

- Active broker renewal fee ~~\$72~~ to \$36
- Sales associate or broker branch office renewal fee ~~\$64~~ to \$32
- Politicians taking credit for \$8.8 million reduction to the industry

### **Third commercial lease tax reduction effective January 1, 2020**

- Commercial lease sales tax was charged at the rate of 6% on gross lease revenues.
- 1/1/18: Commercial lease sales tax rate is 5.8%, saving the average small tenant approximately \$4/month
- 1/1/19: New lease sales tax rate is 5.7%, saving an additional \$2/month
- 1/1/20: New lease sales tax rate is 5.5%, saving an additional \$4/month

### **Ethics continuing education requirement**

61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees

(2)(b) Licensees must take the 3-hour **Core Law** course at least once during each licensure renewal period. A licensee who takes the 3-hour Core Law course in each year of the renewal period shall be allowed a total of 3 hours of Core Law education and 3 hours of specialty education toward the 14-hour requirement. Beginning with licensees that expired on September 30, 2018 and thereafter, licensees must also take the 3-hour **Business Ethics** course once during each licensure renewal period. Licensees who complete the Core Law course and Ethics and Business Practices course will receive 6 hours credit toward the 14-hour requirement.

## **SB 10 Water Resources**

\$1.5 billion plan to restore Lake Okeechobee and the Everglades by building one or two reservoirs south of the lake.

### **Water must go south from Lake Okeechobee to the Everglades**

When the dam was built around Lake Okeechobee in 1930 it **stopped the flow of water** from the Lake to the Everglades, the River of Grass. Now the Everglades only gets 13% of the water from Lake Okeechobee while the Everglades Agricultural Area (EAA), 700,000 acres south of the Lake, mostly sugar cane, gets the perfect "water supply" of 23% of the Lake's water.

The US Army Corps of Engineers and the South Florida Water Management District who control the inflows and outflows to the Lake dump the majority of the Lake water, 64%, to the Atlantic Ocean and Gulf of Mexico polluting the coastal estuaries on the way. In a typical year the estuaries get a discharge of 488 billion gallons from the Lake. That's water that used to flow south to the Everglades.

The Lake can't flow south because agriculture (sugar and citrus) controls the outflows from the Lake to their farms for "water supply" and discharge their polluted stormwater to the Everglades to maintain perfect "flood protection" for their crops. In 1993 the State settled a federal lawsuit by the Everglades National Park to clean up this polluted runoff from the EAA and we, the State, built 55,000 acres of Stormwater Treatment Areas (STAs) at a cost of \$ 1.2 Billion. The water going from the EAA into the Everglades is still not clean enough and a court settlement in 2011 requires the State to build "Restoration Strategies" at a cost of \$880 Million to clean up more of the EAA runoff.

### **The Impact of Water Quality on Florida's Home Values**

A decrease in (water quality) throughout the Caloosahatchee Estuary reduces Lee County's aggregate property value by an estimated \$541 million NOTE: 2013 statistics pre-media

## **U.S. Sugar Deal**

- 2008: \$1.75 billion plan to save the Everglades by buying out a major landowner, United States Sugar
- 2009: The proposal was downsized to purchase only 72,800 acres of United States Sugar's land for \$536 million (\$7,360 / acre).
- The company would stay in business, keep farming all of the land for 7 years and the state would retain the option of buying the remaining 107,000 acres at a future date.
- 2016: In May, the South Florida Water Management District board voted unanimously to terminate its option to buy 48,600 acres of U.S. Sugar Corp. land south of Lake Okeechobee for use as a water storage area.
- The water management district had been in favor of the plan until recently, but Big Sugar's plans changed

## **U.S. Sugar plans development on land Florida wanted for Everglades restoration**

The land that U.S. Sugar wants to designate for development is the same land that Florida officials have an option to buy for Everglades restoration. If the sugar companies' development plan is approved, that land would be worth a lot more — making it more expensive for the state to purchase.

- U.S. Sugar has mapped out a way to turn itself into one of Florida's biggest developers – Sugar Hill.
- On 67 square miles (42,800 acres; keeping 65,000 acres for production) of sugar land, U.S. Sugar and Hilliard Brothers of Florida, another sugar company with adjoining property, have joined forces on a project that would plop down 18,000 homes (54,000 population) and 25 million square feet of stores, offices, warehouses and other commercial buildings

**SB 10 Establishes options for providing additional water storage south of Lake O, including:**

- EAA reservoir project goal of minimum of 240,000 acre-feet of water storage **(NOTE: One acre-foot of water equals 325,851 billion gallons of water)**; and
- C-51 reservoir project with the goal of providing approximately 60,000 acre-feet of water storage.
- Authorizes negotiating the amendment or termination of state leases on lands within the EAA for exchange or use and to contact other lessors and landowners to express interest in acquiring land through the purchase or exchange of lands or by the amendment or termination of lease agreements.
- Beginning in Fiscal Year 2018-2019, appropriates \$100 million per year from the Land Acquisition Trust Fund (LATF) to the Everglades Trust Fund for the purpose of implementing the water storage reservoir projects, with the remainder of such funds in any fiscal year to be made available for Everglades projects.

**CS/HB 935: Mortgage regulation**

Mortgage loan originators, mortgage brokers, and mortgage lenders must be licensed to take part in making a “*residential mortgage loan*” which was defined as one that is primarily for *personal, family, or household* use. Licensure was not required where the residential mortgage loan is made for a *business purpose*.

As a result, unlicensed persons have used this loophole to conduct mortgage lending and brokerage services *without a license* simply by requiring applicants to make application and take title as a corporation or LLC in order to classify it as a residential *business* loan.

CS/HB 935 amends the definition of “mortgage loan” by removing the requirement that a residential mortgage loan be used primarily for personal, family, or household purposes. As a result, a residential mortgage loan made for a business purpose falls under the definition of a “**mortgage loan**” and persons originating, brokering, or lending for such loans are subject to licensure by the Office of Financial Regulation (OFR).



### **CS/CS/HB 1011: Homeowner's insurance policy disclosures**

This notice is required in homeowner's property insurance policies after January 1, 2019:

"FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT."

### **CS/SB 512: Homestead Waivers**

The law provides form language that a spouse may include in a deed to waive his or her right to inherit homestead property:

*By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me.*

This is not a waiver of the protection against the owner's creditor claims during the owner's lifetime and after death. Additionally, the language is not a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.

## **CS/HB 631: Possession of Real Property**

HB 631, which Gov. Rick Scott signed into law in March, "blocks local governments from adopting ordinances to allow continued public entry to privately owned beaches even when property owners may want to block off their land" and restrict public use.

The state generally owns the property under navigable waters up to the mean high water mark and upland landowners own the land down to that mark. The general right of the public at large to possess and use certain dry sand areas for recreational purposes is an example of "**customary use**". Where a customary use of a dry sand area is shown, the property owner may not use traditional causes of action like ejectment, forcible entry, or trespass to stop such public use of the private land.

The Florida Supreme Court has ruled that if a private property owner tries to put up a fence or calls police to eject beachgoers who have been using the beach for years, the local government can cite "customary use" to allow the public to remain — but only if such use has been "ancient, reasonable, without interruption and free from dispute."

It has been a constant battle in some parts of Florida, with property owners in some cases going so far as to try to rope off parts of the beachfront to keep people away. Three counties — St. Johns, Volusia and Walton — have passed local ordinances barring property owners from taking such action.

The new law restricts any such ordinances enacted after Jan. 1, 2016. St. John's and Volusia were passed before that date and are left standing. The only beach access ordinance being abolished is the one passed last year in the Panhandle's Walton County.

A governmental entity seeking to establish the customary use of privately owned lands is required to adopt, at a public hearing, a formal notice of intent, provide notice to affected parcel owners, and file a complaint with the circuit court to determine whether the land is subject to the customary use doctrine.

The law won't automatically cut off public access to the Florida beaches that front private property, but it will make it much more difficult for local governments to regulate access the way they see fit. Now cities and counties will have to get a judge's approval before enacting such an ordinance, and to do that, they'll have to sue private landowners.

## **CS/CS/CS/HB 841 – Community Associations**

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), has regulatory authority over condominium and cooperative associations, and limited authority over homeowner’s associations (HOA). CS/CS/CS/HB 841 made the following changes to current law relating to these associations

- Removes the time limit for the classification as a bulk buyer, extending indefinitely the applicability of bulk buyer provisions previously limited to a specific time period.
- Extends the deadline for condominium associations to post documents on a website to January 1, 2019.
- Provides that a condominium is not liable for disclosing restricted information unless the disclosure was with a knowing disregard of the restricted information.
- Requires condominiums to permanently maintain certain official records. · Revises the term limit provision for condominium board members.
- Revises the term limit provision for condominium board members
- Prevents condominiums from hiring attorneys who represent the condominium’s management company.
- Provides that condominium board members are recalled if the board determines the recall is facially valid, and provides attorney’s fees for a recalled board member who prevails in arbitration, or attorney’s fees for condominium associations under certain circumstances.
- Prohibits a condominium association from waiving the financial reporting requirements for two years if it fails to respond to the Division’s request to provide a financial report to a unit owner.
- Increases the time in which a condominium or cooperative must respond to a unit owners’ request to inspect records, requires electronic records related to voting to be retained as official records, and allows notice of board meetings to be posted on a website.
- Provides that amendments effecting the ability of unit owners to rent or lease their homes only applies to certain properties.
- Requires a vote authorizing an alteration or addition to a condominium be held prior to beginning work.
- Clarifies that an association may act on behalf of its unit owners for appeals by a property appraiser.

- Amends cooperative law to mirror condominium law regarding removal of board members who are 90 days or more delinquent on payments.
- Restricts co-owners from serving on the board of directors. · Allows HOAs to provide electronic notice to any member who has provided a fax number or email.
- Includes communication and information services in bulk contracts as cooperative common expenses.
- Clarifies that a HOA may apply payments for late assessments to interest, fines, and fees before applying the payments to assessments
- Prohibits an association from restricting a unit owner from installing an electric vehicle charging station.

“A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area.”

This provision goes on to clarify how the installation of an electric vehicle charging station must be governed.

### **Passed: Florida Amendment 2: Limitations on Property Tax Assessments**

“Proposing an amendment to the State Constitution to permanently retain provisions currently in effect, which limit property tax assessment increases on specified nonhomestead real property, *except for school district taxes*, to 10 percent each year. If approved, the amendment removes the scheduled repeal of such provisions in 2019 and shall take effect January 1, 2019.”

Passage of Amendment 2 would mean that the current 10 percent cap on annual nonhomestead parcel *non-school district* assessment increases, set to expire on January 1, 2019, would become permanent. This applies to second homes, rental apartments, commercial property and vacant land.

*Amendment 2 is for Everybody* has registered in support of the measure. The top contributor is Florida Realtors® which contributed \$1.06 million.

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 10 if Market Value Increases 10% Per Year</b>
<b>Market Value</b>	\$5,000,000	\$5,700,000	\$6,500,000	\$12,700,000
<b>Assessed Value School Tax (no cap) X 6.5 mills</b>	\$5,000,000 x .0065 \$32,500	\$5,700,000 x .0065 \$37,050	\$6,500,000 x .0065 \$42,250	\$12,700,000 x .0065 \$82,550
<b>Assessed Value Additional (10% cap) X 14.5 mills</b>	\$5,000,000 x .0145 \$72,500	\$5,500,000 x .0145 \$79,750  (\$82,650 no cap)	\$6,050,000 x .0145 \$87,725  (\$94,250 no cap)	\$11,800,000 x .0145 \$171,000  (\$184,150 no cap)
<b>Total Tax with no cap</b>		\$119,700	\$136,500	\$266,700
<b>Total Tax with cap (difference)</b>	\$105,000	\$116,800 (\$2,900)	\$129,475 (\$7,025)	\$253,550 (\$13,150)

At current millage rates, it is estimated by various sources that the overall cost to nonhomestead property owners would increase by \$688 million to \$700 million if Amendment 2 did not passed. Some say that the increases would be passed along to renters and business customers, making the issue important whether someone owns property or not.

Potential impact on residential renters – higher rent or flood of rentals for sale

Impact on businesses – reduced stability, maybe higher rent

## **Failed**

These are bills we watched that didn't pass

### **Failed: CS/CS/SB 1400: Vacation Rentals**

Creating the "Florida Vacation Rental Act"; preempting certain regulation and control of vacation rentals to the state; specifying authority of the Division of Hotels and Restaurants over regulation of vacation rentals; requiring vacation rentals to obtain a license; specifying that vacation rentals are to be treated as transient rentals regarding certain landlord and tenant provisions; requiring the division to inspect vacation rentals when necessary to respond to emergencies and epidemiological conditions; grandfathering certain local laws, ordinances, and regulations, etc.

### **Failed: CS/HB 773: Vacation Rentals**

Operator of public lodging must inquire if guest is sexual predator & inform other guests; requires advertisements for vacation rentals to display address of rental & link to FDLE Sexual Offenders & Predators search.

### **Failed: HB 789: Listings for Vacation Rental Property**

Requires person engaged in leasing, renting, letting, or granting of licenses for use of vacation rentals to display valid certificate of registration number in each rental listing or advertisement.

### **Failed: SB66: Prohibited Discrimination**

"Florida Competitive Workforce Act"; adding sexual orientation and gender identity as impermissible grounds for discrimination in public lodging establishments and public food service establishments.

### **Failed: HB 347: Prohibited Discrimination**

Third year attempt to revise provisions of Florida Civil Rights Act of 1992 and Fair Housing Act to protect sexual orientation & gender identity discrimination in housing + in public lodging and public food service.

### **Failed: HB 377 Homeowners' Associations**

Attempt to authorize DBPR to enforce and ensure compliance with Chapter 720 Homeowners' Association Act.

**Failed: CS/CS/HB 385: Transient Occupants of Residential Property**

Provides that party entitled to possession of dwelling must allow former transient occupant to recover his or her personal belongings within 10 days after vacating the property.

**Failed: HB 409: Tax on Commercial Real Property**

10-year staggered plan to eliminate the commercial lease tax, exempting first \$10,000 from tax first year, \$20,000 from tax second year, etc. for 10 years, then eliminate the tax in 2029.

**Failed: SB 462: Advanced Well Stimulation Treatment**

Prohibiting the performance of advanced well stimulation treatments; clarifying that permits for drilling or operating a well do not authorize the performance of advanced well stimulation treatments, etc.

**Failed: Create within Chapter 83 the Florida Tenant Notification Act.**

Requires all leases and renewals to disclose whether landlord has required employees or potential employees to undergo background screening and disclose credit card theft, violence or sexual battery conviction.

**Failed: HB 727: Property Tax Exemptions**

Increase homestead property tax exemption for residents who are widows, widowers, blind, or totally and permanently disabled from \$500 to \$5,000.

**Failed: SJR 452: Limitations on Homestead Property Tax Assessments**

Constitutional amendment to extend homestead portability deadline from two years after sale of homestead to three years after sale.

**Homestead and Save Our Homes Portability**

Every person who owns and resides on real property in Florida on January 1 and makes the property his or her permanent residence is eligible to receive a homestead exemption up to \$50,000.

Property is reassessed annually on January 1, and any change in assessed (SOH) value of the homestead is limited to the lesser of:

- Three percent of the assessed value of the property for the prior year; or
- The percentage change in the Consumer price Index.

Over time this will create a differential between the just value and the SOH value. This differential has 'portability' – it can be transferred to a new homestead upon sale and purchase. As just values increase rapidly, that differential can grow substantially. The following is an example of the relationship between just value and assessed (SOH) value showing what can happen if just value drops after years of increasing values.

	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>YEAR 4</b>	<b>YEAR 5</b>
<b>Market Value</b>	<b>\$240,000</b>	<b>\$254,400</b>	<b>\$284,928</b>	<b>\$296,325</b>	<b>\$315,475</b>
<b>Assessed Value (3% cap)</b>	<b>\$240,000</b>	<b>\$247,200</b>	<b>\$254,616</b>	<b>\$262,254</b>	<b>\$270,122</b>
<b>Differential</b>	<b>\$0</b>	<b>\$7,200</b>	<b>\$30,312</b>	<b>\$34,071</b>	<b>\$45,353</b>

**Transfer of Homestead Assessment Difference:**

- The differential is transferrable to the next homestead in Florida
- Must establish the new homestead within 2 years of abandoning the previous homestead.
- Maximum is \$500,000 married; \$250,000 single
- Transfer of Homestead Assessment Difference Form DR-501T
- File Form DR-501T by March 1st in the county where the new home is located and includes:
  - The date the previous homestead was sold
  - The address and parcel identification number of the previous homestead
  - A statement that none of the previous owners remained in the homestead and continued to receive a homestead exemption
  - A sworn statement attesting to entitlement to the assessment difference transfer





**TRANSFER OF HOMESTEAD ASSESSMENT DIFFERENCE**  
Attachment to Original Application for Homestead Tax Exemption

DR-501T  
R. 12/08  
Rule 12D-16.002  
Florida Administrative Code  
Effective 11/12

Section 193.155, Florida Statutes

If you have applied for a new homestead exemption and are entitled to transfer a homestead assessment difference from a previous homestead, file this form with your property appraiser by **March 1**.  
Co-applicants transferring from a different homestead must fill out a separate form.

COMPLETED BY APPLICANT			
<b>PART 1. New Homestead</b>			
Applicant name		Phone 1 _____	Phone 2 _____
New address		Parcel ID _____	
		County _____	
		Total number of applicants _____	
<b>PART 2. Previous Homestead</b>			
Previous address		Parcel ID _____	
		County _____	
		Date sold or no longer used as your homestead _____	
Co-applicants who owned and lived at the previous homestead		Owners of the previous homestead not moving to new homestead	
1. _____		1. _____	
2. _____		2. _____	
3. _____		Did any of the owners stay in the previous homestead? <input type="checkbox"/> yes <input type="checkbox"/> no	
<b>PART 3. Signature of Applicant and All Co-applicants</b>			
I affirm that I qualify for the homestead exemption assessment transfer from the previous homestead above. Under penalties of perjury, I declare that I have read this application and the facts in it are true.			
_____	_____	_____	_____
Signature, applicant	Date	Signature, co-applicant 1	Date
_____	_____	_____	_____
Signature, co-applicant 2	Date	Signature, co-applicant 3	Date

Add pages, if needed.

COMPLETED BY PROPERTY APPRAISER OF NEW HOMESTEAD		
_____	_____	_____
Signature, property appraiser or deputy	County	Date
If the previous homestead was in a different county, add your contact information. Send this form with a copy of the Original Application for Homestead Tax Exemption (Form DR-501) to the property appraiser's office in the county of the previous homestead.		
Contact _____	Email _____	
Address _____	Phone 1 _____	
	Phone 2 _____	
	Fax _____	

INSTRUCTIONS TO PROPERTY APPRAISER OF PREVIOUS HOMESTEAD
Based on your county's records, complete and return the Certificate of Transfer of Homestead Assessment Difference (Form DR-501RVSH) to the contact at the property appraiser's office above by April 1 or within 2 weeks after you receive this Transfer of Homestead Assessment Difference (Form DR-501T), whichever is later.

**Florida Statute 193.155(8).**

■ Moving up formula:

EXAMPLE: In YEAR 5 we sell for \$xxxxxxx (more than the just value) and buy for \$400,000. Our SOH (assessed) value will be \$400,000 minus \$45,353 equals \$354,647 and cannot increase more than 3% per year

■ Moving down formula is based on a percentage:

EXAMPLE: In YEAR 5 we sell for \$xxxxxxx (less than the just value) and buy for \$250,000. Our SOH (assessed) value will be based on the percentage difference between the old home's assessed value (\$270,122) divided by its just value (\$315,475) equals 86%. The new home will be assessed at 86% of its just value (\$250,000) equals \$215,000 the first year and cannot increase more than 3% per year.

■ **Portability When Combining Households**

If two people who each have their own homestead decide to acquire a new homestead together, the Property Appraiser will use whichever prior homestead would result in the highest cap differential, and thus the highest tax savings

■ **Portability When Abandoning Joint Property**

When joint owners abandon homestead property and acquire new, separate homestead properties, the cap differential that they are allowed to port is calculated as described above. However, the cap differential is then divided by either the number of owners of the prior homestead or, in the case of property owned as tenants in common, by each owner's proportionate interest in the prior homestead.

■ **Florida Statute 193.155(3)(a) Loss of the Cap**

The cap is lost, and the property must be reassessed at just value as of January 1st of the year following a change of ownership: “any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection.”

- Sale
- Death of homestead recipient (except when left to a spouse or minor children)
- Removal of a co-owner from title
- Addition of a co-owner to title if the new co-owner applies for their own homestead exemption on the property.

## Unit 1 Review Exam

- 1. Which topics are required AFTER the first license renewal as part of the 14-hour continuing education requirement?**
  - A) Core Law and Marketing
  - B) Core Law and Business Ethics
  - C) Core Law and BPOs
  - D) Business Ethics and Contracts
  
- 2. Which of the following statements is UNTRUE regarding the continuing education requirement?**
  - A) The 3-hour Core Law course must be completed at least once during each licensure renewal period.
  - B) A licensee may take the 3-hour Core Law course in each year of the renewal period and get 3 hours of Core Law education and 3 hours of specialty education.
  - C) The 3-hour Ethics and Business Practices course must be completed during each licensure period.
  - D) Brokers are exempt from continuing education requirements.
  
- 3. Property is reassessed annually on January 1st. Any change in assessed (SOH) value of the homestead is limited to the lesser of 3% of the assessed value or:**
  - A) the change in the Consumer Price Index (CPI)
  - B) the change in the LIBOR Index
  - C) the change in the COF Index
  - D) the change in the Treasury Index
  
- 4. When the dam was built around Lake Okeechobee in 1930 it:**
  - A) increased the flow of water to the Everglades
  - B) improved the water quality in Southwest Florida
  - C) stopped the flow of water to the Everglades
  - D) increased property values in Southwest Florida
  
- 5. Every person who owns and resides on real property in Florida on January 1 and makes the property his or her permanent residence is eligible to receive a homestead exemption up to:**
  - A) \$50,000.
  - B) \$25,000.
  - C) \$10,000.
  - D) \$5,000.
  
- 6. A residential mortgage loan made for a business purpose now falls under the definition of a:**
  - A) standard loan
  - B) business loan
  - C) regular loan
  - D) mortgage loan
  
- 7. The general right of the public at large to possess and use certain dry sand areas for recreational purposes is an example of:**
  - A) mixed use
  - B) customary use
  - C) nonconforming use
  - D) recreational use

## Unit 1 Review Exam Key

1. B) 3 hours of Core Law and 3 hours of Business Ethics are required topics as part of the 14-hour continuing education requirement.
2. D) Licensees must take the 3-hour Core Law course at least once during each licensure renewal period. A licensee who takes the 3-hour Core Law course in each year of the renewal period shall be allowed a total of 3 hours of Core Law education and 3 hours of specialty education toward the 14-hour requirement. Licensees must also take the 3-hour Ethics and Business Practices course once during each licensure renewal period. Licensees who complete the Core Law course and Ethics and Business Practices course will receive 6 hours credit toward the 14-hour requirement
3. A) Property is reassessed annually on January 1, and any change in assessed (SOH) value of the homestead is limited to the lesser of 3% of the assessed value of the property for the prior year; or the percentage change in the Consumer Price Index (CPI).
4. C) When the dam was built around Lake Okeechobee in 1930 it stopped the flow of water from the Lake to the Everglades, the River of Grass.
5. A) Every person who owns and resides on real property in Florida on January 1 and makes the property his or her permanent residence is eligible to receive a homestead exemption up to \$50,000.
6. D) A residential mortgage loan made for a business purpose now falls under the definition of a "mortgage loan" and persons originating, brokering, or lending for such loans are subject to licensure by the Office of Financial Regulation (OFR).
7. B) The general right of the public at large to possess and use certain dry sand areas for recreational purposes is an example of "customary use."



