

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2008

SPONSOR: Regulated Industries Committee and Senator Posey

SUBJECT: Real Estate Brokers & Salespersons

DATE: March 6, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	BI	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 2008 does the following:

- Amends the definition of the term “salesperson” under ch. 475, F.S., and makes certain clarifications regarding a salesperson’s ability to participate in, and to form, certain partnerships and corporations;
- Clarifies certain exemptions to ch. 475, F.S.;
- Provides specific requirements regarding the display of real estate-broker signs;
- Provides real estate licensees with discretion regarding the appropriate disbursement of escrowed property and provides for immunity from certain administrative action;
- Authorizes licensed real estate salespersons or entities formed by a salesperson who have been compensated by real estate brokers to compensate persons associated with the salesperson or legal entity;
- Provides for the discipline of real estate brokers who fail to deposit certain property in an escrow account in a manner consistent with the broker’s fiduciary obligations and requirements of timely disbursement.
- Requires real estate brokers to invest certain escrow property upon the consent of the parties;
- Authorizes real estate licensees to keep up to \$5,000 of personal or brokerage business funds in the broker’s escrow account and provides a reasonable amount of time to correct escrow errors under certain conditions.

This committee substitute substantially amends the following sections of the Florida Statutes: 475.01, 475.011, 475.15, 475.22, and 475.25.

II. Present Situation:

Regulation of real estate brokers and salespersons is established under part I of ch. 475, F.S. The Florida Real Estate Commission (commission) within 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. Applicants for licensure must meet character and educational requirements, submit to a criminal background check, and pass an examination.

The term “broker” is defined by s. 475.01, F.S., 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. The term “salesperson” is defined as a person who performs any act specified in the definition of “broker,” but who performs such act under the discretion, control, or management of another person. Section 475.01(2), F.S., provides that the term “employment,” when used in ch. 475, F.S., to describe the relationship between a broker and salesperson, includes an independent contractor relationship.

Section 475.011, F.S., provides for certain exemptions from regulation under ch. 475, F.S. For example, a salaried employee of an owner, or of a registered broker for an owner, of an apartment community who works in an onsite rental office in a leasing capacity is not subject to regulation. *See* s. 475.011(4), F.S. Further, a person employed for a salary as a manager of a condominium or cooperative complex is not subject to regulation for activities or duties that the person may have in relation to renting individual units for rental periods no greater than one year. *See* s. 475.011(5), F.S.

Section 475.15, F.S., sets forth requirements for registration and licensing of general partners, members, officers, and directors of firms. Partnerships, limited liability partnerships, limited liability companies, and corporations acting as brokers are required to renew the licenses or registrations of members, officers, and directors for each licensed period. If a partnership is a limited partnership, only the general partners are required to be licensed brokers. The registration of any firm is automatically cancelled if the license or registration of at least one active broker member is not in force.

Section 475.22, F.S., requires that active brokers maintain an office consisting of at least one enclosed room in an office of stationary construction. Active brokers are required to maintain a sign at their principal office and each branch office.

Section 475.25, F.S., provides for disciplinary action by the commission and grounds for discipline. For example, under s. 475.(1)(d)1, F.S., the commission may take discipline against a licensee who fails to account or deliver upon demand by a person entitled to such accounting and delivery, any escrowed personal property such as money, abstract of title, mortgage, conveyance, lease, or other document or thing of value, including a share of a real estate commission, required by a civil judgment against the licensee relating to the practice of his or her profession, which has not been satisfied within a reasonable time. The licensee may also be disciplined for failing to deliver or account for any profit, which the licensee is not entitled to retain under the circumstances. If, however, the licensee, in good faith, entertains doubt regarding what person is

entitled to the property, or if conflicting demands have been made for such property, the licensee is required to notify the commission and:

- Request the commission to enter an escrow disbursement order determining who is entitled to the property;
- Seek adjudication of the matter by a court; or
- Submit the matter to mediation upon written consent of the parties.

No administrative complaint may be filed against a licensee who follows the foregoing procedure and abides by a resulting order or judgment. Section 475.25, F.S., does authorize a licensee to return a deposit to a residential condominium unit purchaser upon written notice of the purchaser's intent to cancel the contract for sale, or to return a deposit to the purchaser of real property if the purchaser in good faith cannot obtain financing, without following the procedures set forth above.

Section 475.25(1)(h), F.S., provides for discipline of any licensee who shares a commission with, or pays a fee or compensation to, a person not licensed as a broker, broker-salesperson, or salesperson under ch. 475, F.S., for the referral of real estate business, clients, prospects, customers, or for any services provided for under the definition of "broker" under s. 475.1(a), F.S. A licensed broker may, however, pay a referral fee or share a brokerage commission with a broker licensed under the laws of a foreign state, so long as the foreign broker does not violate any Florida laws.

