

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 326

SPONSOR: Regulated Industries Committee and Senator Saunders

SUBJECT: Real Estate Brokers; Escrow Funds

DATE: March 7, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill:

- Allows real estate brokers and salespersons, without having a signed release from the seller and without going through any of the statutory escrow dispute resolution procedures, to refund escrow funds to purchasers of residential condominiums who validly rescind the purchase contract.
- Clarifies that appraisal statutes do not apply to a real estate broker or salesperson who performs a comparative market analysis or gives an opinion of the value of real estate.
- Creates a requirement of and a form for a no brokerage relationship notice.
- Establishes exceptions for all real estate agency relationship disclosure requirements.

This bill substantially amends the following sections of the Florida Statutes: 475.25, 475.278, and 475.612.

## II. Present Situation:

Section 475.25, F.S., provides grounds for discipline of licensed real estate brokers or salespersons. One of these grounds is failure to deliver money, including escrow funds, as required by contract or by law. If the licensee has good faith uncertainty as to who is entitled to the escrowed money, however, or if conflicting demands have been made upon the licensee for the escrowed money, the licensee is to promptly notify the Florida Real Estate Commission of the uncertainty or conflicting demands and to promptly:

- request that the Commission determine who is entitled to the escrowed funds and issue an escrow disbursement order;
- with the consent of all parties, submit the matter to arbitration;
- by interpleader or otherwise, seek adjudication of the matter by a court; or
- with the written consent of all parties, submit the matter to mediation.

If the licensee follows these procedures and abides by the resulting order or judgment, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed money.

Section 718.503, F.S., provides a right of cancellation of a contract to purchase a residential condominium unit. If the seller is the condominium developer, the buyer has 15 days after the date on which the purchaser executes the purchase agreement *and* receives all required documents pertaining to the purchase. If the seller is not the developer, the purchaser has three days after the date on which the purchaser executes the purchase contract *and* receives all required documents pertaining to the purchase. Alternatively, the seller may provide all these documents to the purchaser more than three days prior to execution of the contract. The three day period is exclusive of Saturdays, Sundays, and legal holidays.

For a rescinding residential condominium purchaser to quickly retrieve any escrowed funds, the seller must sign a release of those funds. According to the Florida Association of Realtors, the seller is often an absentee owner, and getting a release of the funds can take up to three months. The only alternative is to petition the Florida Real Estate Commission, which also is a lengthy process.

Another of the grounds for discipline contained in s. 475.25, F.S., is violation of appraisal standards. The statute makes clear that it is not an appraisal violation for a real estate broker or salesperson to provide a comparative market analysis.

A similar provision in s. 475.612, F.S., which requires a license to conduct appraisal work, provides that this requirement does not apply to a real estate broker or salesperson who performs a comparative market analysis or gives an opinion of the value of real estate.

The Brokerage Relationship Disclosure Act, ss. 475.2701-475.2801, F.S., was enacted in 1997. The Act provides for two types of brokerage relationships, single agent and transaction broker. In a “single agent relationship,” the broker represents either the buyer or seller, as a fiduciary, but not both in the same transaction. ss. 475.01(1)(l) and 475.278(3), F.S. In a “transaction broker relationship,” the broker provides a limited form of representation to a buyer, seller, or both, in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent. There are required disclosure forms for both types of relationships.

Until 1999, s. 475.276, F.S., also required that all licensees provide to each potential buyer or seller of residential real estate, at first contact, a notice of nonrepresentation. This notice warned the potential buyer or seller that the licensee did not represent that person and that he or she should not make any confidential disclosures to the licensee. This disclosure requirement was repealed in 1999. s. 8, ch. 99-384, Laws of Florida. The prior law had exemptions to the disclosure requirement, including open houses, casual encounters, responses to general factual questions, and situations where the licensee provides only general information regarding the licensee or the licensee’s brokerage firm.

### III. Effect of Proposed Changes:

The bill allows a real estate broker or salesperson, without going through a petition to the Commission or arbitration or mediation to disburse deposit funds held in escrow to a condominium purchaser who validly exercises a right of rescission under ch. 718.

The bill amends s. 475.25 and s. 475.612, F.S., to clarify that these appraisal statutes do not apply to a real estate broker or salesperson who performs a comparative market analysis or gives an opinion of the value of real estate.

The bill amends s. 475.278, F.S., to re-establish a requirement of and a form for a notice of nonrepresentation, now called a no brokerage relationship notice. This disclosure notice must be given to the buyer or seller before or at the time of the showing of the property. The notice must set out the licensee's duties, which are:

- dealing honestly and fairly.
- disclosing all known facts that materially affect the value of residential real property that are not readily observable to the buyer; and
- accounting for all funds entrusted to the licensee.

For all the various real estate agency relationship disclosure requirements, the bill provides exceptions that are similar to the exceptions in prior law for the notice of nonrepresentation. These include situations where a licensee knows the potential seller or buyer is represented by another licensee or where an owner is selling new residential units built by the owner, and the circumstances or setting should reasonably inform the potential seller or buyer that the owner's employee or single agent is acting on behalf of the owner. The bill also excepts from the disclosure requirements certain bona fide open house or model home showings and a response to general factual questions from a potential buyer or seller.

The bill takes effect July 1, 2000.

### 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:**

None.

**B. Private Sector Impact:**

The bill allows real estate brokers and salespersons to refund escrow funds to purchasers of residential condominiums who validly rescind the purchase contract without having a signed release from the seller and without going through any of the statutory escrow dispute resolution procedures. This will benefit both the real estate professionals, who can operate more efficiently, and the rescinding purchasers, who will get their money back more quickly.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.