## Unit 2

# FINANCE AND TAXATION

### **Key topics in this unit:**

- “Know Before You Owe” Forms
- Property taxation
- Income taxation
- Introduction to real estate as an investment

## UNIT 2 Finances and Taxation

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### “Know Before You Owe” Forms: Summary of the TILA-RESPA Final Rule

The Dodd-Frank Act directed the Bureau to issue rules and forms that combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. The Bureau, by final rule, has amended RESPA and TILA to establish new disclosure requirements and forms for most closed-end consumer credit transactions secured by real property.

The rule, known as the **TILA-RESPA rule**, is effective October 3, 2015.

#### Scope of the TILA-RESPA Rule

The TILA-RESPA rule consolidates four existing disclosures required under TILA and RESPA for closed-end credit transactions secured by real property into two forms: a **Loan Estimate** that must be delivered or placed in the mail no later than the third **business day after receiving the consumer’s application**, and a **Closing Disclosure** that must be provided to the consumer at least three **business days prior to consummation**.

#### TILA-RESPA Integrated Disclosure (TRID) Forms

Mortgage lenders and brokers must provide borrowers with a standard **Loan Estimate** to clearly answer the key questions they have about settlement costs when applying for a mortgage loan including:

- a. What's the term of the loan?
- b. Is the interest rate fixed or can it change?
- c. Is there a pre-payment penalty should the borrower choose to refinance at a later date?
- d. Is there a balloon payment?
- e. What are total closing costs?



## 1. Transactions covered by the rule

The TILA-RESPA rule applies to most **closed-end consumer credit transactions secured by real property**. It **does not apply to** HELOCs, reverse mortgages or mortgages secured by a mobile home.

## 2. Restrictions prior to consumer's receipt of the Loan Estimate:

- **Imposing fees** on a consumer before the consumer has received the **Loan Estimate** and indicated an **intent to proceed** with the transaction; NOTE: A consumer may indicate an **intent to proceed** in any manner the consumer chooses, unless a particular manner of communication is required by the creditor.
- Providing written estimates of terms or costs specific to consumers before they receive the **Loan Estimate** without a written statement informing the consumer that the terms and costs may change; and
- Requiring the submission of documents verifying information related to the consumer's application before providing the **Loan Estimate**.

## 3. Disclosure obligations for transactions not covered by the TILA- RESPA rule

The new Integrated Disclosures are not being used to disclose information about reverse mortgages, HELOCs, chattel-dwelling loans, or other transactions not covered by the TILA- RESPA rule. Creditors originating these types of mortgages must continue to use, as applicable, the GFE, HUD-1, and Truth-in-Lending disclosures required under current law.

## Delivery of the Loan Estimate Disclosure

Generally, the creditor is responsible for ensuring that it delivers or places in the mail the **Loan Estimate** form no later than the third **business day** after receiving the consumer's **application**.

The Loan Estimate must also be delivered or placed in the mail no later than the seventh business day before consummation of the transaction.

The creditor also is responsible for ensuring that the **Loan Estimate** and its delivery meet the content, delivery, and timing requirements

# FICUS BANK

4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

## Loan Estimate

**DATE ISSUED** 2/15/2013  
**APPLICANTS** Michael Jones and Mary Stone  
 123 Anywhere Street  
 Anytown, ST 12345  
**PROPERTY** 456 Somewhere Avenue  
 Anytown, ST 12345  
**SALE PRICE** \$180,000

**LOAN TERM** 30 years  
**PURPOSE** Purchase  
**PRODUCT** Fixed Rate  
**LOAN TYPE**  Conventional  FHA  VA  \_\_\_\_\_  
**LOAN ID #** 123456789  
**RATE LOCK**  NO  YES, until 4/16/2013 at 5:00 p.m. EDT

*Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 3/4/2013 at 5:00 p.m. EDT*

Loan Terms	Can this amount increase after closing?	
<b>Loan Amount</b>	\$162,000	<b>NO</b>
<b>Interest Rate</b>	3.875%	<b>NO</b>
<b>Monthly Principal &amp; Interest</b> <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	<b>NO</b>
<b>Does the loan have these features?</b>		
<b>Prepayment Penalty</b>	<b>YES</b> • As high as \$3,240 if you pay off the loan during the first 2 years	
<b>Balloon Payment</b>	<b>NO</b>	

Projected Payments	Years 1-7		Years 8-30	
<b>Payment Calculation</b>				
Principal & Interest	\$761.78		\$761.78	
Mortgage Insurance	+	82	+	—
Estimated Escrow <i>Amount can increase over time</i>	+	206	+	206
<b>Estimated Total Monthly Payment</b>	<b>\$1,050</b>		<b>\$968</b>	
<b>Estimated Taxes, Insurance &amp; Assessments</b> <i>Amount can increase over time</i>	\$206 a month	<b>This estimate includes</b> <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <i>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</i>		<b>In escrow?</b> <b>YES</b> <b>YES</b>

Costs at Closing		
<b>Estimated Closing Costs</b>	\$8,054	Includes \$5,672 in Loan Costs + \$2,382 in Other Costs – \$0 in Lender Credits. See page 2 for details.
<b>Estimated Cash to Close</b>	\$16,054	Includes Closing Costs. See Calculating Cash to Close on page 2 for details.

Visit [www.consumerfinance.gov/mortgage-estimate](http://www.consumerfinance.gov/mortgage-estimate) for general information and tools.

**Closing Cost Details**

<b>Loan Costs</b>		<b>Other Costs</b>	
<b>A. Origination Charges</b> <b>\$1,802</b>		<b>E. Taxes and Other Government Fees</b> <b>\$85</b>	
.25 % of Loan Amount (Points)	\$405	Recording Fees and Other Taxes	\$85
Application Fee	\$300	Transfer Taxes	
Underwriting Fee	\$1,097		
<b>B. Services You Cannot Shop For</b> <b>\$672</b>		<b>F. Prepaids</b> <b>\$867</b>	
Appraisal Fee	\$405	Homeowner's Insurance Premium ( 6 months)	\$605
Credit Report Fee	\$30	Mortgage Insurance Premium ( months)	
Flood Determination Fee	\$20	Prepaid Interest ( \$17.44 per day for 15 days @ 3.875%)	\$262
Flood Monitoring Fee	\$32	Property Taxes ( months)	
Tax Monitoring Fee	\$75		
Tax Status Research Fee	\$110		
<b>C. Services You Can Shop For</b> <b>\$3,198</b>		<b>G. Initial Escrow Payment at Closing</b> <b>\$413</b>	
Pest Inspection Fee	\$135	Homeowner's Insurance \$100.83 per month for 2 mo.	\$202
Survey Fee	\$65	Mortgage Insurance per month for mo.	
Title – Insurance Binder	\$700	Property Taxes \$105.30 per month for 2 mo.	\$211
Title – Lender's Title Policy	\$535		
Title – Settlement Agent Fee	\$502		
Title – Title Search	\$1,261		
<b>D. TOTAL LOAN COSTS (A + B + C)</b> <b>\$5,672</b>		<b>H. Other</b> <b>\$1,017</b>	
		Title – Owner's Title Policy (optional)	\$1,017
		<b>I. TOTAL OTHER COSTS (E + F + G + H)</b> <b>\$2,382</b>	
		<b>J. TOTAL CLOSING COSTS</b> <b>\$8,054</b>	
		D + I	\$8,054
		Lender Credits	
		<b>Calculating Cash to Close</b>	
		Total Closing Costs (J)	\$8,054
		Closing Costs Financed (Paid from your Loan Amount)	\$0
		Down Payment/Funds from Borrower	\$18,000
		Deposit	– \$10,000
		Funds for Borrower	\$0
		Seller Credits	\$0
		Adjustments and Other Credits	\$0
		<b>Estimated Cash to Close</b>	<b>\$16,054</b>

## Additional Information About This Loan

**LENDER** Ficus Bank  
**NMLS/ \_\_ LICENSE ID**  
**LOAN OFFICER** Joe Smith  
**NMLS/ \_\_ LICENSE ID** 12345  
**EMAIL** joesmith@ficusbank.com  
**PHONE** 123-456-7890

**MORTGAGE BROKER**  
**NMLS/ \_\_ LICENSE ID**  
**LOAN OFFICER**  
**NMLS/ \_\_ LICENSE ID**  
**EMAIL**  
**PHONE**

Comparisons	Use these measures to compare this loan with other loans.	
<b>In 5 Years</b>	\$56,582	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	\$15,773	Principal you will have paid off.
<b>Annual Percentage Rate (APR)</b>	4.274%	Your costs over the loan term expressed as a rate. This is not your interest rate.
<b>Total Interest Percentage (TIP)</b>	69.45%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

### Other Considerations

<b>Appraisal</b>	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
<b>Assumption</b>	If you sell or transfer this property to another person, we <input type="checkbox"/> will allow, under certain conditions, this person to assume this loan on the original terms. <input checked="" type="checkbox"/> will not allow assumption of this loan on the original terms.
<b>Homeowner's Insurance</b>	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
<b>Late Payment</b>	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
<b>Refinance</b>	Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.
<b>Servicing</b>	We intend <input type="checkbox"/> to service your loan. If so, you will make your payments to us. <input checked="" type="checkbox"/> to transfer servicing of your loan.

### Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

Co-Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

## 1. Timing for providing the Loan Estimate to the Consumer

The **Loan Estimate** must be delivered or placed in the mail to the consumer no later than the third **business day** after the creditor receives the consumer's **application** for a mortgage loan as defined later in this section.

If the **Loan Estimate** is not provided to the consumer in person, the consumer is considered to have received the **Loan Estimate** three **business days** after it is delivered or placed in the mail.

## 2. Definition of an "application" that triggers an obligation to provide a Loan Estimate

An **application** means the submission of a consumer's financial information for purposes of obtaining an extension of credit. An **application** consists of the submission of the following six pieces of information:

- The consumer's name;
- The consumer's income;
- The consumer's social security number to obtain a credit report;
- The property address;
- An estimate of the value of the property; and
- The mortgage loan amount sought.

NOTE: The Bureau has revised the definition of application to remove the seventh "catch-all" element of the current definition under Regulation X, that is, "any other information deemed necessary by the loan originator."

An **application** may be submitted in written or electronic format, and includes a written record of an oral application.

## 3. Creditor requirement to act in good faith and exercise due diligence in obtaining information necessary to complete the Loan Estimate

Creditors are required to act in **good faith** and exercise **due diligence** in obtaining information necessary to complete the **Loan Estimate**. Normally creditors may rely on the representations of other parties in obtaining information.

However, there may be some information that is unknown (*i.e.*, not reasonably available to the creditor at the time the **Loan Estimate** is made). In these instances, the creditor may use estimates even though it knows that more precise information will be available by the point of **consummation**. However, new disclosures may be required under § 1026.17(c) or § 1026.19.

When estimated figures are used, they must be designated as such on the **Loan Estimate**.

## Good Faith Requirement and Tolerances

### 1. General accuracy requirement for the Loan Estimate disclosures

Whether or not a **Loan Estimate** was made in **good faith** is determined by calculating the difference between the **estimated charges** originally provided in the **Loan Estimate** and the **actual charges** paid by or imposed on the consumer in the **Closing Disclosure**.

Generally, if the charge paid by or imposed on the consumer **exceeds** the amount originally disclosed on the **Loan Estimate** it is **not in good faith**, regardless of whether the creditor later discovers a technical error, miscalculation, or underestimation of a charge.

However, a **Loan Estimate** is considered to be in **good faith** if the creditor charges the consumer **less** than the amount disclosed on the **Loan Estimate**, without regard to any tolerance limitations.

### 2. Charges that may change without regard to a tolerance limitation

For certain costs or terms, creditors are permitted to charge consumers more than the amount disclosed on the **Loan Estimate** without any **tolerance** limitation.

These charges are:

- Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account.
- For services required by the creditor if the creditor **permits the consumer to shop** and the consumer selects a third-party service provider not on the creditor's **written list of service providers**.
- Charges paid to third-party service providers for services not required by the creditor (may be paid to affiliates of the creditor).

However, creditors may only charge consumers **more** than the amount disclosed when the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided.

### 3. Conditions under which a consumer is permitted to shop for a service

In addition to the **Loan Estimate**, if the consumer is permitted to shop for a settlement service, the creditor must provide the consumer with **a written list of services** for which the consumer can **shop**. This **written list of providers** is separate from the **Loan Estimate**, but must be provided within the same time frame—that is, it must be provided to the consumer no later than **three business days** after the creditor receives the consumer’s **application**—and the list must:

- Identify at least one available settlement service provider for each service; and
- State that the consumer may choose a different provider of that service.

The settlement service providers identified on the **written list** must correspond to the settlement services for which the consumer can **shop** as disclosed on the **Loan Estimate**.

The creditor may also identify on the **written list of providers** those services for which the consumer is **not permitted to shop**, as long as those services are clearly and conspicuously distinguished from those services for which the consumer is **permitted to shop**.

### 4. Charges that are subject to a 10% cumulative tolerance

Charges for third-party services and recording fees paid by or imposed on the consumer are grouped together and subject to a **10% cumulative tolerance**. This means the creditor may charge the consumer more than the amount disclosed on the **Loan Estimate** for any of these charges so long as the total sum of the charges added together does not exceed the sum of all such charges disclosed on the **Loan Estimate** by more than 10%.

These charges are:

- Recording fees
- Charges for third-party services where:
  - The charge is not paid to the creditor or the creditor’s affiliate; and
  - The consumer is permitted by the creditor to **shop** for the third-party service, and the consumer selects a third-party service provider on the creditor’s **written list of service providers**.

**5. What happens to the sum of estimated charges if the consumer is permitted to shop and chooses his or her own service provider?**

Where a consumer chooses a provider that is not on the creditor's **written list of providers**, then the creditor is not limited in the amount that may be charged for the service.

When this occurs for a service that otherwise would be included in the **10% cumulative tolerance** category, the charge is removed from consideration for purposes of determining the **10% tolerance** level.

Remember, if the creditor permits the consumer to **shop** for a required settlement service but the consumer either does not select a settlement service provider or chooses a settlement service provider identified by the creditor on the **written list of providers**, then the amount charged **is included** in the sum of all such third-party charges paid by the consumer, and also is subject to the **10% cumulative tolerance**.

**6. If a consumer is charged more than estimated for a particular third-party service or recording fee, but the total charges paid are still within 10% of the estimate**

Whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in **good faith** depends on whether the sum of all charges subject to that section increases by more than 10 percent, even if a particular charge does not increase by 10 percent. A creditor may charge more than 10 percent in excess of an individual estimated charge in this category, so long as the sum of all charges is still within the **10% cumulative tolerance**.

**7. Zero tolerance charges**

For all other charges, creditors are not permitted to charge consumers more than the amount disclosed on the **Loan Estimate** under any circumstances other than **changed circumstances** that permit a revised **Loan Estimate**.

These **zero tolerance** charges are:

- Fees paid to the creditor, mortgage broker, or an **affiliate** of either;
- Fees paid to an unaffiliated third party if the creditor did not permit the consumer to **shop** for a third party service provider for a settlement service; or
- Transfer taxes.



## 8. Requirements when the amounts paid exceed the disclosed amounts beyond the applicable tolerance thresholds

If the amounts paid by the consumer at closing exceed the amounts disclosed on the **Loan Estimate** beyond the applicable **tolerance** threshold, the creditor must **refund** the excess to the consumer no later than **60 calendar days after consummation**.

- For charges subject to **zero tolerance**, any amount charged beyond the amount disclosed on the **Loan Estimate** must be refunded to the consumer.
- For charges subject to a **10% cumulative tolerance**, to the extent the total sum of the charges added together exceeds the sum of all such charges disclosed on the **Loan Estimate** by more than 10%, the difference must be refunded to the consumer.

## Revisions and Corrections to Loan Estimates

### 1. Conditions under which revisions or corrections are permitted for Loan Estimates

Creditors generally are bound by the **Loan Estimate** provided within three **business days** of the **application**. Creditors are permitted to provide to the consumer revised **Loan Estimates** (and use them to compare estimated amounts to amounts actually charged for purposes of determining **good faith**) only in certain specific circumstances:

- **Changed circumstances** that occur after the **Loan Estimate** is provided to the consumer cause estimated settlement charges to increase more than is permitted under the TILA-RESPA rule;
- **Changed circumstances** that occur after the **Loan Estimate** is provided to the consumer affect the consumer's eligibility for the terms for which the consumer applied or the value of the security for the loan;
- Revisions to the credit terms or the settlement are requested by the consumer;
- The interest rate was not locked when the **Loan Estimate** was provided, and locking the rate causes the points or lender credits disclosed on the **Loan Estimate** to change;
- The consumer indicates an **intent to proceed** with the transaction more than 10 **business days** after the **Loan Estimate** was originally provided; or

- The loan is a new construction loan, and settlement is delayed by more than 60 calendar days, if the original **Loan Estimate** states clearly and conspicuously that at any time prior to 60 calendar days before **consummation**, the creditor may issue revised disclosures.

When creditors revise Loan Estimates for these reasons, the revised Loan Estimate may reflect increased charges only to the extent actually justified by the reason for the revision.

## 2. Explanation of a “changed circumstance”

A **changed circumstance** for purposes of a revised **Loan Estimate** is:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
- Information specific to the consumer or transaction that the creditor relied upon when providing the **Loan Estimate** and that was inaccurate or changed after the disclosures were provided; or
- A natural disaster, such as a hurricane or earthquake, damages the property or otherwise results in additional closing costs;
- New information not relied upon when providing the **Loan Estimate** is discovered, such as a neighbor of the seller filing a claim contesting the boundary of the property to be sold.

## 3. General timing requirement for providing a revised Loan Estimate

The general rule is that the creditor must deliver or place in the mail the revised **Loan Estimate** to the consumer no later than **three business days** after receiving the information sufficient to establish that one of the reasons for the revision described above has occurred.

# Closing Disclosures

## General requirements for the Closing Disclosure

For loans that require a **Loan Estimate** and that proceed to closing, creditors must provide a new final disclosure reflecting the actual terms of the transaction called the **Closing Disclosure**. The form integrates and replaces the existing HUD-1 and the final TIL disclosure for these transactions. The creditor is generally required to ensure that the consumer receives the **Closing Disclosure** no later than **three business days** before **consummation** (when the consumer becomes contractually obligated to the creditor) of the loan.

- **The Closing Disclosure generally must contain the actual terms and costs of the transaction.** Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made. However, creditors must act in **good faith** and use due diligence in obtaining the information. The creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before **consummation**.
- **The Closing Disclosure must be in writing and contain the information prescribed in § 1026.38.** The creditor must disclose only the specific information set forth in § 1026.38(a) through (s), as shown in the Bureau's form in appendix H-25.
- **If the actual terms or costs of the transaction change prior to consummation**, the creditor must provide a **corrected disclosure** that contains the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements, and requirements for providing corrected disclosures due to subsequent changes.
- **New three-day waiting period.** If the creditor provides a corrected disclosure, it may also be required to provide the consumer with an additional **three-business-day waiting period** prior to consummation.

## Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

### Closing Information

**Date Issued** 4/15/2013  
**Closing Date** 4/15/2013  
**Disbursement Date** 4/15/2013  
**Settlement Agent** Epsilon Title Co.  
**File #** 12-3456  
**Property** 456 Somewhere Ave  
 Anytown, ST 12345  
**Sale Price** \$180,000

### Transaction Information

**Borrower** Michael Jones and Mary Stone  
 123 Anywhere Street  
 Anytown, ST 12345  
**Seller** Steve Cole and Amy Doe  
 321 Somewhere Drive  
 Anytown, ST 12345  
**Lender** Ficus Bank

### Loan Information

**Loan Term** 30 years  
**Purpose** Purchase  
**Product** Fixed Rate  
**Loan Type**  Conventional  FHA  
 VA  \_\_\_\_\_  
**Loan ID #** 123456789  
**MIC #** 000654321

Loan Terms	Can this amount increase after closing?	
<b>Loan Amount</b>	\$162,000	<b>NO</b>
<b>Interest Rate</b>	3.875%	<b>NO</b>
<b>Monthly Principal &amp; Interest</b> <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	<b>NO</b>
<b>Does the loan have these features?</b>		
<b>Prepayment Penalty</b>	<b>YES</b>	• As high as \$3,240 if you pay off the loan during the first 2 years
<b>Balloon Payment</b>	<b>NO</b>	

Projected Payments		
Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <i>Amount can increase over time</i>	+ 206.13	+ 206.13
<b>Estimated Total Monthly Payment</b>	<b>\$1,050.26</b>	<b>\$967.91</b>
<b>Estimated Taxes, Insurance &amp; Assessments</b> <i>Amount can increase over time See page 4 for details</i>	<b>\$356.13</b> a month	<b>This estimate includes</b> <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>
		<b>In escrow?</b> <b>YES</b> <b>YES</b> <b>NO</b>

Costs at Closing	
<b>Closing Costs</b>	<b>\$9,712.10</b> Includes \$4,694.05 in Loan Costs + \$5,018.05 in Other Costs – \$0 in Lender Credits. See page 2 for details.
<b>Cash to Close</b>	<b>\$14,147.26</b> Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

## Closing Cost Details

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
<b>A. Origination Charges</b>	<b>\$1,802.00</b>				
01 0.25 % of Loan Amount (Points)	\$405.00				
02 Application Fee	\$300.00				
03 Underwriting Fee	\$1,097.00				
04					
05					
06					
07					
08					
<b>B. Services Borrower Did Not Shop For</b>	<b>\$236.55</b>				
01 Appraisal Fee to John Smith Appraisers Inc.					\$405.00
02 Credit Report Fee to Information Inc.		\$29.80			
03 Flood Determination Fee to Info Co.	\$20.00				
04 Flood Monitoring Fee to Info Co.	\$31.75				
05 Tax Monitoring Fee to Info Co.	\$75.00				
06 Tax Status Research Fee to Info Co.	\$80.00				
07					
08					
09					
10					
<b>C. Services Borrower Did Shop For</b>	<b>\$2,655.50</b>				
01 Pest Inspection Fee to Pests Co.	\$120.50				
02 Survey Fee to Surveys Co.	\$85.00				
03 Title – Insurance Binder to Epsilon Title Co.	\$650.00				
04 Title – Lender’s Title Insurance to Epsilon Title Co.	\$500.00				
05 Title – Settlement Agent Fee to Epsilon Title Co.	\$500.00				
06 Title – Title Search to Epsilon Title Co.	\$800.00				
07					
08					
<b>D. TOTAL LOAN COSTS (Borrower-Paid)</b>	<b>\$4,694.05</b>				
Loan Costs Subtotals (A + B + C)	\$4,664.25	\$29.80			
<b>Other Costs</b>					
<b>E. Taxes and Other Government Fees</b>	<b>\$85.00</b>				
01 Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02 Transfer Tax to Any State			\$950.00		
<b>F. Prepays</b>	<b>\$2,120.80</b>				
01 Homeowner’s Insurance Premium ( 12 mo.) to Insurance Co.	\$1,209.96				
02 Mortgage Insurance Premium ( mo.)					
03 Prepaid Interest ( \$17.44 per day from 4/15/13 to 5/1/13 )	\$279.04				
04 Property Taxes ( 6 mo.) to Any County USA	\$631.80				
05					
<b>G. Initial Escrow Payment at Closing</b>	<b>\$412.25</b>				
01 Homeowner’s Insurance \$100.83 per month for 2 mo.	\$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes \$105.30 per month for 2 mo.	\$210.60				
04					
05					
06					
07					
08 Aggregate Adjustment	- 0.01				
<b>H. Other</b>	<b>\$2,400.00</b>				
01 HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02 HOA Processing Fee to HOA Acre Inc.	\$150.00				
03 Home Inspection Fee to Engineers Inc.	\$750.00			\$750.00	
04 Home Warranty Fee to XYZ Warranty Inc.			\$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			\$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07 Title – Owner’s Title Insurance (optional) to Epsilon Title Co.	\$1,000.00				
08					
<b>I. TOTAL OTHER COSTS (Borrower-Paid)</b>	<b>\$5,018.05</b>				
Other Costs Subtotals (E + F + G + H)	\$5,018.05				
<b>J. TOTAL CLOSING COSTS (Borrower-Paid)</b>	<b>\$9,712.10</b>				
Closing Costs Subtotals (D + I)	\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.00
Lender Credits					

**Calculating Cash to Close**

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	\$8,054.00	\$9,712.10	YES • See <b>Total Loan Costs (D)</b> and <b>Total Other Costs (I)</b>
Closing Costs Paid Before Closing	\$0	– \$29.80	YES • You paid these Closing Costs <b>before closing</b>
Closing Costs Financed (Paid from your Loan Amount)	\$0	\$0	NO
Down Payment/Funds from Borrower	\$18,000.00	\$18,000.00	NO
Deposit	– \$10,000.00	– \$10,000.00	NO
Funds for Borrower	\$0	\$0	NO
Seller Credits	\$0	– \$2,500.00	YES • See Seller Credits in <b>Section L</b>
Adjustments and Other Credits	\$0	– \$1,035.04	YES • See details in <b>Sections K and L</b>
<b>Cash to Close</b>	<b>\$16,054.00</b>	<b>\$14,147.26</b>	

**Summaries of Transactions**

Use this table to see a summary of your transaction.

