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Winter 2005

# Licensing and Discipline of Fiscal Professionals in the State of Florida: Attorneys, Certified Public Accountants, and Real Estate Professionals

Debra Moss Curtis



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LICENSING AND DISCIPLINE OF FISCAL PROFESSIONALS IN THE STATE OF FLORIDA: ATTORNEYS, CERTIFIED PUBLIC ACCOUNTANTS, AND REAL ESTATE PROFESSIONALS

DEBRA MOSS CURTIS\*

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## I. INTRODUCTION AND PURPOSE

The purpose of this article is to compare the regulation of several professions within the state of Florida. In Florida, attorneys are self-regulated through The Florida Bar. As a branch of the Supreme Court of Florida, The Florida Bar serves as the licensing agency of attorneys within the state.<sup>1</sup> Two other professions—real estate professionals and certified public accountants—in which the public also places fiscal trust and responsibility, are regulated through a different agency, the Department of Business and Professional Regulation (DBPR).<sup>2</sup> This article seeks to examine and explain the different methods of licensing and regulation between these professional groups and looks at empirical data regarding the discipline of such members.

The idea for this statistical review arose in 2004 following an analysis, done by this author in conjunction with another legal professional, on the public's view of Florida attorney discipline.<sup>3</sup> That article dealt with the discipline of Florida attorneys and featured statistics gathered from public sources. After publication of that article original information was received from The Florida Bar regarding the specifics of attorney discipline during a certain time period. At that time we came across data comparing attorneys with other professions, prompting a more detailed comparison of the differences in these state professional systems.

## II. FISCAL PROFESSIONALS: THE RELATIONSHIP BETWEEN ATTORNEYS, CERTIFIED PUBLIC ACCOUNTANTS, AND REAL ESTATE PROFESSIONALS IN FLORIDA

The mission of the Department of Business and Professional Regulation (DBPR) is to ensure that professionals provide quality services to the public.<sup>4</sup> In addition, The Florida Bar lists as its ultimate goal "to provide more effective delivery of legal services."<sup>5</sup> Both of these professional membership and

1. See FLA. BAR ADMISSIONS R. 1-12 (2004).

2. Department of Business and Professional Regulation, *Home Page*, at <http://www.myflorida.com/dbpr/index.shtml> (last visited Feb. 7, 2005) [hereinafter *DBPR Home Page*].

3. Debra Moss Curtis & Billie Jo Kaufman, *A Public View of Attorney Discipline in Florida: Statistics, Commentary, and Analysis of Disciplinary Actions Against Licensed Attorneys in the State of Florida from 1988-2002*, 28 NOVA L. REV. 669 (2004).

4. *DBPR Home Page*, *supra* note 2.

5. The Florida Bar, *Member Services*, at <http://www.flabar.org/tfb/TFBMember.nsf/ED6E4BCB92A8FE1B852567090069F3C2/751B0D34A09978C685256B2F006CD81E?OpenDocument> (last visited Feb. 7, 2005).

regulation organizations deal with various occupations. However, the three occupations that overlap frequently either in licensing or in their fiscal responsibilities to the public are attorneys, certified public accountants, and real estate professionals.

In reality, many of these three professional groups are cross-trained; in other words, an attorney also may be a certified public accountant or a real estate broker.<sup>6</sup> A New York State Bar Ethics opinion was issued to assist New York attorneys in sorting out the conflicts of interest in acting as part of a law firm engaged in real estate matters.<sup>7</sup> In that opinion, the State Bar Ethics Committee reiterated that it was not improper for lawyers to engage in other businesses such as dually working as either real estate brokers or certified public accountants.<sup>8</sup> Lawyers, however, must overcome the presumption in many rules of professional conduct that their work in any non-legal field is subject to the rules of professional conduct of lawyering.<sup>9</sup> They also must make it clear to clients that simply being qualified in more than one field is not directly related to the work to be done.<sup>10</sup> Attorneys also must be aware of conflicts of interest in their roles in any dual transaction.<sup>11</sup>

Attorneys have also become acutely aware of the interaction between professions, as well as the cross-purpose in the examination of whether legal

6. See Arash Mostafavipour, *Law Firms: Should They Mind Their Own Business?*, 11 GEO. J. LEGAL ETHICS 435, 453 (1998). In fact, real estate licensing rules for sales associates are tailored to allow already licensed attorneys to waive several requirements. FLA. ADMIN. CODE R. 61J2-3.008(8) (2004). In Texas, for example, when a Texas Civil Statute regulated who may perform property tax consulting services without registering with the Department of Licensing, attorneys, certified public accountants, and certain real estate brokers were specifically grouped together and exempt from the requirement. Cynthia M. Ohlenforst & Jeff W. Dorrill, *Annual Survey of Texas Law Part II, Taxation*, 45 SW. L.J. 2093, 2122 (1992). However, demand for dual-licensed attorney-accountants may even be greater than the current supply. See Corby Brooks, *A Double-Edged Sword Cuts Both Ways: How Clients of Dual Capacity Legal Practitioners Often Lose Their Evidentiary Privileges*, 35 TEX. TECH. L. REV. 1069, 1079 (2004). The American Association of Attorney-Certified Public Accountants (AAA-CPA) professional organization website claims that of the approximately one million lawyers and approximately 450,000 CPAs in the United States, only about three percent are dually qualified. American Association of Attorney-Certified Public Accountants, *An Uncommon Organization for Uncommon Professionals*, at <http://www.attorney-cpa.com/i4a/pages/index.cfm?pageid=3295> (last visited Feb. 7, 2005) [hereinafter *Uncommon Organization*]. A chapter of the AAA-CPA has been established in Florida. *Id.*

7. N.Y. St. Bar Assn. Comm. on Prof. Ethics Op. 595 (1989).

8. *Id.*

9. Mostafavipour, *supra* note 6, at 453.

10. *Id.* In addition, an attorney who is dual-licensed may alter the evidentiary privilege rule of communication with attorneys due to his or her dual-status. See Brooks, *supra* note 6, at 1071.

11. Ethics Op. 595, *supra* note 7.



services should be permitted in the structure of organizations other than traditional law firms.<sup>12</sup> The American Bar Association has been considering the thorny issue of whether lawyers should be allowed to join with other professionals to offer services under one single practice, and how that new structure may affect attorneys' abilities to serve the public and financial outcome.<sup>13</sup> The Florida Bar Ethics hotline reported in 2002 that it had received inquiries about attorneys regarding combining their businesses with others, among them accountants.<sup>14</sup> And clients are increasingly more interested in engaging attorney professionals that may provide the benefits of expertise in accounting matters as well.<sup>15</sup>

These three groups of professions occasionally have overlapping responsibilities. Real estate brokers often are authorized by state law to draft or complete specific legal documents or to conduct closing and settlement proceedings in certain real estate transactions.<sup>16</sup> Some states also allow certified public accountants to perform some activities otherwise considered "legal services," such as appearances before certain tax adjudicatory bodies.<sup>17</sup>

Ultimately, citizens of Florida rely upon members of these three professions to responsibly handle their money and property. While other service professions regulated by the DBPR deal in property and money, those professions are not based on fiscal responsibility.<sup>18</sup> You may pay a contractor, and trust that person with important property, but you are seeking a tangible, physical service from the contractor. The same goes for architects, electrical contractors, barbers, and funeral directors—all occupations regulated by the DBPR.<sup>19</sup> However, accountants and real estate professionals provide basic services that involve holding, accounting for, and transferring money.

Other professions in Florida also have high levels of trust and are not regulated by the DBPR. A key example is physicians, who are regulated by the Florida Board of Medicine.<sup>20</sup> However, while doctors certainly are paid

12. Burnele Powell, *Flight from the Center: Is It Just or Just About Money?*, 84 MINN. L. REV. 1439, 1443 (2000).

13. See Amendments to Rules Regulating the Fla. Bar, 820 So. 2d 210, 213 (Fla. 2002).

14. *Id.*

15. See Brooks, *supra* note 6, at 1071. Brooks asserts that "dual capacity practitioners" benefit consumers by providing a "higher quality product at a lower cost." *Id.* at 1076.

16. Quintin Johnstone, *Connecticut Unauthorized Practice Laws and Some Options for Their Reform*, 36 CONN. L. REV. 303, 337 (2004).

17. *Id.* at 338.

18. See DBPR Home Page, *supra* note 2.

19. See *id.*

20. See Florida Board of Medicine, *Board Overview*, at [http://www.doh.state.fl.us/mqa/medical/me\\_home.html](http://www.doh.state.fl.us/mqa/medical/me_home.html) (last visited Feb. 7, 2005). There are several divisions by medical specialty. *Id.*

for their services, their basic purpose is not related to any fiduciary duty, but rather to the patient's health. Attorneys assist clients through the legal system. All attorneys are required under self-regulation rules to be fiscally responsible to their clients when dealing with their money. However, many fields of law have built into them the primary task of fiscal responsibility, such as estate planning and guardianships. Because this fiscal responsibility, like that of accountants and real estate professionals, often takes center stage in the service to clients, these three professions were chosen for comparison.<sup>21</sup>

### III. LICENSING OF PROFESSIONALS

#### A. Attorney Licensing

Most consumers in the public are familiar with the concept that an attorney must "pass the bar" in order to become licensed in a particular state. What many consumers do not understand is that the "Bar Exam," and in fact, the entire regulation of attorneys in the state of Florida, is handled solely through the judicial system of the state; the same system in which attorneys ultimately conduct most of their business.<sup>22</sup> The Supreme Court of Florida, which is the highest court in the state, handles bar admissions through its administrative arm, the Florida Board of Bar Examiners.<sup>23</sup>

A task of the Florida Board of Bar Examiners is to be gatekeeper for admission to the professional organization known as The Florida Bar,<sup>24</sup> and it is known to be a powerful force. For many years, there has been a growing movement to deregulate the legal profession and allow lay practitioners to practice law.<sup>25</sup> However, the requirements for admission to the bar remain

21. See Robert B. Hale, Comment, *Auditor Liability Under the DTPA: Can It Get Any Worse for Accountants?*, 44 BAYLOR L. REV. 313, 320 (1992) (noting that services of a professional are similar in that they require application of professional judgment and rendering of an opinion, and specifically lists real estate agents, attorneys, and accountants as examples in this category).

22. FLA. BAR ADMISS. R. 1-11 (2004).

23. FLA. BAR ADMISS. R. 1-12. "The Florida Board of Bar Examiners consists of twelve members of The Florida Bar and three members of the general public who are not lawyers." FLA. BAR ADMISS. R. 1-21.

24. See Florida Board of Bar Examiners, *Home Page*, at <http://www.floridabarexam.org> (last visited Feb. 7, 2005). The fee for filing an application to the Bar and sitting for the exam can be as high as \$2500. Florida Board of Bar Examiners, *Frequently Asked Questions*, at <http://floridabarexam.org/public/main.nsf/faq.html> (last visited Feb. 7, 2005) [hereinafter FBBE FAQs]. No one may gain "reciprocity" through admittance from another state. *Id.*

25. Meredith Ann Munro, Note, *Deregulation of the Practice of Law: Panacea or Placebo?*, 42 HASTINGS L.J. 203 (1990).



stringent. Admission to the bar exam begins with an application.<sup>26</sup> The application itself has a three-page checklist that is so detailed that the first step of the "Checklist to File a Bar Application" is instructions to the reader to "[p]rint this [c]hecklist" and "[c]heck each item when completed" in order to ensure all parts of the application are completed.<sup>27</sup> The second step, which requires gathering informational materials, contains fifteen individual items that may be needed depending on responses to some inquiries, including employment information for the past ten years (or since the applicant's sixteenth birthday, whichever is shorter), as well as financial information, information regarding arrests, charges or accusations, and specifics on traffic violations.<sup>28</sup> The third part lists thirteen steps to properly complete the application.<sup>29</sup> Part four contains information on "packaging" the application complete with fingerprint card, photograph, and other supporting documents.<sup>30</sup>

Applicants who wish to sit for the bar exam must have graduated from a law school accredited by the American Bar Association.<sup>31</sup> The costs for a typical six-semester curriculum to complete law school can exceed \$100,000 including living expenses.<sup>32</sup> Only after satisfactory completion of law school requirements can students be "certified" by their deans to proceed with The Florida Bar Examination.<sup>33</sup>

Actual admission to The Florida Bar is divided into two general categories. The first requirement is the taking and passing of The Florida Bar Exam, which is administered on the last Tuesday and Wednesday of February and July each year in one central location in the state.<sup>34</sup> In addition, the admissions process also requires the passing of the Multistate Professional Responsibility Exam (MPRE), given three times yearly, and administered by

26. FBBE FAQs, *supra* note 24.

27. Florida Board of Bar Examiners, *Checklist to File a Bar Application*, at <http://www.floridabarexam.org/public/main.nsf/checklistnreg.html> (last visited Feb. 7, 2005).

28. *Id.*

29. *Id.*

30. *Id.*

31. Jennifer Kucklick Watson, *Protecting the Public Through the Legal Licensing System*, 1 FLA. COASTAL L.J. 547, 549 (2000).

32. *Id.* at 550.

33. NOVA SOUTHEASTERN UNIVERSITY SHEPARD BROAD LAW CENTER, LAW STUDENT HANDBOOK, available at <http://www.nsulaw.nova.edu/students/documents/studenthandbook.pdf> (last visited Feb. 7, 2005) [hereinafter STUDENT HANDBOOK].

34. FBBE FAQs, *supra* note 24. The past several years, this sole location has been in Tampa, Florida, at that city's convention center. Florida Board of Bar Examiners, *Florida Bar Examination and Filing Deadlines*, at [http://www.floridabarexam.org/public/main.nsf/FLABarExamDates.PDF/\\$file/FLABarExamDates.PDF](http://www.floridabarexam.org/public/main.nsf/FLABarExamDates.PDF/$file/FLABarExamDates.PDF) (last visited Feb. 7, 2005) [hereinafter *Bar Schedule*].

the National Conference of Bar Examiners, rather than the state itself.<sup>35</sup> Although applicants must be present in the state of Florida (although not a resident) to sit for the two-day Florida Bar Exam in February or July, applicants to Bar admission in Florida may physically be present in any state administering the MPRE and then have those scores forwarded to the Florida Board of Bar Examiners.<sup>36</sup>

The two-day Florida Bar examination contains two portions. Part A is the "Florida-prepared" portion, generally containing three hours of essays followed by three hours of multiple-choice questions, and including subjects chosen from: Florida Constitutional Law, Florida Rules of Civil and Criminal Procedure, Florida Rules of Judicial Administration, Federal Constitutional Law, Chapters 4 and 5 of the Rules Regulating The Florida Bar, Corporations, Partnerships, Wills, Administration of Estates, Contracts, Criminal Law, Criminal Procedure, Evidence, Family Law, Real Property, Torts, and Trusts.<sup>37</sup> Part B of the two-day exam is titled "Multistate Bar Examination," and it is created by the National Conference of Bar Examiners.<sup>38</sup> This portion of the exam is six hours, two hundred questions, and deals exclusively with the non-state specific subjects of Contracts, Torts, Constitutional Law, Criminal Law, Real Property, and Evidence.<sup>39</sup> The exam is given primarily in paper format, although examinees are permitted to take the essay portion of the exam using laptop computers under certain conditions.<sup>40</sup>

The separate MPRE is a fifty question, two hour, multiple-choice examination, exclusively testing a lawyer's professional conduct as governed by the American Bar Association's *Model Rules of Professional Conduct*, *Model Code of Judicial Conduct*, and other evidentiary and substantive laws

35. FLA. BAR ADMISS. R. 4-30, at <http://www.floridabarexam.org/public/main.nsf/rules.html> (last visited Feb. 7, 2005). Rule 4 of the *Rules of the Supreme Court Relating to Bar Admissions* details the requirements of the examinations and standards for passing. *Id.*

36. *Bar Schedule*, *supra* note 34, at 2.

37. *Id.* at 1. Most, if not all, of these subjects are available in a typical law school curriculum. See STUDENT HANDBOOK, *supra* note 33, at 3-4.

38. National Conference of Bar Examiners, *Multistate Tests*, at <http://www.ncbex.org/tests.htm> (last visited Feb. 7, 2005) [hereinafter *Tests*].

39. *Id.* These courses, with the exception of evidence, which at some schools is a required upper-level course, are generally mandatory courses given in the first year of law school. STUDENT HANDBOOK, *supra* note 33, at 3-4.

