

# TITLE XXIV

## VESSELS

### CHAPTER 326

#### YACHT AND SHIP BROKERS

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**326.001 Short title.**—Sections 326.001–326.006 may be cited as the “Yacht and Ship Brokers’ Act.”

**History.**—ss. 1, 7, ch. 88–282; s. 4, ch. 91–429.

**326.002 Definitions.**—As used in ss. 326.001–326.006, the term:

(1) “Broker” means a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of, or negotiates the purchase, sale, or exchange of, yachts for other persons.

(2) “Division” means the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.

(3) “Salesperson” means a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker.

(4) “Yacht” means any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.

(5) “Person” means an individual, partnership, firm, corporation, association, or other entity.

**History.**—ss. 2, 7, ch. 88–282; s. 2, ch. 89–128; s. 4, ch. 91–429; s. 34, ch. 94–218; s. 950, ch. 95–148.

**326.003 Administration.**—The division shall:

(1) Administer ss. 326.001–326.006 and collect fees sufficient to administer ss. 326.001–326.006.

(2) Adopt rules to administer ss. 326.001–326.006 and to classify brokers and salespersons and regulate their activities.

(3) Enforce the provisions of ss. 326.001–326.006 against any person who operates as a broker or salesperson without a license.

**History.**—ss. 3, 7, ch. 88–282; s. 3, ch. 89–128; s. 4, ch. 91–429; s. 1, ch. 93–55; s. 446, ch. 95–148.

**326.004 Licensing.**—

(1) A person may not act as a broker or salesperson unless licensed under the Yacht and Ship Brokers’ Act. The division shall adopt rules establishing a procedure for the biennial renewal of licenses.

(2) A broker may not engage in business as a broker under a fictitious name unless his or her license is issued in such name.

- (3) A license is not required for:
  - (a) A person who sells his or her own yacht.
  - (b) An attorney at law for services rendered in his or her professional capacity.
  - (c) A receiver, trustee, or other person acting under a court order.
  - (d) A transaction involving the sale of a new yacht.
  - (e) A transaction involving the foreclosure of a security interest in a yacht.

(4) Any person who purchases a used yacht for resale must transfer title to such yacht into his or her name and maintain the title or bill of sale in his or her possession to be exempt from licensure.

(5) The division by rule shall establish fees for application, initial licensing, biennial renewal, and reinstatement of licenses in an amount not to exceed \$500. The fees must be set in an amount that is adequate to proportionately fund the expenses of the division in ss. 326.001–326.006.

(6) The division may deny a license to any applicant who does not:

(a) Furnish proof satisfactory to the division that he or she is of good moral character.

(b) Certify that he or she has never been convicted of a felony.

(c) Post the bond required by the Yacht and Ship Brokers’ Act.

(d) Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.

(e) Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.

(f) Have a current license and has operated as a broker or salesperson without a license.

(7)(a) Before any license may be issued to a yacht or ship broker, he or she must deliver to the division a good and sufficient surety bond or irrevocable letter of credit, executed by the broker as principal, in the sum of \$25,000.

(b) Surety bonds and irrevocable letters of credit must be in a form to be approved by the division and must be conditioned upon the broker complying with the terms of any written contract made by such broker in connection with the sale or exchange of any yacht or ship and not violating any of the provisions of the Yacht and Ship Brokers’ Act in the conduct of the business for which he or she is licensed. The bonds and letters of credit must be delivered to the division and in favor of any person in a transaction who suffers any loss as a result of any violation of the conditions in ss. 326.001–

326.006. When the division determines that a person has incurred a loss as a result of a violation of the Yacht and Ship Brokers' Act, it shall notify the person in writing of the existence of the bond or letter of credit. The bonds and letters of credit must cover the license period, and a new bond or letter of credit or a proper continuation certificate must be delivered to the division at the beginning of each license period. However, the aggregate liability of the surety in any one year may not exceed the sum of the bond or, in the case of a letter of credit, the aggregate liability of the issuing bank may not exceed the sum of the credit.

(c) Surety bonds must be executed by a surety company authorized to do business in the state as surety, and irrevocable letters of credit must be issued by a bank authorized to do business in the state as a bank.

(d) Irrevocable letters of credit must be engaged by a bank as an agreement to honor demands for payment as specified in this section.

The security for a broker must remain on deposit for a period of 1 year after he or she ceases to be a broker.

(8) A person may not be licensed as a broker unless he or she has been a salesperson for at least 2 consecutive years, and may not be licensed as a broker after October 1, 1990, unless he or she has been licensed as a salesperson for at least 2 consecutive years.

(9) An applicant for a salesperson's license or its renewal must deposit with the division a bond or equivalent securities in the sum of \$10,000 subject to the conditions in subsection (7).

(10) Upon a final judgment being rendered against a yacht broker or salesperson for a violation of ss. 326.001-326.006 which results in any action being commenced on the bond or letter of credit, the division may require the filing of a new bond or letter of credit and immediately on the recovery in any action on such bond or letter of credit, the broker or salesperson involved must file a new bond or letter of credit. His or her failure to do so within 10 days constitutes grounds for the suspension or revocation of his or her license.