**BORROWER'S TRANSACTION**

<b>K. Due from Borrower at Closing</b>	<b>\$189,762.30</b>
01 Sale Price of Property	\$180,000.00
02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)	\$9,682.30
04	
<b>Adjustments</b>	
05	
06	
07	
<b>Adjustments for Items Paid by Seller in Advance</b>	
08 City/Town Taxes to	
09 County Taxes to	
10 Assessments to	
11 HOA Dues 4/15/13 to 4/30/13	\$80.00
12	
13	
14	
15	
<b>L. Paid Already by or on Behalf of Borrower at Closing</b>	<b>\$175,615.04</b>
01 Deposit	\$10,000.00
02 Loan Amount	\$162,000.00
03 Existing Loan(s) Assumed or Taken Subject to	
04	
05 Seller Credit	\$2,500.00
<b>Other Credits</b>	
06 Rebate from Epsilon Title Co.	\$750.00
07	
<b>Adjustments</b>	
08	
09	
10	
11	
<b>Adjustments for Items Unpaid by Seller</b>	
12 City/Town Taxes 1/1/13 to 4/14/13	\$365.04
13 County Taxes to	
14 Assessments to	
15	
16	
17	
<b>CALCULATION</b>	
Total Due from Borrower at Closing (K)	\$189,762.30
Total Paid Already by or on Behalf of Borrower at Closing (L)	– \$175,615.04
<b>Cash to Close</b> <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower	<b>\$14,147.26</b>

**SELLER'S TRANSACTION**

<b>M. Due to Seller at Closing</b>	<b>\$180,080.00</b>
01 Sale Price of Property	\$180,000.00
02 Sale Price of Any Personal Property Included in Sale	
03	
04	
05	
06	
07	
08	
<b>Adjustments for Items Paid by Seller in Advance</b>	
09 City/Town Taxes to	
10 County Taxes to	
11 Assessments to	
12 HOA Dues 4/15/13 to 4/30/13	\$80.00
13	
14	
15	
16	
<b>N. Due from Seller at Closing</b>	<b>\$115,665.04</b>
01 Excess Deposit	
02 Closing Costs Paid at Closing (J)	\$12,800.00
03 Existing Loan(s) Assumed or Taken Subject to	
04 Payoff of First Mortgage Loan	\$100,000.00
05 Payoff of Second Mortgage Loan	
06	
07	
08 Seller Credit	\$2,500.00
09	
10	
11	
12	
13	
<b>Adjustments for Items Unpaid by Seller</b>	
14 City/Town Taxes 1/1/13 to 4/14/13	\$365.04
15 County Taxes to	
16 Assessments to	
17	
18	
19	
<b>CALCULATION</b>	
Total Due to Seller at Closing (M)	\$180,080.00
Total Due from Seller at Closing (N)	– \$115,665.04
<b>Cash</b> <input type="checkbox"/> From <input checked="" type="checkbox"/> To Seller	<b>\$64,414.96</b>

## Additional Information About This Loan

### Loan Disclosures

#### Assumption

- If you sell or transfer this property to another person, your lender
- will allow, under certain conditions, this person to assume this loan on the original terms.
  - will not allow assumption of this loan on the original terms.

#### Demand Feature

Your loan

- has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- does not have a demand feature.

#### Late Payment

If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

#### Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

- are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- do not have a negative amortization feature.

#### Partial Payments

Your lender

- may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

#### Security Interest

You are granting a security interest in  
456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

#### Escrow Account

**For now,** your loan

- will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	\$2,473.56	Estimated total amount over year 1 for your escrowed property costs: <i>Homeowner's Insurance</i> <i>Property Taxes</i>
Non-Escrowed Property Costs over Year 1	\$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: <i>Homeowner's Association Dues</i>  You may have other property costs.
Initial Escrow Payment	\$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	\$206.13	The amount included in your total monthly payment.

- will not have an escrow account because  you declined it  your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

#### In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

**Loan Calculations**

<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	\$285,803.36
<b>Finance Charge.</b> The dollar amount the loan will cost you.	\$118,830.27
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	\$162,000.00
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%



**Questions?** If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at [www.consumerfinance.gov/mortgage-closing](http://www.consumerfinance.gov/mortgage-closing)

**Other Disclosures****Appraisal**

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

**Contract Details**

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

**Liability after Foreclosure**

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- state law does not protect you from liability for the unpaid balance.

**Refinance**

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

**Tax Deductions**

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

**Contact Information**

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
<b>Name</b>	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
<b>Address</b>	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
<b>NMLS ID</b>					
<b>ST License ID</b>			Z765416	Z61456	Z61616
<b>Contact</b>	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
<b>Contact NMLS ID</b>	12345				
<b>Contact ST License ID</b>			P16415	P51461	PT1234
<b>Email</b>	joesmith@ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@epsilontitle.com
<b>Phone</b>	123-456-7890		123-555-1717	321-555-7171	987-555-4321

**Confirm Receipt**

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date



## Delivery of the Closing Disclosure

### 1. Closing Disclosure timing and delivery requirements

Generally, the creditor is responsible for ensuring that the consumer receives the **Closing Disclosure** form no later than **three business days** before **consummation**.

The creditor also is responsible for ensuring that the **Closing Disclosure** meets all content, delivery, and timing requirements.

### 2. Methods of delivery of the Closing Disclosure

Creditors must arrange for delivery as follows:

- By providing it to the consumer in person.
- By mailing, or by other delivery methods subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act.
- Creditors must ensure that the consumer receives the **Closing Disclosure** at least three **business days** prior to **consummation**.

### 3. Settlement agent providing the Closing Disclosure

Creditors may contract with settlement agents to have the settlement agent provide the **Closing Disclosure** to consumers on the creditor's behalf. Creditors and settlement agents also may agree to divide responsibility with regard to completing the **Closing Disclosure**, with the settlement agent assuming responsibility to complete some or all the **Closing Disclosure**.

### 4. Responsibility for providing the Closing Disclosure to a seller in a purchase transaction

The settlement agent is required to provide the seller with the **Closing Disclosure** reflecting the actual terms of the seller's transaction no later than the day of **consummation**.

### 5. More than one consumer involved in a transaction

In rescindable transactions, the **Closing Disclosure** must be given separately to each consumer who has the right to rescind under TILA, although the disclosures required for adjustable rate mortgages need only be provided to the consumer who expresses an interest in a variable-rate loan program.

## Revisions and Corrections to Closing Disclosures

### 1. Creditor requirement to correct or revise Closing Disclosures

There are three categories of changes that require a corrected **Closing Disclosure** containing all changed terms.

- Changes that occur before **consummation** that require a new **three-business-day** waiting period.
- Changes that occur before **consummation** and do not require a new **three-business-day** waiting period.
- Changes that occur after **consummation**.

### 2. Changes before consummation that require a new waiting period

If one of the following occurs after delivery of the **Closing Disclosure** and before **consummation**, the creditor must provide a corrected **Closing Disclosure** containing all changed terms and ensure that the consumer receives it no later than three **business days** before **consummation**.

- **The disclosed APR becomes inaccurate.** If the annual percentage rate (APR) previously disclosed becomes inaccurate, the creditor must provide a corrected **Closing Disclosure** with the corrected APR disclosure and all other terms that have changed. The APR's accuracy is determined according to § 1026.22.
- **The loan product changes.** If the loan product previously disclosed becomes inaccurate, the creditor must provide a corrected **Closing Disclosure** with the corrected loan product and all other terms that have changed.
- **A prepayment penalty is added.** If a prepayment penalty is added to the transaction, the creditor must provide a corrected **Closing Disclosure** with the prepayment penalty provision disclosed and all other terms that have changed.

## Additional requirements and prohibitions

### 1. Consumer indication of intent to proceed with a transaction

A consumer indicates **intent to proceed** with the transaction when the consumer communicates, in any manner, that the consumer chooses to proceed after the **Loan Estimate** has been delivered, unless a particular manner of communication is required by the creditor.

This may include:

- Oral communication in person immediately upon delivery of the **Loan Estimate**;
- Oral communication over the phone, written communication via email, or signing a pre- printed form after receipt of the **Loan Estimate**.

A consumer's silence is not indicative of **intent to proceed**.

The creditor must document this communication to satisfy the record retention requirements of § 1026.25.

### 2. Can creditors provide estimates of costs and terms to consumers before the Loan Estimate is provided?

The TILA-RESPA rule does not prohibit a creditor or other person from providing a consumer with estimated terms or costs prior to the consumer receiving the **Loan Estimate**.

However, if a person (such as a creditor or broker) provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the **Loan Estimate**, it must clearly and conspicuously state at the top of the front of the first page of the written estimate "**Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan.**"

### 3. Are creditors allowed to require additional verifying information other than the six pieces of information that form an application from consumers before providing a Loan Estimate?

No. A creditor or other person may not condition providing the **Loan Estimate** on a consumer submitting documents verifying information related to the consumer's mortgage loan application before providing the **Loan Estimate**.

For example:

- A creditor may ask for the sale price and address of the property, but may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the **Loan Estimate**.
- A mortgage broker may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements or similar documentation to support the information orally provided by the consumer before the creditor provides the **Loan Estimate**.

### **Special Information Booklet (RESPA Settlement Costs Booklet)**

**If the consumer is using a mortgage broker to apply for the loan, can the broker provide the booklet?**

Creditors must deliver or place in the mail the **special information booklet** not later than three **business days** after receiving the consumer's loan **application**.

If the consumer uses a mortgage broker, the mortgage broker must provide the **special information booklet** and the creditor need not do so.

# Property and Personal Taxation

## The Tax Jobs and Cuts Act of 2017

### Corporate tax rates

the bill lowers the corporate tax rate to a flat 21% on all profits. This is not only a massive tax cut, but is a major simplification as compared to the 2017 corporate tax structure, as seen in the chart below.

Taxable Income Range	Marginal Corporate Tax Rate (2017)
\$0-\$50,000	15%
\$50,000-\$75,000	25%
\$75,000-\$100,000	34%
\$100,000-\$335,000	39%
\$335,000-\$10,000,000	34%
\$10,000,000-\$15,000,000	35%
\$15,000,000-\$18,333,333	38%
\$18,333,333 and above	35%

### A territorial tax system

The tax reform bill also changed the U.S. corporate tax system from a worldwide one to a territorial system. Previously, U.S. corporations had to pay U.S. taxes on their profits earned abroad, and the new system ended this effective double-taxing of foreign profits.

## The Income Tax Brackets

The Tax Jobs and Cuts Act of 2017 kept the previous seven-bracket structure but with mostly lower tax rates.

### 2017 brackets

Marginal Tax Rate	Single	Married Filing Jointly	Head of Household	Married Filing Separately
<b>10%</b>	\$0-\$9,325	\$0-\$18,650	\$0-\$9,325	\$0-\$13,350
<b>15%</b>	\$9,326-\$37,950	\$18,651-\$75,900	\$9,325-\$37,950	\$13,351-\$50,800
<b>25%</b>	\$37,951-\$91,900	\$75,901-\$153,100	\$37,951-\$76,550	\$50,801-\$131,200
<b>28%</b>	\$91,901-\$191,650	\$153,101-\$233,350	\$76,551-\$116,675	\$131,201-\$212,500
<b>33%</b>	\$191,651-\$416,700	\$233,351-\$416,700	\$116,676-\$208,350	\$212,501-\$416,700
<b>35%</b>	\$416,701-\$418,400	\$416,701-\$470,700	\$208,351-\$235,350	\$416,701-\$444,550
<b>39.6%</b>	Over \$418,400	Over \$470,700	Over \$235,350	Over \$444,550

### 2020 brackets

Marginal Tax Rate	Single	Married Filing Jointly	Head of Household	Married Filing Separately
<b>10%</b>	\$0-\$9,875	\$0-\$19,750	\$0-\$14,100	\$0-\$9,875
<b>12%</b>	\$9,876-\$40,125	\$19,751-\$80,250	\$14,101-\$53,700	\$9,876-\$40,125
<b>22%</b>	\$40,126-\$85,525	\$80,251-\$171,050	\$53,701-\$85,500	\$40,126-\$85,525
<b>24%</b>	\$85,526-\$163,300	\$171,051-\$326,600	\$85,501-\$163,300	\$85,526-\$163,300
<b>32%</b>	\$163,301-\$207,350	\$326,601-\$414,700	\$163,301-\$207,350	\$163,301-\$207,350
<b>35%</b>	\$207,351-\$518,400	\$414,701-\$622,050	\$207,351-\$518,400	\$207,351-\$311,025
<b>37%</b>	Over \$518,400	Over \$622,050	Over \$518,400	Over \$311,025

## How the marginal tax bracket system works

Fortunately, you're not likely to ever have to calculate your federal income tax by hand. The vast majority of Americans use electronic methods of filing that calculate their tax for them, and even if you're among the relative few who still file a paper tax return, the IRS provides tax tables that make determining your tax easier.

Having said that, in case you were wondering how our tax system works, the IRS uses marginal tax brackets when determining the amount of tax you owe.

Here's how this works. Let's say that you're single and have taxable income of \$100,000 in 2020. According to the chart, this puts you in the 24% bracket. However, you won't pay 24% of your entire taxable income. Each marginal tax rate applies *only* to income within that range.

In other words, on \$100,000 in taxable income, a single taxpayer would pay:

- 10% of the first \$9,875 (\$987.50)
- 12% of the amount greater than \$9,875 up to \$40,125 (\$3,630)
- 22% of the amount greater than \$40,125, up to \$85,525 (\$9,988)
- 24% of the amount in excess of \$85,525 (\$3,474)

If you add up all of the numbers in parentheses, you'll see that this hypothetical taxpayer would owe federal income tax of \$18,079.50 for 2020. This translates to about 18% of their taxable income -- not the 24% marginal tax rate.

## Standard deduction and personal exemption

The Joint Committee on Taxation estimates that 94% of households claimed the standard deduction in 2019, up from about 70% in 2017 (when it was \$6,350 for Single and \$12,700 for married filing jointly).

Tax Filing Status	2019 Standard Deduction	2020 Standard Deduction	Change
<b>Married filing jointly</b>	\$24,400	<u>\$24,800</u>	\$400
<b>Head of household</b>	\$18,350	\$18,650	\$300
<b>All others</b>	\$12,200	\$12,400	\$200

## Tax Cuts and Jobs Act of 2017 Effect on Real Estate Licensees

(source: [nar.realtor/tax-reform](http://nar.realtor/tax-reform))

### Deduction for Qualified Business Income

Because the new tax bill greatly decreases the tax rate for corporations (from the prior law's 35% to just 21%), many Members of Congress believed that the business income earned by sole proprietors, such as independent contractors, as well as by pass-through businesses, such as partnerships, limited liability companies (LLCs), and S corporations, should also receive tax rate reductions.

In addition to lower marginal tax rates, the final bill provides a significant up-front deduction of 20% for business income earned by many of these businesses, *but with certain conditions*.

Specifically, the bill limits the 20% deduction to *non-personal service businesses*. Essentially, a personal service business is one involving the performance of services in the following fields:

- Health,
- Law,
- Consulting,
- Athletics,
- Financial Services,
- Brokerage Services (not real estate), and
- "Any business where the main asset of the business is the reputation or skill of one or more of its employees or owners."

The great news for most agents and brokers is that the 20% deduction is available to them if their taxable income for the year is below a certain threshold. For tax year 2019:

- \$160,700 for single filers
- \$321,400 for married filing jointly.

A partial deduction may be claimed for incomes of up to \$421,400 (joint returns) or up to \$210,700 (everyone else).



## Common Questions and Answers

### **Most real estate professionals are sales associates and are sole proprietors. Is there any tactical reason for them to restructure themselves into an LLC or S corporation to get a better deal under the deduction?**

No, a change in entity type is not necessary because sole proprietorship income qualifies for the deduction. Absent other reasons to change, they should keep filing as a sole proprietorship.

### **What if you're a broker or otherwise have pass-through income in addition to commissions earned?**

The deduction is taken on an aggregate basis, so if you have pass-through income from other sources in addition to commissions, then you combine your qualified business income with any qualified business losses before you calculate your deduction. So, if you have \$100,000 in net commission income and \$50,000 in qualified losses from other sources, the 20% would come off the aggregate amount, or \$50,000. That means your potential deduction would be \$10,000.

### **What pass-through activities would generate losses?**

Many things do. It's not uncommon for brokerages to throw off losses today because of generous splits with sales associates. So, if you're a broker-owner who still sells, you might have losses from your brokerage operation while generating commissions earned from your own sales.

### **What if you have investment rental property?**

The [IRS issued Rev. Proc. 2019-38](#) on September 24, 2019, finalizing a limited safe harbor initially proposed in January of 2019 (*IRS Notice 2019-07*) for taxpayers who are direct and indirect owners in rental real estate enterprises. If you qualify for the safe harbor, you can be assured your rental activities will qualify as a business and that the rental income will be eligible for the 20% deduction (subject to possible limitations). Even if you do not qualify for the safe harbor, you may be able to use a facts and circumstances analysis to support the 20% deduction.

### **The deduction is taken on your net qualified business income. There's no change to what counts as deductible business expenses, right?**

With the exception of some new rules for depreciation and changes in deductibility for meals and entertainment, that is correct. You take out your expenses in much the same way. Did you travel to conventions? Did you buy a new car? Did you buy a computer? Did you buy office supplies?

### Basic Income Tax Example: 2017 vs. 2020

Example: A real estate licensee, operating as a sole proprietor and filing as Single, has an annual earned income of \$50,000 in 2017 and \$50,000 in 2020. Calculate their taxes due in 2017 (prior to Tax Cuts and Jobs Act of 2017) vs. 2020. For the sake of simplicity, we will not be factoring in any additional credits, deductions, gains or losses.

	2017	2020
<b>Income</b>	\$50,000	\$50,000
<b>Qualified Business Income Deduction</b> (20% of income)	N/A	\$10,000
<b>Minus Standard Deduction</b>	(\$6,350)	(\$12,400)
<b>Taxable Income</b>	\$43,650	\$27,600
<b>Tax Bracket</b>	25%	12%
<b>Total Tax Due</b>	\$6,651.25	\$3,114.50

### Calculation of Total Tax Due

<b>Marginal Tax Due</b> (From Charts Below)	\$5,226.25 + 25% of the amount over \$37,950	\$987.50 + 12% of the amount over \$9,875
<b>Taxable Income Subject to Tax Bracket Rate</b>	\$43,650 - \$37,950 = \$5,700	\$27,600 - \$9,875 = \$17,725
<b>Difference Times Tax Rate</b>	\$5,700 x .25 = \$1,425	\$17,725 x .12 = \$2,127
<b>Total Tax Due</b>	\$5,226.25 + \$1,425 = \$6,651.25	\$987.50 + \$2,127 = \$3,114.50

### Single Taxpayers 2017

Bracket	Tax is this amount plus this percentage	Of the amount over
\$0 to \$9,325	\$0 plus 10%	\$0
\$9,325 to \$37,950	\$932.50 plus 15%	\$9,325
\$37,950 to \$91,900	\$5,226.25 plus 25%	\$37,950
\$91,900 to \$191,650	\$18,713.75 plus 28%	\$91,900
\$191,650 to \$416,700	\$46,643.75 plus 33%	\$191,650
\$416,700 to \$418,400	\$120,910.25 plus 35%	\$416,700
above \$418,400	\$121,505.25 plus 39.6%	\$418,400

### Single Taxpayers 2020

Bracket	Tax Is This Amount Plus This Percentage	Of the Amount Over
\$0 to \$9,875	\$0 plus 10%	\$0
\$9,875 to \$40,125	\$987.50 plus 12%	\$9,875
\$40,125 to \$85,525	\$4,617.50 plus 22%	\$40,125
\$85,525 to \$163,300	\$14,605.50 plus 24%	\$85,525
\$163,300 to \$207,350	\$33,271.50 plus 32%	\$163,300
\$207,350 to \$518,400	\$47,367.50 plus 35%	\$207,350
Above \$518,400	\$156,235 plus 37%	\$518,400

## Deductions and Tax Credits

Tax deductions and tax credits both reduce your tax bill, but in very different ways.

- **Tax Deductions:** Commonly called tax write-offs, deductions are amounts that can be subtracted from your total income, so you're essentially taxed on a lower amount than you actually earned.

Example: you earned \$50,000 in income and spent \$7,000 on deductible business expenses. You can subtract the \$7,000 expenses from the \$50,000 income, so you'll be taxed on just \$43,000 (instead of being taxed on all \$50,000).

- **Tax Credits:** Tax credits are amounts that are subtracted directly from your calculated taxes due.

Example: after subtracting your deductions, your taxable income is \$27,600. If you're an individual taxpayer, your taxes would be \$3,114.50 (\$987.50 plus 12% of the amount over \$9,875 according to the tax bracket table). If you have one kid, you can take a \$2,000 tax credit which would be subtracted from the calculated taxes. So your tax bill would be just \$1,114.50.

## Top 10 Tax Deductions for Real Estate Professionals

(source: [Investopedia.com](http://Investopedia.com))

### 1. Home Office

The home office deduction is one of the more complex deductions. In short, the cost of any workspace that you use regularly and exclusively for your business, regardless of whether you rent or own it, can be deducted as a home office expense. You are basically on the honor system, but you should be prepared to defend your deduction in the event of an IRS audit. One way to do this is to prepare a diagram of your workspace, with accurate measurements, in case you are required to submit this information to substantiate your deduction, which uses the square feet of your workspace in its calculation.

In addition to the office space itself, the expenses you can deduct for your home office include the business percentage of deductible mortgage interest, home depreciation, property taxes, utilities, homeowners insurance and home maintenance that you pay during the year. If your home office occupies 15% of your home, for example, then 15% of your annual electricity bill becomes tax deductible. Some of these deductions, such as mortgage interest and home depreciation, apply only to those who own rather than rent their home office space.

You have two choices for calculating your home office deduction: the standard method and the simplified option, and you don't have to use the same method every year. The standard method requires you to calculate your actual home office expenses. The simplified option lets you multiply an IRS-determined rate by your home office square footage. To use the simplified option, your home office must not be larger than 300 square feet, and you cannot deduct depreciation or home-related itemized deductions.