40. Florida Board of Bar Examiners, *Laptop Program*, at <http://www.floridabarexam.org/public/main.nsf/laptop.html> (last visited Feb. 7, 2005). Examinees must load a particular software program onto the laptop and be prepared to continue with the exam in paper-based format in the event of malfunction. *Id.*



to emerge from those bodies.<sup>41</sup> However, despite its universal-sounding name, the "American Bar Association" (ABA) is a voluntary organization for attorneys, not a licensing agency.<sup>42</sup> Each state individually creates and approves its own ethical codes and rules for attorneys to follow, to which they are individually bound.<sup>43</sup> Although many states base their own rules on the ABA rules, attorneys required to sit for this exam, and be tested on these rules, ultimately are not bound by those exact rules, particularly if their state has made substantive changes.<sup>44</sup>

The MPRE is graded with both a raw score, calculated from the number of test questions answered correctly, and a scaled score, calculated with a statistical process adjusting for variations in the difficulty of the test from year to year.<sup>45</sup> Raw scores run from zero to fifty, while scaled scores run from fifty to one hundred fifty.<sup>46</sup> The Supreme Court of Florida fixed the passing rate for bar admittance at a scaled score of eighty or better, which must be attained within twenty-five months of passing other parts of The Florida Bar Exam.<sup>47</sup>

The second requirement for admittance to The Florida Bar, apart from passing these two examinations, is the passing of a character and fitness screening.<sup>48</sup> The Supreme Court of Florida holds a "good moral character" requirement emphasizing an inquiry into the applicant's "honesty, fairness, and respect for the rights of others."<sup>49</sup> In considering the character and conduct of an applicant, the court recognized that the character and conduct "must have a rational connection to the applicant's fitness to practice law."<sup>50</sup>

41. *Tests*, *supra* note 38. Most Florida law schools require such a course entitled Professional Responsibility covering the material tested on this exam. STUDENT HANDBOOK, *supra* note 33, at 3-4.

42. American Bar Association, *About the ABA*, at <http://www.abanet.org/about/home.html> (last visited Feb. 7, 2005).

43. American Bar Association Center for Professional Responsibility, *Lawyer Regulation for a New Century: Report of the Commission on the Evaluation of Disciplinary Enforcement*, at [http://www.abanet.org/cpr/mckay\\_report.html](http://www.abanet.org/cpr/mckay_report.html) (last visited Feb. 7, 2005).

44. *Id.* Several of Florida's professional responsibility rules are different from ABA rules, and in fact, portions of them are among the subjects included in Part A of the twoday Florida Bar Exam. *Id.*

45. National Conference of Bar Examiners, *MPRE Score Reports*, at <http://www.ncbex.org/tests/mpre/report.htm> (last visited Feb. 7, 2005).

46. *Id.*

47. FLA. BAR ADMISS. R. 4-18, 4-33.2 (2004).

48. FLA. BAR ADMISS. R. 2-12. The Bar requires applicants to possess "good moral character." *Id.* Rule 2-12 of the *Rules of the Florida Supreme Court Relating to Admission of the Bar* requires that all applicants seeking admission to the Bar shall "produce satisfactory evidence of good moral character." *Id.*

49. Florida Bd. of Bar Exam'rs v. G.W.L., 364 So. 2d 454, 458 (Fla. 1978).

50. *Id.*

To determine this character and conduct, Supreme Court of Florida rules allow for intensive background investigations into the applicant.<sup>51</sup> The rule seeks to ensure that attorneys have a record showing core knowledge; "ability to reason;" likelihood of complying with deadlines; ability to "[c]ommunicate candidly and civilly with clients, attorneys, courts and others;" ability to "[c]onduct financial dealings in a responsible, honest, and trustworthy manner;" capability to "[a]void acts that are illegal, dishonest, fraudulent, or deceitful; and ability to [c]onduct oneself in accordance with the . . . laws . . . and the Rules of Professional Conduct."<sup>52</sup> The rules also delineate "disqualifying conduct" of attorneys, which includes "[a] record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability."<sup>53</sup>

Ultimately, an applicant who has complied with the rules for admission, passed the requisite examinations, and met character and fitness standards, will be recommended for admission to The Florida Bar by the Board of Bar Examiners.<sup>54</sup> The Supreme Court of Florida, upon satisfaction of this recommendation, will enter an order of admission.<sup>55</sup> Once an attorney swears the requisite Oath of Attorney, the applicants then become subject to the administration of The Florida Bar and thus the discipline system of The Florida Bar.<sup>56</sup>

Florida attorneys are required to continue their legal education by completing thirty hours of further education over a period of three years, including five hours in the area of ethics.<sup>57</sup> Members must report hours earned in a three-year cycle, although they are required to renew their bar memberships annually, which includes an annual membership fee starting from \$265.<sup>58</sup>

51. FLA. BAR ADMISS. R. 3.

52. FLA. BAR ADMISS. R. 3-10.

53. FLA. BAR ADMISS. R. 3-11.

54. FLA. BAR ADMISS. R. 5-10.

55. FLA. BAR ADMISS. R. 5-11.

56. FLA. BAR ADMISS. R. 5-15.

57. R. REGULATING FLA. BAR 6-10.3(b).

58. *Id.*; see also Florida Board of Bar Examiners, *Bar Application*, at <http://www.floridabarexam.org> (last visited Feb. 7, 2005). Should attorneys wish to participate in voluntary "sections" of The Florida Bar, there are organizations arranged by area of practice for networking and education purposes. The Florida Bar, *Organization*, at <http://www.flabar.org/tfb/TFBOgan.nsf/2FC809811C0105238525671100692F1C/95FD890BE127C05E85256B2F006CD832?OpenDocument> (last visited Feb. 11, 2005). An additional fee applies for each section joined, which varies per section. See generally The Florida Bar, *Sections and Divisions*, at <http://www.flabar.org/names.nsf/Sections?OpenForm> (last visited Feb. 11, 2005) (linking to each section's website).



The Florida Bar has no reciprocity with licensed attorneys from other jurisdictions.<sup>59</sup> Any candidate wishing to obtain a Florida Bar license must submit to The Florida Bar Examination.<sup>60</sup>

#### B. Real Estate Professionals

In every state, as well as in the District of Columbia, real estate brokers and sales agents must be licensed to conduct real property business dealings.<sup>61</sup> Real estate professionals may be divided into two categories: real estate agents (also called sales associates) and real estate brokers.<sup>62</sup>

The real estate profession in Florida is governed by the DBPR, specifically, the Florida Real Estate Commission.<sup>63</sup> The DBPR is a Florida state agency that issues licenses and ensures the quality of services provided by its licensees.<sup>64</sup> It regulates some two hundred classes of licensed professions and occupations and is required under the *Florida Statutes* to submit an annual report on the professions that it regulates.<sup>65</sup>

The Division of Real Estate regulates real estate licenses through education, regulation, and compliance.<sup>66</sup> It provides administrative support to the Florida Real Estate Commission, which consists of seven members appointed by the Governor and confirmed by the Senate.<sup>67</sup>

59. FBBE FAQs, *supra* note 24.

60. *Id.*

61. Career Webschool, *Florida Real Estate School-Career*, at <http://www.careerwebschool.com/Florida-Real-Estate/florida-real-estate-education-career-info.html> (last visited Feb. 7, 2005) [hereinafter *Career*].

62. Career Webschool, *Florida Real Estate School-State Requirements*, at <http://www.careerwebschool.com/Florida-Real-Estate/florida-real-estate-state-requirements.html> (last visited Feb. 7, 2005) [hereinafter *Real Estate Requirements*]. Real Estate Appraisers are also considered professionals under the DBPR and *Florida Statutes*; however, their roles in relation to the public are dissimilar to attorneys and CPAs and thus have been excluded for purposes of this article. FLA. STAT. § 475.610 (2003); Division of Real Estate, *Florida Real Estate Appraisal Board*, at [http://www.state.fl.us/dbpr/re/freab\\_welcome.shtml](http://www.state.fl.us/dbpr/re/freab_welcome.shtml) (last visited Feb. 7, 2005) [hereinafter *Real Estate Appraisal*].

63. § 475.02(1).

64. DBPR Home Page, *supra* note 2.

65. *Id.*

66. Division of Real Estate, Home Page, at <http://www.myflorida.com/dbpr/re/index.shtml> (last visited Feb. 7, 2005).

67. § 475.02(1). Four members must be brokers having held active licenses for a five-year period. *Id.* One member is a licensed broker or sales associate for two years, and two members are members of the public who have never been licensed real estate professionals. *Id.* Members hold their positions for four year terms, may be removed for cause, and one member of the commission must be at least sixty years of age. § 475.02(1)-(2).

In Florida, real estate sales associates generally are independent salespeople who work for licensed real estate brokers in exchange for a portion of a commission earned from the sale of a property.<sup>68</sup> Real estate brokers, by contrast, generally own their independent businesses and supervise the work of associates in their employ.<sup>69</sup> These two categories have different licensing requirements.<sup>70</sup>

An applicant for a real estate associate license must be at least eighteen years old and have a high school diploma or its equivalent.<sup>71</sup> In addition, an applicant must be "honest, truthful, trustworthy, and of good character" as well as "have a good reputation for fair dealing."<sup>72</sup> An applicant must be "competent and qualified to make real estate transactions," and if a previous license has been denied or revoked, the applicant will not be licensed unless they have rehabilitated themselves through subsequent behavior.<sup>73</sup> Real estate associates must complete a pre-licensing course, approved by the real estate commission, of sixty-three classroom hours, which is valid for two years after completion.<sup>74</sup> The course covers a wide range of important topics for real estate sales associates, from real estate brokerage, including property management, appraising, financing, and counseling, to development and construction, the roles of different levels of government, and professional associations.<sup>75</sup> There are also additional sessions specifically on real estate license law, federal and state laws pertaining to real estate, titles, deeds, legal descriptions, real estate financing, taxes, and zoning.<sup>76</sup>

In addition, applicants must complete an application, fingerprint card, submit an initial fee of \$152, and then sit for the Florida Real Estate Sales

68. *Career*, *supra* note 61.

69. *Id.* A broker is defined under *Florida Statutes* as a person who "appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property." § 475.01(1)(a).

70. *Real Estate Requirements*, *supra* note 62.

71. § 475.17(1)(a). Florida Licensing Requirements for Real Estate are readily accessible on the "myflorida.com" webpage, listed under the DBPR. Division of Real Estate, *Florida Licensing Requirements for Real Estate*, at [http://www.myflorida.com/dbpr/re/frec\\_licensing\\_requirements.shtml](http://www.myflorida.com/dbpr/re/frec_licensing_requirements.shtml) (last visited Feb. 7, 2005) [hereinafter *Licensing Requirements for Real Estate*]. In addition, further detailed information clarifying these statutes appears in the *Florida Administrative Code*. See generally FLA. ADMIN. CODE R. 61J2 (2004).

72. § 475.17(1)(a).

73. *Id.*

74. *Real Estate Requirements*, *supra* note 62.

75. The Florida Real Estate Commission, SALESPERSON COURSE SYLLABUS (2001), at [http://www.state.fl.us/dbpr/re/publications/frec/frec\\_syllabus.pdf](http://www.state.fl.us/dbpr/re/publications/frec/frec_syllabus.pdf) (last visited Feb. 7, 2005) [hereinafter *SALESPERSON COURSE SYLLABUS*].

76. *Id.*



Associate Exam.<sup>77</sup> Finally, applicants must complete the administrative step of activating their licenses and completing forty-five classroom hours of post-licensing instruction before biennial license expiration.<sup>78</sup> Currently, neither licensed Florida attorneys nor applicants with a four-year-degree are required to submit to these real estate requirements.<sup>79</sup>

By contrast, those seeking to become real estate brokers must already hold an active real estate sales associate license and then complete twelve months of real estate experience during a period of five years before seeking to become a broker.<sup>80</sup> A broker must take an additional pre-licensing course, approved by the Florida Real Estate Commission, consisting of seventy-two classroom hours, which also is valid for two years after the course completion date.<sup>81</sup> This course focuses more specifically on advanced skills for this higher level of licensing, such as opening, owning, managing, and supervising a real estate office, including escrow management, valuing real property, listing and selling real property, and several specialty areas including environmental issues that affect real estate transactions.<sup>82</sup> Such information includes understanding policies and law relating to leasing real property and employing sales associates.<sup>83</sup>

All other requirements for brokers are similar to sales associates, such as the application, fingerprinting, paying a fee, and the successful passing of the real estate broker examination.<sup>84</sup> Real estate brokers also must complete administrative requirements in order to activate their licenses and complete at least sixty hours of post-licensing course work prior to license expiration.<sup>85</sup>

77. *Licensing Requirements for Real Estate*, *supra* note 71. A passing grade on this exam is a seventy-five. *Id.* In addition, applicants may sit for the Florida Real Estate Law Examination, of which a passing score of at least thirty is required. *Id.* In addition, Florida has "mutual recognition" of licensing with ten states. SALESPERSON COURSE SYLLABUS, *supra* note 75.

78. *Real Estate Requirements*, *supra* note 62. Real estate applications may be submitted partially online. *Id.*

79. IFREC Real Estate Schools, *Frequently Asked Questions*, at <http://www.ifrec.com/faq.htm> (last visited Feb. 7, 2005) [hereinafter IFREC FAQs].

80. *Real Estate Requirements*, *supra* note 62.

81. *Id.*

82. FLORIDA REAL ESTATE COMMISSION, BROKER COURSE SYLLABUS (1999), at [http://www.state.fl.us/dbpr/re/publications/frec/frec2\\_syllabus.pdf](http://www.state.fl.us/dbpr/re/publications/frec/frec2_syllabus.pdf) (last visited Feb. 7, 2005).

83. *Id.*

84. *Real Estate Requirements*, *supra* note 62.

85. *Id.* Fees for Real Estate Brokers are initially \$162 with a renewal fee of \$72.50 per license; licensees must complete fourteen hours of continuing education every two years. *Id.*; Division of Real Estate, *Fees*, at <http://www.myflorida.com/dbpr/re/fees.shtml> (last visited Feb. 7, 2005) [hereinafter *Fees*].

The real estate exam is given by a private vendor at various testing centers throughout Florida. It is a multiple-choice exam that is administered electronically through a touch-screen format, with instant notification of success or failure at the test site.<sup>86</sup> The examination is graded on a basis of one hundred points, and successful completion is a grade of seventy-five points or higher.<sup>87</sup> The sales associate examination is based on "real estate principles and practices, real estate law, and real estate mathematics."<sup>88</sup> Generally, forty-five points are based on law, forty-five points on principles and practices, and ten points on real estate mathematics.<sup>89</sup> The broker exam is also based on real estate law principles and practices, including appraising, finance, investment and brokerage management, and real estate mathematics.<sup>90</sup> This exam is generally broken down by forty-five points on law, forty points on principles and practices, and fifteen points on mathematics.<sup>91</sup>

Applicants without Florida residency may become licensed, non-resident real estate professionals in Florida. However, those licenses are specially governed and have additional rules that are particular to them. A written exam consisting of forty questions is administered to all non-resident applicants, who must answer thirty or more questions correctly to pass the test.<sup>92</sup> In addition, the code specifically defines residency for real estate licensing purposes and details post-license and continuing education requirements for non-resident licensees.<sup>93</sup>

Real estate schools are heavily regulated by the *Florida Administrative Code*, and a list of approved real estate schools is available on the DBPR website.<sup>94</sup> Although many schools are listed as branches with different physical locations, the list contains 1131 schools, some of which have out-of-state addresses.<sup>95</sup> Minimum standards for pre-licensing study, including use of guest lecturers, instructor requirements, and renewal are all state-regulated.<sup>96</sup>

86. IFREC FAQs, *supra* note 79. Applicants who fail must wait at least thirty days to take the exam again. *Id.*

87. FLA. ADMIN. CODE R. 61J2-2.029 (2004).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. FLA. ADMIN. CODE R. 61J2-26.001 (2004).

93. FLA. ADMIN. CODE R. 61HJ2-26.

94. Department of Business and Professional Regulation, *Real Estate Schools*, at [http://www.myflorida.com/dbpr/re/publications/re\\_schools.pdf](http://www.myflorida.com/dbpr/re/publications/re_schools.pdf) (last visited Feb. 7, 2005).

95. *Id.* The list appears to contain a few repetitions of schools and addresses. *See id.*

96. *See* FLA. ADMIN. CODE R. 61J2-3.008.



