



2021 Stellar Legal Update

October 27, 2021

Juana Watkins, Esq.
General Counsel/VP of Law & Policy



Florida Realtors Legal Update

Copyright Infringement



Copyright Lawsuits

Title	Last Updated	Cause of Action
Nadeau v. [REDACTED] Realty, Inc. et al, Docket No. 0:21-cv-62167 (S.D. Fla. Oct 20, 2021), Court Docket	2021-10-20 15:18:56	17:0101 Copyright Infringement
Nadeau v. [REDACTED] Realty, Inc. et al, Docket No. 1 21-cv-23544 (S D. Fla. Oct 07, 2021), Court Docket	2021-10-14 00:09:56	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED], Inc. et al, Docket No. 9:21-cv-81868 (S.D. Fla. Oct 05, 2021), Court Docket	2021-10-24 23:57:09	17:0101 Copyright Infringement
Nadeau v. [REDACTED] Group LLC et al, Docket No. 1:21-cv-22876 (S.D. Fla. Aug 06, 2021), Court Docket	2021-09-27 00:02:11	17:0501 Copyright Infringement
Nadeau v. [REDACTED] Real Estate, Inc., et al, Docket No. 1:21-cv-22875 (S.D. Fla. Aug 06, 2021), Court Docket	2021-10-14 00:10:01	17:0501 Copyright Infringement
Nadeau v. [REDACTED] Realty Services, Inc. et al, Docket No. 1 21-cv-22874 (S D. Fla. Aug 06, 2021), Court Docket	2021-10-08 00:10:41	17:0501 Copyright Infringement
Nadeau v. [REDACTED] Realty, LLC et al, Docket No. 0 21-cv-61637 (S D. Fla. Aug 06, 2021), Court Docket	2021-10-10 00:00:35	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Realty, LLC et al, Docket No. 0 21-cv-61521 (S D. Fla. Jul 24, 2021), Court Docket	2021-10-02 00:09:20	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Realty, Inc. et al, Docket No. 2 21-cv-14127 (S D. Fla. Mar 18, 2021), Court Docket	2021-06-12 00:04:38	17:0501 Copyright Infringement
Myeress v [REDACTED] LLC et al, Docket No. 2:21-cv-14104 (S.D. Fla. Feb 24, 2021), Court Docket	2021-05-22 00:05:49	17:0501 Copyright Infringement
Myeress v [REDACTED] LLC et al, Docket No. 9:21-cv-80400 (S.D. Fla. Feb 24, 2021), Court Docket	2021-02-24 17:52:02	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED], Inc. et al, Docket No. 9:21-cv-80387 (S.D. Fla. Feb 23, 2021), Court Docket	2021-04-13 00:00:26	17:0501 Copyright Infringement
Nadeau v. [REDACTED] Realty, Inc. et al, Docket No. 1:21-cv-20715 (S.D. Fla. Feb 22, 2021), Court Docket	2021-09-23 00:05:42	17:0501 Copyright Infringement
Myeress v [REDACTED] et al, Docket No. 1 21-cv-20178 (S D. Fla. Jan 15, 2021), Court Docket	2021-03-21 00:05:30	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Corp. et al, Docket No. 9 21-cv-80078 (S D. Fla. Jan 15, 2021), Court Docket	2021-02-13 00:20:51	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Inc. et al, Docket No. 9 20-cv-82365 (S.D. Fla. Dec 21, 2020), Court Docket	2021-02-23 06:20:46	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Realty, LLC et al, Docket No. 9:20-cv-82262 (S.D. Fla. Dec 11, 2020), Court Docket	2021-06-18 00:05:00	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] FLORIDA, LLC et al, Docket No. 9:20-cv-81985 (S.D. Fla. Oct 28, 2020), Court Docket	2021-10-04 00:02:37	17:0101 Copyright Infringement
Myeress v [REDACTED] LLC et al, Docket No. 1 20-cv-23409 (S D. Fla. Aug 17, 2020), Court Docket	2020-09-26 00:07:37	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] LLC et al, Docket No. 9:20-cv-81058 (S.D. Fla. Jul 07, 2020), Court Docket	2020-09-11 00:03:16	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED], Inc. et al, Docket No. 9:20-cv-80853 (S.D. Fla. May 28, 2020), Court Docket	2020-10-26 00:05:10	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Realty Inc. et al, Docket No. 1:20-cv-22220 (S.D. Fla. May 28, 2020), Court Docket	2020-11-16 00:03:42	17:0501 Copyright Infringement
Golden Film Production & Photography, LLC v [REDACTED] Properties, LLC et al, Docket No. 5:20-cv-00094 (M.D. Fla. Mar 05, 2020), Court Docket	2021-10-14 00:09:58	17:501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Realty LLC et al, Docket No. 9 20-cv-80173 (S D. Fla. Feb 06, 2020), Court Docket	2021-02-04 00:07:16	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Realty LLC et al, Docket No. 1 20-cv-20520 (S D. Fla. Feb 06, 2020), Court Docket	2020-09-26 00:07:34	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] Inc. et al, Docket No. 9:19-cv-81146 (S D. Fla. Aug 13, 2019), Court Docket	2020-03-04 00:01:18	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED], P.A. et al, Docket No. 9:19-cv-80555 (S.D. Fla. Apr 24, 2019), Court Docket	2019-11-19 00:12:42	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. Aaron Group Realty, LLC et al, Docket No. 9:19-cv-80489 (S.D. Fla. Apr 09, 2019), Court Docket	2019-11-20 00:13:23	17:0501 Copyright Infringement
McCarthy v [REDACTED], Inc., Docket No. 8:19-cv-00437 (M.D. Fla. Feb 19, 2019), Court Docket	2020-09-23 23:49:41	28:1332 Diversity-Breach of Contract
Affordable Aerial Photography, Inc. v. [REDACTED] LLC et al, Docket No. 9:18-cv-81667 (S D. Fla. Dec 05, 2018), Court Docket	2019-01-19 23:51:56	17:0501 Copyright Infringement
Affordable Aerial Photography, Inc. v. [REDACTED] LLC et al, Docket No. 9:18-cv-81601 (S.D. Fla. Nov 20, 2018), Court Docket	2019-09-15 00:03:48	17:0501 Copyright Infringement



