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FLORIDA REAL ESTATE LICENSE LAW: WHO IS PROTECTING THE PUBLIC?

I. INTRODUCTION*

Real Estate is said to make up three-fourths of the entire wealth in the United States. Billions of dollars worth of real estate is sold each year in this country. In addition to this huge volume of sales, billions of dollars come from appraisals of land and buildings, mortgage loans and rental collections. When you realize that real estate is the foundation on which life exists (the source of food and shelter that sustains life), then you understand clearly that *everyone* is a consumer or user of real estate. Further, when you consider that real estate extends throughout every aspect of the physical, economic, social and political life of the nation, then you also begin to grasp both the importance and the impact of the real estate business.¹

Property ownership is composed of a bundle of rights:² the right to dispose of, the right to use, the right to possess, and the right to exclude others from one's property.³ When real estate license law fails in its purpose, property rights are severely frustrated. When property rights are adversely affected, both the economy and the nation suffer.⁴

Florida real estate license law has major flaws that are frustrating the alienation of real property and adversely affecting the rights of property ownership. Immediate attention is needed in this area to protect the public and the coveted freedom of property ownership.

The Florida Real Estate Commission (FREC) is the administrative agency charged with the protection of the public in real estate transactions.⁵ Authorized to perform executive, quasi-legislative and quasi-

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1. GEORGE GAINES, JR. & DAVID S. COLEMAN, *FLORIDA REAL ESTATE PRINCIPLES, PRACTICES AND LAW* 1 (19th ed. 1995).

2. Harold Demsetz, *The Economics of the Commons, Toward a Theory of Property Rights*, in *PERSPECTIVES ON PROPERTY LAW* 148 (Robert C. Ellickson et al. eds., 1995).

3. GAINES, *supra* note 1, at 117.

4. Demsetz, *supra* note 2, at 148-49.

5. FLORIDA REAL ESTATE COMMISSION, *FLORIDA REAL ESTATE COMMISSION HANDBOOK* ii (1989) [hereinafter *HANDBOOK*]. FREC is governed by Fla. Stat. ch. 120 (1995) (Adminis-

judicial functions,⁶ the FREC promulgates rules, codified in chapter 61J2 in the *Florida Administrative Code*, to conduct the administration of real estate license law.

The FREC is comprised of seven members, all appointed by the governor and approved by the state senate. Four of the members must be licensed Florida brokers having held active licenses for at least five years preceding appointment to the FREC. Two must never have been licensed in real estate. The final member may be either a broker or a salesman who has held an active license for the two years immediately preceding the appointment.⁷ FREC is administratively a part of the Department of Business and Professional Regulation (DBPR). Because the FREC has no employees, the Division of Real Estate (DRE), a division of the Department of Business and Professional Regulation (DBPR), provides all services required to conduct its business.⁸

The main reasons cited for the use of administrative agencies to oversee specialized areas are efficiency and flexibility.⁹ However, while "continued exposure to the same issues may lead to . . . agency expertise, it may [also] be the source of rigidity and ineffectiveness."¹⁰

Premised on the proposition that there exists a "mismatch between the regulatory objective and the technique chosen to achieve it,"¹¹ this article illustrates the false sense of security advanced by the belief that state licensure and regulation provide the yellow brick road to consumer safety in real estate. Part II presents the inadequacy of the threshold standards for state licensing. Part III concentrates on the deficiency of educational requirements in relation to the importance of the duties endemic to the tasks of real estate licensees. Part IV demonstrates that the FREC, whose purpose is to protect the public,¹² is in fact frustrating that purpose by promoting reactive rather than proactive laws, which serve more to entrap licensees and produce revenue than to promote ethical and competent behavior. Part V analyzes the vulnerability for wrong decision making that exists within the current regulatory

trative Procedure Act), Fla. Stat. ch. 455 (1995) (Regulation of Professions and Occupations), and Fla. Stat. ch. 475 (1995) (Real Estate Brokers, Salesmen, Schools, and Appraisers).

6. See FLA. STAT. chs. 455, 475 (1995).

7. FLA. STAT. § 475.02 (1995).

8. FLA. STAT. § 475.021 (1995).

9. The administrative agency can perform its duties without the expense and lengthy process of the courts by employing experts in the particular field of concentration. ERNEST GELLHORN & RONALD M. LEVIN, ADMINISTRATIVE LAW AND PROCESS 1 (3d ed. 1990).

10. *Id.* at 3.

11. *Id.*

12. FLA. STAT. §§ 455.201, 475.04, 475.451 (1995).

structure. Lastly, Part VI offers solutions to the problems discussed in this article.

II. INADEQUACY OF LICENSING REQUIREMENTS

“[N]o man should . . . accept a degree he cannot read.”¹³

The state of Florida merely requires that a person applying for a Real Estate Salesperson's License be a high school graduate or its equivalent, eighteen years of age or older and have successfully completed the prescribed principles and practices course¹⁴ from a school approved by the FREC.¹⁵ This course is comprised of sixty hours of classroom instruction and a three hour exam at the end of the course.¹⁶ Successful completion of the course is achieved by a grade of seventy points or higher on the exam.¹⁷ A candidate having met these prerequisites is then eligible to take the state pre-licensing examination.¹⁸ A grade of seventy-five or higher, out of the one hundred question multiple choice exam taken within two years of passing the course,¹⁹ entitles the candidate to licensure.²⁰

The licensee is then considered a “professional” with “expert knowledge” in real estate.²¹ Thus, immediately upon completion of a basic sixty hour course, an examination at the end of the course, and a state examination, a licensee then has the right to seek employment with a broker,²² usually as an independent contractor.²³ The licensee is now empowered by the state to represent a buyer, a seller, both,²⁴ or possibly act as a facilitator²⁵ in any of the eight major services of real estate: advertising, buying, appraising,²⁶ leasing,²⁷ renting or pro-

13. Millard Fillmore's statement upon refusing an honorary degree from Oxford University in 1855. POLITICAL QUOTATIONS 49 (Michael Thomsett & Jean Thomsett eds., 1994).

14. GAINES, *supra* note 1, at 23.

15. FLA. STAT. § 475.17(2)(a) (1995).

16. FLA. STAT. § 475.04 (1995).

17. *Id.*

18. *Id.*

19. GAINES, *supra* note 1, at 20.

20. Licensure means that a person has met the requirements for a real estate license, pursuant to FLA. STAT. § 475.17 and is registered with the DBPR's DRE.