The initial and continuing education courses necessary for real estate professionals are regulated by the DBPR.<sup>97</sup> All of the details of the specific classroom requirements within each school, including the requirements for successful course completion, as well as regulations on advertising, are specified.<sup>98</sup>

All active licensees must also complete a minimum of fourteen hours of continuing education during each biannual license renewal period, except for the first license period.<sup>99</sup> During the first licensing period, all brokers and sales associates must complete a specified post-licensing course prior to the first renewal.<sup>100</sup> For sales associates, this course requirement is not more than forty-five hours (including exam) in subjects including "property management, appraisal, real estate finance, the economics of real estate management, marketing, technology, sales and listing of properties, business office management . . . practical real estate application skills, development of business plans, marketing of property, and time management."<sup>101</sup> By contrast, the post-licensing course for brokers includes instruction in the same subjects for up to sixty hours prior to the first license period.<sup>102</sup> Sales associates must pay a \$65 renewal fee, while brokers pay a renewal fee of \$72.50.<sup>103</sup>

The Florida Division of Real Estate has "mutual recognition" with ten states, in which both brokers and sales associates can qualify for an equivalent-type license in Florida if they are eighteen years of age, hold a high school diploma or equivalent, and are not a resident of Florida at the time of application.<sup>104</sup>

97. Law schools may be accredited by states for graduates to sit for only that state's bar exam; however, the American Bar Association also nationally accredits law schools, permitting ABA-accredited school graduates to apply for the bar examination in any state. American Bar Association, *The ABA Role in General*, at <http://www.abanet.org/legaled/accreditation/abarole.html> (last visited Feb. 7, 2005).

98. See FLA. ADMIN. CODE R. 61J2-3.008.

99. FLA. STAT. § 475.182(1) (2004).

100. FLA. ADMIN. CODE R. 61J2-3.020.

101. § 475.17(3)(a). These courses must be given by an accredited college, registered real estate school, or other approved center. *Id.*

102. FLA. ADMIN. CODE R. 61J2-3.020(1)(b).

103. *Fees*, *supra* note 85.

104. SALESPERSON COURSE SYLLABUS, *supra* note 75. The ten states are Alabama, Arkansas, Colorado, Georgia, Indiana, Kentucky, Mississippi, Nebraska, Oklahoma, and Tennessee. *Id.* There are other requirements for certain states, and if applicants have received their licenses in these ten states by reciprocity, they may not claim mutual recognition in Florida. *Id.*

### C. Certified Public Accountants

A certified public accountant (CPA) is defined as a person who holds a license from the State of Florida to practice public accounting.<sup>105</sup> A person practicing public accountancy performs various services for the public involving financial statements, presentations of financial information, and various types of services using accounting skills.<sup>106</sup> Any person who wishes to be licensed as a certified public accountant in Florida must apply for such a license to the Department of Business and Professional Regulation Board of Accountancy.<sup>107</sup>

To sit for the examination to become a licensed CPA, an applicant must be a graduate of a four-year baccalaureate degree program, with a major in accounting, as well as other credit hours concentrating in the field of accounting.<sup>108</sup> In addition, the applicant must be considered of "good moral character."<sup>109</sup> Good moral character is defined as a "personal history of honesty, fairness, and respect" both for the rights of others and for the law.<sup>110</sup> A finding of lack of such character must be supported by competent substantial evidence.<sup>111</sup> There is neither a requirement of residence or employment in the state of Florida for applicants, nor of any experience in the field.<sup>112</sup>

Potential licensees must pass the CPA exam, a national exam given under the approval of the Florida Board of Accountancy.<sup>113</sup> The Board is a division of the Department of Business and Professional Regulation, focusing on the regulation of CPAs.<sup>114</sup> The board determines the passing grade for

105. § 473.302(4).

106. § 473.302(7)(a)-(c). A detailed list of public accounting duties is included in this statute. *Id.*

107. Division of Certified Public Accounting, *Florida Board of Accountancy*, at <http://www.myflorida.com/dbpr/cpa/index.shtml> (last visited Feb. 7, 2005) [hereinafter *Board of Accountancy*]. The Florida Board of Accountancy is located in Gainesville, Florida. *Id.*

108. § 473.306(2)(b); FLA. ADMIN. CODE R. § 61H1-27.002 (2003). The other hours must equal at least thirty semester hours or forty-five quarter hours in excess of those required for the baccalaureate degree, including a program concentrating on accounting as defined in the administrative code. § 473.306(2)(b).

109. § 473.306(2)(a).

110. § 473.306(4)(a).

111. § 473.306(4)(b). In addition, an applicant who is rejected for a license based on character must be furnished with a complete record of such evidence upon which the determination was based. FLA. STAT. § 473.306(4)(c) (2004).

112. Division of Certified Public Accounting, *Licensure and Examination*, at [http://www.myflorida.com/dbpr/cpa/business/licensing\\_pages/licensure\\_examination.shtml](http://www.myflorida.com/dbpr/cpa/business/licensing_pages/licensure_examination.shtml) (last visited Feb. 7, 2005) [hereinafter *CPA Licensure*].

113. See *id.*

114. *Board of Accountancy*, *supra* note 107.



each subject of the exam for Florida applicants, but does not administer a Florida-specific examination.<sup>115</sup> The exam is actually prepared by the Board of Examiners of the American Institute of Certified Public Accountants (AICPA).<sup>116</sup> The Board of Examiners of the AICPA is responsible for both preparing and grading the Uniform CPA exam.<sup>117</sup> All fifty states—as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands—use this exam.<sup>118</sup> The National Association of State Boards of Accountancy (NASBA) assists the boards of accountancy in processing the exam grades and providing statistical information arising from the exam.<sup>119</sup>

In 2003, the DBPR approved the final administration of a paper-based CPA examination for Florida test-takers.<sup>120</sup> Beginning on April 5, 2004, all of the testing for the CPA examination in Florida is only computer-based.<sup>121</sup> The Board offers four testing “windows” for examinees to take the exam.<sup>122</sup> An exam “window” is a three-month period, during which the exam is actually available for testing for only two of the months; for one month the exam is not offered for “routine maintenance” of the system.<sup>123</sup>

The newer computer-based examination consists of the same number of parts as the previous paper-based examination, although they have been renamed.<sup>124</sup> The four sections of the exam are: 1) Auditing and Attestation; 2)

115. § 473.306(3)(a); *see also* American Institute of Certified Public Accountants, THE UNIFORM CPA EXAMINATION CANDIDATE BULLETIN (2004), <http://www.cpa-exam.org/cpa/bulletin.html> (last visited Feb. 7, 2005) [hereinafter CPA CANDIDATE BULLETIN]. The Board of Examiners makes recommendations to each individual board of accountancy regarding standards. *Id.*

116. CPA CANDIDATE BULLETIN, *supra* note 115, at 1. The AICPA is the largest national professional organization for CPAs, and its mission is to serve its members in a way to enable them to provide valuable services. *Id.*

117. *Id.*

118. *See id.* at 1, 4.

119. *Id.* at 1.

120. Division of Certified Public Accounting, *Computer-Based CPA Exam Information*, [http://www.myflorida.com/dbpr/cpa/CBT\\_for\\_web\\_page.pdf](http://www.myflorida.com/dbpr/cpa/CBT_for_web_page.pdf) (last visited Feb. 7, 2005).

121. CPA *Licensure*, *supra* note 112.

122. *Id.*

123. *Id.*

124. CPA Ready, *Computerized CPA Exam Information*, at <http://www.cpaexam.com/content/examinfo.asp> (last visited Feb. 7, 2005) [hereinafter CPA Exam Info]. These sections correspond in order to the old paper-based examination sections of 1) Auditing; 2) Financial Accounting and Reporting; 3) Accounting and Reporting; and 4) Business Law and Professional Responsibilities. *Id.* Applicants who are currently in their eighteen-month period of accumulating credits may use old paper-based section credits combined with newer, computer-based passed sections during the transition period of the computer-based testing. *Id.* The specific descriptions of each section are available in the Uniform CPA Examination Candidate Bulletin, June 1, 2004. CPA CANDIDATES BULLETIN, *supra* note 115.

Financial Accounting & Reporting; 3) Regulation; and 4) Business Environment and Concepts.<sup>125</sup> The cost for taking each of these sections, which does not include the \$50 application fee and is paid directly to the Division of CPA, ranges from \$100.50 to \$134.50 for each section.<sup>126</sup> The estimated total cost for first-time exam candidates may be up to \$800.<sup>127</sup>

Candidates for licensing may take different sections of the exam individually and in any order.<sup>128</sup> Once taken, the examinee earns credit for each section of the exam passed for a period of eighteen months.<sup>129</sup> Candidates must pass all four sections within that eighteen-month period and may not retake a failed section within the same examination window.<sup>130</sup>

Information about the CPA exam, including access to sample exams, is available on a national website.<sup>131</sup> In Florida, applicants contact the national examination services directly to set up exam testing.<sup>132</sup> There is generally no application deadline; rather, the new computer-based examination is intended to allow candidates to apply on a rolling basis for an examination window.<sup>133</sup> Once a test appointment is scheduled, candidates may reschedule an appointment if there is a conflict.<sup>134</sup> Applicants do not have to be physically located within their respective jurisdictions to take the exam, but may take it at any site approved by the company administering the exam.<sup>135</sup> There are

125. *Id.*

126. CPA *Licensure*, *supra* note 112. Florida Administrative Code Rule 61H1-31.001, subsection one, lists the costs for taking the paper-based portion of the exam. FLA. ADMIN. CODE R. 61H1-031.001(1) (2003).

127. American Institute of Certified Public Accountants, *CPA Computer-Based Examination FAQs*, at [http://www.cpa-exam.org/cpa/computer\\_faqs.html](http://www.cpa-exam.org/cpa/computer_faqs.html) (last visited Feb. 7, 2005) [hereinafter CPA FAQs]. Each section of the exam carries a different cost. CPA *Licensure*, *supra* note 112. The total cost may include other fees associated with the testing. *Id.*

128. American Institute of Certified Public Accountants, *The CPA Exam: An Update*, at <http://www.aicpa.org/pubs/cpaltr/may2002/supps/edu1.htm> (last visited Feb. 7, 2005).

129. CPA Exam Info, *supra* note 124.

130. *Id.*

131. CPA FAQs, *supra* note 127.

132. CPA CANDIDATE BULLETIN, *supra* note 115. The telephone number is 1-800-CPA-EXAM (1-800-272-3926). American Institute of Certified Public Accountants, *Steps to Become a CPA*, [http://www.cpa-exam.org/get\\_started/steps.html](http://www.cpa-exam.org/get_started/steps.html) (last visited Feb. 7, 2005). In other states, applicants may have to contact their Board of Accountancy directly or another service. *Id.*

133. *See id.* at 8.

134. Applicants may reschedule at no charge if they are rescheduling more than thirty days in advance. *Id.* at 12. Rescheduling between five and twenty-nine days results in a charge of approximately \$35; however, rescheduling within five days requires full forfeiture of the fee for the section that was scheduled. CPA CANDIDATE BULLETIN, *supra* note 115; CPA FAQs, *supra* note 127.

135. CPA CANDIDATE BULLETIN, *supra* note 115; CPA FAQs, *supra* note 127.



test centers throughout the United States, but applicants may not sit for the exam outside of the United States.<sup>136</sup> As of this writing, there were twelve testing centers in Florida, located in Coral Springs, Ft. Myers, Gainesville, Jacksonville, Miami, Davie, Orlando, Sarasota, Tallahassee, and Tampa.<sup>137</sup>

The substance of each exam consists of both simulation tests and multiple-choice questions.<sup>138</sup> The length of each section ranges from two hours and thirty minutes to four hours and thirty minutes, and the test is a total of fourteen hours in four separately tested sections.<sup>139</sup> Each section consists of "testlets" which contain either multiple-choice questions or a case study (simulation).<sup>140</sup>

There is no immediate feedback of results. A minimum of two to four weeks is generally required to process all scores, and an additional delay is likely as the transition to computer-based examinations is completed.<sup>141</sup> A passing grade is eighty.<sup>142</sup>

Licensed CPAs are required to complete continuing professional education programs prior to biennial license renewal.<sup>143</sup> The DBPR brings all licensees into a concurrent reporting system by ending at the end of the DBPR reporting year, which is June 30th. CPA's must complete at least eighty total hours of continuing education during a two-year period, including at least twenty hours in accounting and auditing subjects, and no more than twenty hours in behavioral subjects.<sup>144</sup> The hours must be taken during the period of the current license, and while hours do not carry over, extensions are avail-

136. *Id.* Applicants must bring a document entitled "Notice to Schedule" to the center, and without it, will not be allowed to sit for the exam. CPA CANDIDATE BULLETIN, *supra* note 115, at 14. Applicants must also bring photo identification, on which the name must exactly match the notice. *Id.* at 7.

137. Thompson Prometric, *TCL Test Centers*, at <http://www.2test.com/registrationgateway?ccode=USA&st=FL&cid=CPA> (last visited Feb. 7, 2005) [hereinafter *TCL Centers*]. In the past, when paper-based exams were administered, more than 55,000 applicants took the exam as given twice a year. American Institute of Certified Public Accountants, *The New CPA Exam Meeting Today's Challenges*, at <http://www.aicpa.org/pubs/cpaltr/may2002/supps/edu1.htm> (last visited Feb. 7, 2005). These exams were administered in large rooms to accommodate hundreds or more applicants simultaneously. *Id.* The new computer-based format allows more examination windows, more flexibility to applicants on which section to take at what time, and more options in scheduling and location, as well as private exam carrels. *Id.* CPA CANDIDATE BULLETIN, *supra* note 115, at 8-11, 15-16.

138. CPA CANDIDATE BULLETIN, *supra* note 115, at 22.

139. *CPA Exam Info*, *supra* note 124.

140. CPA CANDIDATE BULLETIN, *supra* note 115.

141. *CPA FAQs*, *supra* note 127.

142. FLA. ADMIN. CODE R. 61H1-33.001(1) (2004).

143. *Id.*

144. FLA. ADMIN. CODE R. 61H1-33.003.

able subject to additional hours taken.<sup>145</sup> License renewal may be administratively accomplished through the "myflorida.com" secure website and must be renewed every two years.<sup>146</sup> In addition to the continuing education courses, current licensees must also pass an exam on Florida Accountancy Law and Rules.<sup>147</sup> This open-book exam is administered either via the Internet or via hard copy upon request.<sup>148</sup> The total biennial cost to renew the CPA license is \$95.<sup>149</sup>

The accountancy system provides that applicants who have passed the CPA examination in another state may become licensed in Florida. First, if the applicant has passed all parts of the nationally administered exam, in conformance with Florida's rules for sitting for the exam, but not yet applied to be licensed in another state, the examinee may apply to transfer credit of the uniform exam to Florida.<sup>150</sup> In contrast, if the applicant has already been licensed or applied for licensing in another jurisdiction, a process known as endorsement must be undergone, requiring a ten-page application with a fee, five years of governmental accounting after licensure, and compliance with specific rules regarding educational experiences and accreditation.<sup>151</sup>

#### D. Comparing and Contrasting Fiscal Professional Licensing

The first difference between the fiscal professionals examined in the state of Florida is their educational requirements. Real estate professionals are not required to hold any particular traditional degree,<sup>152</sup> while CPAs are required to complete a baccalaureate degree,<sup>153</sup> and attorneys are required to complete a post-graduate degree.<sup>154</sup> However, real estate professionals must take a certain number of credit hours of training specifically in that field;<sup>155</sup>

145. *Id.*

146. Division of Certified Public Accounting, *Laws and Rules Exam Reminder*, at [http://www.myflorida.com/dbpr/cpa/laws\\_rules\\_reminder\\_notice\\_2004.pdf](http://www.myflorida.com/dbpr/cpa/laws_rules_reminder_notice_2004.pdf) (last visited Feb. 7, 2005) [hereinafter *CPA Exam Reminder*].

147. *Id.*

148. *Id.*

149. *Id.*

150. Division of Certified Public Accountants, *Instructions For Completing Application For Licensure by Endorsement Transferring Examination Grades DBPR CPA 5002-1*, at [http://www.myflorida.com/dbpr/cpa/forms/endorsement\\_application\\_package.pdf](http://www.myflorida.com/dbpr/cpa/forms/endorsement_application_package.pdf) (last visited Feb. 7, 2005) [hereinafter *Instructions*].