Copyright Lawsuits

- How it starts? You choose the “perfect picture” for your ad off the internet, i.e. a sunset by a popular local bridge or a shot of the beach filled with tourists enjoying the Florida sun.
- What happens next? You receive a “Cease and Desist” letter, along with a demand for payment for use of photos owned by another person or entity, like Getty Images.
- Then what? Check the image in question. Is it owned by the person who sent the demand letter? If so, remove it from your website. Attempt to negotiate a lower fee and possibly consult your own attorney, but don’t ignore the letter!



Copyright Lawsuits

Via physical mail and email

[REDACTED]
Miami Beach, Florida 33139
United States

[REDACTED].com

Image License Validation for Agence France-Presse - Reference Number: [REDACTED]

Dear Business Owner,

As an introduction, PicRights Ltd. ("PicRights") provides licensing compliance services to third-party content owners, including Agence France-Presse. Please note that PicRights is not a law firm and I am not a lawyer. PicRights has noticed that imagery represented by Agence France-Presse has been displayed on your website. Agence France-Presse has been unable to find a license for this usage of the imagery by your company. Therefore we are acting on behalf of Agence France-Presse to obtain compensation for your unauthorized past use of their imagery.

At the end of this message, we've attached a visual reference of the imagery and its use on your website.

Our goal in contacting you is to ascertain if you hold an active license for this use with Agence France-Presse or with any other entity authorized by Agence France-Presse to license and distribute the imagery:

- If you do have an active license for the use of this imagery, we kindly ask you to send us your valid license / authorization, by visiting [https://resolve.picrights.com/\[REDACTED\]](https://resolve.picrights.com/[REDACTED]) and clicking the "I have a license..." link; or
- If you do not have an active license for the use of this imagery, we request that you remove the imagery from your website.



Copyright Lawsuits

- Please be aware that removal of the imagery alone will not resolve this issue. We also require payment of compensation in the amount of \$710.00 for the past unauthorized usage of the imagery.
- Please contact us to resolve this matter at +1 888 367 7778 or resolve@picrights.com or by visiting: <https://resolve.picrights.com> [REDACTED].

We would like to resolve this time-sensitive issue as soon as possible and request that you respond within 14 days from the date of this correspondence.

If you believe you have received this notice in error or have questions, please contact us with your reference number [REDACTED] at +1 888 367 7778 or resolve@picrights.com.

On behalf of PicRights and Agence France-Presse, we thank you for your cooperation and look forward to assisting you in resolving this matter.