The simplified option might be a clear choice if you're pressed for time or can't pull together good records of your deductible home office expenses. However, because the simplified option is calculated as \$5 per square foot, with a maximum of 300 square feet, the most you'll be able to deduct is \$1,500. If you want to make sure you're claiming the largest home office deduction you're entitled to, you'll want to calculate the deduction using both the regular and simplified methods. If you choose the standard method, calculate the deduction using IRS form 8829, Expenses for Business Use of Your Home.

## 2. Internet and Phone Bills

Regardless of whether you claim the home office deduction, you can deduct your business phone, fax and internet expenses. The key is to deduct only the expenses directly related to your business. If you have just one phone, you shouldn't deduct your entire monthly bill, which includes both personal and business use. You should only deduct costs that specifically relate to your business. If you have a second phone line that you use exclusively for business, however, you can deduct 100% of that cost. By the same token, you would only deduct your monthly internet expenses in proportion to how much of your time online is related to business – perhaps 25% to 50%.

## 3. Health Insurance Premiums

If you are self-employed, pay for your own health insurance premiums and were not eligible to participate in a plan through your spouse's employer, you can deduct all of your health, dental and qualified long-term care insurance premiums. You can also deduct premiums that you paid to provide coverage for your spouse, your dependents and your children who were younger than 27 at year-end, even if they aren't dependents. Calculate the deduction using the Self-Employed Health Insurance Deduction Worksheet in IRS publication 535.

## 4. Meals

A meal is a tax-deductible business expense when you are traveling for business or entertaining a client. The meal cannot be lavish or extravagant under the circumstances, and you can only deduct 50% of the meal's actual cost if you keep your receipts, or 50% of the standard meal allowance if you keep records of the time, place and business purpose of your travel but not your actual meal receipts. The lunch you eat alone at your desk is not tax deductible.

## 5. Travel

To qualify as a tax deduction, business travel must last longer than an ordinary workday, require you to get sleep or rest and take place away from the general area of your tax home (usually, outside the city where your business is located).

Further, to be considered a business trip, you should have a specific business purpose planned before you leave home, and you must actually engage in business activity – such as finding new customers, meeting with clients or learning new skills directly related to your business – while you are on the road. Handing out business cards at a bar during your friend's bachelor party won't make your trip to Vegas tax deductible. Keep complete and accurate records and receipts for your business travel expenses and activities, as this deduction often draws scrutiny from the IRS.

Deductible travel expenses include the cost of transportation to and from your destination (such as plane fare), the cost of transportation at your destination (such as a car rental, Uber fare or subway tickets), lodging and meals. You can't deduct lavish or extravagant expenses, but you don't have to choose the cheapest options available, either. You, not your fellow taxpayers, will be paying the bulk of your travel costs, so it's in your interest to keep them reasonable.

Your travel expenses for business are 100% deductible, except for meals, which are limited to 50%. If your trip combines business with pleasure, things get a lot more complicated; in a nutshell, you can only deduct the expenses related to the business portion of your trip – and don't forget that the business part needs to be planned ahead.

## 6. Vehicle Use

When you use your car for business, your expenses for those drives are tax deductible. Make sure to keep excellent records of the date, mileage and purpose for each trip, and don't try to claim personal car trips as business car trips. You can calculate your deduction using either the standard mileage rate (determined annually by the IRS; it's **57.5 cents per mile in 2020**) or your actual expenses.

The standard mileage rate is the easiest because it requires minimal record keeping and calculation. Just write down the business miles you drive and the dates you drive them. Then, multiply your total annual business miles by the standard mileage rate. This amount is your deductible expense.

To use the actual expense method, you must calculate the percentage of driving you did for business all year as well as the total cost of operating your car, including gas, oil changes, registration fees, repairs and car insurance. If you spent \$3,000 on car operating expenses and used your car for business 10% of the time, your deduction would be \$300. As with the home office deduction, it may be worth calculating the deduction both ways so you can claim the larger amount.

## 7. Publications and Subscriptions

The cost of specialized magazines, journals and books directly related to your business is tax deductible. A daily newspaper, for example, would not be specific enough to be considered a business expense.

## 8. Education

Any education expenses you want to deduct must be related to maintaining or improving your skills for your existing business; the cost of classes to prepare for a new line of work isn't deductible. For example, the 63 Hour Sales Associate Pre-Licensing Course is **NOT** deductible. However, the 72 Hour Broker Pre-Licensing Course **IS** deductible.

## 9. Advertising

Do you pay for Facebook ads, Google ads, a website, a billboard, a TV commercial, or mailed flyers? The costs you incur to advertise your business are tax deductible. You can even deduct the cost of advertising that encourages people to donate to charity while also putting your business's name before the public in the hope of gaining customers. A sign advertising "Holiday Toy Drive sponsored by 123 Realty," for example, would be tax deductible.

## 10. Self-Employed Retirement Plan Contributions

Contributions to SEP-IRAs, SIMPLE IRAs and solo 401(k)s reduce your tax bill now and help you rack up tax-deferred investment gains for later. You can't contribute more than you earn, and this benefit will only help you if you have enough profits to take advantage of it.

## Tax Breaks for Parents

### Child Tax Credit

- The Child Tax Credit offers up to \$2,000 per qualifying dependent child 16 or younger at the end of the calendar year.
- \$500 nonrefundable credit for qualifying dependents other than children (ex. 17-year-old child taking care of elderly relatives).
- This is a tax credit, which means it reduces your tax bill on a dollar-for-dollar basis. Up to \$1,400 of the Child Tax Credit is refundable; that is, it can reduce your tax bill to zero and you might be able to get a refund on anything left over.

You can qualify for the Child Tax Credit only if your modified adjusted gross income is under:

- \$400,000 for married filing jointly
- \$200,000 for everybody else.

### Eligibility Requirements

1. **Age Test:** The child you claim as your dependent must have been under age 17 (so, 16 or younger) at the end of the tax year.
2. **Relationship Test:** The child must be your daughter, son, foster child or adopted child. The child can also be a grandchild or a descendant of one of your siblings.
3. **Support Test:** The child must not have provided more than half of their own "support," meaning the money they use for living expenses.
4. **Dependent Test:** The child must be claimed as your dependent on your federal income tax return.
5. **Citizenship Test:** The child must be a U.S. citizen, a U.S. national or a U.S. resident alien.
6. **Resident Test:** The child must have lived with you for more than half of the tax year (with a few exceptions detailed on the Child Tax Credit worksheet).

### **The Child and Dependent Care Tax Credit**

- The Child and Dependent Care Credit can get you 20% to 35% of up to \$3,000 of child care and similar costs for a child under 13, an incapacitated spouse or parent, or another dependent so that you can work (and up to \$6,000 of expenses for two or more dependents).
- This credit is not refundable, which means it can reduce your tax bill to zero but you won't get a refund on anything left over from the credit

### **Eligibility Requirements**

- A dependent child must be 12 or younger at the time the child care is provided.
- Spouses and other dependents don't have an age requirement, but IRS rules say they must have been physically or mentally incapable of self-care and must have lived with you for more than half the year.
- If you're married, you must file as married filing jointly.
- You must have earned income — money you earned from a job. Investment or dividend income doesn't count.
- You must provide the care provider's name, address and Taxpayer Identification Number — either a Social Security number or an Employer Identification Number.

You can't claim the credit for payments to care providers who are:

- Your spouse
- A parent of the dependent child
- A dependent listed on your tax return
- Your child who is age 18 or younger, even if they're not listed as a dependent on your return
- Keep in mind that qualifying expenses can go beyond physical care and extend to household expenses such as paying someone to help with cooking and cleaning.

## Education tax breaks

There are currently two tax credits that apply to higher education costs: the American Opportunity Tax Credit (formerly the Hope Credit), and the Lifetime Learning Credit. The American Opportunity Tax Credit is worth up to \$2,500 for each qualifying student and is available during the first four years of postsecondary education. The credit is phased out for taxpayers with adjusted gross incomes starting at \$80,000 for single filers and \$160,000 for joint filers.

The Lifetime Learning Credit is 20% of the first \$10,000 paid for qualifying tuition and related expenses each year. The maximum credit in 2019 was \$2,000. Expenses for graduate and undergraduate work are eligible. Unlike the American Opportunity Tax Credit, there is no limit on the number of years this credit can be claimed; however, it is subject to the same AGI income phase out rules.

The Tax Jobs and Cuts Act of 2017 expanded the available use of funds saved in a 529 college savings plan to include levels of education other than college. In other words, if you have children in private school, or you pay for tutoring for your child in the K-12 grade levels, you can use the money in your 529 college savings account for these expenses.

## Deductions for gifts

- The annual gift exclusion amount remains the same in 2020 at \$15,000.
- Deductions for gifts to business customers and clients are limited to **\$25 per person**. You and your spouse are treated as one person. A partnership for this rule is also considered one person.

Exceptions to the \$25 limitation would be advertising items which cost less than \$4, i.e. potholders, pens, pencils, etc., or incidental costs of wrapping, insuring or mailing the gift.



## Tax Benefits of Owning and Selling a Primary Residence Itemized Deductions

- **Mortgage interest deduction** can only be taken on mortgage debt of up to \$750,000, down from \$1 million previously. This only applies to mortgages taken after Dec. 15, 2017, prior mortgages were grandfathered in. And the interest on home equity debt can no longer be deducted at all, whereas up to \$100,000 in home equity debt could be considered.
- **(SALT) State and local sales tax**, plus real property taxes, may be deducted, but only up to a combined total limit of \$10,000 (\$5,000 if married, filing separately).
- **Acquisition debt, including equity debt**
  - Acquisition debt is defined as debt used to acquire or improve a personal residence.
  - From 2018 until 2026 the **deduction for interest paid** on home equity loans and lines of credit has been suspended, unless they are used to **buy, build or substantially improve** the taxpayer's home that secures the loan.
    - Under the new law, for example, interest on a home equity loan used to build an addition to an existing home is typically deductible, while interest on the same loan used to pay personal living expenses, such as credit card debts, is not.
    - As under prior law, the loan must be secured by the taxpayer's main home or second home (known as a qualified residence), not exceed the cost of the home and meet other requirements.
    - Example: A married couple obtains a mortgage loan of \$750,000 today. Later this year, they decide to obtain a \$100,000 home equity loan to build an addition and replace their roof. They may only deduct the interest on their total debt up to \$750,000.
- **Points paid** to acquire or improve a primary residence are deductible in the year they are paid. If seller pays points, they are deductible by the **seller**.
- **Capital improvements** (new roof, landscaping, siding, windows, etc.) reduce the realized capital gain upon sale.

## Individual Retirement Accounts (IRA)

For 2020, the limit on contributions to an IRA is \$6,000, the same as in 2019. IRA contribution limits are adjusted to keep pace with the cost of living, but they only increase in \$500 increments, so they don't necessarily increase every year when there's inflation.

The catch-up contribution allowed for individuals age 50 and older is still \$1,000, for a total possible maximum of \$7,000 contributed to an IRA for the 2020 tax year.

A couple of important notes:

- Traditional IRA contributions are a PRE-TAX event and income is deferred. You are taxed on the withdrawals after age 59½.
- ROTH IRA contributions are a POST-TAX event. You pay no taxes on the withdrawals after age 59½.
- The IRA contribution limit is a per-person limit, not a per-account one. In other words, if you have more than one IRA, your total contributions to all of your accounts cannot exceed the limit.
- IRA contributions can be made anytime during the calendar year, or in the following calendar year up to the regular tax deadline. In other words, 2020 IRA contributions can be made anytime between January 1, 2020 and April 15, 2021.

### 2020 IRA Contribution Limits

IRA contribution limit	\$6,000
"Catch Up" contributions if 50 or over	\$1,000
<b>TRADITIONAL IRA</b>	
Income Limits (single filers on employer plan)	Phase out starts at \$65,000; ineligible at \$75,000
Income Limits (joint filers on employer plan)	Phase out starts at \$104,000; ineligible at \$124,000
Income Limits (joint filers NOT on employer plan)	Phase out starts at \$196,000; ineligible at \$206,000
<b>ROTH IRA</b>	
Income Limits (single and head of household)	Phase out starts at \$124,000; ineligible at \$139,000
Income Limits (joint filers)	Phase out starts at \$196,000; ineligible at \$206,000
<b>Contribution Deadline</b>	4/15/2021

## 401(k)

For 2020, the limit for elective 401(k) contributions is increasing by \$500 from its 2019 level to \$19,500.

For older workers 50 and up, additional catch-up contributions are permitted. Catch up contributions are additional elective contributions older workers can make on top of the \$19,500 every eligible worker can invest. In 2019, older workers were allowed to make catch-up contributions of \$6,000. This amount increased in 2020 to \$6,500, so workers 50 and over will be allowed to contribute a maximum of \$26,000 in elective contributions in 2020, compared with \$25,000 in 2019.

Matching contributions from employers, non-elective contributions, and allocations of forfeitures are not counted in the \$19,500 or in the \$26,000 maximum elective contributions. However, there is a total limit for all contributions from all sources. This limit increased \$1,000 in 2020 compared with 2019. The new maximum contribution from all sources is \$57,000 for workers under 50, and \$63,500 for workers 50 and over.

<b>Contribution Type</b>	<b>2019 Limit</b>	<b>2020 Limit</b>	<b>Change</b>
Elective contributions for all workers	\$19,000	\$19,500	\$500
"Catch Up" contributions if 50 or over	\$6,000	\$6,500	\$500
Defined contribution maximum from all sources if under 50	\$56,000	\$57,000	\$1,000
Defined contribution maximum from all sources if over 50	\$62,000	\$63,500	\$1,500
<b>Contribution Deadline</b>	4/15/2020	4/15/2021	

## SEP-IRA

The SEP IRA (Simplified Employee Pension Individual Retirement Arrangement) is a retirement plan that can be set up by the self-employed individual, as an employer and employee of their own business, they can contribute up to 25% of their income, up to \$57,000 in 2020.

- Only the employer (or self-employed person) contributes to the account, and there are generally no filing requirements for the employer. (Employees may also contribute to their own IRAs separately.)
- Contributions are made on a pre-tax basis, lowering the employees' taxable income for the year of the contribution.
- The employee is always 100% vested in the accounts, meaning that the contributions made immediately belong to him or her.

The employer's contribution rate must be the same for all eligible employees.

## Capital gains taxes

Short-term capital gains are still taxed as ordinary income. Since the tax brackets applied to ordinary income have changed over the years, your short-term gains may be taxed at a different rate than they formerly were.

Also, under the new tax law, the three capital gains income thresholds don't match up perfectly with the tax brackets. Under previous tax law, a 0% long-term capital gains tax rate applied to individuals in the two lowest marginal tax brackets, a 15% rate applied to the next four, and a 20% capital gains tax rate applied to the top tax bracket.

Instead of this type of structure, the long-term capital gains tax rate income thresholds are similar to where they would have been under the old tax law. For 2020, they are applied to maximum taxable income levels as follows:

Long-Term Capital Gains Tax Rate	Single Filers (taxable income)	Married Filing Jointly	Heads of Household	Married Filing Separately
0%	\$0-\$40,000	\$0-\$80,000	\$0-53,600	\$0-\$40,000
15%	\$40,001-\$441,450	\$80,001-\$496,600	\$53,601-\$469,050	\$40,001-\$248,300
20%	Over \$441,450	Over \$496,600	Over \$469,050	Over \$248,300

The applicable capital gains tax for most tax payers is 15%.

### **Capital Gain Tax Exemption on Primary Residence**

- Married couple up to \$**500,000** or a single person up to \$**250,000**.
  - Must own and occupy for a least **2** of the **5** years prior to the sale.
  - Use is unlimited.
  - Both spouses must occupy, but only one spouse must own.
- May only apply exclusion once every two years.

### **Non-exempt Gains on the Sale of a Primary Residence**

- Any gain over \$500,000 for married and \$250,000 for single is subject to taxation.
  - As ordinary income when owned less than one year.
    - May be eligible for deductions.
  - As a capital gain when owned one year but less than two.
    - May be eligible for 1031 tax exchange if converted to investment and purchasing investment.

### **Capital Losses**

- Are not deductible on property held for personal use.

**Unit 2 Review Exam**

- 1. The TILA-RESPA Rule requires a Loan Estimate to be delivered or placed in the mail no later than the third business day:**
  - A) before receiving the consumer's application.
  - B) after consummation of the loan.
  - C) after receiving the consumer's application.
  - D) before consummation of the transaction.
  
- 2. A Closing Disclosure must be provided to the consumer at least three business days:**
  - A) prior to consummation.
  - B) prior to final approval.
  - C) after receiving the consumer's application
  - D) after loan consummation.
  
- 3. The TILA-RESPA rule applies to which of the following?**
  - A) A HELOCs
  - B) A conventional real property loan
  - C) A reverse mortgage
  - D) A mortgage secured by a mobile home.
  
- 4. A loan originator or lender is restricted from imposing fees on a consumer before the consumer has indicated an intent to proceed with the transaction after receiving the:**
  - A) good faith estimate.
  - B) HUD-1 settlement statement.
  - C) Closing Disclosure.
  - D) Loan Estimate.
  
- 5. Whether or not a Loan Estimate was made in good faith is determined by calculating the difference between the estimated charges originally provided in the \_\_\_\_\_ and the actual charges paid by or imposed on the consumer in the \_\_\_\_\_.**
  - A) Loan Estimate; Closing Disclosure.
  - B) Good Faith Estimate; HUD-1.
  - C) Purchase and Sale Contract; Loan Estimate.
  - D) Special Information Booklet; Closing Disclosure.
  
- 6. If the actual terms or costs of the transaction change prior to consummation, the creditor must provide a corrected:**
  - A) Loan Application.
  - B) Lender's Affidavit.
  - C) Closing Disclosure and provide the consumer with an additional three-business-day waiting period prior to consummation.
  - D) Special Information Booklet.

**7. To exclude from their income all or part of any gain from the sale of their principal residence, a home seller must meet which of the following ownership and use tests during the 5-year period ending on the date of the sale?**

- A) Own and occupy for all 5 years
- B) Own and occupy as the principal residence for at least 4 years
- C) Own for at least 2 years and occupy as the principal residence for at least 2 years.
- D) Own for all 5 years and live in the home as the principal residence for at least 5 years.

**8. Deductions for gifts to business customers and clients are limited to:**

- A) \$250 per person
- B) \$50 per client
- C) there is no limit
- D) \$25 per person

**9. What is the form called that explains to a borrower all of the estimated settlement costs they will pay when applying for a loan?**

- A) Listing Agreement
- B) Certificate of Eligibility
- C) Prepayment Estimate
- D) Loan Estimate

## Unit 7 Review Exam Key

1. C) A **Loan Estimate** that must be delivered or placed in the mail no later than the **third business day** after receiving the consumer's application.
2. A) A **Closing Disclosure** must be provided to the consumer at least three **business days** prior to **consummation**.
3. B) The TILA-RESPA rule applies to most closed-end consumer credit transactions secured by real property. It **does not apply to** HELOCs, reverse mortgages or mortgages secured by a mobile home.
4. D) Lender restrictions: Imposing fees on a consumer before the consumer has received the **Loan Estimate** and indicated an **intent to proceed** with the transaction.
5. A ) Whether or not a **Loan Estimate** was made in **good faith** is determined by calculating the difference between the estimated charges originally provided in the **Loan Estimate** and the actual charges paid by or imposed on the consumer in the **Closing Disclosure**.
6. C) **If the actual terms or costs of the transaction change prior to consummation**, the creditor must provide a corrected disclosure and provide the consumer with an additional **three-business-day waiting period** prior to consummation.
7. C) To claim the exclusion, the homeseller must meet the ownership and use tests. During the 5-year period ending on the date of the sale, the seller must have:
  - Owned the home for at least two years (the ownership test); and
  - Lived in the home as the principal residence for at least two years (the use test)
8. D) Deductions for gifts to business customers and clients are limited to \$25 per person.
9. D) Mortgage lenders and brokers must provide borrowers with a standard Loan Estimate to clearly answer the key questions they have about settlement costs when applying for a mortgage loan



## Unit 3

# REAL ESTATE ETHICS

### Key topics in this unit:

- Personal and Professional Ethics
- Relationship of Laws and Ethics
- Is Obedience to the Law Good Enough?
- Business Ethics Pyramid
- Business Ethics Case Study
- Business Ethics: Individuals PLUS Industry Practices
- 12 Ethical Principles for Real Estate Agents
- Current Real Estate Ethics Issues
- Ethical Action Self-Test: Is the Action I am Considering Ethical?
- REALTOR® Code of Ethics

## UNIT 3 Real Estate Ethics

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### OVERVIEW

- A. Personal and Professional Ethics
- B. Relationship of Laws and Ethics
- C. Is Obedience to the Law Good Enough?
- D. Business Ethics Pyramid
- E. Business Ethics Case Study
- F. Business Ethics: Individuals PLUS Industry Practices
- G. 12 Ethical Principles for Real Estate Agents
- H. Current Real Estate Ethics Issues
- I. Ethical Action Self-Test: Is the Action I am Considering Ethical?
- J. REALTOR® Code of Ethics

#### A. Personal and Professional Ethics

Each real estate licensee faces a myriad of decisions every day. From managing things on the home front to prospecting, marketing, showing and closing. There are four sources of “information” when it comes to making each of these decisions:

1. Individual moral values
2. Company policies
3. Industry laws and rules
4. Industry ethics

##### 1. Individual moral values - You

***These are YOUR rules applied to business and profit***

Individual moral values are YOUR personal standards of right and wrong. When applied to business and profit, individual morality provides the basis of decisions and judgments: honesty, loyalty, good faith, being responsible and accountable. Going against moral values usually produces guilt.

**2. Company policies – Broker**

***These are BROKER rules tied to their business and profit***

Brokers are required to adequately supervise the activities of sales associates and broker associates registered to the broker. Broker policies and procedures establish the rules of conduct within the organization, outlining the responsibilities of employees, sales associates and the broker. A policy and procedures manual defines company objectives and business philosophies, including, but not limited to:

- the company's function,
- the company's objectives,
- the company policies related to discrimination, sexual harassment, resolution of controversies, and more.

**3. Industry laws and rules**

***These are SOCIETY rules codifying what is right and wrong***

Every industry has laws and rules that identify what society deems to be right and wrong practices. Florida Real Estate Professional Practices Act and Florida Administrative Code are legislative and regulatory standards for practice in real estate. In short, they codify what is right and wrong in the industry and specify penalties for violations. The stated purpose of Chapter 475 is found Section 475.001: "The Legislature deems it necessary in the interest of the public welfare to regulate real estate brokers, sales associates, and schools in this state."

**4. Industry Code of Ethics – Peers**

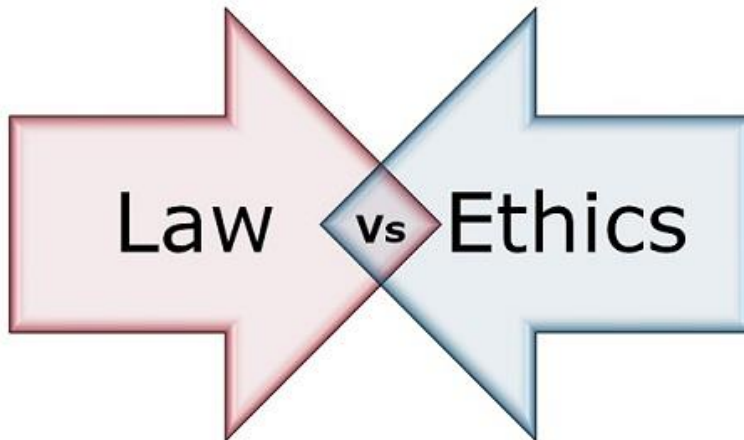
***These are PEER rules to 'do the right thing'***

Most industries and types of businesses have one or more trade associations. Also known as an industry trade group, business association, sector association or industry body, it is an organization founded and funded by businesses that operate in a specific industry. An industry trade association participates in public relations activities such as advertising, education, political donations, lobbying and publishing, but its focus is collaboration between companies. Associations may offer other services, such as producing conferences, networking or charitable events or offering classes or educational materials.