151. FLA. STAT. § 473.308(4) (2004); FLA. ADMIN. CODE R. 61H1-29.003; *Instructions*, *supra* note 150.

152. FLA. STAT. § 475.17(1)(a).

153. FLA. STAT. § 473.306(2)(b)(1).

154. FLA. BAR ADMISS. 4-13.1(a) (2004).

155. § 475.17(3)(a).



similarly, CPAs must have majored specifically in accounting and then taken additional specific accounting courses.<sup>156</sup> In contrast, the attorney, who has completed a minimum of seven years of post-high school education, is not required to take course training specific to the vocation.<sup>157</sup> Law school courses often are said to teach students to think like lawyers and to teach the law, but they do not necessarily cover the specific every day business requirements of being an attorney.<sup>158</sup> One of the results of these requirements is a discrepancy in ages of the fiscal professionals. A real estate professional could be as young as eighteen (as per licensing requirements),<sup>159</sup> while the requirement of a bachelor's degree makes an accounting licensee unlikely to be that young (although no age requirement is specified in the licensing),<sup>160</sup> and certainly attorneys are expected to be even older, with the necessity of three additional years of education over accountant licensees.<sup>161</sup>

A second level of comparison is the examination process. Real estate professionals are required to take an exam that is crafted and administered by the State of Florida.<sup>162</sup> The real estate exam is given by private testing centers and is in computer format with immediate feedback.<sup>163</sup> The accountancy exam, by contrast, is administered by a national organization and has recently switched to an internet format at an approved testing site. Additionally, feedback is not immediate, as the written portion of the exams requires careful evaluation. Attorney examinations differ from both real estate and accounting exams. Attorney examinations are a combination of Florida law and national law, and the Florida Board of Bar Examiners works to administer this combination test with the National Conference of Bar Examiners.<sup>164</sup> While the Bar has recently begun allowing examinees to use laptop computers in the writing of the exam, it is a paper-based exam given only on two specific dates a year in one central location.<sup>165</sup> Feedback as to a passing score generally comes after a delay of several months. Such a difference in examination methods certainly sets a different tone and level of accessibility to the future professionals. This difference regulates the rate at which the stream of professionals is increased in each profession, requiring careful planning by employers and future licensees alike.

156. § 473.306(2)(b)(1), (2).

157. FLA. BAR ADMISSIONS. R. 14-13.1(a).

158. See generally, STUDENT HANDBOOK, *supra* note 33.

159. § 475.17(1)(a).

160. FLA. ADMIN. CODE R. 61H1-27.002.

161. FLA. BAR ADMISSIONS. R. 4-13.1(a).

162. FLA. ADMIN. CODE R. 61J2-3.008 (2004).

163. *Id.*; IFREC FAQs, *supra* note 79.

164. FLA. BAR ADMISSIONS. R. 4-11.

165. FLA. BAR ADMISSIONS. R. 4-14, 4-15.

The third level of difference between the licensure systems is the manner in which they treat potential licensees who are licensed in other jurisdictions. On one end of the spectrum is the attorney system in Florida, forbidding any reciprocity of other licensed attorneys. On the other end, for our purposes, is the real estate system, which has set up a mutual recognition system with twenty percent of the licensing states, once additional minimum standards are met.<sup>166</sup> A far more complicated system is the accountant endorsement system, which designates minimum requirements, work experience, and the potential of additional continuing education.<sup>167</sup>

The final level of comparison between the professions is in the administrative requirements. All three fiscal professional categories require some type of post-licensing continuing credit. Real estate professionals are required to carry a heavy load during the first renewal period, followed by a comparatively lighter educational requirement—half of an attorney's requirements in two-thirds the time period.<sup>168</sup> By contrast, accountants are required to complete more than twice the number of hours in a period one-third shorter in length than attorneys. All three fiscal professional categories are also required to renew their licenses and pay a fee. Both real estate professionals and accountants have two-year renewal periods,<sup>169</sup> brought into time concurrence according to the DBPR annual report year, with a fee of less than \$100; meanwhile, attorneys have a three-year renewal period,<sup>170</sup> staggered as to actual admittance date to the Florida Bar, with a maximum fee of \$265 annually.<sup>171</sup>

#### IV. THE DISCIPLINE SYSTEMS

##### A. Attorneys

The Supreme Court of Florida establishes the responsibilities of its member attorneys through the *Rules Regulating the Florida Bar*.<sup>172</sup> The Su-

166. Division of Real Estate, *Mutual Recognition Information*, at [http://www.myflorida.com/dbpr/re/mut\\_rec.shtml](http://www.myflorida.com/dbpr/re/mut_rec.shtml) (last visited Feb. 7, 2005).

167. FLA. ADMIN. CODE R. 61H1-29.003.

168. FLA. ADMIN. CODE R. 61J2-3.020.

169. FLA. ADMIN. CODE R. 6141-031.001(1); see CPA Exam Reminder, *supra* note 146.

170. R. REGULATING FLA. BAR 6-10.3(b) (2004).

171. R. REGULATING FLA. BAR 1-7.3. Although The Florida Bar Exam is administered only twice per year, the actual admittance date of the applicant may depend on the completion of the full processing of any individual application. FLA. BAR. ADMISSIONS. R. 2.

172. R. REGULATING FLA. BAR 1-4.2. The Supreme Court of Florida has the power under the Florida Constitution to regulate the admission of the members of the Bar with the right to practice law, and thus set the ethical standards for those members. See *id.* The current *Rules*



preme Court of Florida sets the standards of actions for attorneys and determines what constitutes discipline.<sup>173</sup> The Supreme Court of Florida also is ultimately responsible for disciplining Florida attorneys.<sup>174</sup> The professional regulation of lawyers in Florida is not the same as a civil lawsuit for malpractice.<sup>175</sup>

The grievance process against an attorney generally begins with a complaint from a client.<sup>176</sup> Clients are encouraged, before the filing of a complaint, to first contact the Attorney Consumer Assistance Program (ACAP), launched by The Florida Bar in March 2001.<sup>177</sup> A client who contacts ACAP before filing a grievance will first discuss the behavior of the subject attorney with non-lawyer personnel and then with ACAP attorney personnel, who will by then have reviewed the information.<sup>178</sup> The ACAP attorney's role is to help determine if a potentially actionable grievance exists against an attorney and to guide the client through the filing of such a complaint.<sup>179</sup>

*of Professional Conduct* were adopted in the late 1980s and are based on the *ABA Model Rules of Professional Conduct*. See Timothy P. Chinaris, *A Brief Overview of Lawyer Regulation in Florida*, at <http://www.sunethics.com/lawregoverview.htm> (last visited Feb. 7, 2005).

173. R. REGULATING FLA. BAR 3-1.2.

174. *Id.*

175. R. REGULATING FLA. BAR 3-1.1. A civil lawsuit for malpractice occurs when attorneys are sued in the civil court system of the judicial circuit having jurisdiction over that attorney's actions, proceeding according to the court and substantive rules and laws of the jurisdiction. FLA. STAT. § 95.11 (2003). Such malpractice lawsuits are subject to a statute of limitations, as set by section 95.11, *Florida Statutes*. *Id.* In a lawsuit for malpractice, the court usually is asked to award monetary compensation to the plaintiff. *Id.* In professional regulation grievance matters, only the status of the attorney's license is at stake. R. REGULATING FLA. BAR 3-5.1. There is no monetary compensation ordered. *Id.*

176. See The Florida Bar, *Complaint Against a Florida Lawyer*, at <http://www.flabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/c5b7d247a0c9c45a85256b2f006c6186?OpenDocument> (last visited Feb. 7, 2005).

177. The Attorney Consumer Assistance Program (ACAP) was created by The Florida Bar to investigate charges of unethical conduct against lawyers practicing in Florida and assist clients in resolving problems prior to filing a complaint. Jan Pudlow, *Disciplinary Details*, FLA. B. NEWS, Mar. 15, 2001, available at <http://www.flabar.org/DIVCOM/JN/JNNews01.nsf/cb53c80c8fabd49d85256b5900678f6c/5cb1a95d473c0a5585256b0a007269c0?OpenDocument> (last visited Feb. 7, 2005).

178. *Complaint Against a Florida Lawyer*, *supra* note 176. One reason that this program was created was to reduce the number of complaints filed on matters not under the jurisdiction of The Florida Bar for which to give discipline. Pudlow, *supra* note 177. Generally, The Florida Bar has the authority to investigate lawyers' behavior regarding fiscal responsibilities, conflicts of interests, lying, and failure to follow through with matters. See generally R. REGULATING FLA. BAR 5-1.1, 4-1.1, 4-1.7, 4-8.4.

179. *New Bar Program to Assist Lawyers and Their Clients*, 28 FLA. BAR NEWS 1, Apr. 15, 2001, available at <http://www.flabar.org/DIVCOM/JN/JNNews01.nsf/cb53c80c8fabd49d85256b5900678f6c/faaf2e8e8a622b1685256aea0062f7f1?OpenDocument> (last visited Feb. 7, 2005) [hereinafter *New Bar Program*]. The ACAP program is apparently successful in

A complaint filed against an attorney must always be in writing and signed under oath.<sup>180</sup> The official one-page complaint form is available on The Florida Bar website, and additional information may be attached.<sup>181</sup> Complainants must be aware that the name, address, and telephone number of the person making the complaint (technically called an "inquiry" at this stage),<sup>182</sup> not only becomes public record, but also is affirmatively disclosed to the attorney who is the subject of the complaint.<sup>183</sup>

The Florida Bar creates a file on each grievance received, which is assigned to a Florida Bar disciplinary staff attorney in order to determine whether The Florida Bar has jurisdiction to investigate the inquiry.<sup>184</sup> If the Bar determines that it does not have jurisdiction over either the attorney or the actions, the file is closed.<sup>185</sup>

If the Bar does have jurisdiction, the matter then becomes technically known as a "complaint," and the Bar begins the formal investigative process by writing a letter to the lawyer who is the subject of the complaint.<sup>186</sup> The accused lawyer is required to answer this request in writing, generally within twenty days.<sup>187</sup> The individual who filed the complaint may then respond to rebut information provided in the attorney's response.<sup>188</sup>

The Florida Bar disciplinary counsel then conducts a review to determine whether the case should move on to the next stage of the disciplinary process.<sup>189</sup> If counsel makes a determination of complaint substance, the case is taken to the next step and heard by a Florida Bar grievance committee.<sup>190</sup> A grievance committee is comprised of panels of volunteers, at least

reducing the number of grievances filed against attorneys and satisfying clients as well. *Id.* Complaints to the grievance system of The Florida Bar have dropped eight percent since 2001, when ACAP was instituted. *Id.*

180. R. REGULATING FLA. BAR 3-7.3(c).

181. The Florida Bar Inquiry, *Complaint Form*, available at [http://www.flabar.org/TFB/TFBResources.nsf/Attachments/AB230E7DCCC3B75385256B29004BD6DC/\\$FILE/acap-form-web04.pdf?OpenElement](http://www.flabar.org/TFB/TFBResources.nsf/Attachments/AB230E7DCCC3B75385256B29004BD6DC/$FILE/acap-form-web04.pdf?OpenElement) (last visited Feb. 7, 2005).

182. R. REGULATING FLA. BAR 3-7.3(a).

183. *Complaint Against a Florida Lawyer*, *supra* note 176.

184. *Id.*

185. *Id.* At this point, the complaint is initially labeled as an "inquiry." *Id.* One reason, for example, that the Bar may not be able to handle a complaint is if the attorney is not licensed in the state of Florida by The Florida Bar. See R. REGULATING FLA. BAR 1-3.1.

186. *Complaint Against a Florida Lawyer*, *supra* note 176. Attorneys may not know if their behavior was discussed with ACAP when no complaint was filed. *Id.*

187. R. REGULATING FLA. BAR 3-7.6(h)(2). Extensions are generally liberally granted for attorneys engaged in the active practice of law. Curtis & Kaufman, *supra* note 3, at 679.

188. R. REGULATING FLA. BAR 3-7.6(h)(2).

189. R. REGULATING FLA. BAR 3-7.3(a).

190. R. REGULATING FLA. BAR 3-7.3(f).



one-third of whom may not be lawyers.<sup>191</sup> The committee serves to hear cases within its jurisdiction to determine if there is "probable cause" in the matter, determined by a majority vote of those committee members present.<sup>192</sup> Grievance committees may only hear complaints if a quorum, consisting of a minimum of three members, two of whom must be lawyers, is present.<sup>193</sup>

If a grievance committee finds probable cause in a matter, bar counsel files a formal complaint against the accused attorney with the Supreme Court of Florida.<sup>194</sup> If that complaint is contested by the subject attorney, the matter is sent to a circuit or county court judge appointed for that purpose for a trial.<sup>195</sup> The judge, known in this contest as a "referee," hears evidence, makes a finding of fact, and recommends discipline to the Supreme Court of Florida, which has the final authority to decide the discipline of any Florida attorney.<sup>196</sup>

The *Rules Regulating the Florida Bar* enumerate the disciplines which the Supreme Court of Florida may impose.<sup>197</sup> First are specific rules for what is considered "minor misconduct."<sup>198</sup> Although defined in the rules only as what is *not* minor misconduct, rather than an affirmative statement of what *is* minor misconduct, generally, the appropriate discipline for such action is "admonishment" of the attorney.<sup>199</sup> Admonishment of an attorney declares

191. R. REGULATING FLA. BAR 3-7.4(g)(2).

192. *Complaint Against A Florida Lawyer*, *supra* note 176. The Florida grievance committees are assigned by judicial circuit. *Id.* Florida's courts are divided into twenty numbered judicial circuits divided by geography. Florida State Courts, *Circuit Courts*, at <http://www.flcourts.org/courts/circuit/circuit.shtml> (last visited Feb. 11, 2005). Some counties comprise an entire judicial circuit, while other small counties may combine to form one single judicial circuit. *Id.* All members of the grievance committee are appointed by The Florida Bar Board of Governors. R. REGULATING FLA. BAR. 1-4.3.

193. R. REGULATING FLA. BAR 3-7.4(g)(1).

194. R. REGULATING FLA. BAR 3-7.4(p); see CONSUMER PAMPHLET "ATTORNEY CONSUMER ASSISTANCE PROGRAM," <http://www.flabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/90dad2cf7a8f877b85256b2f006c61bd?OpenDocument> (last visited Feb. 7, 2005).

195. R. REGULATING FLA. BAR 3-7.6(a). Cases may also be settled without a trial. *Id.*

196. R. REGULATING FLA. BAR 3-7.7.

197. R. REGULATING FLA. BAR 3-5.1. In addition, the Standards for Imposing Lawyer Sanctions, Part B describes the levels of discipline and reasons why each may be assessed. FLA. STDS. IMPOSING LAW. SANCS. 2.1-10 (2004).

198. R. REGULATING FLA. BAR R. 3-5.1(b).

199. R. REGULATING FLA. BAR R. 3-5.1(b)(1). This rule enumerates six conditions in which misconduct will not be regarded as minor: misappropriation of a client's funds or property; behavior likely to result in actual prejudice to a client; improper behavior by an attorney who has been publicly disciplined in the past three years; misconduct of the same nature for which the subject attorney has been disciplined in the past five years; misconduct

that the conduct of the attorney was not proper, but it does not limit that attorney's right to practice law within the state of Florida.<sup>200</sup>

Attorneys also may have their minor misconduct declared improper in a more public fashion, but still without limiting their right to practice law.<sup>201</sup> This may be appropriate where injury or potential injury is caused by the attorney's actions, but where the behavior is generally categorized as negligent rather than knowing or intentional.<sup>202</sup> Such a judgment of a "public reprimand" is published in the law reporters for Florida cases.<sup>203</sup>

If an attorney's misbehavior is not considered "minor" under the *Rules Regulating the Florida Bar*, there are three levels of discipline potentially available to the court.<sup>204</sup> The discipline is public, and in some way, restricts or alters the attorney's right to practice law.<sup>205</sup>

The least intrusive discipline which alters an attorney's right to practice is being placed on probation.<sup>206</sup> Attorneys may be placed on probation for a time period generally between six months and three years. They also may be required to complete continuing education programs or to be supervised by licensed attorneys.<sup>207</sup>

Alternatively, attorneys may be suspended from practice either after a hearing or on an emergency basis.<sup>208</sup> Suspensions are generally imposed for either ninety days or less, which do not require proof of rehabilitation or passage of the bar examination, or between ninety days and three years, which do require rehabilitation and may also require passage of all or part of the bar exam.<sup>209</sup> An attorney's license may be suspended for violations regarding

which includes dishonesty, misrepresentation, deceit, or fraud by the subject attorney; and behavior constituting a felony. *Id.*

200. FLA. STDS. IMPOSING LAW. SANCS. 2.6. An admonishment generally consists of a memorandum documenting the behavior and directing the attorney to appear before either the grievance committee or The Florida Bar Board of Governors for a discussion of the behavior. R. REGULATING FLA. BAR R. 3-5.1(a).

201. FLA. STDS. IMPOSING LAW. SANCS. 2.5.

202. FLA. STDS. IMPOSING LAW. SANCS. 4.13, 4.23, 4.43, 4.63, 5.13, 5.23, 6.13, 6.23, 6.33, 7.3, 8.3; see also Fla. Bar v. Kelner, 670 So. 2d 62, 63 (Fla. 1996); Fla. Bar v. Lumley, 517 So. 2d 13, 14 (Fla. 1987).

203. R. REGULATING FLA. BAR 3-5.1(d) (2004). Florida cases are published solely in the *Southern Reporter, Second Series*. *Id.*

204. R. REGULATING FLA. BAR 3-5.1(d)-(f).

205. R. REGULATING FLA. BAR 3-5.1(c). The referee's recommendation is not binding on the Supreme Court of Florida, however it is given weight. R. REGULATING FLA. BAR 3-7.7(2).