Sincerely,

Ahmer Hussain, LL.B.
+1 888 367 7778 x3097
Compliance Officer
PicRights Ltd.
resolve@picrights.com



Copyright Lawsuits

- Audit your own website and find what photos you are displaying on it.
- Did you take the photos yourself?
- Did someone else? Do you have their permission to use those photos?
- If you didn't take them yourself and don't have proof of permission, remove the images from your website until you do.
- Brokers may want to create an office policy addressing this issue.



Copyright Lawsuits

- “Safe Harbor Provision” under Digital Millennium Copyright Act involving FIVE steps:
 - 1) A website operator (you) does not have actual knowledge of the infringing content
 - 2) You aren’t aware of facts or circumstances from which infringement is apparent
 - 3) You didn’t receive a financial benefit directly attributable to the infringing activity
 - 4) You act expeditiously to remove the infringing content when notified.
 - 5) You have provided a means to receive notice of the infringing content, have registered a contact person with the U.S. Copyright Office to receive those notices and have that information contained on your website.



Copyright Lawsuits

'Copyright Troll' Lawyer Loses Sanctions Appeal Over False Claim

June 25, 2021, 12:16 PM



- Misrepresented that photo copyright was registered
- Pattern of misconduct supports non-monetary sanctions: 2d Cir.



Brian Flood
Legal Reporter



The non-monetary sanctions imposed on a lawyer and his firm for pursuing a baseless copyright claim and lying to the trial court are reasonable, the U.S. Court of Appeals for the Second Circuit said Friday.

Richard P. Liebowitz of the Liebowitz Law Firm PLLC represented Arthur Usherson in a lawsuit accusing Bandshell Artist Management of infringing Usherson's copyright for a photograph of musician Leon Redbone.

The district court concluded that the complaint falsely stated Usherson's photograph was registered with the U.S. Copyright Office. It also determined that Liebowitz failed to reasonably investigate the matter, continued to maintain the lawsuit after being

Documents

- Decision
[Usherson Order](#)
- Docket
[Usherson Docket](#)

Related Articles



Florida Realtors Legal Update

ADA/FHA Demand Letters



ADA/FHA Website Demand Letters

- Plaintiff's attorneys have been arguing for years that company websites must be accessible to people with disabilities to comply with the Americans with Disabilities Act (ADA)
 - ✦ Similar to in-person accessibility modifications (door width, ramps, handicap parking spaces, etc.), but in a virtual online setting
 - ✦ Demand is to remove barriers so everyone can use the website
 - ✦ Although there's no official set of accessibility standards, courts typically look to WCAG (Website Content Accessibility Guidelines)
 - ✦ Meeting WCAG standards typically involves hiring a programmer



ADA/FHA Website Demand Letters

- Plaintiff's attorneys have been arguing for years that company websites must be accessible to people with disabilities to comply with the Americans with Disabilities Act (ADA)
 - ✦ Similar to in-person accessibility modifications (door width, ramps, handicap parking spaces, etc.), but in a virtual online setting
 - ✦ Demand is to remove barriers so everyone can use the website
 - ✦ Although there's no official set of accessibility standards, courts typically look to WCAG (Website Content Accessibility Guidelines)
 - ✦ Meeting WCAG standards typically involves hiring a programmer



ADA/FHA Website Demand Letters

- Recent developments have gone against plaintiff's attorneys, and in favor of companies not having to make accessibility changes
 - ✦ Winn Dixie won an appeal in the 11th Circuit (FL, AL, GA) that strongly limits what accommodations are necessary to satisfy ADA
 - ✦ A law firm that targeted many Florida Realtors with demand letters in the last few years stopped sending letters
- Still an evolving issue – may end up in the U.S. Supreme Court, as regional federal courts have different rulings



ADA/FHA Website Demand Letters

- There's a new law firm targeting some Florida Realtors
- The arguments and strategy seem very similar to a firm that targeted members last year, with some slight modifications
- What's the same?
 - ✦ They send letters first, not lawsuits
 - ✦ The letters come from very small law firms
 - ✦ The letters argue that the FHA (Fair Housing Act) requires accessibility
 - ✦ The letters demand WCAG compliance
 - ✦ The settlement offer is low, compared to the cost of litigation
 - ✦ We haven't heard of many actual lawsuits filed



ADA/FHA Website Demand Letters

○ What's different?

