Module Four

Department of Business & Professional Regulation

After completing this module, you should be able to

- discuss the various powers the Department has available to enforce the law and rules under its jurisdiction;
- describe the relationship between the Department and the Florida Real Estate Commission;
- describe the role of the Department of Legal Affairs; and
- understand the intent of licensing legislation.

Introduction — Florida Statute 455 created the Department of Business and Professional Regulation to provide oversight and regulation of professions and businesses in the state of Florida.

Authorization and administration — The Department has 10 Divisions that administer the operation of 32 professions and related businesses and issues over 1,220,000 licenses and permits, including real estate and appraisal.

The ten Divisions within the Department include:

- Administration
- Alcoholic Beverages and Tobacco
- Certified Public Accounting
- Condominiums, Timeshares and Mobile Homes
- Hotels and Restaurants
- Pari-mutuel Wagering
- Professions
- Real Estate
- Regulation
- Technology

The principal offices of the DBPR are in Tallahassee. The Division of Real Estate offices are located in Orlando. The executive officer of the DBPR is the Secretary of the Department who is appointed by the Governor, subject to confirmation by the Senate.
The Director of the Division of Real Estate is appointed by the Secretary of the DBPR, subject to approval of a majority of the members of the Florida Real Estate Commission. The Division Director is a salaried state employee who acts as the day-to-day manager of the Division of Real Estate and is an intermediary between the Department and the Florida Real Estate Commission [FREC].

Intent of legislation — The intent of Chapter 455 is to regulate professionals in the most cost-efficient manner so as to maximize competition, minimize the cost of licenses, and maximize public access. The Act specifies that professions should only be regulated when:
- The unregulated practice of a profession can cause harm to the public health, safety or welfare.
- The potential for such harm is recognizable and clearly outweighs any anti-competitive impact that may result from regulation.
- The public is not effectively protected by other means such as federal, state or local legislation, statutes or ordinances.
- Less restrictive means are not available. [455.201, F.S.]

Issuing and renewing licenses — The Department of Business and Professional Regulation issues and renews all licenses for all professions administered under s. 455, including appraisal registrations, licenses and certifications. The statute authorizes certain licenses to be issued for a four-year period. Fees for licenses are determined by the budgetary requirements of each Board or Division, but may not exceed limits established by statute. No Board is allowed to operate with a negative balance, nor allowed to become a profit center. [455.203(1) F.S.]

Applications for new and renewal licenses are screened in accordance with s. 409 to confirm compliance with child support obligations. New applicants can be denied and renewal applicants can be suspended if found to be delinquent. Licenses can be reinstated after notification to the Department that a licensee has complied with child support terms imposed by the court. [455.203 (9), F.S.]

Giving false information when applying for or renewing a license is a felony of the third degree punishable by a criminal court. In addition, the FREC may take punitive action against those applying for a renewal under such circumstances. [455.2275, F.S.]

All information received by the DBPR from applicants is a matter of public record, except financial and medical information, school transcripts, examination questions and answers, papers, grades and grading keys. [455.229(1), F.S.]

Testing new applicants — The Division of Technology is responsible for providing testing services designed to assure competency to practice in an applicant’s chosen field. Currently, a private testing service is under contract with the Department to provide testing services for real estate and appraisal applicants. [455.217, 455.2171, 455.2175, F.S.]

If 15 or more applicants request an examination in a language other than English, such examination must be made available. However, the applicants requesting such examination must pay all costs associated with its preparation and administration. [455.11(1) & (2), F.S.]
Examination questions and answers are confidential. The theft or reproduction of such material is a third degree felony. [455.2175, F.S.]

**Powers of the DBPR** — The Department is authorized to issue cease and desist orders, administer oaths, take depositions, issue subpoenas and adopt rules concerning violations that may be submitted for mediation. [455.228, F.S.]

Mediation offenses are defined as those that are economic in nature, are caused by and can be corrected by licensees. Fourteen days are allowed after contact by a mediator for the parties to agree to mediation and the matter must be resolved within sixty days. [455.223, 455.2235, F.S.]

The Department may issue a notice of noncompliance or a citation to a licensee for specified offenses. The Department, through the Division of Real Estate, conducts investigations and the prosecution of complaints.

The Department also has the power to issue a cease and desist order against an unlicensed party for violation of any rule or law under its administration. Citations may be issued to violators of specified rules that include the payment of an administrative fine not to exceed $5,000 per offense.

The Department may act as a plaintiff in a civil action, in which case a civil penalty of not less than $500 or more than $5,000 may be imposed. [455.228, F.S.]

Enforcement costs are to be borne by the profession being regulated. A fee of $5.00 is collected from all applicants for licensure and all those that request a renewal of license to pay for investigation and prosecution of unlicensed activity. [455.2281, F.S.]

**Legal advice** — The Department of Legal Affairs office (attorney general’s office) provides legal advice to the Department and to the Florida Real Estate Appraisal Board. Assistant attorneys general may be assigned to the Division of Real Estate. The primary purpose of the Department of Legal Affairs is to represent the interests of the citizens of this state. Advice and legal assistance provided to the DBPR and the FREAB serves as protection to the public.

Outside counsel and investigative services can be obtained when necessary. However, outside personnel cannot offer advice and provide legal services in the same matter. [455.221, F.S.]

**Members of the U. S. Armed Forces**

An amendment to s.455.213 requires the Department of Business and Professional Regulation to waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Fees, dues, and other requirements required are waived for members of the U.S. Armed Forces who have a Florida real estate license while serving in active duty and for six months following return to civilian life, provided the licensee is not engaged in his or her licensed profession in the private sector while serving. [455.02, F.S.]
The spouse of an active member of the U.S. Armed Forces who holds a real estate license is exempt from licensure renewal requirements when absent from the state due to his or her spouse’s duties with the Armed Forces.

The Department may issue a temporary license, which is not renewable, to the spouse of an active duty member of the Armed Forces of the United States who has been assigned to a duty station in Florida pursuant to his or her spouse’s official active duty military orders. To receive such licensure the spouse must provide proof of licensure in good standing in another state or country, proof of marriage and proof of assignment to a duty station in Florida. An application and fingerprinting is required with background checks performed in the same manner as with other applicants.
Progress Questions: Module Four

1. The powers of the Department of Business & Professional Regulation do NOT include
   
   a. issuing subpoenas.
   b. issuing injunctions.
   c. issuing cease and desist orders.
   d. taking depositions.

2. Enforcement costs for the investigation and prosecution of unlicensed activity is paid for by
   
   a. those parties found to be operating in violation of the law.
   b. the Department of Business & Professional Regulation Trust Fund.
   c. fees paid by licensees.
   d. the Division of Real Estate.

3. Giving false information when applying for or renewing a license is classified under the criminal statutes as a
   
   a. misdemeanor of the second degree.
   b. misdemeanor of the first degree.
   c. second degree felony.
   d. third degree felony.

4. The Director of the Division of Real Estate is
   
   a. appointed by the Secretary of the Department of Business & Professional Regulation.
   b. an employee of the Florida Real Estate Commission.
   c. the chief operating officer of the Department of Business & Professional Regulation.
   d. appointed by the Governor subject to confirmation by the Senate.

5. Chapter 455 specifies that professions should only be regulated when
   
   a. the unregulated practice of a profession cannot cause harm to the public health, safety or welfare.
   b. the potential for harm is recognizable and clearly outweighs any anti-competitive impact that may result from regulation.
   c. the public is effectively protected by other means such as federal, state or local legislation, statutes or ordinances.
   d. less restrictive means are available.