206. R. REGULATING FLA. BAR 3-5.1(c).

207. *Id.*

208. R. REGULATING FLA. BAR 3-5.1(e); see also FLA. STDS. IMPOSING LAW. SANCS. 2.3, 2.4 (2004).

209. R. REGULATING FLA. BAR 3-5.1(e).



improper dealing with client property causing injury, revealing confidential information of a client, knowing of conflicts of interest without disclosing them to clients, knowingly failing to perform services for a client, knowingly lacking competence causing injury, or knowingly deceiving a client, causing injury or potential injury.<sup>210</sup>

The court also may order an emergency suspension of the license of an attorney without the full grievance proceeding when an attorney has been convicted of a serious crime, or if an attorney's conduct will, or is likely to, cause immediate or serious injury to a client or the public.<sup>211</sup>

The most severe of the disciplines against attorneys is disbarment.<sup>212</sup> Attorneys who are disbarred lose both the privilege of practicing law and their status as members of the Bar.<sup>213</sup> Attorneys may be permanently disbarred or disbarred with leave to apply for readmission.<sup>214</sup>

There is no explicit list of violations published for attorneys that will result in disbarment. However, disbarment may be recognized as an appropriate punishment in a variety of grave injuries or potential injuries to a client, or being convicted of a felony, engaging in the sale of drugs, fraud, or for deceitful behavior.<sup>215</sup>

210. FLA. STDS. IMPOSING LAW. SANCS. 4.12, 4.22, 4.32, 4.42, 4.52, 4.62. In addition, a license suspension may be the appropriate sanction for an attorney who engages in certain kinds of criminal conduct or other activities, including causing intentional injury or potential injury to a client, the public, or the legal system. FLA. STDS. IMPOSING LAW. SANCS. 8.2. The Supreme Court of Florida may also find it appropriate to suspend an attorney's license to practice law if the attorney already has been publicly reprimanded for the same or similar conduct, and subsequently has another violation of a similar type. *Id.*

211. FLA. STDS. IMPOSING LAW. SANCS. 2.4. The Florida Bar is required to file a formal complaint of discipline within sixty days of an order of emergency suspension. R. REGULATING FLA. BAR 3-5.2(d) (2004). Such a case then proceeds directly to trial, skipping the need for a probable cause hearing before a grievance committee. *Id.* Attorneys may move to have the emergency order dissolved. R. REGULATING FLA. BAR 3-5.2(e)(1).

212. R. REGULATING FLA. BAR 3-5.1(f).

213. *Id.*

214. *Id.*; see *In re Hipsh*, 586 So. 2d 311 (Fla. 1991); see also *Fla. Bar v. Ryder*, 540 So. 2d 121 (Fla. 1989). The disbarred attorney must show, in a petition supported by clear and convincing evidence, that he or she both has completed the bar examination and is rehabilitated, once again fit to practice law. FLA. STDS. IMPOSING LAW. SANCS. 2.2 (2004). The disbarred attorney must also wait a minimum of five years before reapplying. *Id.*

215. FLA. STDS. IMPOSING LAW. SANCS. 4.11, 4.21, 4.31, 4.41, 4.51, 5.21, 6.31, 7.1. This rule also applies when an attorney intentionally reveals information regarding a client's matter, with the intent to benefit a third person, and the disclosure, which would not otherwise be permitted, causes potential or real injury to the client. FLA. STDS. IMPOSING LAW. SANCS. 4.61. If an attorney knowingly or intentionally deceives a client, disbarment may be appropriate regardless of injury. *Id.* When an attorney is found guilty of theft from monies held by that lawyer in a fiduciary relationship, The Florida Bar rules provide for a rebuttable presumption of disbarment. FLA. STDS. IMPOSING LAW. SANCS. 4.11; see also *Fla. Bar v. Mart*, 550 So. 2d

The *Florida Standard for Imposing Lawyer Sanctions* states that a court should consider the following factors in imposing a discipline order on an attorney: the duty violated by the attorney, the mental state of the attorney, the potential or actual injury caused by the misconduct, and whether any mitigating or aggravating factors existed in the matter.<sup>216</sup> Aggravating factors may justify an increase in the discipline level imposed on an attorney, and by contrast, mitigating factors may justify a reduction in the discipline imposed.<sup>217</sup>

The public has some access to this discipline information, although not in a single format with both an organized report and detailed information. The Florida Bar publishes a summary chart for its past fiscal year overviewing the years 1996-97 to the present, regarding bar population and final orders by category and the total number of files opened.<sup>218</sup> Also, the public may access specific information about attorney conduct and discipline in a number of ways. The first is through a listing of orders by the Supreme Court of Florida (detailing the attorney's name, city, specific conduct, and discipline received) dating back approximately a year.<sup>219</sup> In addition, these paragraphs are published in the Florida attorney trade newspaper, *The Florida Bar News*, on a biweekly basis. It is available at law libraries open to the public, although many non-lawyers may not be aware of this publication or its availability. Last, an individual concerned about a specific attorney may contact The Florida Bar directly to inquire about his/her discipline history.<sup>220</sup>

464 (Fla. 1989). Standard 5.1 called it failure to maintain personal integrity. FLA. STDS. IMPOSING LAW. SANCS. 5.1. Other reasons for the disbarment sanction may include intentionally deceiving the court, abusing the legal process, or intentionally violating the terms of a prior disciplinary order. *E.g.*, FLA. STDS. IMPOSING LAW. SANCS. 6.11, 6.21, 8.1.

216. FLA. STDS. IMPOSING LAW. SANCS. 3.0.

217. FLA. STDS. IMPOSING LAW. SANCS. 9.21, 9.31. Facts which may be considered aggravating include prior disciplinary offenses, experience level, patterns of misconduct or vulnerability of the victim of the offense. FLA. STDS. IMPOSING LAW. SANCS. 9.22. Mitigating factors may include absence of prior records or dishonest motive, personal problems or situations, good faith efforts to rectify consequences, impairments, and overall character. FLA. STDS. IMPOSING LAW. SANCS. 9.32.

218. The Florida Bar, *Regulation of Lawyer Conduct: The Florida Bar Disciplinary Statistics*, at <http://www.flabar.org/tfb/TFBLawReg.nsf/basicview/F4AB3FF7CB9A5AFA85256B2F006C9F09?OpenDocument> (last visited Feb. 7, 2005) [hereinafter *Bar Disciplinary Statistics*].

219. The Florida Bar, *News Releases*, at <http://www.flabar.org/tfb/TFBPublic.nsf/wNewsReleases?OpenView> (last visited Feb. 7, 2005) [hereinafter *Fla. Bar News Releases*].

220. *Id.*



### B. Real Estate Professionals

The Department of Business and Professional Regulation provides a centralized electronic format for both licensees and the public to gather information about the regulation of many professions.<sup>221</sup> The site may be searched according to occupation.<sup>222</sup>

Complaints against real estate associates, brokers, or unlicensed persons practicing in the field must be in writing and signed.<sup>223</sup> A complaint form is available on the DBPR website for consumers, or the complainant may write a letter including details of the complaint along with copies of all pertinent documents.<sup>224</sup>

The Division of Real Estate's "Complaint Section" will forward a complaint to a complaint analyst when received for a determination of legal sufficiency.<sup>225</sup> If sufficient information does not exist to support a violation, a letter will be sent to the complainant explaining that a case will not be opened.<sup>226</sup>

A probable cause panel, consisting of two members of the Florida Real Estate Commission, determines if probable cause exists that a licensee or subject of an investigation violated the *Florida Statutes* pertaining to real estate.<sup>227</sup> The main office of the Real Estate Commission is in Orlando, Florida.<sup>228</sup> Members, including those serving on probable cause panels, may be compensated \$50 per day for attendance at meetings or the conducting of "official" business of the Commission, as defined in the code.<sup>229</sup>

221. Department of Business and Professional Regulation, *Division of Regulation*, at <http://www.myflorida.com/dbpr/reg/index.shtml> (last visited Feb. 7, 2005).

222. *Id.*

223. Division of Real Estate, *Frequently Asked Questions*, at [http://www.myflorida.com/dbpr/re/faq\\_enf\\_new.shtml](http://www.myflorida.com/dbpr/re/faq_enf_new.shtml) (last visited Feb. 7, 2005) [hereinafter *Real Estate FAQs*]. The complaint form itself asks the complainant to properly categorize the problem as either unlicensed activity, escrow deposit, property management, appraisal, or other. Department of Business and Professional Regulation, *Uniform Complaint Form*, at [http://www.myflorida.com/dbpr/dbpr/le\\_portal/dbpr-0070-1.pdf](http://www.myflorida.com/dbpr/dbpr/le_portal/dbpr-0070-1.pdf) (last visited Feb. 7, 2005) [hereinafter *Uniform Complaint Form*]. It also asks to list private attorney information if available. *Id.*

224. *Real Estate FAQs*, *supra* note 223.

225. *Id.*

226. *Id.* The confidential complaint is retained by the Division of Real Estate. *Id.*

227. FLA. ADMIN. CODE R. 61J2-20.009 (2004). The members of the panel are appointed by the chairperson of the Commission, and one panel member may be a former member, rather than a current member, of the Commission. *Id.* If a former member, that person must hold an active real estate license. *Id.*

228. FLA. ADMIN. CODE R. 61J2-20.048.

229. FLA. ADMIN. CODE R. 61J2-20.049.

When an investigation of a complaint is undertaken, the DBPR is required to furnish to the subject a copy of that complaint, and the subject has twenty days in which to submit a written response to that complaint.<sup>230</sup> The panel must consider the response by the subject, but regardless of it, may still have the power to issue an emergency order if warranted in order to protect the public.<sup>231</sup> The complaint will be further investigated by the DBPR and its report submitted to the probable cause panel, including findings and recommendations as to the existence of probable cause.<sup>232</sup> The department may also dismiss a case at any point in the proceedings for insufficient evidence.<sup>233</sup>

As an alternative to the complaint being heard by the probable cause panel, the DBPR may give a licensee, who is the subject of a complaint, a "notice of noncompliance for an initial offense of a minor violation."<sup>234</sup> A minor violation is defined as one that "does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm."<sup>235</sup>

There are twenty such behaviors listed which carry no other penalty, including improper use of a guest lecturer in a course or failure to maintain an office entrance sign.<sup>236</sup> The notice identifies the statute and rule violated, and provides information on how to comply.<sup>237</sup> The subject is given fifteen days from the time of receipt of notice in order to be in compliance; failure to comply may result in a citation.<sup>238</sup> The law requires the DBPR to keep the complainant updated as to probable cause and any other proceedings or appeals.<sup>239</sup>

If there are violations which the Division will hear, and the documentation supports these violations, a case is opened and forwarded to a local Investigative Field Office.<sup>240</sup> Complaints are confidential until the subject of

230. FLA. STAT. § 455.225(1)(b) (2003). These guidelines are not specific to the real estate profession only, rather this applies to the entire Department of Business and Professional Regulation. *See id.* Compare with section 454.021 of the *Florida Statutes*, which delegates the regulation of attorneys to the Supreme Court of Florida. § 454.021.

231. § 455.225(1)(b).

232. § 455.225(2).

233. *Id.* A dismissal may come even after a finding of legal sufficiency. *Id.*

234. § 455.225(3)(a).

235. *Id.*

236. FLA. ADMIN. CODE R. 61J2-24.003(1) (2003).

237. FLA. ADMIN. CODE R. 61J2-24.003(2).

238. *Id.*

239. § 455.225(9).

240. *Real Estate FAQs*, *supra* note 223.



the investigation waives the privilege of confidentiality or ten days after a disciplinary action finding of probable cause.<sup>241</sup>

In cases going to the probable cause panel, a determination as to the existence of probable cause is made by a majority vote.<sup>242</sup> Generally, a panel that requests additional investigative information must make that request within fifteen days of the receipt of the initial report and make its determination within thirty days of that date.<sup>243</sup>

In a situation of a disputed issue of material fact, a formal hearing on the complaint may be heard by an administrative law judge, who issues a recommended order.<sup>244</sup> In addition, the DBPR may have such a judge review any final order by the Board.<sup>245</sup> Mediation may be used to assist the processing of a complaint.<sup>246</sup> Such judicial reviews have recently included appeals from decisions of the Florida Real Estate Commission by brokers having licenses revoked or having been found guilty.<sup>247</sup>

A person operating as a broker or sales associate without a valid active license commits a third degree felony under Florida law, and the Division of Real Estate may refer such situations to the State Attorney.<sup>248</sup> The Florida Real Estate Commission, as a licensing body, may impose various disciplines against its licensees for wrongdoing.<sup>249</sup> It may choose to fine, suspend, revoke licenses, place on probation, or simply reprimand its licensees.<sup>250</sup> The *Florida Statutes* and the *Florida Administrative Code* detail a range of disciplinary guidelines for violations under chapter 475 of the *Flor-*

241. *Id.* The outcome of any action taken against a licensee may be discovered by contacting the DBPR with the correct spelling of the licensee's name. *Id.*

242. § 455.225(4). The *Florida Administrative Code* specifically stated there were two members (not at least two) of a probable cause panel for real estate hearings, which then appears to require a unanimous vote. FLA. ADMIN. CODE R. 61J2-20.009.

243. § 455.225(4). However, extensions may be granted. *Id.*

244. § 455.225(5).

245. § 455.225(7).

246. FLA. ADMIN. CODE R. 61J2-24.004.

247. *Jones v. Dep't of Bus. & Prof'l Regulation*, 873 So. 2d 1266 (Fla. 5th Dist. Ct. App. 2004) (holding that there was no "dishonest dealing by trick, scheme or device" and reversing in part); *Djokic v. Dep't of Bus. & Prof'l Regulation*, Div. of Real Estate, 875 So. 2d 693, 695 (Fla. 4th Dist. Ct. App. 2004) (holding that the Florida Real Estate Commission could not reverse an administrative law judge's finding of not guilty and no violation of statute, reversing the previous finding).

248. § 475.42(1)(a).

249. See Real Estate FAQs, *supra* note 223.

250. *Id.* Restitution to the complainant is not within the power of the board. *Id.* Licensees operating outside of their licensing or employing those who do so may also be punishable. *Id.*

*ida Statutes*.<sup>251</sup> Violations are specifically listed with a recommended range of penalty for each behavior.<sup>252</sup>

The purpose of the specific list of violations, along with their penalties, is to give notice to licensees regarding potential violations.<sup>253</sup> The general "order of penalties, ranging from lowest to highest: is reprimand, fine, probation, suspension, and revocation or denial."<sup>254</sup> In addition to other penalties (combinations are permitted), the commission may place a licensee on probation. Such conditions may include attending or completing a pre-licensure course, attending or completing post-licensure courses, attending continuing education courses, and re-taking the state-issued exam.<sup>255</sup> Other conditions may include periodic inspections, interviews, filing reports, or the changing of a license from broker to broker-salesperson status.<sup>256</sup>

There are thirty-nine separate violations and corresponding penalties listed with their statutory authority, ranging from: failing to properly maintain an office and sign; to have false, deceptive, or misleading advertising; or to be convicted or found guilty of a crime related to real estate.<sup>257</sup> Disciplines may include: 1) suspensions (generally either up to ninety days, ninety days to two years, three to five years, or five years); 2) revocation; and 3) fines of either \$500 or \$1000.<sup>258</sup>

There are additional violations which the Commission can discharge with only a citation, generally consisting of a fine between \$100 to \$500, and possibly including education requirements.<sup>259</sup> There are forty-one such separate citation violations, including: failure to maintain a proper office sign; failure to timely deposit trust funds (if not more than three days late); failure to properly report education to the DBPR; and improper handling of financial matters for clients, such as failing to secure permission of parties before placing trust funds in an interest-bearing account.<sup>260</sup>

Aggravating or mitigating circumstances may change the discipline given, and may include factors such as "[t]he degree of harm to the consumer or public," "[t]he disciplinary history of the [subject]," and the degree of hardship a penalty may have on the subject, among others.<sup>261</sup>

251. § 475.42; FLA. ADMIN. CODE R. 61J2-24.001.