(11) Any person injured by the fraud, deceit, or willful negligence of any broker or salesperson or by the failure of any broker or salesperson to comply with the Yacht and Ship Brokers' Act or other law may file an action for damages upon the respective bonds against the principals and the surety.

(12) If a surety notifies the division that it is no longer the surety for a licensee, the division shall notify the licensee of such withdrawal by certified mail, return receipt requested, addressed to the licensee's principal office. Upon the termination of such surety the licensee's license is automatically suspended until he or she files a new bond with the division.

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. A separate license must be maintained for each branch office. The division shall establish by rule a fee not to exceed \$100 for each branch office license.

(14)(a) Each license must be prominently displayed in the office of the broker.

(b) Each salesperson's license must remain in the possession of the employing broker until canceled or

until the salesperson leaves such employment. Immediately upon a salesperson's withdrawal from the employment of a broker, the broker must return the salesperson's license to the division for cancellation.

(15) The division shall provide by rule for the issuance of a temporary 90-day license to an applicant while the Florida Department of Law Enforcement conducts a national criminal history analysis of the applicant by means of fingerprint identification.

**History.**—ss. 4, 7, ch. 88-282; s. 4, ch. 89-128; s. 4, ch. 91-429; s. 1, ch. 92-13; s. 2, ch. 93-55; s. 447, ch. 95-148.

### **326.005 Escrow depository, closing transactions.**

(1) A broker shall place any funds received pursuant to a transaction into a trust account in a savings and loan association, bank, trust company, or other financial institution located in this state having a net worth in excess of \$5 million until he or she disburses such funds. A separate record shall be maintained of all such moneys received and the disposition thereof.

(2) At the closing of a transaction in which title to a yacht is transferred, a broker shall provide the seller and purchaser with an itemized closing statement, including the selling price and all charges and credits, a description of any yachts exchanged, and the amount of any consideration. If the transaction is closed through escrow and the escrow holder renders a closing statement which reveals such information, that shall be deemed compliance with this subsection on the part of the licensed broker.

(3) A broker who intentionally fails to comply with the provisions of this section concerning the establishment of a trust account, deposits of funds into a trust account, and withdrawal therefrom, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The failure to establish a trust account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this section.

**History.**—ss. 5, 7, ch. 88-282; s. 5, ch. 89-128; s. 4, ch. 91-429; s. 448, ch. 95-148.

### **326.006 Powers and duties of division.—**

(1) Proceedings under the Yacht and Ship Brokers' Act shall be conducted pursuant to chapter 120.

(2) The division has the power to enforce and ensure compliance with the provisions of this chapter and rules adopted under this chapter relating to the sale and ownership of yachts and ships. In performing its duties, the division has the following powers and duties:

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order issued under this chapter, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms under this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel

their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to a yacht or ship purchaser, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule adopted under this chapter has occurred, the division may institute enforcement proceedings in its own name against any broker or salesperson or any of his or her assignees or agents, or against any unlicensed person or any of his or her assignees or agents, as follows:

1. The division may permit a person whose conduct or actions are under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the broker or salesperson or any of his or her assignees or agents, or requiring any unlicensed person or any of his or her assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter.

3. The division may bring an action in circuit court on behalf of a class of yacht or ship purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a broker or salesperson or any of his or her assignees or agents, or against an unlicensed person or any of his or her assignees or agents, for any violation of this chapter or a rule adopted under this chapter. A penalty may be imposed for each day of continuing violation, but in no event may the penalty for any offense exceed \$10,000. All amounts collected must be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a broker, salesperson, or unlicensed person working for

a broker, fails to pay the civil penalty, the division shall thereupon issue an order suspending the broker's license until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. The order imposing the civil penalty or the order of suspension may not become effective until 20 days after the date of such order. Any action commenced by the division must be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division may suspend or revoke the license of a broker or salesperson who:

1. Makes a substantial and intentional misrepresentation, with respect to a transaction involving a yacht, upon which any person has relied.

2. Makes a false warranty, with respect to a transaction involving a yacht, of a character likely to influence, persuade, or induce any person with whom business is transacted.

3. Engages in continued misrepresentation or makes false warranties with respect to transactions involving a yacht, whether or not relied upon by another person.

4. Acts for both the buyer and seller in a transaction involving a yacht without the knowledge and written consent of both parties.

5. Commingles the money or other property of his or her principal with his or her own.

6. Commits fraud or dishonest acts in the conduct of any transaction involving a yacht.

7. Allows an unlicensed person to use his or her name to evade the provisions of the Yacht and Ship Brokers' Act.

8. Violates any law governing the transactions involving a yacht, including any provision relating to the collection or payment of sales or use taxes.

(f) The division may suspend or revoke the license of a broker or salesperson who has:

1. Procured a license for himself or herself or another by fraud, misrepresentation, falsification, or deceit.

2. Been found guilty of a felony or a crime of moral turpitude.

(3) All fees must be deposited in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund as provided by law.

**History.**—ss. 6, 7, ch. 88-282; s. 6, ch. 89-128; s. 4, ch. 91-429; s. 3, ch. 93-55; s. 449, ch. 95-148.