Many associations adopt its own Code of Ethics intended to serve as a guide to the everyday professional conduct of its members. A code of ethics document may outline the mission and values of the organization, how professionals are supposed to approach problems, the ethical principles based on the organization's core values and the standards to which the professional is held.

The REALTOR® Code of Ethics has been the standard for real estate for over 100 years. True, only member REALTORS® are obligated to abide by the Code. However, courts have historically looked to the Code for direction in determining ethical performance by members and non-members alike.

## **B. Relationship of Laws and Ethics**



### **1. Laws are created by the government**

The law is described as the universally accepted, recognized and enforced set of rules and regulations created by the government. It is used to govern the action and behavior of the participant and can be enforced by imposing penalties. It is created with the purpose of maintaining social order, peace, justice in the society and to provide protection to the public and safeguard their interests. Every applicable person is bound to follow the law or face punishment.

**2. Ethics are the code of conduct agreed to and adopted by peers**

Ethics are the code of conduct agreed and adopted by the people to set a standard of how a person should live and interact with others. They are the principles that guide a person, whether a company or individual, to determine what is good or bad, right or wrong, in each situation. Ethics guide a person's behavior and help an individual to apply moral rules and guidelines to make better choices for ourselves.

**3. Laws and Ethics do not dovetail in every respect**

Laws can be learned, mandated, and enforced, but no one has ever been able to legislate ethical behavior. In many cases, ethics go beyond the limitations of the law. The law draws a firm black-and-white line between right and wrong, while ethics tend to come in multiple shades of gray.

The law is unique and distinct from business ethics. Some acts are legal but unethical. When Broker purposely advertises and otherwise represents inaccurate information about a listed property it is an obvious case of right versus wrong. It is a violation of law. But it is less obvious when Broker makes disparaging statements about a competitor or former partner, especially if they are true.

**4. Laws do not require acts of common decency and personal integrity.**

For example, does the Fair Housing Act promote equal opportunity in housing when, in fact, individual property owners are exempt from the law? Compliance with the "Golden Rule" may be a highly worthy goal from an ethical point of view but it is not something society would want to enforce legally.

**5. The position that the ethical responsibility of businesses ends with obedience to the law can invite abuses that will in turn generate more legal regulation.**

The failure of personal ethics at Enron and WorldCom can be thanked for the Sarbanes-Oxley Act in 2002. Our Case Study ethics failures prompted the Dodd-Frank Act of 2010 that spans 2,300 pages and directed federal regulators to burden job creators and the economy with more than 400 new rules and mandates. And the widespread practice of dual agency by Florida real estate licensees generated the "Brokerage Relationship Disclosure Act."

To say that all an individual or business must do is obey the law suggests that laws are clear-cut and can be easily applied. If that were the case, there would not be much of a role for lawyers, courts or real estate commissions.

**Laws are not Clear-Cut**

A recent real estate student asked a seemingly simple question: Am I required to disclose to a buyer all pertinent facts about a property? The answer, I explained, is not simple. Chapter 475 in six separate places requires "Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer." Nowhere does it require disclosing all pertinent facts about a property. However, it DOES require "Dealing honestly and fairly" and "Using skill, care, and diligence in the transaction." It would be left to a judge or arbitrator to determine whether failure to disclose all pertinent facts was an example of dealing dishonestly, unfairly or in a negligent manner.

Because the law is ambiguous and sometimes not clear, real estate licensees often face decisions that rely on their ethical judgment. We are committed to obeying the law but we are confronted with fundamental ethical questions: What should I do? How should I respond?

**6. In general, regulators and the courts don't care if you make nasty comments about your competitor or former partner.**

Both law and ethics serve to channel our behavior. Law accomplishes this primarily through the threat of sanctions if we disobey legal rules. Ethics also involve incentives: unethical behavior may result in disapproval and guilt, and ethical behavior may result in virtuous feelings and praise. Because of the binding nature of the law, general morality is not legislated. So making nasty comments about a competitor or coworker is not likely to result in a criminal charge.

However, a REALTOR® is bound by the REALTOR® Code of Ethics. Article 15 states: "REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices." Anyone could bring a complaint to the local REALTOR® Association and, if found guilty of violating the Code, the perpetrator of the false or misleading statements could be subject to penalties including a fine of up to \$15,000.

In addition, there is always the potential for a lawsuit and award of damages in a civil action on the grounds of unethical behavior. In real estate, adherence to ethical standards is taking the high road for ALL LICENSEES, not just REALTORS® bound to the Code of Ethics.

## Law Versus Ethics Comparison Chart

<b>BASIS FOR COMPARISON</b>	<b>LAW</b>	<b>ETHICS</b>
Meaning	A systematic body of rules that governs the whole society and the actions of its individual members.	A branch of moral philosophy that guides people about the basic human conduct.
What is it?	Set of rules and regulations	Set of guidelines
Governed By	Government	Individual, professional norms and trade associations
Expression	Expressed and published in writing.	Abstract unless codified.
Violation	Violation is not permissible and may result in punishment like imprisonment or fine or both.	There is no punishment for violation unless pledged to abide by a code.
Objective	Created with an intent to maintain social order and peace in the society and provide protection to all the citizens.	Help people to decide what is right or wrong and how to act.
Binding	Legally binding.	Not binding unless pledged to abide by a code.



## Real Estate Law Versus Ethics Versus Common Law

VIOLATION OF REAL ESTATE LAW	VIOLATION OF ETHICS	COMMON LAW
<ul style="list-style-type: none"> <li>• Notice of noncompliance</li> <li>• Citation</li> <li>• Denial</li> <li>• Suspension</li> <li>• Revocation</li> <li>• First or second-degree misdemeanor or felony of the third degree</li> <li>• Fine up to \$5,000</li> </ul>	<ul style="list-style-type: none"> <li>• Disapproval and guilt</li> <li>• If REALTOR®               <ul style="list-style-type: none"> <li>• Letter of reprimand</li> <li>• Education</li> <li>• Probation up to one year</li> <li>• Suspension of up to one year</li> <li>• Expulsion from membership for up to three years</li> <li>• Suspension or termination of MLS privileges</li> <li>• Fine up to \$15,000</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• May be based on Statute, Code of Ethics (whether a member or not), or Common Law</li> <li>• Judge/jury decide damages</li> <li>• Unlimited financial liability</li> </ul>

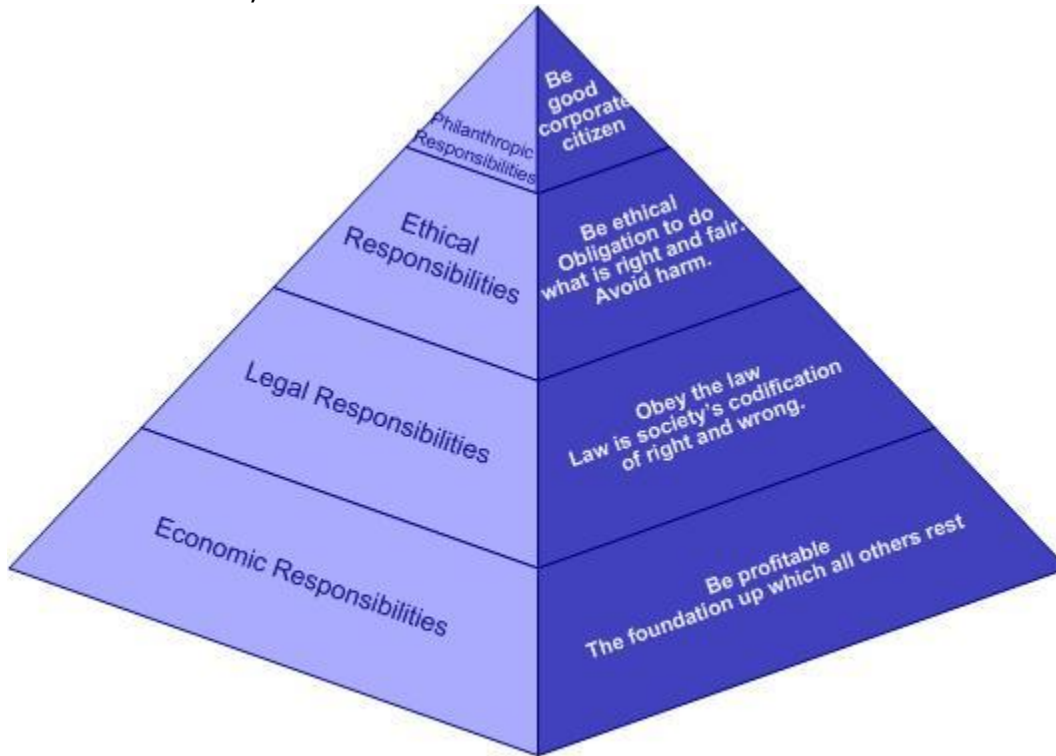
### C. Is Obedience to the Law Good Enough?

Although economic and legal responsibilities embody ethical norms about fairness and justice, ethical responsibilities embrace those activities and practices that are *expected* or *prohibited* by societal members even though they are not codified into law. Ethical responsibilities embody those standards, norms, or expectations that reflect a concern for what consumers, employees, shareholders, and the community regard as fair, just, or in keeping with the respect or protection of individual rights.

Changing ethics or values often become the driving force behind the very creation of laws or regulations. For example, wholesale fraud and misrepresentation in the real estate industry eventually drove licensing legislation across the United States. Legislatures across the country also enacted standards of conduct using the REALTOR® Code of Ethics as a guideline. The environmental, civil rights, and consumer movements have driven later legislation.

## D. Business Ethics Pyramid

Source: Carroll, Archie B.



Carroll's CSR Pyramid

### 1. Economic responsibilities

***Primary economic responsibility of any business organization is to be profitable***

Historically the principal role of a business organization was to produce goods and services that consumers needed and wanted and to make an acceptable profit in the process. At some point the idea of the profit motive got transformed into a notion of maximum profits, and this has been an enduring value ever since.

This theory tells us that business managers have one overriding responsibility: to maximize the profits of business owners. Under this theory managers' actions in fulfilling its responsibility are limited only by the obligation to obey the law and avoid fraud and coercion. All other business responsibilities are predicated upon the economic responsibility of the firm, because without it the others become moot considerations.

## 2. Legal responsibilities

### Industry laws and rules

- **Legal Responsibilities to the Broker**
- **Legal Responsibilities to consumers**
- **DADSOCOLD**

### Legal Responsibilities to the Broker

A real estate sales associate is expected to operate profitably within the framework of legal responsibilities to the employing broker and industry laws and rules. While the majority of sales associates operate as independent contractors rather than employees, they are considered to be agents of the employing broker. Florida Statutes Chapter 475 and Chapter 61J2 Florida Administrative Code represent the real estate industry's "codified ethics." They specify responsibilities to the broker as the employing principal and to the consumer as a customer of the broker's services.

### Legal Responsibilities to consumers

- **D**ealing honestly and fairly;
- **A**ccounting
- **D**isclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer
- **S**kill, care and diligence
- **O**ffers and counteroffers presented in a timely manner, unless a party has previously directed the licensee otherwise in writing
- **C**onfidentiality (limited if transaction broker)

### Common law sales associate agency responsibilities to the employing broker principal include:

- **D**ealing honestly and fairly;
- **A**ccounting
- **S**kill, care and diligence
- **C**onfidentiality (full confidentiality)
- **O**bedience
- **L**oyalty
- **D**isclosure of all material facts

## Business Economic and Legal Responsibilities Chart

<b>Economic Responsibilities</b>	<b>Legal Responsibilities</b>
1. Maximize earnings per share	1. Comply with governmental expectations
2. Commit to being as profitable as possible	2. Comply with various laws and regulations
3. Maintain a strong competitive position	3. Be a law-abiding corporate citizen
4. Maintain a high level of operating efficiency	4. Define a successful firm as one that fulfills its legal obligations
5. Define a successful firm as one that is consistently profitable	5. Provide goods and services that at least meet minimal legal requirements

### 3. Ethical responsibilities

#### Ethics in real estate

- **Individual ethical standards**
- **Corporate ethical standards**
- **REALTOR® Code of Ethics – Peers**

#### Ethical Responsibilities to the Consumer

The principles of ethics that help us solve ethical dilemmas in everyday life are the same principles that provide guidance in business, health care, law, and education:

1. Do No Harm
2. Make Things Better
3. Respect Others
4. Be Fair
5. Care

#### **4. Philanthropic responsibilities**

##### ***Be a Good Corporate Citizen***

Philanthropy encompasses those corporate actions that are in response to society's expectation that businesses be good corporate citizens. This includes actively engaging in acts or programs to promote human welfare or goodwill. Examples of philanthropy include business contributions to financial resources or executive time, such as contributions to the arts, education, or the community. A loaned-executive program that provides leadership for a community's United Way campaign is one illustration of philanthropy.

The distinguishing feature between philanthropy and ethical responsibilities is that the former are not expected in an ethical or moral sense. Communities desire firms to contribute their money, facilities, and employee time to humanitarian programs or purposes, but they do not regard the firms as unethical if they do not provide the desired level. Therefore, philanthropy is more discretionary or voluntary on the part of businesses even though there is always the societal expectation that businesses provide it.

#### **E. Business Ethics Case Study**

The information for this case study was taken from court records and other public records and documents. The numbers are for example purposes.

Consider:

1. Were these actions legal?
2. Would these actions be legal today?
3. Were these actions ethical?
4. Would these actions be considered ethical today?

## Sell Paradise and Retire Early

In 2004, with real estate sales and prices booming, private and institutional lenders had a voracious appetite for new loans secured by mortgages. Lenders had virtually nothing to lose and everything to gain – because all they needed was a completed application and a certified appraisal and they could sell the note at a premium in the secondary mortgage market, pocketing loan origination fees in addition to the so-called “Service Release Premium.” Ethical AND unethical developers, builders, title insurance companies, individual loan officers and real estate agents were more than willing to get in on the easy money.

**The Plan:** Sell pre-construction to high net worth investors to resell for a profit

### The Pieces:

Developer – Access to approved building sites

Builder— A licensed general contractor registered as a separate entity but with the same ownership as the developer

Lender – A bank placing and selling mortgage loans in the secondary mortgage market, primarily funded through Lehman Brothers, an investment banking firm

Individual loan officer – An unlicensed individual paid commissions to deliver completed applications to the in-house loan processor

Appraiser – A state certified real property appraiser

Title Insurance – A licensed title insurance company to prepare HUD-1 Settlement Statements

Real Estate Broker – A Florida-licensed broker to draft all purchase and sale contracts and addenda (required to use developer’s contract form)

### The Broker’s Deal:

- Broker will receive a commission of 5% of gross sales price + an unstated “share of buyers’ deposits”
- Broker will get the listing contract on resale
- Broker will get all rental and property management contracts

## The Strategy

They targeted high net worth investors who were required to have a credit score of 700+; available reserves to pay a 5% cash deposit / downpayment (roughly \$14,250). An advertising fund was available to entice prospective investors to attend seminars in the Cape Coral area that included presentations by the Broker, the builder, title representative and loan originator.

## The Roles

### Builder:

- The Builder developed the plans and specs including inflated bids
- Required construction on Builder's lot
- Builder's lots were not prime

### Broker:

- The Broker's role was to hold seminars and conduct conference calls and other meetings to entice prospects to invest.
- Broker pushed the idea of becoming "...a passive real estate investor in Lee County, Florida enjoying the beauty of 70 to 100% returns within one year on your leveraged invested capital...."
- Broker sold the "hot" real estate market in Cape Coral.
- All participants sold the concept that "renters will more than pay for the mortgage" and expect "25% appreciation" per year.
- The Broker was authorized to use all media to bolster the claims.

### Lender: **The Countrywide Mortgage Scam**

- Lender offered "construction perm" financing to pay for construction and convert to a 30-year 95% LTV loan @ 6.95%.
- Lender suggested during the application that it would be possible for the investor to obtain a HELOC for up to 5% of appraised value once the building was completed.
- The lender was positioned to "partner with" the qualified investor/buyer to buy the land and build the home through the development / construction company
- The lender qualified as if they would be owner-occupants even though the properties were being purchased by absentee owners for investment purposes (to be completed in 150 days and sold thereafter)
- The loan officer falsified borrower's qualifications to make it work.
- Most loans were "stated income, no documentation"
- After completion, when investors sought the 5% HELOC they were told that funds for the program had "dried up" and they should seek other sources

### **Appraiser: The Appraisal Scam**

- The appraiser's job was to make the numbers work, even though the sales price was \$285,000 and real comparable sales would show a value of \$170,000
- Falsify the sales price of comparable sales
- Select distant, dissimilar properties as comparable sales
- Create and use "pending sales"
- Use listings as comparable sales
- Use real sales that are not comparable
- Lie about the current market conditions

### **Title Company: The Title Insurance Scam**

- Require the use of ABC Title Company (owned by the Builder)
- Have simultaneous closings with different HUD-1 statements
- Falsify the costs on the HUD-1 that Countrywide and Lehman Brothers will see

### **All:**

- Each received inflated compensation plus each took a portion of the potential investors' non-refundable 5% deposit (\$14,250) in advance

### **The Investor Transaction**

#### **Representations to Investor A:**

Purchase price:	\$285,000
Lot:	\$ 70,000
House:	\$215,000
Deposit	\$14,250 Total Cash Investment
Mortgage:	\$270,750 + Possible HELOC of \$14,250 upon completion



**The Promise:**

- Broker will list the property for resale at \$385,000 immediately upon mortgage application
- Broker will offer the property for long-term or vacation rental for more than the monthly payments until the property is sold
- Broker will find renters and manage the property for 50% of first month's rent and 20% thereafter

**The Builder Transaction**

Sale Price:	\$285,000
Broker commission:	\$ 15,000
Loan origination fee:	\$ 15,000
Lot cost:	\$ 20,000
Title services:	\$ 6,000
Appraisal fee:	\$ 1,000
<u>Construction cost:</u>	<u>\$133,000</u>
Developer profit:	\$95,000

**The Lender Transaction**

Countrywide pockets the \$15,000 loan origination fee

Countrywide holds a \$270,750 note (mortgage bond) on a net \$255,750 investment

Countrywide packages a bundle of mortgage bonds into a Collateralized Debt Obligation (CDO) called a Mortgage Backed Security (MBS) and gains a AAA rating based on the falsified borrower qualifications

Countrywide either sells shares to multiple investors or an entire package to Lehman Brothers or Fannie Mae or Freddie Mac

## F. Business Ethics: Individuals PLUS Industry Practices

***Business ethics involves not only issues of decision making at the individual, personal level but also issues of the industry social institutions, structures and practices***

Unethical and shady business practices in such major financial firms as Countrywide Financial, Lehman Brothers, AIG and Fannie Mae all played roles in the financial collapse. Fraud, deception, conflicts of interest and sheer greed characterized the standard practices of the financial industry. And along with the major financial players were innumerable individual real estate practitioners, title insurance companies, mortgage loan originators, and appraisers who were more than willing to get in on the easy money.

The January 2011 Federal Crisis Inquiry Commission report on the causes of the economic crisis that began in 2007 states:

*"the crisis was the result of human action and inaction, not of Mother Nature or computer models gone haywire. The captains of finance and public stewards of our financial system ignored warnings and failed to question, understand, and manage evolving risks within a system essential to the well-being of the American public."*

The commission cited:

- Dramatic failures of corporate governance and risk management
- Excessive borrowing
- Risky investments
- Lack of transparency
- Ill-prepared government
- Failures of credit rating agencies, and
- ***A systemic breakdown in accountability and ethics.***

Consider the range of people harmed by the business misconduct that brought about the economic meltdown:

- Those (and their families) who were found guilty of crimes and unethical behavior
- Employees of firms lost jobs, income, health care insurance, retirement
- Investors lost billions due to fraud and corruptions
- Investor confidence in financial markets
- Millions lost homes and remain deeply in debt due to the collapse of the housing bubble that was created by unethical financial practices
- US and global economies have been slow to recover

The best analysis of the most serious economic crisis since the Great Depression of the 1930's cites BOTH:

- Personal failures of individuals, and
- Shortcomings within the economic, social, and political context in which the individuals acted.

## **G. 12 Ethical Principles for Real Estate Agents**

According to the Josephson Institute, whose mission is to improve the ethical quality of society by changing personal and organizational decision making and behavior, the key ethical principle is to make the right decision – to do the right thing. That may be difficult because the wrong thing may be an easier decision. Josephson consultants point out that ethical business practices are not necessarily the most profitable methods in the short term, but they are essential for long-term organizational survival.

Josephson reports that ethical principles should guide our personal and professional lives. For direction, they offer the following 12 ethical principles that we relate to real estate agents.

### **1. HONESTY.**

Ethical agents are honest and truthful in all their dealings and they do not deliberately mislead or deceive others by misrepresentations, overstatements, partial truths, selective omissions, or any other means.

**2. INTEGRITY.**

Ethical agents demonstrate personal integrity and the courage of their convictions by doing what they think is right even when there is great pressure to do otherwise; they are principled, honorable and upright; they will fight for their beliefs. They will not sacrifice principle for expediency, be hypocritical, or unscrupulous.

**3. PROMISE-KEEPING & TRUSTWORTHINESS.**

Ethical agents are worthy of trust. They are candid and forthcoming in supplying relevant information and correcting misapprehensions of fact, and they make every reasonable effort to fulfill the letter and spirit of their promises and commitments. They do not interpret agreements in an unreasonably technical or legalistic manner in order to rationalize non-compliance or create justifications for escaping their commitments.

**4. LOYALTY.**

Ethical agents are worthy of trust, demonstrate fidelity and loyalty to persons and institutions by friendship in adversity, support and devotion to duty; they do not use or disclose information learned in confidence for personal advantage. They safeguard the ability to make independent professional judgments by scrupulously avoiding undue influences and conflicts of interest. They are loyal to their companies and colleagues and if they decide to accept other employment, they provide reasonable notice, respect the proprietary information of their former employer, and refuse to engage in any activities that take undue advantage of their previous positions.

**5. FAIRNESS.**

Ethical agents are fair and just in all dealings; they do not exercise power arbitrarily, and do not use overreaching nor indecent means to gain or maintain any advantage nor take undue advantage of another's mistakes or difficulties. Fair persons manifest a commitment to justice, the equal treatment of individuals, tolerance for and acceptance of diversity, they are open-minded; they are willing to admit they are wrong and, where appropriate, change their positions and beliefs.

**6. CONCERN FOR OTHERS.**

Ethical agents are caring, compassionate, benevolent and kind; they like the Golden Rule, help those in need, and seek to accomplish their business objectives in a manner that causes the least harm and the greatest positive good.

**7. RESPECT FOR OTHERS.**

Ethical agents demonstrate respect for the human dignity, autonomy, privacy, rights, and interests of all those who have a stake in their decisions; they are courteous and treat all people with equal respect and dignity regardless of sex, race or national origin.

**8. LAW ABIDING.**

Ethical agents abide by laws, rules and regulations relating to their business activities.

**9. COMMITMENT TO EXCELLENCE.**

Ethical agents pursue excellence in performing their duties, are well informed and prepared, and constantly endeavor to increase their proficiency in all areas of responsibility.

**10. LEADERSHIP.**

Ethical agents are conscious of the responsibilities and opportunities of their position of leadership and seek to be positive ethical role models by their own conduct and by helping to create an environment in which principled reasoning and ethical decision making are highly prized.

**11. REPUTATION AND MORALE.**

Ethical agents seek to protect and build the company's good reputation and the morale of its employees by engaging in no conduct that might undermine respect and by taking whatever actions are necessary to correct or prevent inappropriate conduct of others.