- ✦ Each state seems to have its own state-specific attorney sending letters
- ✦ Different client: the new client is Pursuit of Respect
- ✦ The Florida letters now mention ADA, in addition to FHA
- ✦ The Florida attorney is a different person from a different firm
- ✦ Despite different firms in each state sending letters, the contact information is the same



ADA/FHA Website Demand Letters

- What can you do if you get a letter?
 - ✦ Ultimately a business decision
 - ✦ NAR has prepared a template response letter you can use
 - ✦ NAR's response letter concludes with the following:
 - ✦ "In sum, there is no basis for your client to assert any claims under the FHA, the ADA, or the WCA. Please cease and desist from sending any further threats related to these misguided and baseless claims."



Florida Realtors Legal Update

Florida Real Estate Commission Update



Licenses and Applications

Application Counts for DRE				
	June 2021	July 2021	July 2020	
Request BK Exam (Upgrade SL to BL)	322	313	320	
Request BK Exam (out-State Applicant)	116	121	83	
Request BK Law Exam Mutual Recognition	51	60	42	
Request SL Exam	5,812	5,063	5,380	
Request SL Law Exam Mutual Recognition	130	131	111	
Total for Month	6,431	5,688	5,936	

STATE OF FLORIDA Department of Business and Professional Regulation	
	July
RE	442,959
Sales Assoc	
Current	223,825
Current, Inactive	78,755
Probation	25
Suspend	77
Invol Inactive	24,329
Military	228
Broker/Sales Assoc	
Current	22,269
Current, Inactive	5,321
Probation	0
Suspend	4
Invol Inactive	1,869
Military	5
Brokers	
Current	41,856
Current, Inactive	3,080
Probation	8
Suspend	14
Invol Inactive	2,724
Military	2
RE Corporation	
Current	28,491
Probation	2
Suspend	0
Invol Inactive	1,991
RE Partnerships	
Current	50
Invol Inactive	13
RE Branch Office	
Current	4,517
Invol Inactive	518
RE Add'l Locations	
Current	537
Invol Inactive	302
RE Instructor	
Current	767
Current, Inactive	632



Exam Performance

Client Name: FL DBPR Real Estate and Appraisers															
Examination	First Time Takers					Repeaters					Total				
Exam Title	Total Graded	Total Passed	Pass Rate	Total Failed	Fail Rate	Total Graded	Total Passed	Pass Rate	Total Failed	Fail Rate	Total Graded	Total Passed	Pass Rate	Total Failed	Fail Rate
FL Real Estate Sales Associate	3,941	1,889	48%	2,052	52%	3,453	1,099	32%	2,354	68%	7,394	2,988	40%	4,406	60%
FL Real Estate Broker	273	138	51%	135	49%	203	65	32%	138	68%	476	203	43%	273	57%
FL Real Estate Laws & Rules	95	61	64%	34	36%	38	19	50%	19	50%	133	80	60%	53	40%
FL Real Estate Instructor	5	0	0%	5	100%	9	3	33%	6	67%	14	3	21%	11	79%
Certified Residential Appraiser	6	5	83%	1	17%	4	2	50%	2	50%	10	7	70%	3	30%
Certified General Appraiser	1	1	100%	0	0%	0	0	0%	0	0%	1	1	100%	0	0%
FL Supplemental Appraiser Laws & Rules Residential	10	10	100%	0	0%	0	0	N/A	0	N/A	10	10	100%	0	0%
FL Supplemental Appraiser Laws & Rules General	9	9	100%	0	0%	1	1	N/A	0	N/A	10	10	100%	0	0%
Total	4,340	2,113	49%	2,227	51%	3,708	1,189	32%	2,519	68%	8,048	3,302	41%	4,746	59%