21. FLA. STAT. § 475.01(1)(c), (d) (1995).

22. GAINES, *supra* note 1, at 19.

23. The licensee is not an employee. FLORIDA REAL ESTATE COMMISSION, REAL ESTATE RESEARCH CENTER, DIVISION OF REAL ESTATE, FLORIDA REAL ESTATE COMMISSION BROKER'S COURSE TEXTBOOK 17-11 (7th ed. 1992) [hereinafter BROKER'S TEXTBOOK].

24. Florida law permits dual agency by a licensee. FLA. STAT. § 475.01 (1995).

25. A person acting in this capacity is known as a transaction broker. FLA. ADMIN. CODE ANN. r. 61J2-10.37 (1996).

26. A real estate licensee is permitted to appraise real property for compensation provided

viding rental information, selling, auctioning, and exchanging.²⁸

In a real estate transaction, a licensee may be required to perform such functions as, but not limited to, advising a buyer or a seller as to the value of property, marketing the property, and writing contracts specifying the terms agreed upon by the parties.²⁹ The terms of an agreement generally include such complex concepts as the acceptable condition of the title to the property, the methods of financing, the condition of the property, risk of loss, and integration clauses (which may subsequently serve to bar proper interpretation of the actual intent of the parties).³⁰ In essence, a novice licensed real estate salesperson, having completed the previously required steps for licensure, has *carte blanche* to represent, in a legal transaction, unwary real estate services consumers—who may be making the biggest purchase of their lives with their life's savings and, in addition, may be investing long term potential earnings. The licensee is statutorily *qualified* to negotiate and prepare leases, as well as listing, option, and sales contracts.³¹

The word *qualified* is important. You would not consider paying \$1,000, \$100 or even \$50 to an architect, a dentist or a veterinarian if you knew that he or she had not first been required to complete a designated course of study. Many times the amounts mentioned above are paid for professional real estate services. In comparison, the academic and application precicensing requirements to become qualified as a real estate licensee are relatively lenient.³²

Licensing exams are scheduled every two weeks in Miami and Orlando.³³ The FREC tests hundreds of applicants each exam period.³⁴ Furthermore, the exams are graded on the premises where the successful applicant walks out of the test site as an "expert" in real

that the appraisal does not involve a federally related transaction and that no representation is made on the report that the appraiser is "certified" or "licensed." FLA. STAT. § 475.612 (1995).

27. The Florida Bar Re: Advisory Opinion—Non lawyers Preparation of Residential Leases Up to One Year in Duration, The Florida Bar Re: Approval of Forms Pursuant to Rule 10-1.19(b) of the Rules Regulating the Florida Bar, 602 So. 2d 916 (Fla. 1992).

28. GAINES, *supra* note 1, at 25.

29. *Id.* at 2-10.

30. Hershon v. Gibraltar Bldg. & Loan Ass'n, 864 F.2d 848, 856 (D.C. Cir. 1989).

31. GAINES, *supra* note 1, at 179.

32. *Id.* at 18.

33. Exams are held in Panama City every other month. Memorandum, Florida Department of Business and Professional Regulation, Examination Calendar of June 3, 1996.

34. *Id.*

estate and, per statute, a "professional."³⁵ Are these professionals qualified to perform with the expertise with which licensure empowers them? After all, even to acquire a drivers license, an official of the state must take a trial drive with the applicants to ascertain that they are qualified to merit the driving permit.

Probably out of concern for the answer to the above question, the FREC instituted additional educational requirements in the late 1980s. The novice licensee is now required, within the first license renewal period (the first eighteen to twenty-four months from initial licensure),³⁶ to complete a post-licensing course (an intensive review of the pre-licensing course),³⁷ comprised of forty-five hours of classroom instruction and to successfully pass an exam at the end of the course.³⁸ Nonetheless, the question remains: Just how much damage can be done to the public in eighteen to twenty-four months? As Part III will illustrate, a great deal of heartache to the public may be avoided by requiring what is now post-licensing material to be made a part of the prelicensing requirements.

Subsequent license renewals may be obtained by simply completing a take-home fourteen hour "continuing education" course every two years.³⁹ The typical take-home course (also referred to as a correspondence course) is composed of a pamphlet-type book. The material covered includes some basics of real estate principles and practices as well as recent changes in license law. Usually, the book has eight or nine chapters covering different topics, with a progress test after each chapter.⁴⁰

As part of the machinations of "ensuring" that the test taker has read the information, there is a requirement that the answers to the multiple choice progress tests be written on a form and included with the answer keys to the final exam. Ironically, the progress tests are not graded. In fact, the answer keys to the progress tests are provided with the take home course.

The take-home multiple choice exam is also provided within the book. Most schools that offer continuing education courses use the same book. Each school develops or purchases a final exam, which

35. FLA. STAT. § 475.01(1)(c), (d) (1995).

36. GAINES, *supra* note 1, at 39.

37. *Id.*

38. *Id.* at 28.

39. FLA. STAT. § 475.182(1) (1995); FLA. ADMIN. CODE ANN. r. 61J2-3.020 (1996).

40. GEORGE GAINES, JR., ET AL., CONTINUING EDUCATION FOR REAL ESTATE BROKERS & SALESPERSONS (1996-1997).

must be approved by the FREC.⁴¹ The respective school then markets the chosen book and the same exam to anyone seeking renewal during that period.⁴² Only when the time granted by the FREC for its use expires, does the school issue a new exam.⁴³ Continuing education can also be satisfied by attending fourteen hours of classroom instruction, where the same text as in the take home course is used, but mere attendance, without an examination, guarantees renewal.⁴⁴

No other formal education is required of a real estate professional.⁴⁵ The only exception is a special course that may be assigned as a sanction for minor breaches of law. These classes may include refresher courses on how to reconcile a bank statement for brokers who are found in violation and deficient in the subject, if and when audited.⁴⁶

One year from the date of the issuance of licensure as a salesperson, the novice licensee may obtain a broker's license.⁴⁷ Prerequisites include the successful completion of a seventy-two hour FREC course, a score of seventy or better on the course exam, a salesperson's license that has been active for one year, and a score of seventy or better on the state exam.⁴⁸

The term "active" refers to a status.⁴⁹ It means that the salesperson has the privilege of participating in real estate transactions and obtaining commissions. No actual on-the-job experience is required. The licensee may have never participated in a single real estate transaction, yet is eligible to claim "active" status.⁵⁰ The broker's first license renewal period (eighteen to twenty-four months from initial licensure) requires a post-licensing course.⁵¹ Subsequently, the same correspondence course as that already described for salespersons satis-

41. Publishers of the book usually have an exam for sale to the schools.

42. It is conceivable that within one real estate office numerous agents may be sharing the same answers to the exam without actually reading the materials.