**12. ACCOUNTABILITY.**

Ethical agents acknowledge and accept personal accountability for the ethical quality of their decisions and omissions to themselves, their colleagues, their companies, and their communities.

## H. Current Real Estate Ethics Issues

### 1. "Did your Seller even see my Buyer's offer?"

#### Duties to Clients and Customers – Article 1

Article 1: "When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves **to protect and promote the interests of their client**. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly."

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease **unless the seller/landlord has waived this obligation in writing**. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease.

#### Amended Standard of Practice 1-7 effective 1/1/2019

Upon the request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a **written affirmation** to the cooperating broker stating that the **offer has been submitted** to the seller, or a written notification that the **seller has waived the obligation** to have the offer presented.

## 2. 'Coming Soon' properties and social media

Many Brokers are using social media to broadcast news that a property is "coming soon" to the marketplace. Typically, the announcement is accompanied by a photo of the property, the address and other identifying information.

One caution is that such information would likely be considered "advertising" and would need to comply with 61J2-10.025 F.A.C. which states in part "When advertising on a site on the Internet, the brokerage firm name...shall be placed adjacent to or immediately above or below the point of contact information." Also, if the listing Broker participates in MLS there may be rules related to misrepresentation of availability. There may also be rules related to allowing showings prior to actually coming on the market.

- **"Is there an ethical or legal obligation to share information with other Brokers?"**
- **"Is the answer different if the listing Broker participates in MLS?"**
- **"If the listing Broker is a member of MLS, is it ethical for the listing sales associate and other associates from Broker's firm to show the property during the 'coming soon' period?"**

## 3. "Highest and best offers"

A recent trend has been for listing agents to request an offeror to submit a "highest and best offer". This technique to get the highest possible price evolved from bank REOs. Rather than dealing with counter-offers, banks customarily request a "highest and best offer" that they either accept or reject.

A common strategy in today's resale market is to list a property slightly lower than market value to get quick attention and multiple offers. The seller then will go back to the strongest prospects and tell them that there is a bidding war and they should submit their "highest and best offer," potentially causing the property to be sold above the original listing price.

What are your thoughts on this practice?

***The licensee's primary ethical obligation is to be forthright and honest when dealing with others. When taking listings, explain to sellers that receiving multiple, competing offers is a possibility and explain the choices.***

#### **4. Multiple offer escalation clause**

In some markets the list price is like an opening bid. Agents are suggesting that buyers offer "\$3,000 over the highest bid." Complications can arise, such as another buyer offering \$3,000 over the highest bid. One way to be clear is to place a maximum on the escalation clause. Under that circumstance, could there be ethical issues if there are no competing offers and the seller is presented an offer of, say, \$600,000 with an escalation cap of \$610,000? Would it be unethical for the seller to counter at \$610,000?

#### **5. Shopping the contract**

An associate has a hot listing that has attracted two offers, one from a cooperating agent and one from the listing associate's office. The listing associate contacts the sales associate from her office and says, "Your offer is \$2,000 below another offer. Bring in a better offer by tonight or you'll lose out." The selling sales associate writes a better offer at a price higher than the other one and gets the property.

Is shopping the contract in this way unethical?

***Not according to NAR if the seller has granted permission to disclose terms of other offers.***



## **I. Ethical Action Self-Test: Is the Action I am Considering Ethical?**

Every day we are faced with a myriad of decisions. The answers to the following four questions can serve as a guide to ethical decision-making.

### **1. Is the conduct I'm considering consistent with my obligations to be trustworthy?**

- Am I prepared to be truthful, sincere and candid?
- Is it consistent with what I believe and what I say?
- Have I made any promises I will have to break?
- Am I being disloyal to anyone?

### **2. Will I be treating everyone with appropriate respect?**

- Is my conduct courteous and civil?
- Am I respecting the autonomy, dignity and privacy of others?
- Can anything I am doing be reasonably construed as an act of prejudice or intolerance?

### **3. Is the conduct I am considering consistent with my responsibilities?**

- Am I being accountable for what I am doing or not doing?
- Am I really pursuing excellence?
- Am I exercising appropriate self-restraint?

### **4. Is what I am considering doing fair to all concerned?**

- Is anyone being taken advantage of?
- Is the conduct consistent with principles of equity, equality, impartiality and openness?
- Does the conduct I am considering show concern for the well-being of others?
- Am I unnecessarily harming anyone?
- Can I be kinder or more considerate?
- Am I doing what I ought to do as a good citizen?
- Am I breaking any laws or rules?
- Am I doing my share for the community?

## J. REALTOR® Code of Ethics

### Professional Standards for Conduct

#### A. Not Established Professional Standards for Conduct

1. First ethical code for business after medicine, engineering, and law
2. Focused on service to the public and commitment to professionalism
3. Unique and distinct from business ethics
  - a. Cheat a vendor, deal drugs, armed robbery –not ethics violation
  - b. Cheat a customer or another REALTOR® – ethics violation
4. Adherence to the Code is taking the high road for ALL LICENSEES

#### B. Principles of the Code

The **Golden Rule** is at the heart of the Code of Ethics:

**"Do unto others as you would have them do unto you."**

1. "Widely allocated ownership" and "widest distribution of land ownership"
2. Maintain and improve the standards of our industry
3. Share a common responsibility for the integrity and honor of the real estate profession
4. Strive to become and remain informed on issues affecting real estate
5. Willingly share the fruit of your experience and study with others
6. Identify and take steps to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession
7. Do not attempt to gain any unfair advantage over competitors

8. Refrain from making unsolicited comments about other practitioners
9. If an opinion is sought about a competitor (or the REALTOR® believes comment is necessary), the opinion should be offered in an objective, professional manner
10. The term REALTOR® stands for competency, fairness, high integrity, moral conduct in business relations
11. No inducement of profit and no instruction from clients can justify departure from these ideals

## **Structure of the Code**

### **A. Three Sections**

1. Duties to Clients and Customers
2. Duties to the Public
3. Duties to REALTORS®

### **B. 17 Articles**

1. Articles which are broad statements of ethical principles
2. Only Articles of the Code may be violated

### **C. 87 Standards of Practice**

1. Each Standard of Practice supports, interprets, and amplifies an Article
2. May not be charged, but may be cited in support of an alleged violation

## **Enforcement Complaints and Discipline**

### **A. Two NAR-Mandated Functions at the Local Board Level**

1. Grievance Committee is like a Grand Jury, which filters both complaints against agents and brokers, and arbitration requests
2. The Professional Standards Committee, commonly called the Hearing Panel, conducts full “due process” hearing and decides which party is entitled to the award, based on a *preponderance of the evidence*
  - a. Decides whether there was a violation of the Code proven by *clear, strong and convincing proof*
  - b. Panel determines the discipline to be imposed from a list established by the National Association of Realtors.

### **B. Authorized Discipline**

1. Letter of warning
2. Letter of reprimand
3. Education
4. Fine, not to exceed \$15,000
5. Probation of one year or less
6. Suspension of not less than 30 days, nor more than one year
7. Expulsion from membership for one to three years
8. Suspension or termination of MLS privileges

### **C. Informal Dispute Resolution**

1. Arbitration for procuring cause monetary disputes between REALTORS® (brokers) arising out of their relationship as REALTORS®
  - a. Filed within 180 days after closing or within 180 days after the facts could have been known, whichever is later

- b. Payment of a \$500 fee by both parties, to be returned to the prevailing party
- 2. Procuring cause guidelines
  - a. No pre-determiners – considers the entire course of events
  - b. Writing an offer, making the first showing, or an agency relationship, in and of themselves, do not necessarily determine procuring cause or entitlement
  - c. ***The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object.***
    - *Black’s Law Dictionary*, Fifth Edition
  - d. ***It is the squirrel that shakes the branch and not the squirrel that gathers the nut.***
    - Arkansas Supreme Court

## Lawsuits

### Litigation

#### A. Relationship of Ethics and Statutes

- 1. REALTORS® are subject to an additional layer of guidelines that serve to supplement those laid down by Florida Statutes 475 and 61J2
- 2. Where money is involved, most people don’t bother with filing ethics complaints and go straight to attorneys
- 3. In a typical lawsuit, a licensee's conduct is measured against both Florida law and the Code of Ethics – even if unaffiliated
- 4. It is easy to connect a violation of Code to breach of one or more duties imposed upon a Transaction Broker
  - a. Dealing honestly and fairly
  - b. Using skill, care, and diligence in the transaction

**B. Judgment for Damages**

1. In law, a plaintiff may be awarded a judgment of compensatory damages, typically in the form of money, to be paid by a defendant as compensation for loss or injury.
2. Once recorded, the judgment becomes a general lien on the property of the defendant.

**C. The Florida Real Estate Recovery Fund**

1. Provides reimbursement to any person, partnership, or corporation adjudged by a court of competent civil jurisdiction in this state to have **suffered monetary damages** by reason of **any act committed, as a part of any real estate brokerage transaction involving real property** in this state, by any broker or sales associate who:
  - a. Was, at the time the act was committed, an active real estate licensee;
  - b. Was not a party to the transaction; and
  - c. Was acting solely in the capacity of a real estate licensee in the transaction;
2. Eligibility for recovery
  - a. Final judgment against an individual broker or sales associate
  - b. A writ of execution and an affidavit showing that no personal or real property can be found or that the amount realized on the sale of the judgment debtor's property was insufficient to satisfy the judgment
  - c. Any amounts recovered from the licensee have been applied to the damages
3. Payment from the Recovery Fund
  - a. Apply to the commission for the unsatisfied portion of the judgment (actual or compensatory damages) or \$50,000, whichever is less

- b. Payments are limited, in the aggregate, to \$50,000 per transaction regardless of the number of claimants or parcels involved in the transaction.
- c. Payments against any one licensee may not exceed, in the aggregate, \$150,000
- 4. Penalties against the licensee
  - a. Suspension of license
  - b. Must repay the entire amount plus interest

**D. Most Common Florida Real Estate Lawsuits and Ethics Complaints**

- 1. Failed to disclose latent defects or hidden facts about the property
- 2. Failed to present an offer
- 3. Made false statements about a property or a party to a transaction
- 4. Created false advertising
- 5. Was unfair and dishonest (broker malpractice)
- 6. Was negligent (not diligent or careful)
- 7. Breached a statutory, professional, or contractually-created duty
- 8. Provided property opinions outside area of professional expertise
- 9. Accepted undisclosed kickbacks, commissions, or finder's fees
- 10. Did not use skill or care in the course of the transaction
- 11. Failed to disclose a private relationship with buyer or seller
- 12. Conspired with mortgage broker, closing agent, or appraiser to defraud lender
- 13. Failed to account and deliver funds
- 14. Forged a signature on a sales contract or other legal document
- 15. Shared in illicit proceeds
- 16. Did (or did not) earn the commission (aka procuring cause)

## **REALTOR® Code of Ethics**

**Article 1:** “When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.”

### **Case Studies**

**Article 2:** “REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.”

### **Case Studies**



**Article 3:** "REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker."

### **Case Studies**

- Standard of Practice 3-2  

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. (*Amended 1/14*)
- Standard of Practice 3-3  

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. (*Adopted 1/94*)
- Standard of Practice 3-4  

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/ landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. (*Amended 1/02*)

**Article 9:** "REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing." (*Amended 1/04*)

### **Case Studies**

- Standard of Practice 9-1

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. (*Amended 1/93*)

- Standard of Practice 9-2

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party

**Article 15:** "REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices."

### Unit 3 Review Exam

1. **The government creates which of the following?**
  - A) Laws
  - B) Ethics
  - C) Morals
  - D) Values
  
2. **Ethics are the code of conduct agreed to and adopted by:**
  - A) DBPR
  - B) Government
  - C) Peers
  - D) HOAs
  
3. **At the heart of the REALTOR® Code of Ethics is the:**
  - A) Purple Rule
  - B) Green Rule
  - C) Golden Rule
  - D) Yellow Rule.
  
4. **YOUR rules applied to business and profit are:**
  - A) company policies
  - B) individual moral values
  - C) industry laws and rules
  - D) REALTOR® Code of Ethics
  
5. **SOCIETY rules codifying what is right and wrong are:**
  - A) REALTOR® Code of Ethics
  - B) individual moral values
  - C) company policies
  - D) industry laws and rules
  
6. **BROKER rules tied to their business and profit are:**
  - A) company policies
  - B) industry laws and rules
  - C) individual moral values
  - D) REALTOR® Code of Ethics

### Unit 3 Review Exam Key

1. A) Laws are created by the government
2. C) Ethics are the code of conduct agreed to and adopted by peers
3. C) The Golden Rule is at the heart of the Code of Ethics:  
**"Do unto others as you would have them do unto you."**
4. B) *YOUR* rules applied to business and profit are individual moral values
5. D) *SOCIETY* rules codifying what is right and wrong are industry laws and rules
6. A) *BROKER* rules tied to their business and profit are company policies

## Unit 4

# SAFETY, SECURITY AND CUSTOMER DATA PROTECTION

### Key topics in this unit:

- Agent safety in the news
- Safety with customers
- Video, surveillance and privacy laws
- Safety and security at the office
- Customer data protection
- Online safety and identity theft
- Disaster preparedness

## Introduction – Agent Safety in the News

In the 2019 National Association of REALTORS® annual report, 21% of men and 40% of women said they had experienced a situation that made them fear for their personal safety or the safety of their personal information. About forty percent (35% of men, 49% of women) said they carry weapons; the most common were pepper spray, carried by 18% of agents, followed by guns, which 14% carried. Others toted pocket knives and stun guns.

Every year, agents around the country are threatened, robbed, or physically or sexually assaulted while fulfilling the everyday requirements of their jobs. Some even lose their lives. Through the sharing of real-world examples and the discussion of safety tips and strategies, real estate agents will hopefully develop situational awareness and lessen the chances of harm.

*San Francisco, CA – March 2018*

A 55-year-old real estate agent was hosting an open house March 10, on the 200 block of Pelican Cove, a privately-owned street in the Bayview Heights neighborhood when just before 2:30 p.m., as the agent stood in the kitchen, she heard someone enter the home and assumed it was potential buyers.

Instead, the agent was confronted by three suspects, one of whom was armed with a gun. The suspects took the agent's cash and began rummaging through her purse until the sound of a doorbell startled them. The robbers then fled the home and drove away.

*Milwaukee, WI – May 2016*

Real estate agent Jim Olsen thought it was a simple showing. Instead his prospective rental tenant lured him into an ambush. Once inside the property, two masked men appeared. They pushed Olsen to the ground and hit him in the back of the head with a gun. The attackers fled with his cash, phone and wedding ring.

*San Antonio, TX – December 2010*

It was a few days before Christmas 2010. San Antonio real estate agent Janice Tisdale had arranged to meet her client Emilio Maldonado and his banker at a \$750,000 house in a remote subdivision.

"As soon as I pulled up I said, 'Where's your banker?' And he goes, 'Oh, he couldn't come today,'" Tisdale, 68, told ABC News' "20/20." "And I thought, 'Oh, this is weird.' You know? It just didn't feel right."

Tisdale took some precautions in the moments before meeting Maldonado. She removed her diamond jewelry and opened the doors of the house so she would

have an escape route. Even though she'd shown him several homes in the recent months, she felt inexplicably uneasy around him.

As Tisdale and Maldonado toured the vacant house, Tisdale said her instincts were telling her to bolt.

"The hair on the back of my neck was standing up, and I just was feeling really uncomfortable," Tisdale recalled. "And finally I said, we really need to go. So, we started out the door, and I reached down to pick up the lock box. That's when he struck me over the head."

Maldonado had pulled a tire thumper -- used by long haul truckers to check tire pressure -- from his cowboy boot and smacked Tisdale over the head, causing her to fall forward and hit her forehead on a stone wall.

Instead of passing out, Tisdale managed to jump up and give Maldonado a piece of her mind.

"I said, why did you hit me over the head?" Tisdale recalled. "And he just looked at me, and he said, 'I need four thousand dollars.'"

As blood gushed from the back of Tisdale's head, Maldonado held the then-64-year-old grandmother hostage for 45 minutes. As a former flight attendant, Janice was trained to keep calm and keep talking.

"I just kept telling him, 'You just need to go to your car,'" Tisdale said. "'You need to get a piece of paper. I'll write that you did not attack me ... and my husband will totally believe me, because he calls me such a klutz!'"

Tisdale's cleverness paid off. When Maldonado stepped toward his car to retrieve some paper, Tisdale ran. Maldonado chased her and tried to grab her.

In the distance, Tisdale spotted some teenagers driving a Honda Civic. "And here come those kids, and that car, and their window was down, so I just screamed, 'Help me, help me. He's trying to kill me.' And they slammed on their brakes, and five teenagers bounded out of this car."

Maldonado was arrested soon after and is currently serving 60 years in prison for aggravated robbery. Tisdale said she still sells houses, but she never goes to a property alone and always carries a hand gun. She speaks once a month to new agents at the San Antonio Board of Realtors, telling her story and giving safety tips.

And as for the teens who came to her rescue? Tisdale credits Blair Engel, Sean Reyes, Stephen Mery, Esteban Rodriguez, and Taylor Freiermuth with saving her life and expanding her family.

"I have five more children now. So instead of four, I have nine," Tisdale laughed. "What more could a mother want?"

*Whitehouse, TX – February 2018*

Danny Shane Lafait, 44, is charged with third-degree stalking.

The sheriff's office took a report from the REALTOR on Feb. 2. She said Lafait had come to her office as she was leaving and asked about real estate. The REALTOR said she had a bad feeling, but gave him her card to contact her later.

Lafait went into the office on Dec. 19 and was trying to see the REALTOR and became violent when they would not let him see her. Lafait hit one of her co-workers with a disk tray when he was told he could not speak with her. He was later issued a criminal trespass warning.

The REALTOR said soon after that incident she was contacted by someone with a different name who inquired about real estate. He later started sending pornographic images and began making sexual advances toward her through email.

*Tampa, FL – August 2017*

Reginald Bernard Nelsonm 48, was charged with one count of felony cyberstalking a 73-year-old woman.

Nelson has been linked to about 21 cases that were reported to several local police departments.

The victims in these related cases were also real estate agents who were receiving similar text messages. Deputies said Nelson admitted that he intentionally would find local female REALTORS in local advertisement papers and contact them with inappropriate images and or texts.

Deputies said they began their investigation June 17 after receiving information that Nelson, who was unknown at the time, had sent text messages to the woman. When she replied to the initial message, she received a photograph of an explicit image followed by sexual messages. Nelson sent her multiple explicit messages.

*Washington DC – December 2018*

A number of Realtors received an email with the subject line "Help Support Diana Recovery." The email appeared to come from the Realtor® Party asking for donations to fund medical expenses for a young girl.

However, the request for aid is not from the Realtor Party or the National Association of Realtors (NAR), which says it "never solicits donations for personal or individual charities."



*Phoenix, AZ – March 2018*

Jill Comfort, a Phoenix-area real estate agent, had a good feeling about the cream-colored stucco house she planned to show her client, a young man relocating to the city from California. It was in his budget, in the right location and had a huge pool and back yard that would allow him to entertain.

It also had multiple surveillance cameras that recorded everything that went on as prospective buyers walked through.

“When we were walking out of the hallway, we could see they were following us,” Comfort said. Both agent and client felt “awkward,” she added.

“I can understand where some sellers are leery of strangers walking through their house, but that’s what happens when you put your house on the market,” Comfort said. Her client, she said, was “creeped out.”

*Madison, CT – June 2018*

Betsy Anderson was leading a married couple with two children and their real estate agent through a tour of her listing when she received a startling text from the seller.

Anderson, a sales associate with William Pitt Sotheby’s International Realty in Madison, Conn., had been holding the back door open to keep an eye on the kids, who had gone outside to view the in-ground pool while their parents continued looking through the home.

At that moment, Anderson’s client, who was not present at the property during the showing, messaged her to ask why she was letting the cool air in the house escape through the open door.

Anderson was stunned and perplexed as to how the seller was able to see what was happening inside the home. She knew of a couple of external security cameras on the front side of the \$600,000 property, which were visible. It was then she learned that the seller had installed a hidden camera inside the home and was watching her every move.

“I just thought the seller’s text was very telling,” Anderson says. “Clearly, there were things going on that I didn’t know about.”

# Safety with Customers

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Real estate sales and rental agents routinely find themselves in situations where they are alone with customers about whom they have very little information. The very nature of showing real estate to prospective buyers and tenants who are virtual strangers can make agents, both men and women, susceptible to becoming victims of violent crimes. (source: *North Carolina Real Estate Commission* [ncrec.gov](http://ncrec.gov))

It is recommended that you think about your personal safety in a two-Phase system:

- **Phase 1** is the **Planning Phase** where you take time in advance of a customer interaction to determine how you will handle certain situations.
- **Phase 2** is the **Execution Phase** where you are actively working in the field and must put the Planning Phase into motion.

## **Phase 1: Planning Phase**

### **1. Don't make personal marketing too personal**

Giving out too much of the wrong information can make you a target. Concentrate on your professional proficiency rather than personal information in advertisements, resumes, business cards and websites.

- Your marketing materials should be polished and professional.
- Limit the amount of personal information you share.
- Use your office number and have your calls forwarded to your phone.
- Use your office address rather than your home address.

Keep your personal life and your professional life separate. "Getting to know your customer" does not need to include personal information about your children, or where or with whom you live.

### **2. Dress for safety**

- Dress professionally for your market
- Don't wear expensive or excessive jewelry
- Only carry the cash or credit cards you need
- Carry yourself with confidence
- Don't wear shoes that hamper your ability to move quickly, if necessary.

### 3. New customer plan – know who you are dealing with

- **Meet them at your office**
- Take their picture
- Photocopy their driver's license
- Get their car description and/or license plate number or
- Take a picture of their car and/or license plate
- If at the property, email/text the information to a coworker
- Verify their identity
- Conduct a Google and social media search

#### **Verify Their Identity**

Run a Google search and check social media sites. Consider calling references, their place of employment, and verifying their current address.

#### **Meet Them in Your Office First**

Ask the prospective customer **to meet at your office** before going to a property. This provides a safe, neutral first meeting place where you can openly collect and file identifying information. This may discourage an assailant.

If you can't get them to come into the office first and you still want to work with them, ask an associate to accompany you. At a minimum, let someone in your office know with whom you are meeting, where and when. When the customer arrives at the property, note the make, model, color and license number of their vehicle or take a picture of it. Email or text this information to your office before you proceed.

#### **Copy or Scan Their Driver's License**

Legitimate customers do not mind you copying their driver's license or photo identification, and they also shouldn't mind if you take a picture on your phone for your file. Be sure to email or text it to your office, a friend, or your family. It is reasonable to expect identification from a prospective client before we show a home worth hundreds of thousands of dollars.

#### 4. Have a buddy

Know in advance who you are going to call when:

- Your instincts tell you to get help
- You're just a little nervous
- You need help at an open house

#### 5. Have a prearranged **distress code**

You may be in a situation where you think you might need help; you can use the phone, but the person you are with can overhear the conversation and you do not want to alert him or her. This is where a prearranged distress code can help.

When a situation arises that makes you feel uncomfortable, call, text or email your buddy or someone else you have shared the code with previously. Give them the prearranged distress code (**a phrase or a keyword**) alerting them to have someone meet you so you will not be alone.

You can make up your own distress code — one that would sound reasonable to a prospective customer; however, it may be advisable to have a single distress code that is used by the entire office.

### Phase 2: **Execution Phase**

#### 1. Tell someone

- a. Who you are with
- b. Where are you going
- c. When you will be back

Make sure you tell someone where you are going, who you are going with and when you will be back. Whenever possible, make sure the customer knows you have shared this information with someone.