FREC Investigations

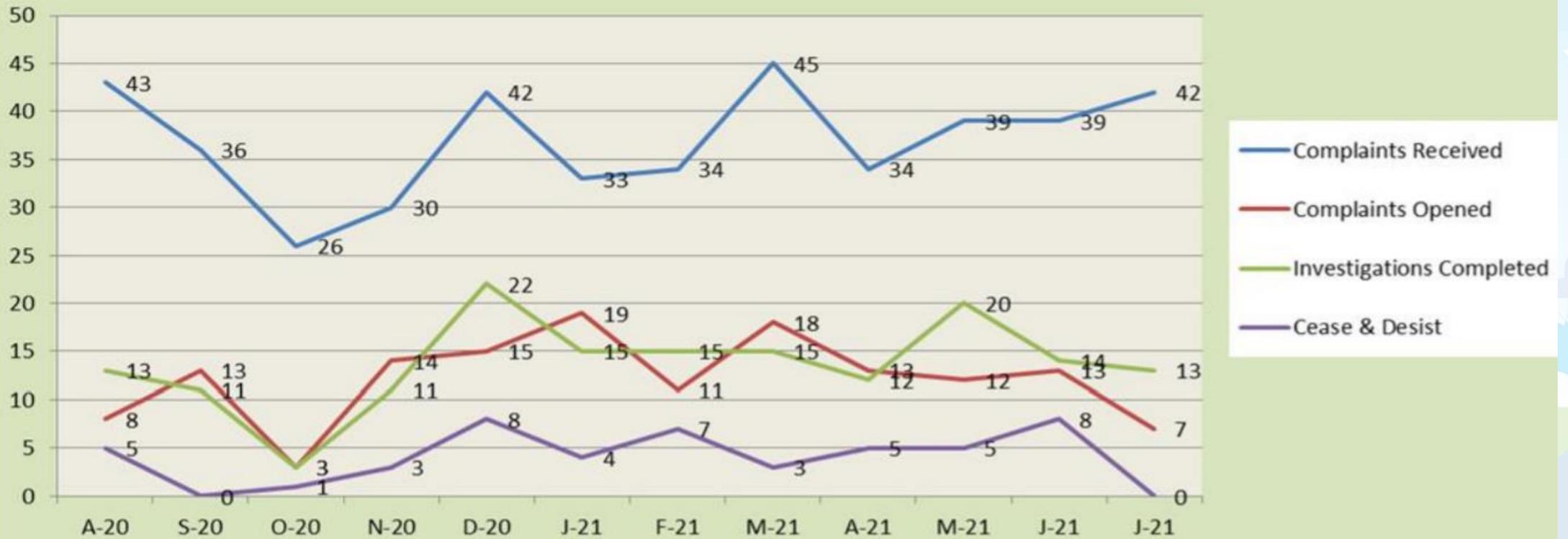
FREC Investigation Trends





Unlicensed Activity

ULA-FREC Enforcement Trends





Audits & Inspections

AUDITS/INSPECTION 2021													
	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
INSPECTIONS	15	43	83	107	87	139	72						546
AUDITS	3	6	13	20	22	28	36						128

AUDITS/INSPECTION 2020													
	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
INSPECTIONS	87	95	78	3	0	0	0	0	6	33	38	27	367
AUDITS	13	17	22	1	0	0	0	0	1	5	2	3	64



Audits & Inspections

 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION DIVISION OF REAL ESTATE OFFICE INSPECTION & ESCROW / TRUST ACCOUNT AUDIT FORM			
Date of Inspection:			
Name of Broker:		Name of Broker:	
Broker License #		Broker License #	
Name of Brokerage		Brokerage License #	
		Phone Number	
DBA / Trade Name (if applicable) (Rule 61J2-10.034)			
Street Address		City	County
Zip			
Office (Rule 61J2-10.022 & .023)	Yes / No	Teams or Groups	Yes / No
Office Sign (F.S.475.22(1))	Yes / No	Written record of team / group members (Rule 61J2-10.026)(3)	Yes / No
Written Brokerage Relationship Disclosure (if applicable) (F.S.475.278)	Yes / No	Designated licensee responsible for advertisement compliance (Rule 61J2-10.026)(2)	Yes / No
Deposit Verification (Rule 61J2-14.008(2)(b))	Yes / No		
Escrow Accounts	Yes / No		
Type: Sales <input type="checkbox"/> / Security <input type="checkbox"/> / Rental Distribution <input type="checkbox"/>			
Reconciliation Statements (Rule 61J2-14.012)	Yes / No		
Trust Liability:			
Reconciliation Bank Balance:	Yes / No		
(Short/Over) Amount:			
Type: Sales <input type="checkbox"/> / Security <input type="checkbox"/> / Rental Distribution <input type="checkbox"/>			
Reconciliation Statements (Rule 61J2-14.012)	Yes / No		
Trust Liability:			
Reconciliation Bank Balance:	Yes / No		
(Short/Over) Amount:			
Type: Sales <input type="checkbox"/> / Security <input type="checkbox"/> / Rental Distribution <input type="checkbox"/>			
Reconciliation Statements (Rule 61J2-14.012)	Yes / No		
Trust Liability:			
Reconciliation Bank Balance:	Yes / No		
(Short/Over) Amount:			
Violation(s):			
Corrective Action:			
I hereby certify that to the best of my knowledge, I have made available to the Department such books, accounts, and records as prescribed in F.S.475.5015, to determine compliance with the provisions of F.S.475 and Administrative Code 61J2. The contents of this report have been thoroughly explained by the Investigator and I agree to take corrective action (if applicable) within _____ days.			
Signature of Broker		Printed Name	Date
Signature of Investigator		Printed Name	Date