252. FLA. ADMIN. CODE R. 61J2-24.001(3).

253. FLA. ADMIN. CODE R. 61J2-24.001(1).

254. *Id.*

255. FLA. ADMIN. CODE R. 61J2-24.001(2).

256. *Id.*

257. FLA. ADMIN. CODE R. 61J2-24.001(1)(a), (d), (g) (2003).

258. FLA. ADMIN. CODE R. 61J2-24.001(3).

259. FLA. ADMIN. CODE R. 61J2-24.002(2).

260. *Id.*

261. FLA. ADMIN. CODE R. 61J2-24.001(4)(b).



The harshest penalty imposed on a licensee is revocation.<sup>262</sup> Revocation of a licensee is generally permanent, except in certain unusual circumstances.<sup>263</sup>

The disciplines themselves are reported on the DBPR public access websites.<sup>264</sup> By following a link entitled "Disciplinary Action," members of the public may access fully compiled reports by year—dating back to the DBPR year 2000—of discipline information sorted by city, including "name of disciplined professional and a full description of the behavior involved."<sup>265</sup> In addition, the DBPR produces an annual report summarizing the licensee numbers, complaints received, and dispositions of various professions, including real estate.<sup>266</sup> Last, the public may search individual licensees online by name and learn the status of their licenses—including whether they have had their license revoked, or had other discipline imposed on them.<sup>267</sup>

### C. Certified Public Accountants

The discipline process of certified public accountants (CPA) generally begins with a complaint against a Florida CPA. A uniform complaint form is available on line at [www.myfloridalicense.com](http://www.myfloridalicense.com), and contains a contact number at the DBPR Customer Contact Center for assistance in completing the form.<sup>268</sup> The form itself, found through the general licensing pages, rather than at the specific Division of Accountancy page, asks complainants for personal information such as name, company, address, contact information, and a specific question regarding whether this is a complaint regarding unli-

262. *See id.*

263. FLA. ADMIN. CODE R. 61J2-24.005(1).

264. DBPR Home Page, *supra* note 2. Certain aspects of the DBPR website are password protected. *See id.* They are generally specific sites related to license maintenance, renewal and personal information. *Id.*

265. Division of Real Estate, Florida Real Estate Commission: *Disciplinary Activity Reports*, at [http://www.myflorida.com/dbpr/re/freab\\_dar.shtml](http://www.myflorida.com/dbpr/re/freab_dar.shtml) (last visited Feb. 7, 2005) [hereinafter *FREC Disc.*].

266. *Real Estate Appraisal*, *supra* note 62.

267. Department of Business and Professional Regulation, *Licensing Portal-Licensee Search by Name*, at <https://www.myfloridalicense.com/licensing/wl11.jsp?SID=> (last visited Feb. 7, 2005) [hereinafter *Search by Name*].

268. Department of Business and Professional Regulation, *Complaint Filing*, at <https://www.myfloridalicense.com/entercomplaint.asp?SID=> (last visited Feb. 7, 2005).

censed activity.<sup>269</sup> Last, the form allows for the inclusion of a 5000 character complaint description.<sup>270</sup> It may be mailed or submitted online.<sup>271</sup>

The Florida Board of Accountancy is responsible for appointing a probable cause panel to determine whether probable cause exists for a violation of the *Florida Statutes* regarding rules of accountancy.<sup>272</sup> The Florida Accountancy Board consists of nine members, seven of whom are CPAs and two of whom are consumer members.<sup>273</sup>

The Board-appointed probable cause panel is composed of at least three members.<sup>274</sup> One member must be a current Board member and another must be a present or former Board member who must hold an active and valid CPA license.<sup>275</sup> The panel also must contain a former or present consumer member, if available.<sup>276</sup> Any determination of probable cause must be made by a majority vote of the probable cause panel.<sup>277</sup> The Chairman of the Board selects the probable cause panel, and one panelist is selected as presiding officer, who determines the meeting times of the panel.<sup>278</sup> The process of finding probable cause is similar to that of the process for real estate professionals, described above, as they are both under the jurisdiction of the DBPR.<sup>279</sup>

The Board of Accountancy has set forth specific penalty ranges that correspond with specific behavior violating the *Florida Statutes*.<sup>280</sup> Rule 61H1-36.004(2) of the *Florida Administrative Code* lists multiple categories

269. *Uniform Complaint Form*, *supra* note 223. Compare to attorney regulation, which has a different department of the Bar that handles unlicensed practice of law matters. R. REGULATING FLA. BAR 4-5.5 (2004).

270. *Uniform Complaint Form*, *supra* note 223.

271. *Id.*

272. FLA. ADMIN. CODE R. 61H1-19.007 (2003). To be a member of the Florida Board of Accountancy, board members must attend all regularly scheduled meetings (approximately ten per year) and may not be absent without excuse from three consecutive meetings. FLA. ADMIN. CODE R. 61H1-19.006. Excused absences are specifically defined as "illness of the Board member or member of the Board member's family, death of a member of the Board member's immediate family, or natural disaster." FLA. ADMIN. CODE R. 61H1-19.006(1). The terms "family" and "immediate family" are also defined. FLA. ADMIN. CODE R. 61H1-19.006(3)-(4).

273. FLA. STAT. § 473.303(1) (2003).

274. FLA. ADMIN. CODE R. 61H1-19.007(2).

275. *Id.*

276. *Id.*

277. FLA. ADMIN. CODE R. 61H1-19.007(1).

278. FLA. ADMIN. CODE R. 61H1-19.007(3).

279. § 455.225(4).

280. §§ 473.322, .323.



of violations.<sup>281</sup> The following table summarizes the Code's information regarding violations.<sup>282</sup>

Table 1: Disciplining Accountants

Violation	Source (FLA. STAT. or FLA. ADMIN. CODE)	Minimum Penalty	Maximum Penalty
Attempting to procure license by bribery or fraudulent misrepresentation	§ 473.323(1)(b); FLA. ADMIN. CODE R. 61H1-36.004(2)(a).	Revocation and \$5000 fine if licensed; denial of license and refer to State Attorney if not licensed	Not applicable
CPA License disciplined by another jurisdiction	§ 473.323(1)(c); FLA. ADMIN. CODE R. 61H1-36.004(2)(b).	Same penalty as imposed in other jurisdiction or same range of penalties for same violation	Not applicable
Misdemeanor criminal conviction relating to accountancy	§ 473.323(1)(d); FLA. ADMIN. CODE R. 61H1-36.004(2)(c).	Reprimand	Reprimand; \$5000 fine; one (1) year suspension and two (2) years probation
Felony criminal conviction relating to accountancy	§ 473.323(1)(d); FLA. ADMIN. CODE R. 61H1-36.004(2)(c).	One (1) year suspension; two (2) years probation; \$5000 fine	Revocation and \$5000 fine

281. FLA. ADMIN. CODE R. 61H1-36.004(2) (1999). Two recent cases in which the Board of Accountancy was a party were either affirmed without decision or declined to be heard by the Florida appellate courts, and no further information is available on these matters. *Jarkow v. State*, 847 So. 2d 483 (Fla. 4th Dist. Ct. App. 2003) (unpublished table decision); *Buchman v. Dep't of Bus. & Prof'l Regulation*, 819 So. 2d 754 (Fla. 1st Dist. Ct. App. 2002) (unpublished table decision). In previous years, particularly in 1993 and 1994, most published cases regarding the Board of Accountancy dealt with accountant's ability to advertise. *See Ibanez v. State*, 621 So. 2d 435 (Fla. 1st Dist. Ct. App. 1993), *rev'd by Ibanez v. Florida Dept. of Prof'l Regulation*, 512 U.S. 136 (1994); *see also Dep't of Bus. & Prof'l Regulation v. Rampell*, 621 So. 2d 426 (Fla. 1993).

282. FLA. ADMIN. CODE R. 61H1-36.004(2).

Violation	Source (FLA. STAT. or FLA. ADMIN. CODE)	Minimum Penalty	Maximum Penalty
Knowingly making or filing false report	§ 473.323(1)(e); FLA. ADMIN. CODE R. 61H1-36.004(2)(d).	Reprimand; one (1) year probation	Revocation; \$5000 fine
Fraudulent, false, deceptive or misleading advertising	§ 473.323(1)(f); FLA. ADMIN. CODE R. 61H1-36.004(2)(e).	Letter of guidance	Reprimand; one (1) year probation and \$5000 fine
Incompetence (impairment)	§ 473.323(1)(g); FLA. ADMIN. CODE R. 61H1-36.004(2)(f).	Suspension until ability to practice proved followed by probation	Not applicable
Fraud or deceit	§ 473.323 (1)(g), (k); FLA. ADMIN. CODE R. 61H1-36.004(2)(g).	Reprimand; one (1) year suspension; two (2) year probation and \$5000 fine	\$5000 fine and revocation
Negligence or misconduct: technical standards	§ 473.315; FLA. ADMIN. CODE R. 61H1-36.004(2)(h)(1).	Letter of Guidance	Reprimand; one (1) year probation, continuing education, and review of practice at licensee's expense and limited area of practice
Negligence or misconduct: lack of independence	§ 473.315; FLA. ADMIN. CODE R. 61H1-36.004(2)(h)(2).	Reprimand; one (1) year probation with review of practice and continuing education	Reprimand; one (1) year suspension; two (2) year probation and review of practice and continuing education
Negligence or misconduct: commissions and contingent fees	FLA. ADMIN. CODE R. 61H1-21.003, .005; FLA. ADMIN. CODE R. 61H1-36.004(2)(h)(3).	Reprimand	One (1) year suspension; two (2) years probation; \$5000 fine



Violation	Source (FLA. STAT. or FLA. ADMIN. CODE)	Minimum Penalty	Maximum Penalty
Negligence or misconduct; client records disposition	FLA. ADMIN. CODE R. 61H1-23.002; FLA. ADMIN. CODE R. 61H1-36.004(2)(h)(4).	Letter of guidance	Suspension until records are returned
Solicitation	§ 473.323(1)(i); FLA. ADMIN. CODE R. 61H1-36.004(2)(l).	Letter of guidance	Reprimand; one (1) year probation; \$5000 fine; and one (1) year suspension
Practicing on suspended or revoked license	§ 473.323(1)(l); FLA. ADMIN. CODE R. 61H1-36.004(2)(j).	Revoke if previously suspended, refer to State Attorney if previously revoked	Not applicable
Practicing on inactive license	§ 473.323(1)(l); FLA. ADMIN. CODE R. 61H1-36.004(2)(k).	Reprimand and fine based on length of time in practice while inactive; \$100 per month or \$5000 maximum (will require licensure or cease practice)	Not applicable
Licensees practicing in an unlicensed firm	§ 473.309; § 473.3101; § 473.323(1)(g); FLA. ADMIN. CODE R. 61H1-36.004(2)(l).	Reprimand and \$100 per month fine to maximum of \$5000 and suspension of right to practice until corrected	Not applicable
Suspension of right to practice in front of any state or federal agency	§ 473.323(1)(j); FLA. ADMIN. CODE R. 61H1-36.004(2)(m).	Same penalty as imposed by agency or imposition of same range as those set forth in those rules for type of violation	Not applicable
Lack of good moral character	§ 473.323(1)(l); FLA. ADMIN. CODE R. 61H1-36.004(2)(n).	Reprimand and one (1) year probation	Revocation

Violation	Source (FLA. STAT. or FLA. ADMIN. CODE)	Minimum Penalty	Maximum Penalty
Failure to pay fines or administrative costs imposed by final order or citations	§ 473.323(1)(l), (m); FLA. ADMIN. CODE R. 61H1-36.004(2)(o).	\$100 per month late fee for every month licensee is late to max of \$5000	Revocation

Once these penalties have been assessed by the Board, the public is able to access information about them. One way is through the exact same annual report, which summarizes the real estate profession, created by the DBPR annually in accordance with its fiscal year ending June 30.<sup>283</sup> A second way is to search individually for a particular licensee by name to determine that person's discipline status and history.<sup>284</sup>

D. Comparing and Contrasting Fiscal Professional Discipline

The first major difference in the discipline of these fiscal professionals in Florida is in the certainty of discipline for a particular action. The rules governing attorney behavior include broad categories of actions, with room for interpretation for particular circumstances. In contrast, both real estate professionals and certified public accountants are pre-noticed with a specific list of behaviors and specific penalties imposed for those behaviors.<sup>285</sup> The difference is two-fold—first in the notice to a potential violator and second in the amount of discretion given to a particular body imposing discipline. All three systems involve initial boards, made up of diverse members and non-members of the profession initially reviewing a behavior for discipline, and do allow for mitigating circumstances that may ultimately affect the final disposition.<sup>286</sup>

283. Department of Business and Professional Regulation, *Annual Reports & Long Range Program Plan*, at <http://www.myflorida.com/dbpr/os/ospubs/index.shtml> (last visited Feb. 7, 2005) (linking to individual reports) [hereinafter *Long Range Program Plan*].

284. *Search by Name*, *supra* note 267.

285. FLA. ADMIN. CODE R. 61J2-24.001(1) (2000); FLA. ADMIN. CODE R. 61H1-36.004(1) (2003).

286. R. REGULATING FLA. BAR. 3-3.4(c) (2004); FLA. STDS. IMPOSING LAW. SANCS. 9.31 (2004).



A second difference in evaluating these three systems of discipline is the ultimate manner in which the discipline is finalized. In professions regulated by the DBPR, disciplines are generally decided by a board, with an administrative law judge either recommending an order or reviewing a final order. By contrast, judges in attorney cases serve as initial "referees" recommending discipline,<sup>287</sup> with ultimate discipline being ordered by the highest court of the state, and thus becoming part of the legal system in which the attorney operates.<sup>288</sup>

A third difference is a program that attorneys have put into place to "pre-handle" potential attorney grievances.<sup>289</sup> In an effort to reduce the number of improper grievances brought before the Bar, a consumer assistance program was put into place three years ago to assist consumers with complaints.<sup>290</sup> While the real estate and certified public accountant professions are under the umbrella of the already consumer-friendly DBPR, with help lines available, no such specific program has been deemed necessary to assist the consumer in properly resolving problems with these professions. Statistics discussed in Part IV of this article may illuminate the Bar's need for such a program.

A fourth difference is the manner in which unauthorized practice claims are handled. The same disciplinary body which deals with license violations also handles complaints of unlicensed activity for DBPR, treating unlicensed activity as a consumer fraud issue.<sup>291</sup> The real estate complaint form even specifically provides for a place to indicate that complaint subject.<sup>292</sup> The public on-line information for DBPR even allows for searches of complaints against persons or organizations that were not DBPR-licensed.<sup>293</sup> By contrast, the information about the "unlicensed practice of law" appears in the "regulation" section of The Florida Bar website, rather than the consumer services information, and has a separate complaint sent to a department created to monitor this problem specifically.<sup>294</sup>

287. R. REGULATING FLA. BAR 3-7.6.

288. See R. REGULATING FLA. BAR 3-7.7.

289. *New Bar Program* *supra* note 179.

290. *Id.*

291. Department of Business and Professional Regulation, *Don't Be a Victim of Unlicensed Activity*, at [http://www.state.fl.us/dbpr/os/communications\\_office/unlicensed\\_activity/dont\\_be\\_a\\_victim.doc](http://www.state.fl.us/dbpr/os/communications_office/unlicensed_activity/dont_be_a_victim.doc) (last visited Feb. 7, 2005) [hereinafter *Don't Be a Victim*].

292. *Uniform Complaint Form*, *supra* note 223.

293. *Don't Be a Victim*, *supra* note 291.

294. The Florida Bar, *Law Practice Regulation*, at <http://www.flabar.org/tfb/TFBLawReg.nsf/e0f40af2c23904c785256709006a3713/12e6c80e88ba08fd85256b2f006c9d15?OpenDocument> (last visited Feb. 7, 2005).

A fifth comparison may be made in the diversion from the probable cause panel provided for in the real estate complaint system. Certain violations by real estate professionals are considered so technical that an administrative notice and order to comply may be directly issued rather than the violation being heard for substance. In contrast, the attorney system provides for a minor misconduct result but not process,<sup>295</sup> while the accountant system focuses on more major penalties.<sup>296</sup>

One sharp difference between the professions regulated by the DBPR and the self-regulated attorney system is the ability to fine the licensed professional for violations. Both the real estate and accountant professions provide specifically for fines, in some cases up to \$5000 for some accountancy violations to be paid by the disciplined professional as part of the discipline imposed.<sup>297</sup> By contrast, fines are not regularly part of the attorney discipline process.<sup>298</sup>

A final distinction among the professions is the public's access to information. The real estate profession, through the DBPR, has been most forthcoming with information, including both an annual detailed report as well as a searchable index for licensed professionals. To learn about discipline regarding a certified public accountant, only general information regarding totals may be gleaned from the annual report, but an individual may be searched, showing the DBPR does not require the same information among different regulated professions. Those interested in attorney discipline also may search individual names or look at a numerical report, but also may peruse individual information about attorneys and their disciplines, although sorted by date and not by name or location.