You are less likely to be attacked if the criminal knows you will be missed and he or she can be identified. Even leaving behind a note on your desk could help the authorities find you in an emergency.

Remember, victims of crimes can be missing for days before co-workers begin to worry, unless they are told when to expect you back.

## 2. Danger is not always easy to identify

- a. Gut feelings
- b. Hesitation
- c. Unexplained fear
- d. Apprehension

*These are signals that something isn't right!*

Safety experts agree that it is best to assume that your instincts are right and to take the necessary precautions. Do not be so anxious for a sale that you ignore your own intuition in the heat of the moment. Use these same instincts before you give out your phone number or address, and especially before getting in the car with a new customer.

## 3. Keep a phone in hand

- Keep your phone fully charged and have a battery reserve.
- **Carry your phone in your hand at all times.** Your greatest source of help is your phone. If you keep your phone in a purse, a laptop bag or briefcase, it may not be available when you need it most.
- It's a good idea to keep a phone charging adaptor in your car for emergency situations and to carry a fully charged battery reserve.
- Contact someone once an hour to let people know where you are. Anytime you feel uncomfortable about a customer, make a plan with a friend, colleague, or family member to contact you if they haven't heard from you at the appointed time.
- If you have an emergency situation and call 911, stay on the line and do not hang up, even if you can't talk.
- Rehearse in your own mind how you would react to an emergency situation such as a mugging or physical attack. Know when you will fight back, when you will run and when you will have an opportunity to call 911 for assistance.

#### 4. Conduct a safe open house

- Don't advertise a listing as vacant
- Establish escape routes from each level of the house
- Call the office or a buddy hourly
- Keep your keys and phone with you
- Park where you can get out quickly
- Never conduct an open house alone, especially at a multi-level property

Arrive early and survey exits to **establish escape routes** from each level. Depending upon the location of the property, make sure all deadbolt locks are unlocked to facilitate a faster escape. Position your work station at the most visible point for viewing arriving guests. Double check the backyard to make sure you can get past the fence if necessary. When leaving the property, secure the house and check all windows and doors.

If possible, **provide an electronic registration sheet** on a tablet or phone and transmit it each time someone registers. At a minimum, have a paper registration and a pen. Place one of your business cards, with the date and time on the back, in a kitchen cupboard.

**Notify neighbors in advance** or, if time permits, introduce yourself to the neighbors and let them know when you will be showing a house. They will be more alert to unusual sounds and you will have somewhere to run to if you need help.

**Make sellers aware of the safety risks** associated with open houses. Remind sellers to put valuables and prescription drugs in a safe, secure place. Do not leave your briefcase, purse or laptop, tablet or mobile device sitting on the counter.

**Never conduct an open house alone**, especially in a multi-level house where observing guests is even more difficult. Always enlist the help of a teammate, lender, builder, spouse, assistant, friend, etc. Thieves often work in teams. While one is keeping you occupied, the other is stealing whatever they can.

#### 5. Let customers lead the way

- Let the customer **walk in front of you** as you move through the property
- Be aware of possible escape routes
- Leave doors open
- Be wary in attics and small rooms

## 6. Practice vehicle safety

- When you are alone, the first thing you should do when you get into your vehicle is lock the doors.
- Be observant when approaching your vehicle, looking underneath and in the back seat before you get in.
- When working with a customer, take **separate vehicles** whenever possible.
- As you park your vehicle, take in your surroundings and ask yourself: In an emergency, am I going to be able to run to my vehicle and drive away? You won't be able to if you are blocked in.
- Park on the street whenever possible to avoid **being blocked in** a driveway.
- If you are in an unfamiliar area, make mental notes of landmarks, points of interest and intersections. And always know the exact address of where you are going.
- If you must take one vehicle, **you drive!**

## 7. Fight or flight

- Yell "fire" to get attention
- Select a response that fits the situation
- Run and call 911 when you can
- Take a self-defense training course
- If you strike, mean it

Remember that the primary goal in any incident is to escape from the danger and call for help.

If an attack does occur, trust yourself and stay as calm as possible. Think rationally and evaluate your options. There is no one right way to respond to a confrontation, because each situation is different. The response depends on the circumstances: location of the attack, your personal resources, the characteristics of the assailant and the presence of weapons.

### **Possible Responses to an Attack**

No matter which response you choose, be decisive and act accordingly to your situation. No two situations are alike, nor should they be treated as such.

- **Flight**

Immediately try to distance yourself from the situation. This is the preferred response. Once you are safely away, you can reevaluate the situation and contact the authorities.

- **Passive resistance**

Appear to cooperate with your attacker until such time as you can change the situation. If it is a matter of just giving up your property, do it! Your life is worth more than a possession. If the attacker has a weapon, you may need to cooperate until you can make a plan for a different response.

Keep talking and make it personal. It is much harder for an attacker to hurt someone they see as a real person. If the opportunity to escape arises, take it.

- **Verbal assertiveness**

If someone is coming toward you, hold out your hands in front of you and yell, "Stop" or "Stay Back!" Several criminals interviewed said they'd leave a woman alone if she yelled or showed that she was not afraid to fight back.

- **Fight**

Escape, if possible, should always be your first priority. However, in some situations you may need to fight your way into a position to escape. Remember that there is no such thing as a fair fight; use whatever weapon is available to you (e.g., ink pen, car keys, pepper spray, etc.).

If you fight your attacker, try to hit vulnerable areas such as the eyes, nose, face, shins, feet, or groin. These areas are more likely to cause distracting pain to the attacker, which could allow you to escape.

### **BONUS: Safety for Landlords**

1. Implement and follow a fair and thorough screening process for prospective tenants, vendors and employees. Don't make any exceptions.
2. Communicate with your tenants and avoid giving them unpleasant surprises.
3. Use a PO box, drop box, or electronic deposit to receive rent checks; don't make your home address known.
4. Meet with potential renters in a public place and have them fill out a contact or interest form before showing them your rental. Show rentals during the day.
5. Learn how you can de-escalate a conflict. You will inevitably be dealing with an irate tenant at some point. Skills to help you listen, stay calm and communicate will help you.



# Video, Surveillance and Privacy Laws

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## Florida Constitution Article I, SECTION 12 – Searches and Seizures

*"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated..."*

## Florida Constitution Article I, SECTION 23 - Right of Privacy

*"Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."*

The Florida Constitution explicitly recognizes a right to individual privacy. However, this law has been interpreted to protect a person only from invasions of privacy into their personal affairs by the State, rather than by other private parties. The law is mostly referenced in cases centered on alleged warrantless searches, which is probably not relevant to us in the real estate related industries.

So, we will look at the following Florida privacy statutes as our guide to rights of privacy:

- **Section 934.50 F.S. – Freedom from Unwarranted Surveillance Act**
  
- **Section 934.03 F.S. – Interception and disclosure of wire, oral, or electronic communications prohibited**
  
- **Section 810.145 F.S. – Video voyeurism**

## Section 934.50 F.S.– Freedom from Unwarranted Surveillance Act

### **Use of Drones 934.50 (3)(b):**

A person may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property ...to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent.

### **“Reasonable expectation of privacy” means:**

He or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

### **“Surveillance” means:**

With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or

With respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

### **Exceptions:**

*This section does not prohibit the use of a drone by a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license.*

However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

### **Remedies for Violation of Paragraph (3)(b)**

The owner, tenant, occupant, invitee, or licensee of privately-owned real property may initiate a civil action for compensatory damages for violations and may seek injunctive relief to prevent future violations. The court may also issue punitive damages.

## **Section 934.03 -Interception and disclosure of wire, oral, or electronic communications prohibited**

### **Do Not Record Voices Without Consent**

While it's generally legal to videotape someone in Florida, you are not permitted to record a conversation unless all parties have given consent to be taped. Florida law makes an exception for in-person communications when the parties do not have a reasonable expectation of privacy in the conversation, such as when they are engaged in conversation in a public place where they might reasonably be overheard.

It is probably best to install image-only recording devices. It could be a violation of privacy law if the video picks up a private conversation without the parties' consent.

### **Florida Section 810.145 Video voyeurism**

Video voyeurism is a second-or third-degree felony in Florida punishable by a fine up to \$10,000 and 10 years in prison for repeat offenders. Perpetrators also face the possibility of a civil lawsuit leading to massive damages for invasion of privacy.

Video voyeurism is the act of secretly recording someone in a place where they have a "**reasonable expectation of privacy**"...(meaning) a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom..."

"A person commits the offense of video voyeurism if that person for his or her amusement, entertainment...or profit intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent..."

"This section does not apply to any..."

- security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises (or)
- video surveillance device that is installed in such a manner that the presence of the device is clearly and immediately obvious..."

### **Conspicuous Notice**

This section recognizes that people have the right to know when they're being filmed inside a residential dwelling, including personal residences, leased properties and short-term rentals such as VRBO or Airbnb. Accordingly, in all cases cameras should be placed where they can "**clearly and obviously**" be seen by anyone who enters the property.

If the cameras are hidden or not obvious, a sign must be used that clearly states that the property is under video surveillance. The sign itself must be clear and obvious to anyone who enters the dwelling.

### **Installed by a Licensed Contractor**

There are many security systems available online that can be self-installed and self-monitored. However, if a security company will be monitoring or servicing the system, it must be installed by a licensed contractor. Additionally, Florida law requires that any security system used to monitor a business must be installed by a licensed contractor.

The safest bet is to always have the system installed and configured by a licensed security system professional.

### **Exterior Home Security Cameras**

Many Florida residents install video recording equipment outside their homes to deter burglars and monitor suspicious activity on the street. This type of video recording is perfectly legal as a crime prevention tool if there is **no** a violation of Florida law. It is generally recommended that the cameras be placed in a visible location and pointed at an area where people don't expect to have privacy.

There are special limitations for those living in a condominium or HOA. Before considering a home security camera system, consult with the local association to ensure security cameras are allowed. Even if allowed, there may be problems with the video voyeurism law for placing cameras on the exterior to record activity in common areas, or that have a view of a neighbor's patio or balcony.

There may also be problems for community associations and community association managers who use drones to inspect patios, balconies, lanais and other jointly owned but privately used portions of the property. The easiest solution is to obtain written consent from unit or parcel owners.

## **Surveillance in the Workplace**

Florida employers may record their employees in the workplace for legitimate, work-related purposes such as preventing theft. Since video voyeurism laws also apply to workplaces, business owners must take care not to place cameras in areas where staff have a reasonable expectation of privacy – it's an absolute no-no to place cameras in the bathroom.

Employers may not record videos, images or sound recordings of employees for purposes of amusement under Florida law. They may not broadcast such recordings or images, which means posting them on the Internet, emailing them or otherwise sending them to any other person for the purpose of entertainment. Likewise, employers may not share recordings or images for the purpose of embarrassing or harming the subject.

Basic guidelines:

1. Employees are entitled to have reasonable expectations for privacy
2. Monitoring only for a specific, work-related purpose
- 3, No unfair discrimination
4. Notification that there is surveillance

# Safety and Security at the Office

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The following tips and strategies are recommended by the National Association of REALTORS®.

## General Security Measures

- Know staff in other nearby businesses and be aware of their schedules.
- Ensure all doors other than the main entrance are secured.
- Make certain windows are not obscured so that passersby can see in.
- Make sure there is a clear exit route from the service desk to the door.
- Never allow visitors to wander freely about the business. Have the person whom they want to see come to the front office area and escort the individual to the meeting area.
- Have a visitor log book and policy on issuing visitor tags that limit access to certain areas and hours of the day.
- If you encounter an individual while working late or alone, indicate to that person that you are not alone. Say something like, "My supervisor will be right with you and should be able to assist you."
- Keep personal information private. Avoid discussing where you live, after-work or vacation plans in front of customers, new coworkers or anyone in general with whom you are not comfortable.
- Install a landline phone in the storage room.
- Install an alarm, (preferably both audible and monitored). Have alarm buttons in strategic spots; i.e. panic buttons at the reception area.
- Install surveillance cameras that will monitor the front entrance, the reception area, and other areas that are accessible to the public.

## Workplace Security Plan

It would be remiss to not state that the most effective way to deal with a workplace violence incident is to avoid it in the first place. Every organization should have a safe hiring process in place that emphasizes pre-employment screening and background checks, as well as a visitor policy that has at the heart of it a “zero-incident” approach to workplace violence prevention.

A zero-incident approach addresses prevention by focusing on identifying at-risk behaviors of employees and visitors, as well as by conducting risk assessments of the work environment, physical facilities, and by putting contingency plans in place for anticipating threats.

- 1. Identify tools you might use to secure your workplace.**

Include physical barriers such as fences and gates, access control systems, door locks, security guards, and video surveillance.

- 2. Create a facility map that marks all doors, exits, security cameras and stairwells.**

- 3. Devise a plan for access control.**

Consider using keys that cannot be replicated or cipher locks that require a code. Electronic access cards are another good option. They allow you to disable a terminated employee's card without having to issue new codes to everyone. This system also enables management to limit access to certain areas.

- 4. Ensure security cameras are positioned where you need them.**

- 5. Address how to secure particularly vulnerable areas.**

These include locations where visitors can enter freely or with little scrutiny. This might be the waiting area in a doctor's office, the lobby of a law firm or the loading dock of a trucking company.

- 6. Conduct a periodic review of security measures.**

The review should ensure that doors are closed or locked as needed, and that locks are functional. Security cameras are positioned correctly and working.

- 7. Devise a plan for communicating with employees in the event of a security emergency.**

If a visitor turns violent, or a fired employee returns to retaliate, what doors will you lock? How will you warn employees to seek cover? Where can they go to not only avoid harm but to escape?

## 8. Create a system for tracking security issues.

If an employee reports that her ex-husband is stalking her in or around the facility, do you have a process for communicating that information to your front desk so they can watch for him? If an employee finds a door open when it shouldn't be, does she just close it? Or does she report it so that you can investigate whether this happens a lot and adjust your security measures? The system for recording security issues doesn't have to be complex. Purchase a simple logbook from an office supply store or record your data in a spreadsheet. Your security plan should detail where this log will be kept and who will be responsible for updating and reviewing it.

## 9. Designate a spokesperson to issue communications in the event of an incident.

The spokesperson should be able to speak intelligently to the media, the public and employees' relatives. Choose a person who would be able to impart the facts about an incident and convey concern for victims and their relatives. In more complicated situations, a public relations professional can help you craft a message for the media.

## 5 Strategies for Dealing with Upset Customers

No one in this room got into the real estate industry to be yelled at, harassed or assaulted. But it does happen even with our best efforts and intentions. Here are some tips and strategies for dealing with these difficult situations.

### 1. Approach stressful situations with a Zen mind and compassion

Our brain perceives an angry customer as a threat and enters into a stress and defense mode - fight or flight. This is exactly when we have to take control of our minds. Throwing a punch at the customer would not make things better for anyone.

It is not the actual event that causes the threat. The angry customer is simply a catalyst. It is your reaction to the customer that causes the stress. It is the fear of not being able to solve the problem or not being able to calm the customer that causes the stress.

You have to let go of the idea that you have to fix a situation. This is not the same as not caring. It is simply a realization that you can only do your best and it might or might not solve the problem.

You do not have to hold yourself responsible for the situation. Let go of the fear of the outcome and focus on the execution.

A simple 'I understand this must be frustrating for you' goes a long in pacifying the customer when they are at their worst.



## 2. Calm them down by asking questions

Our standard response to anger is defense. It is a natural tendency to argue with the customer and call their beliefs unfounded. The customer is under stress and any argument will make them feel that they are not taken seriously.

What's better: ask questions. Like we discussed in the previous point, tell them that you understand why they are angry and move straight to asking questions about the problem they're facing.

Remember to not cast any judgment at this stage. All you have to do is understand the details of the problem. It is a good way to handle the customer before you can actually move to rational resolution.

Being listened to will make the customer feel that you take them seriously. The act of talking and explaining the problem brings their minds to a rational state. They will be calmer than they were when they initially called.

This is also a good time to thank them for pointing you to the issue. A bit of ego-boosting will open doors to a rational conversation.

## 3. Apologize for the situation

More often than not, the customer would be angry about something that was never under your control. The human tendency is to shrug shoulders off the blame.

A company might respond to an infuriated customer saying it was not their fault. All this does is shake the faith the customer has in your company.

Tendering an apology is not a weakness. It is, in fact, a sign of compassion.

An apology will help diffuse the situation quickly and open doors for the resolution. An apology tells your customer that you regret them having to interrupt their day to make that call.

## 4. Reinstate trust and resolve the problem

Once you have managed to calm your customer down to a reasonable extent, only then should you start working on the resolution.

Your customer wants to know that you are willing to work on the problem and aren't going to run for the door. Start with a positive statement such as '**We're going to solve this together**'. It will help them feel reassured about the resolution process.

The first question you should ask them is '**What would you consider a fair and reasonable solution?**'. Asking a customer what they would consider a fair deal is very important to set the expectations right at the get-go.

At the same time, you have to watch out for patronizing phrases such as 'How can I help you' or 'How can I make you happy.'

Instances when you need to reach out to someone in order to solve the customer's problem, most reps have a tendency to give out vague responses such as 'I will get back to you as soon as I can.' This is again a bad idea as it would leave your customer wondering whether you have a solution.

Instead, tell them exactly what you'll do, and indicate how much time will that take. A great response to such situations is:

*I will have to reach out to the listing agent about this. Allow me to call you in 2 hours.*

If you do not have a solution within the next two hours, call them anyway and tell them that you are working on it. A small reassurance is a must every time you talk to them.

## **5. Follow up, and express gratitude**

The goal of every support interaction needs to be more than just solving the problem at hand. The actual measure of success is whether you have been able to preserve the investment you've made in the customer.

Ask your customer a very straightforward question: **Are you satisfied with the solution?** It goes a long way in showing that you care.

A very common parting note is 'Is there something else I can do for you?'. You do not have to sound like you're doing the customer a favor by solving their problem!

It's a great idea to express a little gratitude at the end of the interaction and saying '**thank you**'.

## Office Intruders and Active Shooters

Many brokerages have policies in place outlining responses to different types of crises, such as a hurricane evacuation. But what about an office intruder plan? How can you plan for a violent intruder like an **active shooter in the workplace**? (source: [guardiandefenseplan.com](http://guardiandefenseplan.com))

### 4 Strategies for Surviving an Active Shooter

#### 1. Non-Emergency Lockdown Procedures (Incident Close to Facility)

A non-emergency lockdown is necessary when there is a known **THREAT OFF-SITE, BUT CLOSE** to the facility. An example of a non-emergency lockdown would be when police establish a perimeter close to the facility and search for a suspect.

#### Think "**CREATE LAYERS OF RESISTANCE**"

- **Create LAYERS OF RESISTANCE** to block a potential intruder from entering the site. "Layers of Resistance" include locked doors, possibly heavy furniture pushed up against doors, shades pulled down over windows.
- **SECURE** all exterior doors and fencing to keep the problem out.
- Operate as usual on the inside. **DO NOT PERMIT** entrance into the facility.
- Ensure to secure the facility from the outside
- Call the police to gain information and **INFORM OPERATOR** that the facility is on a non-emergency lockdown (also known as "lockout" or "standard lockdown").
- **REQUEST NOTIFICATION** when threat is clear and once law enforcement says that the location is safe, operations will go back to normal.

*Being in a non-emergency lockdown for a potential threat off-site, puts the workplace at an advantage in the event the facility moves to an emergency lockdown.*

## 2. Emergency Lockdown Procedures (Incident within Facility)

An emergency lockdown is necessary when an unwanted intruder is **ON SITE** or **WITHIN the FACILITY**.

Think "**REPORT and COMMUNICATE**"

- **REPORT** the incident to law enforcement as quickly as possible.
- **COMMUNICATE** with coworkers and staff through an intercom system, group text or other means to reach everyone.
- Activating an emergency lockdown could discourage the threat from executing their plan.
- **CARRY OUT** your plan while waiting for police to arrive.
- **WEAPONS:** Keep in mind the threat may be concealing his/her weapon.

*Most of all, a disgruntled customer or former employee should be taken seriously because the intention is unknown.*

## 3. Run. Hide. Fight. (During an Active Threat)

The **Run. Hide. Fight.** model was developed by the Department of Homeland Security.

### a. **RUN: Where You Should Run and When You Should Go**

Think "**EVADE and EVACUATE**"

- If the decision is to "Run", the response is to **EVADE** or **EVACUATE**. The action shall not be to blindly "Run" from the threat.
- **EVADE** (MOVE) when the threat's location is not close to you.
- **MAINTAIN COVER** or **CONCEALMENT** if possible. Then, **EVACUATE** to safety.
- If there are no auditory sounds of a threat, it is possible that evading to a secure area, rather than evacuate, is your best choice.
- **BE AWARE** of any avenue of escape or exits.
- Take time for internal "field trips" of your work space.

*Under stress people resort back to training or previous experiences. Simply learning the layout of the facility can assist employees to recognize the avenues of escape.*

**b. HIDE: How You Should Hide and Where You Should Go**

**Think "ISOLATE and SECURE"**

- Unfortunately, evacuation may not be feasible for all employees and they may need to **ISOLATE** and **SECURE** themselves from the threat.
- In choosing to "Hide," there should be a clear understanding of the location to hide and the material that is chosen to hide behind.
- When selecting a location to isolate, it would be most beneficial to access areas less known or regularly travelled.
- Adjoining rooms that bring one deeper into the facility and further away from the threat is a good option for isolation.
- Once the location has been chosen, secure the area by creating layers of resistance.
- **Simply securing the door** allows staff time to react to the situation.
- It should be noted that a locked door is sometimes all that is needed to win an active killer incident. The threat is aware of limited time to locate victims and it would be a "waste of time" to attempt to force their way into a room that may have nobody inside.
- If the threat decides to force their way through the locked door, build a barricade (the second layer of resistance). The barricade could be built from desks, tables, chairs, or cabinets.
- If you cannot secure in an enclosed area, then shielding oneself behind the proper material for "**cover**" is imperative.
- **Cover** is something that can stop bullets from penetrating through it.

An example of cover is concrete block or potentially a filing cabinet filled with papers.

- If cover cannot be located, then **concealment** would be the next option. Concealment only affords the benefit of stealth and it should be noted that bullets will penetrate through said material.

Examples of concealment are dry wall, most doors, desks, tables, and closets.

- If concealment is the only option available, then locate a closet or material that conceals all the way around the body.

c. **FIGHT: When You Should Fight and How You Should Do It**

Think "**DEFEND**"

- "FIGHT" may come first, last, or not at all.
- The need to **DEFEND** oneself is dependent upon the location and nature of the threat.
- If you fight, you must **COMMIT** 100% to winning that battle.
- If possible, **PROCURE a WEAPON.**

A weapon of choice could be a sharp object, like scissors, or a blunt object, like a heavy trophy or bat.

- Position yourself in a low, aggressive stance.
- Aim for the **HEAD**, rather than attempting to disarm the attacker.

**4. Frequent Staff Training**

- Train Frequently
- Practice an Emergency Lockdown
- Practice through tabletop exercises or actual drills

# Customer Data Protection

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## Protect Customer Information

Most real estate businesses — brokerages, associations, and MLSs — keep sensitive, personal information in their files. Brokers and agents collect personal information for a variety of reasons, including:

- Social Security numbers in order to perform credit checks on renters;
- Bank account information and Social Security numbers contained in mortgage documents and closing statements;
- Personal checks given as earnest money;
- Credit card information to make various payments for inspections or appraisals;
- Drivers' license numbers as a safety precaution when agents leave the office with a new customer for the first time

## Federal Laws

Federal and state laws govern how personal information should be disposed of. Specifically, the Federal Trade Commission (FTC) oversees the ***Disposal of Consumer Report Information and Records Rule***.

