

STORAGE NAME: h0029s1.sgc.doc

DATE: January 10, 2002

HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS

BILL #: CS/HB 29

RELATING TO: Real Estate Brokers

SPONSOR(S): Smarter Government Council and Representative(s) Kyle

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 10 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The Florida Real Estate Commission under the Division of Real Estate within the Department of Business and Professional Regulation administers regulation of real estate brokers and salespersons. A real estate broker, in simplified terms, means a person who for compensation buys, sells, or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation that acts as a broker.

“Trustee” is identified as one who holds property in trust for the benefit of another person and who must carry out specific duties with regard to the property. “Trust powers” for purposes of the financial institutions code is defined to mean the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association or trust company by, or pursuant to, the laws or any other jurisdiction to engage in trust business.

Penalties for violations of the real estate statutes include administrative sanctions and criminal sanctions of a second degree misdemeanor.

This bill is designed to further clarify the application of the term real estate broker. The bill specifies that a real estate broker acting as a trustee is subject to the statutory provisions regulating real estate brokers. The bill clarifies that financial institutions operating with trust powers are excluded from the requirements of the real estate statutes.

The bill does not have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Regulation of real estate brokers and salespersons is established under part I of chapter 475, F.S. The Florida Real Estate Commission under the Division of Real Estate of the Department of Business and Professional Regulation administers this program. Regulation is designed to assure the minimal competency of real estate practitioners in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Currently, several real estate terms are used in chapter 475, F.S., including the following:

The term "broker" is statutorily defined as a person who for compensation buys, sells or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation which acts as a broker.

A "single agent" is a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction. A "dual agent" is a broker who works as an agent for both the buyer and seller and is specifically prohibited in Florida, s. 475.278, F.S.

A "transaction broker" is a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent, and no fiduciary duties exist, except for the duty of accounting and the duty to use skill, care, and diligence. However, the transaction broker must treat the buyer and seller with honesty and fairness and must disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller.

A "fiduciary" is a broker in a relationship of trust and confidence between that broker, as agent, and the seller or buyer, as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

Though not specifically defined in chapter 475, F.S., the term "trustee" is identified in Black's Law Dictionary as one who holds legal title to property in trust for the benefit of another person

(beneficiary) and who must carry out specific duties with regard to the property. The trustee owes a fiduciary duty to the beneficiary.

“Trust powers” for purposes of the financial institutions code is defined to mean the rights and powers necessary to act as a fiduciary and, when the context so requires or admits. By this definition the term also means the authority granted to a bank, state or federal association or trust company by, or pursuant to, the laws or any other jurisdiction to engage in trust business.

Chapter 689, F.S., generally relating to real property law addresses conveyances of land and declarations of trust.

The term real estate broker has been the focus of extensive litigation. Nevertheless, confusion or disagreement can arise under certain, usually complicated circumstances or arrangements, as to the application of the provisions of chapter 475, F.S. to particular brokerage relationships.

C. EFFECT OF PROPOSED CHANGES:

The bill specifies the provisions of chapter 475, F.S., apply to a real estate broker acting as a trustee of a trust created under chapter 689, F.S. The bill clarifies that financial institutions operating with trust powers are excluded from the requirements of chapter 475, F.S.

The bill takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None anticipated

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 10, 2002 the Smarter Government Council adopted a council substitute for the bill. The substitute differs from the original bill, primarily, by deleting reference to the term fiduciary and clarifies that the term broker includes trustees of a trust created under chapter 689, F.S., relating to trusts generally under real property law. The CS also clarifies that financial institutions operating with trust powers are excluded from the requirements of chapter 475, F.S.

VII. SIGNATURES:

SMARTER GOVERNMENT COUNCIL:

Prepared by:

Alan W. Livingston

Staff Director:

Paul Liepshutz

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AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

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