#### V. STATISTICS REGARDING LICENSING, COMPLAINTS, AND DISCIPLINE IN THE ACCOUNTANCY, ATTORNEY, AND REAL ESTATE PROFESSIONS

The following information is gathered from two different kinds of sources.<sup>299</sup> The first source is the official reports released by the governing

295. R. REGULATING FLA. BAR 3-5.1(b).

296. FLA. ADMIN. CODE R. 61H1-36.004 (2003).

297. See generally FLA. ADMIN. CODE R. 61J2-24.001(1); FLA. ADMIN. CODE R. 61H1-36.004(1).

298. *Complaint Against a Florida Lawyer*, *supra* note 176. There are some instances where attorneys may be required to pay restitution for specific misdeeds, and a client recovery fund is available under The Florida Bar to assist in certain client compensation situations. *Id.* See also FLA. STDS. IMPOSING LAW. SANCS. 2.1-.8 (2004).

299. The author is not a trained statistician; all information was hand-tabulated and percentages rounded on a traditional +/- .5 basis.



body, either the DBPR<sup>300</sup> or The Florida Bar.<sup>301</sup> Each regulatory body has produced certain kinds of office information available to the public for the past several years; however, the information type has not been consistent through the years, even from the same organization. This information is presented in accord with the agency's fiscal year, which is a July 1 to June 30 year for both the DBPR and The Florida Bar.<sup>302</sup> The second type of information used is compiled from general public records published regarding the discipline of each professional where available.<sup>303</sup> The information gathered from these sources does not come from an official report of the agency, but rather was tabulated from various reports listing, and/or describing, disciplines throughout a year.<sup>304</sup> Information about the nature of those disciplines was extrapolated from the published reports.<sup>305</sup> Each table or set of tables will indicate from which source the information was procured.

A. Licensees in Florida

The published annual reports of both the Department of Business and Professional Regulation and The Florida Bar list the total number of licensees being regulated in Florida.<sup>306</sup>

Table 2: Total Licensees

Profession	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003
Accountancy (includes firms) <sup>307</sup>	25,392 <sup>308</sup>	25,872 <sup>309</sup>	32,119 <sup>310</sup>	33,024 <sup>311</sup>	31,471 <sup>312</sup>	32,336 <sup>313</sup>	35,016 <sup>314</sup>

300. See *Long Range Program Plan*, *supra* note 283.  
301. *Bar Disciplinary Statistics*, *supra* note 218.  
302. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.  
303. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.  
304. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.  
305. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.  
306. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.

Profession	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003
Attorneys <sup>315</sup>	56,379	58,108	59,741	61,014	62,722	62,999	72,933 <sup>316</sup>

307. See *Long Range Program Plan*, *supra* note 283. The DBPR annual report included all accountant licensees through 1996-97; starting in 1997-98 active licensees were designated.  
308. FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, 1996-1997 ANNUAL REPORT 60, <http://www.myflorida.com/dbpr/os/ospubs/ar9697.pdf> (last visited Feb. 7, 2005) [hereinafter 1996-1997 REPORT]. This number shown represents the number of active licenses.  
309. FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, 1997-1998 ANNUAL REPORT 60, <http://www.myflorida.com/dbpr/os/ospubs/ar9798.pdf> (last visited Feb. 7, 2005) [hereinafter 1997-1998 REPORT]. This number shown represents licenses.  
310. FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, INSIDE DBPR FISCAL YEAR 1998-1999 22, <http://www.myflorida.com/dbpr/os/ospubs/ar9899.pdf> (last visited Feb. 7, 2005) [hereinafter 1998-1999 REPORT]. This number shown represents total accountancy.  
311. FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, 1999-2000 ANNUAL REPORT 22, <http://www.myflorida.com/dbpr/os/ospubs/ar9900.pdf> (last visited Feb. 7, 2005) [hereinafter 1999-2000 REPORT].  
312. DIVISION OF PROFESSIONS, REAL ESTATE AND CERTIFIED ACCOUNTANCY, 2000-2001 ANNUAL REPORT 7, <http://www.myflorida.com/dbpr/os/ospubs/ar0001.pdf> (last visited Feb. 7, 2005) [hereinafter 2000-2001 REPORT]. This number shown represents total accountancy.  
313. DIVISION OF PROFESSIONS, REAL ESTATE AND CERTIFIED ACCOUNTANCY, 2001-2002 ANNUAL REPORT 7, <http://www.myflorida.com/dbpr/os/ospubs/ar0102.pdf> (last visited Feb. 7, 2005) [hereinafter 2001-2002 REPORT].  
314. DIVISION OF PROFESSIONS, REAL ESTATE AND CERTIFIED ACCOUNTANCY, 2002-2003 ANNUAL REPORT 7, [http://www.myflorida.com/dbpr/os/ospubs/ar\\_0203.pdf](http://www.myflorida.com/dbpr/os/ospubs/ar_0203.pdf) (last visited Feb. 7, 2005) [hereinafter 2002-2003 REPORT].  
315. *Bar Disciplinary Statistics*, *supra* note 218. The Florida Bar information indicates that the membership figure for The Florida Bar began including inactive status beginning in 2002-2003.  
316. The Florida Bar information indicates that the membership figure now includes total migs (members in good standing) and inactive status.



Profession	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003
Real Estate Commission (includes corporations, schools) <sup>317</sup>	B: 49,135 <sup>318</sup>	B: 56,023 <sup>319</sup>	267,006 <sup>320</sup>	266,382 <sup>321</sup>	215,287 <sup>322</sup>	227,015 <sup>323</sup>	249,871 <sup>324</sup>
	S: 100,651 <sup>325</sup>	S: 141,022 <sup>326</sup>					

First, the numbers of those being regulated under the Real Estate Commission is far greater than those of accountancy or attorneys, as all corporations, organizations, and schools involved in the real estate profession are reported together under one figure in the DBPR annual report.<sup>327</sup> It is not possible to extrapolate only the number of sales associates and/or broker licensees, and thus it is difficult to examine the comparative effect that these licensing agencies have on individuals.

Second, the manner in which licensees are reported has shifted through the years.<sup>328</sup> A consumer of these professional services, keeping a watch on

317. See *Long Range Program Plan*, *supra* note 283. The DBPR included all real estate licensees regardless of status but distinguished between brokers (B) and sales associates (S) in its annual report through the 1997-98 year. After that, only active real estate licensees were designated without distinction of the category.

318. 1996-1997 REPORT, *supra* note 308, at 62. This number shown represents the number of active licenses.

319. 1997-1998 REPORT, *supra* note 309, at 62. This number shown represents licenses.

320. 1998-1999 REPORT, *supra* note 310, at 22. This number shown represents total real estate commission.

321. 1999-2000 REPORT, *supra* note 311, at 22. This number shown represents total real estate commission.

322. 2000-2001 REPORT, *supra* note 312, at 7. This number shown represents total real estate commission.

323. 2001-2002 REPORT, *supra* note 313, at 8. This number shown represents total real estate commission.

324. 2002-2003 REPORT, *supra* note 314, at 6. This number shown represents total real estate commission.

325. 1996-1997 REPORT, *supra* note 308, at 62. This number shown represents the number of active licenses.

326. 1997-1998 REPORT, *supra* note 309, at 62. This number shown represents licenses.

327. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.

328. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.

licensees, would have to carefully note the differences in what was reported—active licensees only or all licensees, individuals or individuals and companies. No explanations are given in any of the reports as to why the reporting methods have changed.<sup>329</sup>

B. *Complaints Against Licensees Received/Probable Cause Found*

Each agency has produced an annual report detailing the number of complaints received (from The Florida Bar, files opened) by that regulatory body.<sup>330</sup> In addition, the DBPR also includes within its annual report the number of these complaints in which probable cause was found through its regulation system.<sup>331</sup>

Table 3: Total Complaints Received Against Licensed Professionals (Files Opened for Attorneys/Probable Cause Found) (not available for Attorneys)<sup>332</sup>

Profession	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003
Accountancy	249 <sup>333</sup> / 199 <sup>334</sup>	299 <sup>335</sup> / 298 <sup>336</sup>	290 <sup>337</sup> / 56 <sup>338</sup>	216 <sup>339</sup> / 53 <sup>340</sup>	279 <sup>341</sup> / 108 <sup>342</sup>	234 <sup>343</sup> / 92 <sup>344</sup>	249 <sup>345</sup> / 59 <sup>346</sup>

329. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.

330. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.

331. See *Long Range Program Plan*, *supra* note 283.

332. The data for Accountancy and Real Estate Commission from 1996 to 1998 references total complaints received and legally sufficient complaints. After 1998 data for Accountancy and Real Estate Commission references total complaints received and complaints for which probable cause was found. The data for Attorneys references complaint files opened.

333. 1996-1997 REPORT, *supra* note 308, at 64.

334. *Id.*

335. 1997-1998 REPORT, *supra* note 309, at 64.

336. *Id.*

337. 1998-1999 REPORT, *supra* note 310, at 13.

338. *Id.* at 14.

339. 1999-2000 REPORT, *supra* note 311, at 22.

340. *Id.*

341. 2000-2001 REPORT, *supra* note 312, at 8.

342. *Id.* at 9.

343. 2001-2002 REPORT, *supra* note 313, at 9.

344. *Id.* at 10.

345. 2002-2003 REPORT, *supra* note 314, at 7.

346. *Id.* at 8.



Profession	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003
Attorneys <sup>347</sup>	9,436	9,317	9,101	9,491	9,280	8,691	8,671
Real Estate-Commission <sup>348</sup> (includes corporations, schools)	B: 5,403 <sup>349/</sup> 4,226 <sup>350</sup>	B: 6,358 <sup>351/</sup> 5,117 <sup>352</sup>	7,611 <sup>353/</sup> 469 <sup>354</sup>	4,918 <sup>355/</sup> 593 <sup>356</sup>	5,123 <sup>357/</sup> 490 <sup>358</sup>	4,246 <sup>359/</sup> 316 <sup>360</sup>	4,826 <sup>361/</sup> 360 <sup>362</sup>

The first notable figure is the number of accountancy complaints versus the number of complaints against attorneys. Approximately twice the number of attorney licenses have been issued, yet more than *thirty* times the number of complaints have been filed.<sup>363</sup> Although the overall number of complaints against attorneys is decreasing, the number is still far greater than in either of the other fields.<sup>364</sup>

A second figure to look at is the number of files in which probable cause was found compared to the total number filed. In accountancy, the number of files with probable cause have been steadily decreasing from approximately a little more than one-third of the grievances filed down to one-fourth.<sup>365</sup> In some years, only one complaint was not found to have probable cause, while by comparison, the real estate complaints with probable cause are a small fraction of the total number of complaints filed. The reasons for

347. *Bar Disciplinary Statistics*, *supra* note 218.  
348. See *Long Range Program Plan*, *supra* note 283. The DBPR distinguished between brokers and sales associates in their annual report through the 1997-98 report. *Id.*  
349. 1996-1997 REPORT, *supra* note 308, at 66.  
350. *Id.*  
351. 1997-1998 REPORT, *supra* note 309, at 66.  
352. *Id.*  
353. 1998-1999 REPORT, *supra* note 310, at 13.  
354. *Id.* at 14.  
355. 1999-2000 REPORT, *supra* note 311, at 20.  
356. *Id.*  
357. 2000-2001 REPORT, *supra* note 312, at 8.  
358. *Id.* at 9.  
359. 2001-2002 REPORT, *supra* note 313, at 9.  
360. *Id.* at 10.  
361. 2002-2003 REPORT, *supra* note 314, at 7.  
362. *Id.* at 8.  
363. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.  
364. *Bar Disciplinary Statistics*, *supra* note 218.  
365. See *Long Range Program Plan*, *supra* note 283.

this discrepancy are unknown. It is possible this gap is due to the actual number of clients these respective professions typically handle. Accountants tend to work with fewer large projects or with fewer individual clients with sophisticated fiscal needs. In contrast, real estate professionals often deal with numerous individuals in many transactions.<sup>366</sup>

C. Dispositions of Disciplinary Files

Beginning in 1998, the DBPR began reporting the numbers of dispositions that each board accomplished in that fiscal year.<sup>367</sup> In the DBPR reports, a disposition only means that a file was closed, not that a particular discipline, if any, was imposed.<sup>368</sup> Attorney final orders connote a discipline ordered.<sup>369</sup>

Table 4: Dispositions of Disciplinary Files  
(Final Orders of Discipline for Attorneys)

Profession	1998-1999 <sup>370</sup>	1999-2000 <sup>371</sup>	2000-2001 <sup>372</sup>	2001-2002 <sup>373</sup>	2002-2003 <sup>374</sup>
Accountancy	38	17	40	35	65
Attorneys	403	391	472	414	384
Real Estate Commission (includes corporations, schools)	1229	687	297	384	416

D. Gender and Disciplines Ordered

On the public websites for both the DBPR and The Florida Bar, the public may read individual descriptions of disciplines meted out by the re-

366. Career Web School, *Significant Points*, at <http://www.careerwebschool.com/Florida-real-estate/florida-real-estate-education-career-info.html> (last visited Feb.7, 2005) [hereinafter *Significant Points*].  
367. See *id.*  
368. See *id.*  
369. *Bar Disciplinary Statistics*, *supra* note 218.  
370. 1998-1999 REPORT, *supra* note 310, at 13; *Bar Disciplinary Statistics*, *supra* note 218.  
371. 1999-2000 REPORT, *supra* note 311, at 20; *Bar Disciplinary Statistics*, *supra* note 218.  
372. 2000-2001 REPORT, *supra* note 312, at 8; *Bar Disciplinary Statistics*, *supra* note 218.  
373. 2001-2002 REPORT, *supra* note 313, at 9; *Bar Disciplinary Statistics*, *supra* note 218.  
374. 2002-2003 REPORT, *supra* note 314, at 7; *Bar Disciplinary Statistics*, *supra* note 218.



spective disciplinary bodies.<sup>375</sup> The Florida Bar publishes a paragraph-long narrative about each final order of discipline from the Supreme Court of Florida.<sup>376</sup> The Division of Real Estate has a direct link to a calendar year-long compilation of descriptive narratives regarding discipline, sorted by city of the licensee, licensee name, and a full description of the discipline ordered.<sup>377</sup> Through reading these individual narratives, Table 5 was compiled for the three years available in full to the public.

Table 5: Total Disciplines Designated by Gender/Percentage of Disciplined Licensees by Gender for Years 2000-2002.<sup>378</sup>

Year: 2000

Professions	Disciplines in Report	Male/Female <sup>379</sup>	Percentage Male/Female
Attorneys	250	221/29	88%/12%
Real Estate	271	170/85	63%/31%

Year: 2001

Professions	Disciplines in Report	Male/Female	Percentage Male/Female
Attorneys	281	242/39	86%/14%
Real Estate	221	145/60	66%/27%

Year: 2002

Professions	Disciplines in Report	Male/Female	Percentage Male/Female
Attorneys	217	188/24	87%/11%

375. FREC Disc., *supra* note 265; Fla. Bar News Releases, *supra* note 219.

376. Fla. Bar News Releases, *supra* note 219.

377. FREC Disc., *supra* note 265.

378. Florida Real Estate Commission, 2002 Disciplinary Activity Reports, available at [http://www.state.fl.us/dbpr/re/publications/frec/DARs/2002/frec\\_dar\\_2002.pdf](http://www.state.fl.us/dbpr/re/publications/frec/DARs/2002/frec_dar_2002.pdf) (last visited Feb. 7, 2005); Florida Real Estate Commission, 2001 Disciplinary Activity Reports, available at [http://www.state.fl.us/dbpr/re/publications/frec/DARs/2001/frec\\_dar\\_2001.pdf](http://www.state.fl.us/dbpr/re/publications/frec/DARs/2001/frec_dar_2001.pdf) (last visited Feb. 7, 2005); Florida Real Estate Commission, 2000 Disciplinary Activity Reports, available at [http://www.state.fl.us/dbpr/re/publications/frec/DARs/2000/frec\\_dar\\_2000.pdf](http://www.state.fl.us/dbpr/re/publications/frec/DARs/2000/frec_dar_2000.pdf) (last visited Feb. 7, 2005). There are no published reports available to the public to read individual accountancy disciplines by name.

379. For Table 5, years 2000 through 2002, any discrepancy in gender split against total results from the inability to determine a certain person's gender.