43. The FREC advises the school of the expiration date when an exam is approved.

44. GAINES, *supra* note 1, at 28.

45. FLA. ADMIN. CODE ANN. r. 61J2-2.030 (1996).

46. In *Weiss v. Department of Professional Regulation*, the court upheld the FREC/DBPR's final order requiring a broker to complete sixty hours of post-licensure. *Weiss v. Department of Prof'l Regulation*, 677 So. 2d 98, 100 (Fla. Dist. Ct. App. 1996).

47. A broker's license entitles that person to open and operate a real estate enterprise, to hire licensed salespersons, and to conduct all the functions permitted by the licensing authority. FLA. STAT. § 475.01(c) (1995).

48. Only one text, which is updated periodically to comply with changes in the law of licensing, is used for the broker's course. BROKER'S TEXTBOOK, *supra* note 23.

49. GAINES, *supra* note 1, at 24.

50. FLA. STAT. § 475.183 (1995).

51. GAINES, *supra* note 1, at 27-28.

fies the continuing education requirement.

Currently, a high school graduate or equivalent may take an exam to qualify for registration as a real estate instructor (no course is required nor is there one available). Upon successfully passing the exam, the licensee is granted real estate instructor status.⁵² In an effort to keep instructors up to date, the FREC requires license renewals every two years. Fifteen hours of classroom instruction, seven of which are conducted by the Division of Real Estate and eight hours of approved specialty courses fulfill the education requirement.⁵³ This requirement is not satisfied with the continuing education options available to salespersons and brokers.

III. DEFICIENCY OF EDUCATIONAL REQUIREMENTS

“Education makes a people easy to lead, but difficult to drive; easy to govern, but impossible to enslave.”⁵⁴

Real property sales are intricate, and in many cases, require expert legal knowledge.⁵⁵ Purchase and sale contracts are composed of numerous sub-agreements (e.g., the price may depend on the condition of the property, the closing may be subject to the condition of title, or the payment of funds may be contingent on the buyer obtaining financing). To demonstrate how better education of licensees may prevent harsh results, let us explore a hypothetical specifically addressing how failure to properly cross-reference clauses of an underlying document may adversely affect a transaction.

A real estate licensee drafts a contract for the resale of a condominium unit where the seller provides the financing to the buyer. The condominium association only requires approval of the buyer and not of the transaction.⁵⁶ Buyers purchasing from nondeveloper unit owners must be allowed three business days to examine the condominium documents and are granted the option of invalidating the sale if for any reason the bylaws are not found acceptable.⁵⁷ The complexity and

52. *Id.* at 42, 43.

53. FLA. STAT. § 475.451(2)(c)(3) (1995); FLA. ADMIN. CODE ANN. r. 61J2-3.011(2) (1996).

54. Attributed to Lord Brougham in FIVE THOUSAND QUOTATIONS FOR ALL OCCASIONS 71 (Lewis C. Henry ed., 1945).

55. However, “as a broker and salesperson, you can’t have an attorney at your side every minute to advise you.” HANDBOOK, *supra* note 5, at iv.

56. Generally, condominium associations, through their bylaws, reserve the right to approve the sale or rental of the unit to the buyer/tenant.

57. The three-day time period applies when the condominium unit is being sold by a private party. Developers, the sellers that built the complex, have an obligation to provide the

length of most condominium documents renders this exchange a perfunctory procedure without effective inspection of said documents.⁵⁸ Thus, the transfer of documents becomes a mere formality where neither the seller nor the licensee discovers potential problems.

However, the condominium bylaws limited the financing of the individual units to institutional lenders. The seller/lender, later attempting to foreclose on the loan because the buyer has defaulted on the payments, may face a precarious legal situation. If the buyer relies on the fact that the seller/lender is not an institutional lender as an affirmative defense to the foreclosure, the seller/lender may prevail in court. However, the harshness and expense of legal action above and beyond this type of foreclosure may be prevented if adequate advice is given to the seller/lender as to the risk of seller financing.⁵⁹ Unfortunately, less than three full pages of the text used in the FREC approved salesperson's course are devoted to "condominiums."⁶⁰

Unlike the practice of real estate, the core curriculum required for licensure is not geared toward understanding contract law. The state of Florida is satisfied with exposing a licensee to merely twenty-two pages of contract law education prior to making them a professional and an expert⁶¹ in a field that is primarily dependent on contractual relationships.⁶² As a result, the licensees are generally not aware of the consequences of their actions while practicing in their field of expertise.

Another frequent mistake made by licensees is the selling of the same property to more than one buyer. Consider the following situation: A novice salesperson persuades a seller to price a property, located in a coveted area, below the market value. Soon thereafter, five other salespersons⁶³ bring offers from prospective purchasers. On the advice of the listing licensee, the seller counters the same price and terms to all five buyers advising each that the first one to present a fully executed contract will have a sale. All offers are accepted by the respective buyers and returned to the listing office in the absence of

buyer with fifteen days to inspect the condominium documents and a right to cancel the sales agreement within that period. FLA. STAT. § 718.503 (1995).

58. Three days for these complex documents to be inspected by a nonlawyer, or by anyone not familiar with condominium laws, should be assumed to yield an absurd result.

59. GARY EARLE, *HOW TO SELL APARTMENT BUILDINGS* 51-53 (1988).

60. GAINES, *supra* note 1, at 130-33.

61. *Id.* at 179-201.

62. Contracts involving the transfer of title to real property must be in writing to be valid. GAINES, *supra* note 1, at 181.

63. "Salesperson" is a license status indicating that the licensee is not a broker, branch office, corporation, or partnership. GAINES, *supra* note 1, at 24.

the listing agent. It is not known which contract was returned first. The result: the seller, upon the advice of a statutorily qualified and properly licensed real estate salesperson, sold the property five times, facing five suits for specific performance and owing five commissions. This consequence may have been avoided with proper education as to when a contract becomes effective and sufficient familiarity with pertinent clauses to be inserted in the purchase and sale agreement.⁶⁴

If these buyers were to sue for specific performance, *lis pendens* are generally placed on the seller's property making it virtually inalienable until the matter is resolved.⁶⁵ Meanwhile, if the reason for selling is due to financial hardship, a desperate seller may lose the property. Additionally, a buyer may have a substantial amount of money (escrow deposits) tied up in the registry of the court pending resolution of the dispute, and may be unable to purchase another property. Furthermore, a fully licensed salesperson, relying on the perceived adequacy of state prescribed education, promoted a transaction where liability in a malpractice suit to both the seller and buyers, will probably be inevitable.

