

STORAGE NAME: h1089a.jo.doc
DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1089
RELATING TO: Real Estate Professionals
SPONSOR(S): Representatives Bilirakis, Sobel, and Paul
TIED BILL(S): none

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

- (1) BUSINESS REGULATION YEAS 8 NAYS 0
- (2) JUDICIAL OVERSIGHT YEAS 11 NAYS 0
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

Typically, when a buyer cancels a real estate agreement, the buyer also will request the return of any deposit held in escrow. If the seller objects to the return of the escrow deposit, the claim is considered in dispute and the real estate licensee must notify the Real Estate Commission and follow specific statutory procedures to attempt to reach accord between the parties. As a common practice the contract for purchase or sale may include a provision that allows the return of any deposit upon the failure to obtain financing.

This bill allows a real estate licensee to return escrowed property to a buyer who rescinds the purchase contract due to the failure to obtain financing. The real estate licensee would not be required to obtain a signed release from the seller and would not be required to follow the statutory dispute resolution procedures for the disbursement of escrowed funds.

A real estate "appraiser" is a person registered, licensed, or certified to perform appraisal services under Part II of Chapter 475, F.S. A "registered assistant appraiser" is statutory defined as a person who performs appraisal services under the supervision of a licensed or certified appraiser. An assistant appraiser is required to meet certain standards to be registered but is not required to take an examination.

The bill establishes a procedure for an assistant appraiser to operate under the supervision of primary or secondary appraiser supervisors. It authorizes a primary appraiser to designate secondary supervisors and requires supervisor cosignatures, license numbers and professional titles on the work product of an assistant appraiser. The bill requires the primary supervisor to approve finance arrangements where direct payments are made to an assistant appraiser.

The bill does not appear to have a significant 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

Real Estate – Escrow Funds

In a typical contract for purchase and sale of real estate, the seller expects the buyer to place property in escrow as a condition of the contract. Although any form of property may be placed in escrow, in practice the property is nearly always cash. The property placed in escrow is commonly referred to as a "good faith deposit" or a "good faith binder."

Section 475.25(1)(d)1., F.S., authorizes discipline of a licensee for failure to account for or deliver a deposit to the party entitled to it "at the time which has been agreed upon or is required by law..."
Section 475.25(1)(k), F.S., requires a licensee to hold monies in trust "until disbursement thereof is properly authorized..."

Typically, when a buyer chooses to withdraw from or cancel the transaction, the buyer also makes a simultaneous demand for the return of any property the buyer may have placed in escrow with a real estate licensee. The real estate licensee must then inform the seller of the buyer's election to rescind the contract, and will then typically ask the seller to sign a form releasing the deposit to the buyer. If the seller refuses to sign the release of deposit form, the claim is considered in dispute and the real estate licensee must follow specific procedures set forth in s. 475.25(1)(d)1., F.S. The real estate licensee must first promptly notify the Florida Real Estate Commission, under the Department of Business and Professional Regulation (DBPR), of the conflicting demands and then must promptly institute one of the procedures listed in ss. 475.25(1)(d)1.a.-d., F.S.:

- a. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;
- b. With the consent of all parties, submit the matter to arbitration;
- c. Seek adjudication of the matter by a court; or
- d. With the written consent of all parties, submit the matter to mediation. The mediation process must be successfully completed within 90 days following the last demand or the licensee must promptly employ one of the other escape procedures contained in this section.

In general, the buyer forfeits the escrowed property if the purchase is not completed unless the seller breaches the contract or the contract requires refund of the escrow deposit to the buyer. For instance, the standard contract promulgated by the Florida Association of Realtors and used throughout much of the state requires the escrowed property to be returned to the buyer if the buyer is unable to secure financing. (Form FAR-5 Rev. 10/98, page 1, line 38)

Current statutes allow a real estate licensee to return escrowed property to the buyer of a residential condominium unit who validly rescinds the purchase contract without the licensee obtaining a signed release from the seller and without following the statutory dispute resolution procedures. There is no similar statutory allowance for the cancellation of a contract and the return of an escrowed deposit for the failure of the buyer to obtain financing for the purchase of the property.

Registered Assistant Appraiser

An "appraisal report" is "any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property..." A real estate "appraiser" is a person registered, licensed, or certified to perform appraisal services under Part II of Chapter 475, F.S. A "registered assistant appraiser" is statutory defined as a person who performs appraisal services under the supervision of a licensed or certified appraiser.

The Florida Real Estate Appraisal Board, under the DBPR, is authorized to license and discipline appraisers. Persons seeking licensure or certification must meet education and experience requirements, pass an examination, submit to a background check, and pledge to comply with specified standards of practice. An assistant appraiser is required to meet similar standards to be registered but is not required to take an examination.

A person may not issue an appraisal report in connection with certain real estate transactions, unless that person is authorized to perform appraisal services. A report or other appraisal document must contain the appraisers' registration, license or certification number, as appropriate, next to their official title and the work product must be signed by the appraiser.

C. EFFECT OF PROPOSED CHANGES:

Real Estate – Escrow Funds

This bill allows a real estate licensee to return escrowed property to a buyer without notifying the Florida Real Estate Commission and without initiating the procedures listed in s. 475.25(1)(d)1.a.-d., F.S., provided the buyer rescinds the purchase contract due to the failure to obtain financing. The provisions of the bill are permissive rather than mandatory. Thus, a real estate licensee is not required to return escrowed property upon cancellation of a contract for purchase and sale, but merely permitted to do so.

Registered Assistant Appraiser

The bill requires a registered assistant appraiser to conduct business under the supervision of a licensed or certified appraiser who must be designated as a "primary supervisor." The primary supervisor is further authorized to designate additional licensed or certified appraisers as "secondary supervisors." The bill requires the supervisors to be from the same firm or company. It

requires the assistant appraiser to notify the DBPR of the affiliation and of any changes in the business relationship between the assistant and a primary supervisor.

This bill requires approval by the primary supervisor of any arrangement for direct payment by a client to an assistant appraiser. This bill also requires the primary supervisors' signature, designation and license number on appraisal reports and related papers when the assistant appraiser is required by law to authenticate these documents.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 475.25, F.S., to allow a buyer to cancel a real estate purchase agreement due to the failure to obtain financing.

Section 2. Amends s. 475.622, F.S., to require the professional title and license number of a primary appraiser supervisor on documents that are required to be authenticated by an assistant appraiser.

Section 3. Creates s. 475.6221, F.S., to create the appraiser classifications of "primary supervisor" and "secondary supervisor" and require the direct oversight of assistant appraisers by these supervisors.

Section 4. Provides the act shall take effect October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 municipalities or counties 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.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Alan W. Livingston

Staff Director:

Paul Liepshutz

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Lynne Overton, J.D.