

Some Common Mistakes for Real Estate Sales Associates and Brokers to Avoid

There are some violations of the license law that come before the FREC on a very frequent basis. I will outline some of them here:

Practice without a Valid and Current License. 475.42(1)(a), F.S.; 475.42(1)(c), F.S.; Rule 61J2-5.019, F.A.C. Brokers, especially in the current economic environment, must be careful to ensure that their sales associates have registrations and licenses that are current. It is as simple as doing a regular check at www.myfloridalicense.com. The usual action of the Commission for practice without a valid and current license is to impose an administrative fine not to exceed \$5,000 and a three year suspension to revocation. For brokers employing sales associates who are not holders of a valid and current license, the usual action of the Commission is to impose an administrative fine not to exceed \$5,000 and a 90-day to two year suspension.

Failure to Account and Deliver for Sales Associates. 475.25(1)(d)(1), F.S.; 61J2-14.009. For Real Estate Sales Associates, this is perhaps the most common violation. It usually is discovered during the course of investigating a complaint. Every sales associate who receives any deposit, as defined in Rule 61J2-14.008, Florida Administrative Code, shall deliver the same to the broker or employer no later than the end of the next business day following receipt of the item to be deposited. Saturday, Sundays and legal holidays shall not be construed as business days. Receipt by a sales associate or any other representative of the brokerage firm constitutes receipt by the broker for purposes of paragraph 61J2-14.008(1)(d), Florida Administrative Code. The usual action of the Commission for failure to account and deliver is to impose an administrative fine not to exceed \$5,000 and up to a five year suspension.

Failure to Account and Deliver for Brokers. 475.25(1)(d), F.S. 61J2-10.032, F.A.C. Conflicting demands on escrow deposits has become a frequent situation in today's real estate market. The Florida Statutes and Code are quite complicated here, and should be reviewed carefully. If the licensee, in good faith, entertains doubt as to what person is entitled to the accounting and delivery of the escrowed property, or if conflicting demands have been made upon the licensee for the escrowed funds in her or his escrow or trust account, the licensee shall notify the commission within 15 days of such doubts or conflicting demands and shall within 30 days after the last demand or after having such doubt:

- Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;
- With the consent of all parties, submit the matter to arbitration;
- By interpleader or otherwise, seek adjudication of the matter by a court (oftentimes, brokers employ attorneys to handle this for them); OR
- With the written consent of all parties, submit the matter to mediation. Review the F.A.C. for more info on this option.

If the licensee employs one of the options above within the proper timeframes and abides by the resulting order or judgment, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property.

For violations for failure to account or deliver, it is the usual action of the Commission to impose an administrative fine not to exceed \$5,000 and up to a 5 year suspension.

I hope this short recitation of a couple of the most common mistakes that Realtors make can help everyone to avoid having to make an appearance at our next meeting. In the current economic situation, an administrative fine is the last thing a Realtor needs. Good luck in business and in life.

All the best,

Richard DeNapoli
Florida Real Estate Commissioner