Further complicating the situation, and unlike lease forms,⁶⁶ there is no standard purchase and sale contract form in the state of Florida. There could conceivably be as many different purchase and sale agreement forms as there are real estate brokerages in the state of Florida.⁶⁷ Yet, a licensee, having completed the minimal FREC prescribed requirements, is considered qualified to examine any and all of these forms and to competently negotiate these instruments which are "designed to spell out clearly the meeting of the minds between parties on a particular subject, and . . . thereby create certain enforceable rights."⁶⁸

An example of a clause that is often taken for granted by licensees is found in the "Purchase and Sale Agreement Form" prepared by

64. This type of outcome is very common in contractual relationships. For one of the earliest cases relating to this matter, see *Henthorn v. Fraser*, 2 Ch. 27 (Ch. Div. 1892), for a discussion of properties sold simultaneously to different buyers.

65. *Lis pendens* on the public records is constructive notice to all purchasers that there is a cloud on the title of the pertinent property.

66. Currently, lease forms are the only contract type which are standardized in Florida. The Florida Bar Re: Advisory Opinion—Non lawyers Preparation of Residential Leases Up to One Year in Duration, The Florida Bar Re: Approval of Forms Pursuant to Rule 10-1.19(b) of the Rules Regulating the Florida Bar, 602 So. 2d 916 (Fla. 1992).

67. There are approximately 13,500 registered real estate corporations and 200 partnerships in the state of Florida. *Florida Real Estate Licensees as of April 1, 1996*, 43 FLA. REAL EST. COMM'N NEWS & REP. 1 (Spring 1996).

68. GAINES, *supra* note 1, at 181.

the Dade County Association of Realtors.⁶⁹ Paragraph 9(B) of this form states: "Seller warrants that, at time of Closing, there shall be no violation of building or zoning codes. If the Property is in violation of such codes, Seller shall pay for the expenses required to bring the Property into compliance with such codes at time of Closing."⁷⁰ The negative ramifications that this clause may present are evidenced by the following scenario.

A licensed salesperson sells a property built in 1970. Prior to closing, the buyer has the plumbing and electricity inspected pursuant to paragraph 9(B). The inspection yields code violations, using the current code regulations as the universal standard. In accordance with paragraph 9(B) the seller may be obligated, subject to pre-arranged limits of liability (if any), to correct what is now termed a deficiency, but which was performed according to the code at the time the property was built. Oversight of this detail could result in thousands of dollars in repairs to the seller or in a suit for specific performance should the seller decline to comply because the licensee and the parties were ignorant of the ramifications of the clause. Because building and zoning codes change frequently,⁷¹ and because most homes sold by real estate licensees are resales of previously owned homes, consider the impact on the hundreds of contracts conditioned on this clause.

Real estate licensees sell property rights.⁷² Yet, equivoque to contract education, only one chapter (that translates into approximately one to two hours of classroom instruction) is usually dedicated to "Title, Deeds and Ownership Restrictions."⁷³ This deficiency is ever increasing as real estate law becomes more complicated.⁷⁴ Again, innocent bystanders, the buying and selling public, who place their faith in the state's licensing procedures, may end up in litigation due to the ignorance condoned by the licensing/regulating authority.

When measured by the gravity of the harm that could result, granting "professional" status to a person based on the threshold education requisite in Florida for real estate licensure continues to be a

69. Paragraph 9B of the Purchase and Sale Contract authorized by the Dade County Association of Realtors (on file with author).

70. *Id.*

71. Dade County, especially, has undergone major zoning and building code changes since Hurricane Andrew in August of 1992.

72. Demsetz, *supra* note 2, at 145.

73. See GAINES, *supra* note 1, at 179-201, for a typical sample from the *Principles and Practices Student Textbook*.

74. DON HARLAN & GAIL JONES, *THE FUTURE OF REAL ESTATE: PROFITING FROM THE REVOLUTION passim* (1995).

source of substantial liability to the real property buyer and seller. The disputes currently pending resolution, the numerous fines, suspensions, and revocations reported by the FREC via its quarterly report⁷⁵ and through other publications, such as the *Florida Realtor*,⁷⁶ evidence the widespread incompetence that is incessantly gnawing at the industry and at the confidence the public places on the credibility of state licensing.

IV. PROMOTION OF REACTIVE VERSUS PROACTIVE LAWS

“The history of liberty has largely been the history of procedural safeguards.”⁷⁷

John Stuart Mill is a philosopher who reconciled the simultaneous adherence to utilitarian and libertarian ideals by using the “harm principle” as the measure of when to regulate behavior by the application of prohibition.⁷⁸ In his book, *Principles of Political Economy*, Mill expressed the theory that competition was endemic to economic well-being.⁷⁹ He criticized socialist and communist theories as illusions, for he felt that if everyone’s livelihood was guaranteed, people would not work. Adopting Mill’s philosophy, this author submits that the FREC, in its endeavor to protect the public, should promote proactive instead of reactive methods of policing the real estate community.

Currently, licensure is renewable automatically upon receipt of the appropriate fees and licensee certification of completion of the continuing education requirement.⁸⁰ Only upon routine and random inspections, which may or may not happen within a renewal period,⁸¹ or as

75. *Florida Real Estate Commission News & Report*, which is currently published semiannually, is a vehicle by which disciplinary actions, including the names of the parties, are published.

76. *The Florida Realtor* is a monthly publication of the Florida Association of Realtors, through which James R. Mitchell, Assistant Attorney General and Counsel for FREC, does case studies of administrative actions.

77. *McNabb v. United States*, 318 U.S. 332, 347 (1943).

78. “[O]ne man’s right to liberty of action stops short at the point where it might injure or curb the liberty of another man. ‘The only purpose for which power can be exercised on any member of a civilized community against his will, is to prevent harm to the others.’” MAURICE CRANSTON, *JOHN STUART MILL* 20, 21 (1958) (quoting Mill).

79. JOHN STUART MILL, *PRINCIPLES OF POLITICAL ECONOMY* (1848).

80. *FREC Update*, *FLORIDA REALTOR*, Mar. 1996, at 2.