Audits & Inspections

DBA / Trade Name (if applicable) (Rule 61J2-10.034)	
Street Address	
Office (Rule 61J2-10.022 & .023)	Yes / No
Office Sign (F.S.475.22(1))	Yes / No
Written Brokerage Relationship Disclosure (if applicable) (F.S.475.278)	Yes / No
Deposit Verification (Rule 61J2-14.008(2)(b))	Yes / No
Escrow Accounts	Yes / No
Type: Sales <input type="checkbox"/> / Security <input type="checkbox"/> / Rental Distribution <input type="checkbox"/>	
Reconciliation Statements (Rule 61J2-14.012)	Yes / No
Trust Liability:	Yes / No
Reconciliation Bank Balance:	
(Short/Over) Amount:	



Audits & Inspections

Violation(s):		
Corrective Action:		
I hereby certify that to the best of my knowledge, I have made available to the Department such books, accounts, and records as prescribed in F.S.475.5015, to determine compliance with the provisions of F.S.475 and Administrative Code 61J2. The contents of this report have been thoroughly explained by the Investigator and I agree to take corrective action (if applicable) within days.		
Signature of Broker	Printed Name	Date
Signature of Investigator	Printed Name	Date



Important Rulemaking

FREC PRELIMINARY LANGUAGE FOR CONSIDERATION
WORKSHOP SEPTEMBER 22, 2021
COMMENTS DUE TO EXECUTIVE DIRECTOR BY SEPTEMBER 1, 2021

61J2-10.025 Advertising.

(1) All advertising must be in a manner in which reasonable persons would know they are dealing with a real estate licensee. All real estate advertisements must include the licensed name of the brokerage firm. No real estate advertisement placed or caused to be placed by a licensee shall be fraudulent, false, deceptive or misleading.

(2) When the licensee's personal name appears in the advertisement, at the very least the licensee's last name must be used in the manner in which it is registered with the Commission.

(3)(a) When advertising on a site on the Internet, or by any other electronic means, including but not limited to SMS or any digital messaging services of any kind, the brokerage firm name as required in subsection (1), above, shall be placed adjacent to or immediately above or below the point of contact information. "Point of contact information" refers to any means by which to contact the brokerage firm or individual licensee including mailing address(es), physical street address(es), email address(es), telephone number(s) or facsimile telephone number(s).

(b) The remaining requirements of subsections (1) and (2), apply to advertising on a site on the Internet or by any other electronic means, including but not limited to SMS or any digital messaging services of any kind.

Rulemaking Authority 475.05, 475.25(1)(c) FS. Law Implemented 475.01, 475.25(1)(c), 475.4511 FS. History—New 1-1-80, Amended 2-17-81, 3-14-85, Formerly 21V-10.25, Amended 12-29-91, 7-20-93, Formerly 21V-10.025, Amended 4-18-99, 7-4-06, 2-5-07.



Florida Realtors Legal Update

- Escalation Addendum to Contract



Escalation Addendum to Contract

- Released July 22, 2021 in Form Simplicity
- Has accompanying forms to help complete and answer general Q&As on the form (go to Florida Realtors website and search “escalation” or go to www.floridarealtors.org/escalation to locate)



Escalation Addendum & Time for Acceptance

- Need to understand and remember that competing offer has to be bona fide and unexpired
- Confusion on Florida Realtors hotline over Time for Acceptance Date
- <https://www.floridarealtors.org/news-media/news-articles/2021/06/time-acceptance-make-most-provision>
- All Florida Realtors contracts contain a Time for Acceptance provision
- Time for Acceptance is the date by which seller must respond to buyer's initial offer or the initial offer is withdrawn



Escalation Addendum & Time for Acceptance Continued...

- Important to pay attention to the time provision of the contract being used with the Escalation Addendum – WHY?
- **CONTRACTS** compute **TIME** differently!
- For example, the Commercial Contract computes time periods of 5 days or less to not include Saturday, Sundays and national legal holidays.
- **MUST** read and then re-read the time provision of whatever contract you are using so you know!