Professions	Disciplines in Report	Male/Female	Percentage Male/Female
Real Estate	235	157/56	67%/24%

There is a clear difference in the numbers of men and women being disciplined in these two professions. It is clear that in the legal field in Florida, men are being disciplined at a far greater rate than women.<sup>380</sup> It was posited previously in regard to this data that the source of this discrepancy can be linked to data indicating that more disciplines also are ordered on attorneys with more than ten or even twenty years of experience.<sup>381</sup> In addition, with women having entered the legal profession in small numbers over many years, a critical mass of women has not yet reached the level of responsibility in which most attorneys are at risk for discipline.<sup>382</sup>

By contrast, due to different levels of education required for licensing, combined with the lifestyle flexibility available to those in the real estate profession, it is likely that large numbers of women have been a part of the real estate business for many years, thus increasing the overall likelihood that women will be involved in business.<sup>383</sup> Second, the real estate business is not structured in terms of levels of responsibility in the same manner as law firms.<sup>384</sup> While a new attorney in certain legal structures may work under the guidance and supervision of more senior attorneys for many years without dealing directly with clients (and thus unlikely to be the subject of a complaint),<sup>385</sup> real estate sales associates, due to the nature of their work, deal directly with individual clients right away.<sup>386</sup> Although they work under the structure of real estate brokers, different responsibilities fall to each licensed group, and each licensed group is subject to complaints related to the work associated with that licensee's responsibility.<sup>387</sup> Therefore, due to the nature of this work, no person working in the real estate profession is immune from complaints.

380. Curtis & Kaufman, *supra* note 3, at 691-95.

381. *Id.*

382. *Id.* In this article, it was clear from a longer range view of the data that the percentage of women being disciplined is rising in Florida. *Id.*

383. See *Significant Points*, *supra* note 366.

384. *Id.*

385. Curtis & Kaufman, *supra* note 3, at 693 n.151.

386. *Id.*

387. *Id.*



E. Categories of Discipline Ordered

In examining which types of discipline were ordered within each professional regulatory organization, the quirk of information being presented for some period of time and then no longer being presented in the annual report was particularly noticeable.<sup>388</sup> Table 6 looks in detail at some of the different kinds of discipline ordered by each regulatory body from official annual reports, from 1997 through 2000.<sup>389</sup> Once that format changed and the information was no longer presented in summary form, the information in Table 7 became available: a composition of extrapolated data from the individual descriptions of the disciplines ordered on the same subject.<sup>390</sup> It also is important to note that from reviewing individual reports of real estate licensee discipline, those under the real estate system may be given more than one category of discipline at a time, so that one behavior can generate numbers in multiple categories.<sup>391</sup> By contrast, the categories of discipline are generally exclusive in the attorney system, which results in a total count in each category of discipline equaling, but not exceeding, the total number of disciplines in real estate.<sup>392</sup>

388. See *Long Range Program Plan*, *supra* note 283.  
389. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.  
390. *Bar Disciplinary Statistics*, *supra* note 218. See *Long Range Program Plan*, *supra* note 283.  
391. See *Long Range Program Plan*, *supra* note 283.  
392. *Bar Disciplinary Statistics*, *supra* note 218.

Table 6: Annual Report Summaries of Selected Disciplines Ordered 1997-2000

Year: 1997-1998

Profession	Total Disciplines Given <sup>393</sup>	Disbar/ Revoke	Suspend	Probation	Voluntary Surrender /Resign <sup>394</sup>
Accountant	40	6	6	14	N/a
Attorney <sup>395</sup>	417	32	150	73	38
Real Estate	977	105	36	54	N/a

Year: 1998-1999

Profession	Total Disciplines Given	Disbar/ Revoke	Suspend	Probation	Voluntary Surrender /Resign
Accountant	29	0	6	3	3
Attorney	403	29	144	71	44
Real Estate	1024	109	37	68	55

Year: 1999-2000

Profession	Total Disciplines Given	Disbar/ Revoke	Suspend	Probation	Voluntary Surrender /Resign
Accountant	16	2	2	5	0
Attorney	391	35	132	93	30
Real Estate	521	52	45	89	18

393. Even when the format of the report remained constant, certain information was not presented in certain years. Some figures were not explicit within the annual report, but calculated from other information within it.  
394. The DBPR titles this category as "Voluntary Relinquishment" while The Florida Bar titles them "Disciplinary Resignations."  
395. The Florida Bar presents this information through the present in official report form. However, for comparison purposes with the other professions, extrapolated data is used post-2000.



Table 7: Data Assembled from Individual Reports Regarding Selected Disciplines Ordered 2000-2002

Year: 2000

Profession <sup>396</sup>	Total Disciplines Given	Disbar/ Revoke	Suspend	Probation	Voluntary Surrender /Resign
Attorney	250	38	129	11	25
Real Estate	271	41	54	95	37

Year: 2001

Profession	Total Disciplines Given	Disbar/ Revoke	Suspend	Probation	Voluntary Surrender /Resign
Attorney	281	29	148	10	31
Real Estate	221	21	68	56	38

Year: 2002

Profession	Total Disciplines Given	Disbar/ Revoke	Suspend	Probation	Voluntary Surrender /Resign
Attorney	217	31	101	4	29
Real Estate	284	38	57	119	25

396. There are two sources of information on attorney discipline available from The Florida Bar. The first source is a statistical chart based on fiscal year totals of the numbers of disciplines, totaled by year and category and cost of discipline, available at [www.floridabar.org](http://www.floridabar.org). However, The Florida Bar also publishes individual reports, in paragraph form, on each discipline, which are available either on the same website, or in print through *The Florida Bar News*. Information about the discipline of real estate professionals is also available through an organized statistical chart published by the Department of Business and Professional Regulation, as well as through a report compiling the individual reports, in paragraph form, on each discipline in this profession. As the statistical charts created by each licensing agency do not provide clear correlating information, Table 7 was created by researching the individual paragraphs on attorney discipline for these calendar years (not published in compilation by The Florida Bar), and comparing those figures with the individual paragraphs as published in compilation form by the Department of Business and Professional Regulation. The individual attorney reports, however, do not explicitly match the statistical chart published on The Florida Bar website (due to time period differences and gaps between the total disciplines from that statistical chart) with those actually published in detailed form. Therefore, the figures for attorney discipline represent what a member of the public would extrapolate from reading only individual reports of attorneys, as well as reading individual reports about Real Estate professionals, but not necessarily the exact figures as published by The Florida Bar.

While the low total number of accountancy disciplines yields no unusual breakdown as among disciplines, an interesting contrast is seen between the attorney system and real estate system. Despite the higher number of total disciplines given in the real estate system, the number of those with certain categories of disciplines is not always higher, or in proportion to the greater number of total disciplines.<sup>397</sup> In the years examined, attorneys who were disciplined were far more likely to be suspended than real estate licensees.<sup>398</sup> In all years, the total numbers of licensees in each group who were disbarred or had their license(s) revoked were in closer proportion to the total disciplines given.<sup>399</sup> The number of licensees who received probation is very close between professions, despite the discrepancies in total disciplines for the first three years, with the numbers of attorneys on probation decreasing and the number of real estate professionals on probation increasing.<sup>400</sup> Although disciplines are given similar names and effect among these professions, the discipline systems order them in different quantities.

The difference between the end results of discipline may be related to the structure of how disciplines may be ordered. The real estate system, working from the DBPR, provides a specific list of violations with penalties—so within a factual interpretation of the situation, the discipline category has been predetermined.<sup>401</sup> By contrast, the attorney rules are written more open-ended, allowing discipline categories to be determined in each specific factual situation.<sup>402</sup> Second, the real estate system allows more than one discipline to be imposed, the most common example being probation and suspension being ordered together, along with a fine.<sup>403</sup> By contrast, the judge acting as referee in examining a lawyer's factual circumstances must choose to recommend only one discipline category.<sup>404</sup>

The number of professionals on probation presented the most striking changes through the years examined.<sup>405</sup> One explanation for the rising number of real estate professionals on probation simultaneous to the sinking number of attorneys on probation is the real world consequence of the discipline ordered. When a real estate professional is put on probation, a probation may be ordered to follow a suspension, and is usually accompanied by a

397. See Tables 6 & 7.

398. *Id.*

399. *Id.*

400. *Id.*

401. FLA. STAT. § 475.25 (2003).

402. See FLA. STDS. IMPOSING LAW. SANCS. 3.0 (2004).

403. § 475.25(1).

404. See FLA. STDS. IMPOSING LAW. SANCS. preface.

405. See *id.*; Table 7.



fine as well as an additional educational requirement.<sup>406</sup> By contrast, attorneys put on probation are subject to no other levels of discipline, other than potentially being ordered to complete additional educational requirements.<sup>407</sup> In short, because of the “one discipline” nature of the system, an attorney on probation suffers little professional consequence, and thus the “punishment” may be falling out of favor within the disciplinary body.

F. *Discipline by Geographic Location*

Table 8 examines certain selected counties within Florida for the total number of disciplines ordered. This geographic information was extrapolated from the individual listing, which the DBPR emphasizes, as it sorts the individual discipline listings first by year and then by city.<sup>408</sup> The counties examined were selected as some of the major population centers, though certainly not all of them, within Florida.

Table 8: Disciplines Ordered by Florida County (Selected)

Year: 2000							
Profession	Broward	Hills-boro	Leon	Miami-Dade	Orange	Palm Beach	Pinellas
Attorney	27	13	6	64	13	19	22
Real Estate	21	10	1	53	28	21	8

Year: 2001							
Profession	Broward	Hills-boro	Leon	Miami-Dade	Orange	Palm Beach	Pinellas
Attorney	40	21	5	72	10	1	21
Real Estate	32	11	1	31	14	26	13

Year: 2002							
Profession	Broward	Hills-boro	Leon	Miami-Dade	Orange	Palm Beach	Pinellas
Attorney	24	8	7	52	11	23	9
Real Estate	39	9	3	45	15	26	12

406. See § 475.25(1).  
407. FLA. STDS. IMPOSING LAW. SANCS. 2.7.  
408. See FREC Disc., *supra* note 265.

In counties with a high population, there are higher numbers of disciplines in both the attorney and real estate professions.<sup>409</sup> The South Florida tri-county area of Broward County, Miami-Dade County and Palm Beach County contain high levels of the general population and is likely to employ high numbers of service professionals as well.<sup>410</sup> However, the other counties examined show no pattern of connecting disciplined professionals with geographic location. For example, Hillsborough County, in which Tampa is located, in one year examined has slightly more attorneys disciplined than real estate professionals.<sup>411</sup> In a second year examined, the number of attorneys disciplined was approximately two times that of real estate professionals.<sup>412</sup> In the third year, the numbers were nearly equal.<sup>413</sup>

G. *Overall Licensees Disciplined*

One last look at the accountant, attorney, and real estate professions is an evaluation of the overall profession and how many disciplines are being ordered in each. Table 9 examines the total licensees and total disciplines in each year as reported in the agency’s annual reports, and calculated the percentage of disciplines as to licensees. There are two important notes to these figures. The first is that while throughout this entire table, the total licensees of the two DBPR professions is calculated on the total licensees, active and inactive.<sup>414</sup> However, The Florida Bar, as noted in Table 2, only reported *active* licensees up until the 2002-2003 year.<sup>415</sup> As a result, comparison percentages are affected. The second point of data is that in the real estate profession, more than one discipline may be ordered to one licensee—thus, the column reflecting the total disciplines is actually the number of disciplines, not exactly the number of licensees.

409. Curtis & Kaufman, *supra* note 3, at 694.  
410. See *id.* at 699–701.  
411. Curtis & Kaufman, *supra* note 3, at 697; see FREC Disc., *supra* note 265.  
412. *Id.*; see FREC Disc., *supra* note 265.  
413. *Id.*; see FREC Disc., *supra* note 265.  
414. See Long Range Program Plan, *supra* note 283.  
415. Bar Disciplinary Statistics, *supra* note 218.



Table 9: Total Licensees, Disciplines and Percentages of Discipline

Year: 1997-1998

Professions	Total Licensees	Total Disciplines <sup>416</sup>	Percentage of Disciplines
Accountancy	25,392	40	.16%
Attorneys	58,108	417	.72%
Real Estate	197,045	977	.50%

Year: 1998-1999

Professions	Total Licensees	Total Disciplines	Percentage of Disciplines
Accountancy	28,687	29	.10%
Attorneys	59,741	403	.67%
Real Estate	165,585	1024	.62%

Year: 1999-2000

Professions	Total Licensees	Total Disciplines	Percentage of Disciplines
Accountancy	28,607	16	.06%
Attorneys	61,014	391	.64%
Real Estate	168,244	521	.31%

Year: 2000-2001

Professions	Total Licensees	Total Disciplines <sup>417</sup>	Percentage of Disciplines
Accountancy	31,471	40	.13%
Attorneys	62,722	472	.75%
Real Estate	215,287	297	.14%

416. The 1997-1998 annual report by the DBPR does not explicitly state the total disciplines, however this number was extrapolated from other information given.

417. The annual report format of the DBPR changed beginning in 2000. Rather than reporting the "total disciplines," the report states "Disposition of Disciplinary Actions" and compares with "Disposition of Non-Disciplinary Actions." See *Long Range Program Plan*, *supra* note 283. This number appears to reflect the total disciplines ordered in that year. This category appears in all annual reports forward from this date.

Year: 2001-2002

Professions	Total Licensees	Total Disciplines <sup>418</sup>	Percentage of Disciplines
Accountancy	32,336	35	.11%
Attorneys	62,999	414	.66%
Real Estate	227,015	384	.17%

Year: 2002-2003

Professions	Total Licensees	Total Disciplines <sup>419</sup>	Percentage of Disciplines
Accountancy	35,016	65	.19%
Attorneys <sup>420</sup>	72,933	384	.53%
Real Estate	249,871	416	.17%

Year: 2003-2004 (DBPR information not yet available)

Professions	Total Licensees	Total Disciplines <sup>421</sup>	Percentage of Disciplines
Attorneys	74,874	331	.44%

The first notable conclusion from Table 9 is that despite the time and money that each profession dedicates to the discipline system, in each profession in each year, less than one percent of licensees receive final orders of discipline, when total disciplines given is compared to total licensees. From a consumer standpoint, this result may be viewed in either of two ways: (1) consumers of professional services in Florida can be confident that the professional that they have hired will not act in a way commensurate with discipline within that profession, as more than ninety-nine percent of professionals are not subject to a discipline order in any given year, or (2) the extraordinary low percentages of disciplines could also make some consumers suspect of professions that are either self-regulated (such as attorneys), or regulated using fellow professionals. Some consumers may see the low number and percentage of disciplines not as a triumph of the ethics of these profes-

418. *Id.*

419. *Id.*

420. This year marks the first that attorney license numbers included both active and inactive licensees.

421. See *Long Range Program Plan*, *supra* note 283.



sionals, but as a weakness in the system that potentially does not catch enough licensees.

The accounting profession has the second lowest ratio of the three professions examined, and as discussed above in conjunction with Table 3, may be attributed to the profession's clients, and the overall low number of complaints.<sup>422</sup>

The attorney profession has clearly been working to reduce the number of licensees disciplined. As discussed earlier, the ACAP program by the Florida Bar has clearly produced results.<sup>423</sup> In the years since the ACAP program was introduced, the ratio of disciplines to licensees has decreased by a full one-third.<sup>424</sup>

The real estate profession demonstrates the greatest reduction in total disciplines compared with total licensees; from a high of .62% in 1998-99,<sup>425</sup> down to the most recent figure of .17% in 2002-03.<sup>426</sup> The total number of licensees is growing tremendously in recent years, while the total number of disciplines is shrinking.<sup>427</sup> The reasons for these dramatic changes may be many. First, the real estate profession may simply be experiencing fewer disciplinary problems within its system, due to education, licensing requirements or ethical qualities of professionals, or any combination of factors. Alternatively, fewer disciplines may have been ordered due to changes in the way the system is being administered—individual probable cause panels may be viewing behaviors differently, or more citations warning real estate professionals of potential violations may be doing the job of diverting potentially problematic behavior before it reaches the complaint stage. Finally, the changes in the annual report (not clearly labeling the total disciplines in a year) may be altering the appearance of the statistics, resulting in altered data.

## VI. CONCLUSION

Although the public may place the same fiscal trust in attorneys, real estate professionals, and certified public accountants within Florida, these professions are not treated the same by their licensing bodies. With different educational requirements, testing, and renewal requirements, each of these fiscal professionals are presented to the consumer with different back-

422. *Id.*

423. *Id.*

424. *Id.*

425. 1998-1999 REPORT, *supra* note 310.

426. See *Long Range Program Plan*, *supra* note 283.

427. *Id.*

grounds. With different discipline systems, each consumer also may encounter a different process or result in case of a problem with that professional.

While any professional clearly operating under more than one license will be subject to the licensing and discipline of the profession under which they are specifically acting, the lines are not always clear as to what fiscal activity falls under which profession. When realtors complete legal forms, attorneys escrow money, accountants give financial advice with legal consequences, and realtors counsel individuals, the lines are blurred in the everyday, proper activities of these professionals in Florida. Consumers must be aware of which fiscal professionals they are dealing with and learn as much as possible about each system of licensing and discipline before engaging a professional in which the consumer will place his or her fiscal trust.