81. Only 25% of just-renewed licenses are audited following the end of the renewal cycle. James R. Mitchell, *Legally Speaking*, 43 *FLA. REAL EST. COMM’N NEWS & REP.* 3 (Fall 1996). Additionally, “[i]f a licensee renews the license without having completed the required continuing education and, for whatever reason, turns himself or herself in before it is found out through the audit or some other way, the penalty will be a \$1,000 fine.” *Id.*

a result of a complaint filed against the licensee, would a request for proof of actual completion of the continuing education requirements be requested by the licensing authority.⁸²

The knowledgeable James R. Mitchell, Assistant Attorney General and counsel for the FREC, reports results of an administrative adjudication where a broker has been charged with having obtained a license by means of fraud, misrepresentation or concealment in violation of section 475.25(1)(m) of the Florida Statutes.⁸³ The broker sent the fee and certification that declared he had completed the continuing education requirement. During a routine investigation it was discovered that the broker did not complete the education requirement until after the date of certification. Since the broker had ultimately complied with license law, it was considered a mitigating factor and, therefore, he was merely reprimanded and ordered to pay a \$1,500 administrative fine.⁸⁴

While this truant broker was caught, the risk remains that many who are not discovered do not comply with the education requirement at all. However, because the FREC chooses to react to wrongdoing instead of offensively discouraging it, we are unable to determine just how many of the hundreds of thousands of licensees in the state of Florida are offering their "expertise" to the public and, using as the foundation of their credibility, a fraudulently acquired license without even the benefit of the meager education standards required to maintain a license in good standing.⁸⁵

If the licensee is compelled to produce a copy of the completion certificate⁸⁶ with the renewal fee, absent fraud or mistake, it is unlikely that renewal would be effectuated without meeting the continuing education requirement. Hence, the public would be assured that the licensee, at minimum, participated in the process of continuing education (deficient as it may be).⁸⁷ Reacting to a violation by fining a truant broker does not justify the potential for harm to the public which could have been avoided, in the first instance, by requiring proof of compliance.

This reactive method of policing behavior provides opportunities

82. James R. Mitchell, *Case Studies*, FLA. REALTOR, Mar. 1996, at 6.

83. *FREC Update*, FLA. REALTOR, Mar. 1996, at 2.

84. *Id.*

85. As of April 1, 1996, there are 270,971 licenses in Florida. 43 FLA. REAL EST. COMM'N NEWS & REP. 2 (Spring 1996).

86. Real estate schools must provide a course completion report to each student. FLA. STAT. § 475.175(2) (1995).

87. This was the required procedure until 1994. FLA. STAT. § 475.182 (1994).

for those in the system who are prone to wrongdoing⁸⁸ and procures revenue for the state,⁸⁹ leaving the public unprotected and vulnerable due to the inefficiency of the regulating agency. Unquestionably, the state is negligent in granting a license without proof that its minimum standards have been met. This proposition is further emphasized by the FREC itself, where Chairman Clifford M. Stein states, "the Commission intends to become more pro-active in sponsoring new legislation and taking an active role in endorsing or opposing new legislation in the next legislative session."⁹⁰

Further reducing the incentive to comply with procedure, the DBPR has altered the manner in which licensees attest to the completion of the continuing education requirement when renewing their license, as proved by the removal of the signature line from the renewal application.⁹¹ Steven Fieldman, Chief Attorney for Real Estate at the DBPR, instructs licensees, "you are no longer required to sign the renewal . . . by submitting it with the appropriate fee you are certifying that you have completed your Continuing Education requirements."⁹²

The term "certify," in its legal context, does not have a host of meanings.⁹³ The FREC and the DBPR, however, have changed the meaning of legal language *sua sponte* to meet their laissez faire reactive style of regulation. Therefore, it is no longer necessary to certify compliance, only to ipse dixit confirm it. A unique paradigm is found in the FREC's requirement that brokers sign the monthly reconciliation of the escrow bank statements.⁹⁴ Although a broker may reconcile the escrow account on a monthly basis, the mere fact that he fails to sign even one reconciliation statement during the period of the audit is grounds for discipline and/or fines.⁹⁵ However, the very document that

88. As in the instant case where a licensee intentionally sent in the renewal without having completed the education requirement.

89. "The DRE is funded by fees, publication sales and other charges assessed by the FREC. Money generated from these sources must be used only to fund real estate regulation activities." GAINES, *supra* note 1, at 38.

90. Clifford M. Stein, *A Message from the Chairman*, 43 FLA. REAL EST. COMM'N NEWS & REP. 3 (Summer 1996).

91. *Business Bulletin*, FLA. REALTOR, Mar. 1996, at 2.

92. Steve D. Fieldman, *The Legal Perspective*, 43 FLA. REAL EST. COMM'N NEWS & REP. 7 (Summer 1996).

93. "To authenticate or vouch for a thing in writing." BLACK'S LAW DICTIONARY 156 (6th ed. 1991).

94. FLA. ADMIN. CODE ANN. r. 61J2-14.012 (1996) (defining escrow reconciliation as a balancing of the monthly bank statement where the escrow funds are maintained).

95. See, e.g., FLA. REAL EST. COMM'N NEWS & REP. *passim* (Spring 1996).

serves as prima facie evidence of capability and competence, making it possible for a licensee to be authorized to accept an escrow deposit, is not considered sufficiently significant to require actual, as opposed to constructive, certification. If the FREC was acting in harmony with its legislated purpose,⁹⁶ the signature line of a document where authentication of completion is intended would be considered of utmost importance. In its absence, there is a dearth of diligence on the part of the rulemakers in this agency, and the appearance of a blatant disregard for the class to be protected is patently progressing.

At the February 1996 meeting of the FREC,⁹⁷ proposals that classroom instruction be required for continuing education instead of the correspondence course were addressed, yet action was delayed. Delaying action was also the response to proposals that the FREC develop the course materials and sell them at cost to the schools.⁹⁸ During the same session, a suggestion by the DBPR to eliminate the process of fingerprinting applicants for licensure was rejected.⁹⁹ However, the decision was qualified by limiting the fingerprinting process to those years when the Florida legislature provides funds.¹⁰⁰ Fortunately, upon further appraisal of the issue, the FREC realized that it "would [then] be required to rely on the good-faith and honesty of applicants with criminal histories to properly disclose their background on the application" and, during the same session, voted to retain the fingerprinting process.¹⁰¹ This is an example of sound analysis that the FREC should employ in performing its duties.

Who is protecting the public from harm when the regulatory body is reacting to wrongdoers instead of seeking to prevent wrongdoing?