Escalation Addendum to Contract Continued...

Some other things to remember when using any escalation language: it's still just an offer

Seller can accept, reject, counter, or ignore any offer

Seller doesn't have to "play ball" with buyer's escalation clause

If seller wants to delete the escalation clause and counter at buyer's cap, they can

If seller wants to ignore buyer's escalation clause offer and go with another offer, they can

If seller wants to request highest and best, they can

If seller wants to share buyer's offer terms with another buyer, they can



Florida Realtors Legal Update

Florida Realtors/Florida Bar Contract Changes



Paragraph 1. Property Description:

Redline change

1. (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), ~~intercom~~, light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), **thermostat(s), doorbell(s), television wall mounts and television mounting** hardware, security gate and other access devices, and **mailbox keys**, and storm shutters/**storm protection items panels and hardware** ("Personal Property").



Paragraph 4. Closing Date:

Redline change

4. CLOSING; CLOSING DATE: ~~Unless modified by other provisions of this Contract,~~ The closing of this transaction shall occur **when all funds required for closing are received by Closing Agent and Collected pursuant to STANDARD S.** ~~and the all~~ closing documents required to be furnished by each party pursuant to this Contract shall be ~~are~~ delivered (“Closing”). **Unless modified by other provisions of this Contract,** the Closing shall occur on _____ (“Closing Date”), at the time established by the Closing Agent.



Paragraph 5. Extension of Closing Date

Redline change

- 1.(a) ~~If Paragraph 8(b) is checked and~~ **In the event** Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), **if Paragraph 8(b) is checked, Loan Approval has been obtained, and lender's underwriting is complete,** then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed ~~10~~ **7** days.



Paragraph 7. Assignability

Redline Change

ASSIGNABILITY: (CHECK ONE): Buyer may assign and thereby be released from any further liability under this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract.
IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.



Paragraph 8 Financing

8(b) This Contract is contingent upon, **within _____ (if left blank, then 30) days after Effective Date (“Loan Approval Period”):** (1) Buyer obtaining approval of a conventional FHA VA or other _____ (describe) ~~loan within _____ (if left blank, then 30) days after Effective Date (“Loan Approval Period”)~~ **mortgage loan for the purchase of the Property for a (CHECK ONE):** fixed, adjustable, fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer’s creditworthiness), and for a term of _____ (if left blank, then 30) years (“Financing”) **and (2) Buyer’s mortgage broker or lender having received an appraisal or alternative valuation of the Property satisfactory to lender, if either is required by lender, prior to Closing, which is sufficient to meet the terms required for lender to issue provide Financing for Buyer and proceed to Closing (“Appraisal”).**



Paragraph 8(b) (i)

(i) Buyer shall make ~~mortgage loan~~ application for the Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing **and Appraisal terms of Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period** and, thereafter, to close this Contract. Loan Approval which requires a ~~condition related to the sale by Buyer of~~ **to sell** other **real** property shall not be ~~deemed~~ **considered** Loan Approval for ~~purposes of this subparagraph~~ **unless Rider V is attached.**



Paragraph 9(a)

Redline Change

1. (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- HOA/Condominium Association estoppel fees
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Recording and other fees needed to cure title
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Seller's attorneys' fees _____
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- Other:
- **Charges for FIRPTA withholding and reporting**



Paragraph 9(d)

Redline Change

1.(d) **SURVEY:** **At least 5 days prior to Closing Date,** ~~On or before Title Evidence Deadline,~~ Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.



Standard G. FORCE MAJEURE:

Buyer or Seller shall not be required **to exercise** or perform any **right or** obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the **right or** obligation, or the availability of services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by **a Force Majeure event**. “Force Majeure” means: hurricanes, floods, extreme weather, earthquakes, fires, or other acts of God, unusual transportation delays, or wars, insurrections, **civil unrest** or acts of terrorism, **or governmental actions and mandates, government shutdowns, epidemics, or pandemics**, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. **The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents performance, non-performance, or the availability of services, insurance or required approvals essential to Closing.**



Standard O: CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY

Neither this Contract nor any notice of it shall be recorded in any public or official records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail, **facsimile transmission**, personal delivery or ~~electronic (including "pdf")~~ media. **email**.



Questions???
Thank you!

Juana Watkins
407-587-1466

DARE TO

Dream

inspire / encourage / innovate