The rule requires businesses that maintain or possess consumer information for a business purpose (typically credit providing businesses), properly dispose of such information by taking ***reasonable measures*** to protect against unauthorized use of or access to the information.

Examples of "Reasonable Measures"

- **Paper Records**  
Implementing and monitoring compliance with policies and procedures that require the ***burning, pulverizing, or shredding*** of papers containing consumer information so that the information cannot practicably be read or reconstructed.
- **Electronic Records**  
Implementing and monitoring compliance with policies and procedures that require the ***destruction or erasure of electronic media*** containing consumer information so that the information cannot practicably be read or reconstructed.
- **Disposal Company**  
Entering into and monitoring compliance with a contract with another party ***engaged in the business of record destruction*** to dispose of consumer information.

## Florida Laws

In Florida, Statute 501.171 *Security of Confidential Personal Information* states:

Each **covered entity** or third-party agent shall take all **reasonable measures** to dispose of customer records containing **personal information**. Such disposal shall involve shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

**“Covered entity”** means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information.

**“Personal information”** means either of the following:

1. An individual’s first name or first initial and last name in combination with any one or more of the following data elements for that individual:
  - a. A social security number;
  - b. A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
  - c. A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account;
2. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

## Notice of Data Breach Requirement

The Florida Department of Legal Affairs requires that notice must be provided to each individual in Florida whose personal information was accessed or believed to be accessed as a result of the data breach.

- Notice must be within 30 days of the breach
- Must be in writing and sent by mail or email
- Must include the date or estimated date of the breach
- A description of the personal information that was accessed
- Contact information for the business where the breach occurred



Breaches affecting 500 or more individuals in Florida must be communicated to the Department of Legal Affairs within 30 days of the breach. The written notice must include:

- A synopsis of the events surrounding the breach at the time notice is provided.
- The number of individuals in this state who were or potentially have been affected by the breach.
- Any services related to the breach being offered or scheduled to be offered, without charge, by the covered entity to individuals, and instructions as to how to use such services.
- A copy of the notice the company provided to the individuals affected by the breach.
- The name, address, telephone number, and e-mail address of the employee or agent of the covered entity from whom additional information may be obtained about the breach.

Additionally, the business may be asked by the department to provide the following:

- A police report, incident report or computer forensics report
- A copy of the company's data breach policy
- Steps that have been taken to rectify the breach

### **Enforcement**

Failure to provide notice of a breach to the individuals affected, as well as notifying the Department of Legal Affairs will result in a violation of 507.171 and shall be treated as an unfair or deceptive trade practice. Violators are subject to:

- Civil penalty of \$1,000 per day up to the first 30 days following any breach violation and \$50,000 for each subsequent 30-day period
- If the violation continues for more than 180 days, in an amount not to exceed \$500,000.

## 5 Principles of a Sound Data Security Plan

- 1. Take Stock**  
Know what personal information you have in your files and on your computers. Effective data security starts with assessing what information you have and who has access to it. Understanding how personal information moves into, through, and out of your business and who has—or could have—access to it is essential to assessing security vulnerabilities.
- 2. Scale Down**  
Keep only what you need. If you don't have a legitimate business need for sensitive identifying information, don't keep it. In fact, don't even collect it. If you have a legitimate business need for the information, keep it only as long as it's necessary. If only one or two employees need access to personal information, make sure access is limited to only those employees.
- 3. Lock It**  
Protect the information that you keep. The most effective data security plans include physical security, electronic security, employee training, and the security practices of contractors and service providers.
- 4. Pitch It**  
Properly dispose of what you no longer need to ensure that it cannot be read or reconstructed. Be sure you are in compliance with the *Disposal of Consumer Report Information and Records Rule*.
- 5. Plan Ahead**  
Have a plan in place to respond if there is a security breach. Designate a senior member of your staff to coordinate and implement the response plan.

### Key Elements of a Data or Security Breach Response Plan:

- 1. Choose a representative:** Ensure a communications representative is part of your core incident response team and is included in legal and forensics discussions
- 2. Map out your process:** Document a detailed process for developing and approving internal and external communications that includes a well-defined approval hierarchy
- 3. Cover all audiences:** Ensure your plan accounts for communicating to your employees, customers, regulators and business partners
- 4. Prepare templated materials in advance:** Prepare draft communications materials with content placeholders including holding statements for a variety of incident types, a public Q&A document to address questions from customers, investors and media, a letter to customers from company leadership and an internal memo to employees

## **Data or Security Breach Response Plan Example:**

1. **Record the moment of discovery**  
Also mark the date and time your response efforts begin, i.e. when someone on the response team is alerted to the breach
2. **Alert and activate everyone**  
Include everyone on the response team, including external resources, to begin executing your preparedness plan
3. **Secure the premises**  
Ensure the area where the data breach occurred, and surrounding areas are secure to help preserve evidence
4. **Stop additional data loss**  
Take affected machines offline
5. **Document everything**  
Record who discovered the breach, who reported it, to whom was it reported, who else knows about it, what type of breach occurred, etc
6. **Interview involved parties**  
Speak to those involved with discovering the breach and anyone else who may know about it – then document the results
7. **Review notification protocol**  
Review those that touch on disseminating information about the breach for everyone involved in this early stage
8. **Assess priorities and risks**  
Include those based on what you know about the breach. Bring in your forensics firm to begin an in-depth investigation
9. **Notify law enforcement**  
Do this if merited, after consulting with legal counsel

# Online Safety and Identity Theft

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Even though apps loom larger in most people's daily online interactions than traditional websites do, that does not mean that the basic Internet safety rules have changed. Hackers are still on the lookout for personal information they can use to access your credit card and bank information.

## Online Safety

Here are the Top 10 Internet safety rules to follow to help you avoid getting into trouble online (and offline).

### 1. Keep Personal Information Professional and Limited

Potential employers or customers don't need to know your personal relationship status or your home address. They do need to know about your expertise and professional background, and how to get in touch with you. You wouldn't hand purely personal information out to strangers individually—don't hand it out to millions of people online.

### 2. Keep Your Privacy Settings On

Marketers love to know all about you, and so do hackers. Both can learn a lot from your browsing and social media usage. But you can take charge of your information. Web browsers and mobile operating systems have settings available to protect your privacy online. Major websites like Facebook also have privacy-enhancing settings available.

These settings are sometimes (deliberately) hard to find because companies want your personal information for its marketing value. Make sure you have enabled these privacy safeguards and keep them enabled.

### 3. Practice Safe Browsing

You wouldn't choose to walk through a dangerous neighborhood—don't visit dangerous neighborhoods online. Cybercriminals use lurid content as bait. They know people are sometimes tempted by dubious content and may let their guard down when searching for it. The Internet is filled with hard-to-see pitfalls, where one careless click could expose personal data or infect your device with malware. By resisting the urge, you don't even give the hackers a chance.

### 4. Avoid Public Wi-Fi While You Shop Online

Public Wi-Fi is generally insecure, and hackers find it the most convenient platform to steal your credit card information. Hence, you should go for a trusted connection whenever you make any online transaction.

**5. Say No to Untrusted Email Attachments**

Email attachments are one of the biggest sources of virus attack; so it is advisable that you do not click on suspicious emails. The best way to prevent your PC from becoming a victim is to judge the subject line or the sender's email id before opening the attachment. You can also scan attachments with your antivirus program to minimize any kind of possible risk.

**6. Be Careful What You Download**

A top goal of cybercriminals is to trick you into downloading malware—programs or apps that carry malware or try to steal information. This malware can be disguised as an app: anything from a popular game to something that checks traffic or the weather. Don't download apps that look suspicious or come from a site you don't trust.

**7. Choose Strong Passwords and Consider a Password Manager**

Passwords are one of the biggest weak spots in the whole Internet security structure, but there's currently no way around them. And the problem with passwords is that people tend to choose easy ones to remember (such as "password" and "123456"), which are also easy for cyber thieves to guess.

A strong password is one that is unique and complex—at least 15 characters long, mixing letters, numbers and special characters. Remembering such strong passwords is nearly impossible without resorting to some sort of trick. The ideal trick is a password manager that generates secure, random passwords for you and remembers them so you don't have to.

**8. Make Online Purchases from Secure Sites**

Any time you make a purchase online, you need to provide credit card or bank account information—just what cybercriminals are most eager to get their hands on. Only supply this information to sites that provide secure, encrypted connections. You can identify secure sites by looking for an address that starts with *https:* (the S stands for *secure*) rather than simply *http:* They may also be marked by a padlock icon next to the address bar.

**9. Use Smartphone Lock**

Your smartphone contains highly sensitive information about you such as banking credentials, pictures, etc. It is, therefore, a good idea to set authentication for unlocking the phone. Use smartphone lock, either in the form of pattern or PIN, so that your information is safe whenever your phone is idle for a while.

**10. Keep Your Antivirus Program Up To Date**

Internet security software cannot protect against every threat, but it will detect and remove most malware—though you should make sure it's to date. Be sure to stay current with your operating system's updates and updates to applications you use. They provide a vital layer of security.

## Identity Theft

Identity theft refers to fraud that involves pretending to be someone else in order to steal money or get other benefits. The term is actually a misnomer, since it is not inherently possible to steal an identity, only to use it.

1. Identity theft is divided into four categories:
  - a. Financial identity theft: using another's identity to obtain goods and services
  - b. Criminal identity theft: posing as another when apprehended for a crime
  - c. Identity cloning: using another's information to assume his or her identity in daily life
  - d. Business/commercial identity theft: using another's business name to obtain credit
2. Identity theft may be used to facilitate crimes including illegal immigration, terrorism, and espionage. Identity theft may also be a means of blackmail. There are also cases of identity cloning to attack payment systems, including online credit card processing and medical insurance.
3. Some individuals may impersonate others for non-financial reasons. Some do it to receive praise or attention for the victim's achievements. This is sometimes referred to as identity theft in the media.

## Techniques for Obtaining Personal Information

1. **Dumpster Diving** - When someone goes through trash looking for personal information that can be used for identity theft purposes. Identity thieves look for credit card bills, bank statements, medical bills and insurance, and old financial forms such as old tax forms.
2. **Phishing** - A scam in which the identity thief sends an email falsely claiming to be from a legitimate organization, government agency or bank, to lure the victim into surrendering personal information such as a bank account number, credit card number or passwords.
3. **Skimming** - When thieves use a data storage device to capture the information from the magnetic stripe of credit, debit or ATM card at an ATM or during an actual purchase.
4. **Imposter** - Some identity thieves will obtain a copy of your credit report by posing as your employer or rental agent. This will give them access to your credit history including your credit cards numbers and loan information.
5. **Shoulder Surfing** - Eavesdropping on public transactions to obtain personal data.
6. **Unsecured Websites** - Whenever you shop or make a transaction online, there's a chance an identity thief could intercept your personal information. Before you make your next online purchase, make sure the website is secure. If the URL starts with "https," then you should be safe.
7. **Hacking** - When a corporation's protected and confidential information is copied, viewed or stolen by someone who is unauthorized to obtain the information. The information can be personal or financial including names, addresses, telephone numbers, social security numbers, personal health information, banking information, credit history, and more.
8. **Sim Swapping** - At its most basic level, a SIM swap is when someone convinces your carrier to switch your phone number over to a SIM card they own. By diverting your incoming messages, scammers can easily complete the text-based two-factor authentication checks that protect your most sensitive accounts. Or, if you don't have two-factor set up in the first place, they can use your phone number to trick services into coughing up your passwords.

## How Identity Theft Victim's Information is Misused:

<b>Tax fraud</b>	<b>32.7%</b>
<b>New credit card accounts</b>	<b>25.6%</b>
<b>Other identity theft</b>	<b>16.0%</b>
<b>Phone or utilities fraud</b>	<b>13.1%</b>
<b>Bank fraud</b> (checking, savings, debit cards, electronic fund transfers)	<b>11.8%</b>
<b>Loan or lease fraud</b>	<b>6.8%</b>
<b>Government documents or benefits fraud</b>	<b>6.6%</b>

\*Percentages total to more than 100 because some victims reported experiencing more than one type of identity theft.

### 4 Ways to Protect Against Identity Theft

1. **Set Up Fraud Alerts** – establish fraud alerts with the three major reporting agencies (Equifax, Experian and TransUnion). This will alert you if someone tries to apply for credit in your name.
2. **Consider Credit Freezes** - A credit freeze will lock your credit files so that only companies you already do business with will have access to them.
3. **Check Your Credit Report** – Credit reports will include any suspicious activity on your financial accounts. As a result, check your credit report regularly for any discrepancies.
4. **Credit Monitoring** - All Americans are entitled to one free credit report every year from all three major reporting agencies, accessible at [annualcreditreport.com](http://annualcreditreport.com). Experts advise spreading these out over the year, checking in about once every four months.



# Disaster Preparedness

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Natural disasters such as floods, fires, hurricanes, and mudslides pose threats to more communities than ever before, and the real estate community is keeping an eye on how this affects housing. The costs associated with natural disasters in the U.S. reached a record high of \$306 billion in 2017.

After a disaster strikes a community, real estate professionals often find themselves in the role of advisers in helping their current or former customers navigate the process of either repairing their home, selling it, or finding temporary accommodation.

## **Essential Disaster Preparedness for Florida Residents** (source: [ready.gov](https://www.ready.gov))

### **1. Basic Disaster Supplies Kit**

To assemble your kit, store items in airtight plastic bags and put your entire disaster supplies kit in one or two easy-to-carry containers such as plastic bins or a duffel bag.

#### **Recommended items for a basic disaster supply kit:**

- Water - one gallon of water per person per day for at least four days; one gallon for cooking per day for at least four days
- Food - at least a four-day supply of non-perishable food
- Battery-powered or hand crank radio and a NOAA Weather Radio with tone alert
- Flashlight
- First aid kit
- Extra batteries
- Whistle to signal for help
- Dust mask to help filter contaminated air and plastic sheeting and duct tape to shelter-in-place
- Moist towelettes, garbage bags and plastic ties for personal sanitation
- Wrench or pliers to turn on and off utilities
- Manual can opener for food
- Local maps
- Phone with chargers and a backup battery

2. **Hurricane Preparedness** (source: [noaa.gov](https://www.noaa.gov))

- Download a phone app that can notify people where you are, and if you need help or are safe. The Red Cross has a Hurricane App available in the Apple App Store and the Google Play Store, as well as a shelter -finder app.
- Use hurricane shutters or board up windows and doors with 5/8-inch plywood.
- Bring outside items in if they could be picked up by the wind.
- Clear gutters of debris.
- Reinforce the garage door.
- Turn the refrigerator to its coldest setting in case power goes off. Use a cooler instead of opening freezer or refrigerator doors.
- Fill a bathtub with water.
- Get a full tank of gas in one car.
- Go over your evacuation plan with your family and learn alternate routes to safety.
- Learn the location of the nearest shelter or nearest pet-friendly shelter.
- Put an ax in your attic in case of severe flooding.
- Evacuate if ordered and stick to marked evacuation routes, if possible.
- Store important documents – passports, Social Security cards, birth certificates, deeds – in a watertight container.
- Leave a note to say where you are going.
- Unplug small appliances you leave.
- If possible, turn off the electricity, gas and water for the residence.

3. **Generator Safety Tips** (source: [Florida Power & Light](https://www.floridapower.com))

- Set it up outside, away from all open windows, including neighbors' windows, to prevent deadly exhaust from entering a home or business.
- Use a heavy-duty extension cord rated for outdoor use to keep the generator safely outdoors. If the appliance has a three-prong plug, always use a three-prong extension cord.
- Consider using a battery-operated carbon monoxide alarm to be alerted if carbon monoxide levels become dangerous.

- Connect appliances directly to it. Do not wire your generator directly to your breaker or fuse box.
- Turn off all connected appliances before starting your generator. Turn connected appliances on one at a time, never exceeding the generator's rated wattage.
- Don't touch a generator if you are wet or are standing in water or on damp ground.
- Never refuel a hot generator or one that is running – hot engine parts or exhaust can ignite gasoline.
- Ensure you have plenty of gas for operation stored safely in gas containers.
- Don't leave a running generator unattended; turn it off at night and when away from home.

## **7 Hurricane Preparedness Tips**

1. Copy or scan all important documents
2. Compile all information on every listing or current transaction you have.
3. Take down all for sale and marketing signs prior to the storm.
4. Put all lockboxes in a safe place
5. Bring all keys with you when you evacuate
6. Get alternative contact information from all current customers.
7. Consult with your broker on your office's disaster contingency plan. If there is not one in place, talk to them about creating one.

### **After the Disaster**

- **Services that require a state license**
  - Roof repairs
  - New or replacement roof
  - Installing new windows
  - Plumbing repairs
  - Electrical repairs or rewiring

- **Services that do not require a state license**

- Trimming or removing a fallen tree
- Removing debris
- Placing a tarp on a roof
- Installing storm shutters

- **Be cautious of individuals who...**

- Advertise without a license number
- Request cash only
- Use high-pressure sales tactics
- Lack a written contract
- Demand a full payment up front
- Solicit door to door

Report unlicensed activity to **866.532.1440** or [ULA@myfloridalicense.com](mailto:ULA@myfloridalicense.com)

- **Transaction Guidance**

When disaster strikes a property during a pending real estate transaction, there are many important issues that must be addressed. The health and safety of everyone involved is of the utmost concern.

Be aware of these five issues so you can help your customers navigate their way through this difficult time.

- 1. Customers**

- Speak with your customers as soon as possible. Keep everyone advised as much as possible, both as to what is known and what is not known.
- Don't panic, be patient, and try to encourage customers to do the same. Many people are involved in this difficult situation, and you'll all need to work together to figure it out.

## 2. Contracts and Law

The short inventory below provides an overview of key provisions in the Florida Realtors/Florida Bar "AS IS" Residential Contract for Sale and Purchase revised in April of 2017, along with one reference to the casualty provision contained in the Florida Residential Landlord and Tenant Act.

- **Section 18(G) Force Majeure**

This is an automatic extension that comes into play when a dramatic event prevents a party's performance or closing from happening. It takes an unusual and unplanned event to trigger this "Force Majeure" clause, as you can see from a few of the examples given, such as, hurricanes, acts of God and acts of terrorism.

Once the clause is triggered, though, certain time periods (including the closing date, if applicable) will be extended for a reasonable time up to 7 days after the force majeure no longer prevents performance. Parties should pay attention to the time in relation to the closing date, though, since either party may terminate the contract by delivering a written notice if force majeure continues to prevent performance more than 30 days beyond the closing date.

- **Section 18(L) Access to Property to Conduct Appraisals, Inspections, and Walk-Through**

After a hurricane passes over a property, a buyer often wants to take another look at the property, regardless of whether the buyer is still in the inspection period. This clause generally favors the buyer's request, as it provides that "Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing."

- **Section 18(M) Risk of Loss**

If the buyer or seller discover casualty damage from the hurricane, this clause describes the rights and obligations of each party. If the cost to restore the property does not exceed 1.5 percent of the purchase price (this cost includes the cost of pruning or removing damaged trees), then the cost is a seller obligation. If the restoration isn't complete prior to closing, the seller will escrow a sum equal to 125 percent of the estimated cost to complete the restoration.

If the cost of restoration exceeds 1.5 percent of the purchase price, then the buyer has the option to either take the property along with 1.5 percent of the purchase price, or receive a refund of the deposit, releasing buyer and seller from all further obligations under the contract.

- **Section 83.63, Florida Statutes (Casualty Damage)**

This brief section simply provides that if rented residential premises are damaged or destroyed "so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises." This section continues to present a second scenario whereby a tenant may "vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed."

### **3. Homeowner's Insurance and Flood Insurance**

- Advise your customer to file a homeowner's insurance claim, or at least notify the carrier of the claim, as soon as possible.
- Document and inventory all damages in writing, photos, and video.
- Keep records of everything you spend on repairs and replacements.
- Passed 2018: CS/CS/HB 1011: Homeowner's insurance policy disclosures

**This notice is required in homeowner's property insurance policies after January 1, 2019:**

"FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF

HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT."

### **4. Lending**

- Buyers should check with the lenders to determine how they will handle re-inspections or re-appraisals that may be required.
- Sellers should notify their lender and inquire about fee waivers and deferment options.
- Both parties should ask lenders about additional costs and or timeframes caused by the disaster, even if the property is not in a designated FEMA disaster area.

## **4 Tips for Getting your Real Estate Business back up and Running**

### **1. Be sensitive**

If you are in the middle of a deal when disaster strikes your area, you have to be sensitive to what your buyers or sellers are feeling.

It's not just about closing the deal but also being supportive and creative to keep everything in check.

Whether a blizzard, earthquake, hurricane or wildfire, it will take some time and effort to get things back on track, but all is not lost. This is a test to see who is built to handle these unpredictable high-pressure situations.

### **2. Customer communication is key**

Building lifelong relationships is a key differentiator in the real estate industry. Reach out to customers before and after the storm.

Customers and prospects need reassurance that their investment is safe both before and after. This can seal the deal for future referrals and transactions.

Also, after the storm, it is critical to re-engage with buyers and sellers and reiterate why we have chosen to live in the communities we love.

### **3. Manage the fears and reactions of your customers**

They are going to panic, but it is in your best interest to help keep them calm. For example, since Hurricane Andrew, homes in Florida are built to handle strong hurricanes. It is essential to educate out-of-state buyers on this. Newer homes held up very well against the strong winds of Hurricane Irma.

Combined with master generators, impact glass and hurricane shutters, homes went virtually unscathed.

### **4. Add value to the experience**

Roll up your sleeves and get involved. Take the time to ask customers if they need help:

- putting up or taking down shutters
- cleaning yard debris
- getting groceries or food delivered
- buying gas for their car or generator
- delivering ice for their cooler

**Unit 4 Review Exam**

- 1. When conducting a showing with a customer, how should you proceed through the property?**
  - A) You should be the first person to walk into a room
  - B) Allow the customer to walk in front of you as you move through the property
  - C) Let the customer do a self-guided tour while you stay in one spot
  - D) Ask the customer how they would like to view the property
- 2. Which of the following is NOT recommended for vehicle safety when working with customers?**
  - A) Take separate vehicles if possible
  - B) You shouldn't drive your vehicle to a showing because you should let your customer drive
  - C) Somewhere where you won't be blocked in, such as at the curb
  - D) If you must take one vehicle, you drive!
- 3. What is the best location to meet a new customer?**
  - A) At the property you're showing
  - B) At the customer's home
  - C) At your office
  - D) At your home
- 4. When it comes to agent safety planning and preparation, what is a "distress code"?**
  - A) An app on your phone
  - B) A word you say to a threatening person to make them stop
  - C) A security code or pin you use to lock your phone from unwanted users
  - D) A phrase or keyword that you can use via phone call, text or email to alert a buddy or coworker that you need assistance
- 5. In a leased property or short-term rental, cameras should be:**
  - A) placed where they can clearly and obviously be seen
  - B) hidden in a vent
  - C) switched to "voice-only" mode
  - D) anywhere the owner wants them to be



## Unit 4 Review Exam Key

1. B) When conducting a showing you should always let the customer walk in front of you as you move through the property.
2. B) You should never ride in a vehicle driven by your customer. It is recommended that you drive separately or if it's necessary to take one vehicle, you should drive. When parking at the showing, you should park in a spot where you will not be blocked in, such as on the street or at the curb.
3. C) it is best to meet a new customer at your office. This provides a safe, neutral first meeting place where you can openly collect and file identifying information. This may discourage an assailant.
4. D) When a situation arises that makes you feel uncomfortable, call, text or email your prearranged distress code (a keyword or phrase) to your buddy or someone else you have shared the code with previously
5. A) people have the right to know when they're being filmed inside a residential dwelling, including personal residences, leased properties and short-term rentals such as VRBO or Airbnb. Accordingly, in all cases cameras should be placed where they can "clearly and obviously" be seen by anyone who enters the property.