V. POTENTIAL RISK FOR WRONG DECISION MAKING

"Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions."¹⁰²

The potential risk for wrong decision making within the FREC/DBPR effectively undermines both the purpose of the agency and intent of the legislature, thereby producing the opposite effect:

96. FREC's purpose is to protect the public. HANDBOOK, *supra* note 5, at iii, iv.

97. Meetings are held at DBPR's DRE headquarters in Orlando, Florida.

98. *Business Bulletin*, FLA. REALTOR, Apr. 1996, at 2.

99. *Id.*

100. *Id.*

101. Clifford M. Stein, *A Message from the Chairman*, 43 FLA. REAL EST. COMM'N NEWS & REP. 7 (Summer 1996).

102. *United States v. Wunderlich*, 342 U.S. 98, 101 (1951).

harm to the public. Examination of the problem must begin with how the agency may violate its own rules via its powers as "mini-legislature," prosecutor, judge, and jury.¹⁰³

The filing of a complaint against a licensee initiates the investigatory process.¹⁰⁴ A complaint may be filed by a member of the public and must be filed by a licensee. It should be noted that Florida real estate licensees are subject to disciplinary action if they fail to report another real estate licensee to the FREC for known violations of real estate license law.¹⁰⁵ The fines for failure to report a colleague may be up to \$5,000 per unreported violation.¹⁰⁶

The complaint process is comprised of eight steps:¹⁰⁷

1. The complaint is filed with the DBPR and an analyst reviews alleged wrongdoing to determine if it is legally sufficient.¹⁰⁸

2. The DRE conducts an investigation and notifies the licensee/respondent.

3. The DRE gives an investigative report to the FREC Probable Cause Panel for decision and return to the DBPR.

4. If probable cause is found, the DBPR issues a formal complaint and notifies the licensee/respondent. If no probable cause is found, the file is sealed and the process terminates. The complainant may seek review by a civil court.¹⁰⁹

5. If probable cause is found, the licensee is entitled to an informal proceeding.

6. The DBPR requests either a FREC final order or a formal hearing. The hearing is convened and a recommended order results.

7. The FREC Final Order Panel renders a verdict and issues a final order.¹¹⁰

103. The FREC is empowered to exercise executive, quasi-legislative, and quasi-judicial powers. FLA. STAT. ch. 475 (1995).

104. FLA. STAT. § 455.225(1) (1995).

105. FLA. STAT. § 455.227(1)(i) (1995).

106. FLA. STAT. § 455.227(2)(d) (1995).

107. GAINES, *supra* note 1, at 101. For a narrative and detailed procedure by the Chief Attorney for the DBPR, see *infra* Appendix A.

108. A complaint is legally sufficient if the facts show that a violation of a Florida Statute, a legally enacted DBPR rule, and/or a legally enacted FREC rule has occurred. FLA. STAT. § 475.25 (1995).

109. See *infra* Appendix A.

110. Steven D. Fieldman, *The Legal Perspective*, 43 FLA. REAL EST. COMM'N NEWS & REP. 6 (Summer 1996). The FREC may publish the names and addresses of parties to a final order. FLA. STAT. § 475.31(2) (1995).

8. The DBPR/FREC and the licensee/respondent may appeal the final order.

When no probable cause is found, files are declared confidential and are virtually sealed.¹¹¹ The complainant then merely receives a form letter (Appendix A) naming a myriad of predisposed possible reasons why the complaint may have been dismissed, which may or may not apply to the issue. Because very little is known outside of the FREC concerning improprieties by investigators and/or others involved in the investigative and decision making process when no probable cause is found, the procedure outlined by the administrative agency is very vulnerable to abuse. Unless an audit is performed by one authorized to access the confidential files, discovery of wrongdoing or negligence is probably impossible. Thus, other than judicial review,¹¹² there is no accountability by the agency. Unfortunately, judicial review is very expensive and time consuming. Private individuals are not likely to assert this option for the benefit of the general public.¹¹³

The following analysis is based on actual complaints filed with the DBPR and are authenticated by citing the case numbers.¹¹⁴ The names have been omitted to protect the privacy of the parties and to comply with Florida law.¹¹⁵

A. Case #9383024 July 2, 1991

Broker A sold Broker B's listing. The transaction was to close within sixty days. Four days prior to the closing, Broker A advised Broker B that he had sold the buyer another property. The seller placed a demand on the good faith deposits in Broker A's escrow account. Broker A advised that he had transferred the escrow deposit to the new purchase.

Since the buyer had met all the contingencies of the contract, the seller may have been successful in obtaining equitable relief in a suit for specific performance. However, the seller was recently widowed, afraid to live alone, and had vacated the subject property. She was

111. No information relating to the investigation may be divulged until ten days after probable cause is found. If no probable cause is found, the file remains confidential. FLA. STAT. § 455.225(10) (Supp. 1996).

112. A petition for judicial review of a final order may be filed in the district court of appeal in the appellate district where the appellant resides or where the FREC's executive offices are located. FLA. STAT. § 475.37 (1995).

113. In a study by this author, which encompassed 140 Florida cases from 1985 to 1996, naming the DBPR and/or the FREC, confirms this assertion.

114. The author has personal knowledge and possession of the complaint files.

115. FLA. STAT. § 455.225(10) (Supp. 1996) (referring to FLA. STAT. § 455.227(1)(k)).

living with relatives while awaiting the proceeds from the sale of the subject property in order to purchase a condominium where she would feel safe. The seller's attorney advised her that if she instituted a law suit it could be at least one year before she received a judgment. In the meantime, the house would be rendered "not marketable" during that period of time since it would be a subject of litigation. The quickest relief would be to place the property back on the market and attempt to resell the home.

The seller opted for the latter action. In addition, relying on section 475.25(1)(d) of the Florida Statutes,¹¹⁶ the seller reported Broker A to the DBPR/FREC for having disbursed escrow funds to which the seller was entitled (contractually) in the event the buyer breaches the contract. Shortly thereafter, the DBPR notified the seller that the complaint was deemed legally sufficient and that an investigation would ensue.

In the interim, the seller reached an agreement with a new buyer contingent on obtaining a release of contract from the previous buyer,¹¹⁷ which she requested through the licensees. Broker A responded by advising that since the seller had reported him to the DBPR/FREC he would not cooperate in obtaining the release. The investigating officer assigned to the case was advised of Broker A's communication. The investigator spoke with Broker A, who immediately thereafter provided the release of contract executed by the original buyer.