Section 475.25(1)(k), F.S., subjects a licensed broker to disciplinary action for failure to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to the licensee by any person dealing with him or her as a broker into escrow with a title company, bank, credit union, or savings and loan association. The licensee may also deposit such funds into a trust or escrow account maintained by him or her with a bank, credit union, or savings and loan association. A licensed salesperson is subject to discipline if he or she fails to place any such property with his or her registered employer.

III. Effect of Proposed Changes:

Section 1 amends the definition of "salesperson" under paragraph (j) of subsection (1) of s. 475.01, F.S., to provide that any acts performed by a salesperson are performed under the "employment" of a broker. This change conforms to the definition of "employment" under s. 475.02, F.S. The committee substitute clarifies that nothing within the definition of "salesperson" shall be construed to limit a salesperson from registering as an officer or director of a brokerage corporation or as a general partner of a brokerage partnership. The committee substitute also clarifies that salespersons may form partnerships, limited liability companies, limited liability partnerships, and corporations with brokers and other salespersons.

Section 2 amends subsections (4) and (5) of s. 475.011, F.S., to clarify that the exemption for salaried employees of an apartment community, condominium, or cooperative complex who arrange leases or rentals applies if the employee receives no other compensation in addition to the salary.

Section 3 amends s. 475.15, F.S., to conform to the definition of “salesperson.” The committee substitute deletes language that provides that general partners of a limited partnership must be licensed brokers or brokerage corporations.

Section 4 amends subsection (1) of s. 475.22, F.S., to make additional requirements regarding the display of brokerage signs. Each sign must contain the name of the broker and any trade name. A partnership or corporation’s sign must contain the name of the firm or corporation or trade name of the firm or corporation, and the name of at least one broker. At a minimum, the words “licensed real estate broker” or “lic. real estate broker” must appear on the office entrance sign.

Section 5 amends paragraph (d) of subsection (1) of s. 475.25, F.S., regarding a licensee’s duty to notify the commission and seek an escrow disbursement order, arbitration, or court adjudication when there is doubt by the licensee, or when conflicting demands have been made, over the ownership of the property. The committee substitute only requires that the licensee follow the aforementioned procedures when there is doubt over ownership, not when there is a conflicting demand for the property. The reference to entertaining doubt “in good faith” is removed. Further, the committee substitute provides that, in the alternative, a licensee may promptly disburse property from the licensee’s escrow account without notifying the commission or following the procedures set forth above and, notwithstanding any potential civil liability, an administrative complaint may not be filed against the licensee solely upon those grounds.

The committee substitute also amends paragraph (h) of subsection (1) of s. 475.25, F.S., to provide that when a broker compensates a salesperson or legal entity formed and controlled by a salesperson, the salesperson may compensate persons associated with the salesperson or legal entity.

The committee substitute amends paragraph (k) of subsection (1) of s. 475.25, F.S., to provide for the discipline of real estate brokers who fail to deposit funds in an escrow account in a manner consistent with the broker’s fiduciary obligations and requirements of timely disbursement. The committee substitute requires that the escrowed funds be invested, upon written consent of the parties to the real estate transaction, in a manner not inconsistent with s. 18.10(2), F.S. Section 18.10(2), F.S., requires the Treasurer of the state to invest state funds. Examples of authorized investments include: asset-backed or mortgage-backed securities of the highest quality, certain no-load mutual funds, money market mutual funds, and certain negotiable certificates of deposit.

Finally, the committee substitute provides that a broker may keep up to \$5,000 of personal or brokerage business funds in the broker’s escrow account, and shall be provided a reasonable amount of time to correct any escrow account errors if there is no shortage of funds, and the errors do not pose a significant threat of economic harm to the public. The committee substitute provides that it is the intent of the Legislature that the disbursement of escrow account funds shall not be delayed due to a legal dispute regarding ownership of personal or brokerage funds.

Section 6 provides that the act takes effect July 1, 2002.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

It appears that additional fees may be collected from entities created by salespersons; however, no specific information was provided by the department.

B. Private Sector Impact:

The committee substitute would allow salespersons to form their own legal entities. The ability to create such entities may expand the number of licensees.

Parties to real estate transactions may be affected by the committee substitute. The committee substitute would allow brokers greater control over escrowed property with less supervision by the commission. However, the intended recipients of escrow funds would likely benefit from the requirement that the funds be invested.

C. Government Sector Impact:

The department may be impacted by increased licensees, which would likely be offset by fees; however, no specific information was provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