Approximately eight months to one year from the date of the initial complaint, the seller was advised by the FREC that no probable cause was found against Broker A and that the case was dismissed. As a result, the complaint file was declared confidential, the "guilty" broker was absolved of wrongdoing, and the public (the seller in this case) was harmed by an unethical and incompetent licensee acting under the auspices of the State of Florida. In addition, Broker A will continue to be licensed to possibly repeat further trials and tribulations against the public whom the FREC is charged with protecting.

B. Case #9581162 February 24, 1995

Upon the advice of independent counsel and in compliance with section 455 of the Florida Statutes,¹¹⁸ a licensee filed a lengthy and

116. The FREC must be notified and the broker holding the deposit must institute one of the settlement procedures outlined by the statute.

117. This process took approximately an additional six months.

118. The selling licensee is currently suing the owner/listing licensee for payment of Commission and Fraud in Circuit Court in Dade County, Florida. Such action should constitute

well documented complaint¹¹⁹ with the DBPR/FREC against a seller/licensee. Among other things, and of least consequence, the complaint included evidence such as copies of correspondence from the accused refusing to provide a roof report performed within the past year,¹²⁰ correspondence from the accused intentionally misstating improvements made to the property for the purpose of inducing the buyer to buy,¹²¹ and a letter from the accused's attorney threatening the complainant with a suit for defamation of character should a complaint against the accused be filed.¹²²

The complainant received a phone call¹²³ from the investigator assigned to the case advising that the complaint had been found legally sufficient and that he would advise if any further information was needed. Further information requested by the investigator on March 29, 1995, was provided by the complainant on that same day. No further communication regarding the complaint took place until March 5, 1996, when the complainant's attorney received a letter from the accused's attorney advising that the DBPR/FREC had dismissed the complaint against their client and that they were considering a suit against the complainant for having filed a baseless complaint.

On March 6, 1996, the complainant sent a letter, via facsimile, to the investigator requesting the case number and status of the complaint. The investigator called the next day and advised that he had no information. He stated that he would be unable to supply any information because the computers in Tallahassee were down, but that he would attempt to determine the status of the file. Again, on the following day, the investigator called and confirmed that the complaint had indeed been dismissed.

On March 29, 1996, the complainant received a letter with a facsimile stamp signature of Steven D. Fieldman, Chief Attorney of Real Estate for the DBPR, advising that the complaint was dismissed.

knowledge of wrongdoing by another licensee prompting the statutory requirement of FLA. STAT. ch. 455 (1995).

119. Author has a copy on file.

120. FLA. STAT. § 475.422 (1995). Failure to furnish copies of termite or roof inspection reports performed within the past year is punishable by up to a three year suspension. FLA. ADMIN. CODE ANN. r. 61J2-24.001(3)(ii) (1996).

121. FLA. STAT. § 475.421 (1995). Publishing of false or misleading information is punishable with up to a first degree misdemeanor. FLA. STAT. § 775.082(4)(a) (1995).

122. A licensee must not interfere or attempt to prevent the filing of a complaint by another licensee. FLA. STAT. § 455.227(r) (1995).

123. All phone calls herewith mentioned are logged, as a matter of course, in the complainant's business records (on file with author).

The letter of complaint dismissal was dated February 20, 1996; the envelope was postmarked by postage meter March 1, 1996.

Enclosed with the Chief Attorney's correspondence was a poor copy of a form titled "PLEASE NOTE"¹²⁴ with the following information:

The proceedings of the Probable Cause Panel are not open to public inspection and the investigative report is held confidential by authority of Subsection 455.225(10), Florida Statutes. INFORMATION CANNOT BE RELEASED WITHOUT THE SUBJECT OF THE INVESTIGATION WAIVING HIS RIGHT OF CONFIDENTIALITY OR UNTIL TEN DAYS AFTER PROBABLE CAUSE WAS FOUND. Typical reasons for dismissing a complaint and closing the file are:

1. The matter is not within the jurisdiction of this agency.
2. The facts and circumstances will not support a charge of a violation of the license law.
3. The available evidence is not competent and substantial to prove a violation of the real estate license law.
4. The violation was minor or the infraction has been corrected.
5. The unlicensed activity has stopped or it was determined that a license is not required.¹²⁵

As a matter of law, the investigation is kept secret if no probable cause is found; thus, there is no procedure in place to confirm that the investigation was conducted properly. None of the "typical reasons" given for dismissing the complaint apply to this case. In addition, the matter is, by virtue of law, within the jurisdiction of the agency.¹²⁶ The facts and circumstances by the clear and convincing language of the relevant statutes support a violation of license law.¹²⁷ The evidence included with the complaint in support of the above mentioned allegations competently corroborates that infractions were committed.¹²⁸ The violations may be considered minor by the DBPR/FREC, but the Florida Legislature has determined that these are breaches of law.¹²⁹ Lastly, whether or not the activity may have stopped, harm was caused by a licensee in violation of license law.¹³⁰

124. For the full text of the form see *infra* Appendix B.

125. *Id.* (emphasis added).

126. FLA. STAT. § 475.25 (1996).

127. All of the allegations are violations within the purview of FLA. STAT. §§ 455, 475 (1995). See *supra* notes 118-20.

128. Correspondence from the accused corroborates that he committed an infraction as to each allegation. This correspondence is on file with the author.

129. Each allegation has been cross referenced with a violation of FLA. STAT. §§ 455, 475 (1995). See *supra* notes 118-20.

130. No Florida Statute has been found permitting the FREC discretion for not enforcing

Ironically, the DBPR's Chief Attorney for Real Estate concludes his rendition of the complaint process, published in an effort to educate licensees (Appendix A), by stating:

From my particular perspective, it is critically important that the judgment and conduct of the prosecutors and the legal staff be as competent and professional as possible. The people in this office must always be aware that our decisions and actions may significantly affect the lives of complainants and subjects, as well as the protection of the public.¹³¹

VI. CONCLUSION

"The one who decides must hear."¹³²

The regulating agency's failure to have the proper safeguards in place to compel compliance with the enabling statute and what society considers reasonable conduct undermines the purpose of its existence. The FREC should, with utmost deliberateness, review its procedures and bring them into harmony with its mission statement,¹³³ thereby evidencing its commitment to the protection of the public.

As an urgent subject of reform, the FREC should be obliged to institute stricter standards for obtaining licenses, such as a minimum of an associate's degree from a college or university for salespersons and brokers and a four-year degree for instructors. Real estate education should include a comprehensive concentration of study in areas, such as contracts, where a licensee is permitted to practice law, and commit the parties to legal liability.

Most importantly, the FREC must alter its reactive form of regulation and undertake a proactive (preventive) posture in executing its purpose of protecting the public in real estate concerns and, thereby, property rights. In conformity with the above implementation, a procedure that minimizes and/or eradicates the possibility for abuse within its administrative system is tantamount to the success of effectuating its statutory mandate. Therefore, a report explaining the specific reasons why a complaint was dismissed should be made available to all parties concerned.

Nancy Pico Campiglia, GRI

properly adopted legislation.

131. Steven D. Fieldman, *The Legal Perspective*, 43 FLA. REAL EST. COMM'N NEWS & REP. 6 (Summer 1996).

132. *Southern Garment Mfr. Ass'n v. Fleming*, 122 F.2d 622, 626 (D.C. Cir. 1941).

133. FLA. STAT. § 475.001 (1995).

Appendix A

THE LEGAL PERSPECTIVE

By Steven D. Fieldman

Chief Attorney for Real Estate

Department of Business and Professional Regulation

As the Chief Attorney for Real Estate in the DBPR, my duties include serving as the chief of prosecution for cases involving the Florida Real Estate Appraisal Board and the Florida Real Estate Commission (FREC). In this article, I want to outline the processing of complaints involving real estate licensees in Florida. The disciplinary process is generally initiated by the filing of a formal complaint with the Complaint Section of the Bureau of Enforcement, Division of Real Estate, Department of Business and Professional Regulation. Written complaints may be addressed to the Complaint Section, at 400 West Robinson Street, Orlando, Florida 32801. If complainants call they are sent a uniform complaint form to fill out and return or they are told to send a letter describing their complaint.

When a complaint is received, a complaint analyst reviews the complaint to determine whether it is "legally sufficient" (under *Florida Statutes*, Chapter 455).

If and only if a complaint is legally sufficient, then the complaint analyst sends the complaint to the Enforcement Section. At this point, a case number is assigned and an investigation commences. Typically, the investigator provides a copy of the complaint to the "subject" (i.e., the licensee against whom the complaint was made), the investigator interviews the complainants and the subjects, and the investigator prepares an investigative report which is forwarded to the Legal Section.

It is very important to note that law provides for Notices of Non-compliance and/or Citations to be issued for minor violations. Generally, Notices of Noncompliance and Citations are handled without an investigative report being forwarded to the Legal Section. (A discussion of such Notices and Citations will have to be in another column).

The investigative report is reviewed in the Legal Section, and the prosecutors make a recommendation to the Probable Cause Panel. In some cases, prosecutors request additional investigation before making a recommendation. The Probable Cause Panel of the FREC consists of

two members or past members of FREC (with at least one being a licensee), who meet to determine whether or not there is probable cause to believe that a violation of Chapter 475, Part I, has occurred, and formal charges should be filed by the DBPR. If the panel determines that there is no probable cause, then the case is dismissed. In some cases where no probable cause is found and the case is dismissed, the panel elects to issue a "letter of guidance" to the subject, generally expressing that the subject's conduct was less than satisfactory. If the panel determines that there is probable cause, an administrative complaint is filed by the prosecutors against the subject.

Ten days after the probable cause panel determines that probable cause exists, the complaint becomes a public record. Unless and until ten days after probable cause is found, the existence of the complaint, the investigative report, and the disposition of the case by the probable cause panel are entirely confidential, pursuant to Chapter 455.

The administrative complaint constitutes formal administrative charges by the DBPR against the subject, who is called the respondent in the administrative complaint. The administrative complaint is served on the respondent, and the respondent has 21 days within which to make an election of rights. By the election of rights, the respondent indicates whether the respondent admits all of the factual allegations of the complaint or the respondent denies any of the factual allegations of the complaint.

If the respondent admits all of the factual allegations, then the case is brought to the FREC (consisting of the members who did not serve on the Probable Cause Panel) for an "informal hearing." In such cases, the Respondent is entitled to present matters in mitigation. The FREC may impose discipline, depending upon the specific statutes or rules which have been violated, including a fine of up to \$1,000 per count, additional education, probation, a reprimand, and/or suspension or revocation of the respondent's license.

In cases where the respondent denies any of the factual allegations of the administrative complaint, the respondent is entitled to a "formal hearing" before an administrative hearing officer. In these cases, the hearing officer conducts a hearing (which is similar to a trial) and then submits a recommended order, consisting of findings of fact and conclusions of law, to the FREC. The FREC reviews the hearing officer's recommended order, listens to any exceptions to the recommended order presented by the respondents or by the prosecutors, and then enters a FREC final order.

The FREC final order may be appealed to the Florida District

Court of Appeals.

In many cases, where the respondent has denied the allegations of the administrative complaint in the election of rights, the respondent and the prosecutors enter into a stipulation. A stipulation is essentially an agreement between the respondent and the DBPR, to the effect that the respondent neither admits nor denies the allegations of the administrative complaint but the respondent agrees to the imposition of a particular disciplinary sentence, as the stipulated disposition of the case. If the FREC approves the stipulation, then a final order is entered accepting the stipulation; if the FREC disapproves of the stipulation, then the case will proceed to an informal or formal hearing.

There are some exceptions or variances from the above described process. Virtually all of the disciplinary final orders of the FREC are published in the *FREC News & Report*.

From my particular perspective, it is critically important that the judgment and conduct of the prosecutors and the legal staff be as competent and professional as possible. The people in this office must always be aware that our decisions and actions may significantly affect the lives of complainants and subjects, as well as the protection of the public.

Appendix B

PLEASE NOTE

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Typical reasons for dismissing a complaint and closing the file are:

1. The matter is not within the jurisdiction of this agency.
2. The facts and circumstances will not support a charge of a violation of the license law.
3. The available evidence is not competent and substantial to prove a violation of the real estate license law.
4. The violation was minor or the infraction has been corrected.
5. The unlicensed activity has stopped or it was determined that a license is not required.

The closing of our case has no legal effect upon any civil or criminal case. If you wish to pursue this matter please consult with an attorney engaged in the private practice of law.

If you obtain a favorable civil judgement or if there is a criminal conviction, please re-submit the matter to us.

If you have any additional information or if you desire to contact this agency, please **WRITE** to:

Department of Business and Professional
Regulation
Division of Real Estate
Attention Legal Services
Hurston North Tower
400 West Robinson Street, N308
P.O. Box 1900
Orlando, Florida 32802-1900

Please include our case number on all correspondence.