

By Representative Kyle

1                                   A bill to be entitled  
 2           An act relating to real estate brokers;  
 3           amending s. 475.01, F.S.; expanding the  
 4           definition of the term "broker"; amending s.  
 5           475.25, F.S.; specifying additional actions for  
 6           which the Florida Real Estate Commission may  
 7           institute disciplinary action; amending s.  
 8           475.42, F.S.; prohibiting specified breach of  
 9           fiduciary duties and providing penalties  
 10          therefor; reenacting ss. 468.383(7),  
 11          475.25(1)(h), and 475.274, F.S., to incorporate  
 12          the amendment to s. 475.01(1)(a), F.S., in  
 13          references thereto; providing an effective  
 14          date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18           Section 1. Paragraph (a) of subsection (1) of section  
 19 475.01, Florida Statutes, is amended to read:

20           475.01 Definitions.--

21           (1) As used in this part:

22           (a) "Broker" means a person who, for another, and for  
 23 a compensation or valuable consideration directly or  
 24 indirectly paid or promised, expressly or impliedly, or with  
 25 an intent to collect or receive a compensation or valuable  
 26 consideration therefor, appraises, auctions, sells, exchanges,  
 27 buys, rents, or offers, attempts or agrees to appraise,  
 28 auction, or negotiate the sale, exchange, purchase, or rental  
 29 of business enterprises or business opportunities or any real  
 30 property or any interest in or concerning the same, including  
 31 mineral rights or leases, or who advertises or holds out to

1 the public by any oral or printed solicitation or  
2 representation that she or he is engaged in the business of  
3 appraising, auctioning, buying, selling, exchanging, leasing,  
4 or renting business enterprises or business opportunities or  
5 real property of others or interests therein, including  
6 mineral rights, or who takes any part in the procuring of  
7 sellers, purchasers, lessors, or lessees of business  
8 enterprises or business opportunities or the real property of  
9 another, or leases, or interest therein, including mineral  
10 rights, or who directs or assists in the procuring of  
11 prospects or in the negotiation or closing of any transaction  
12 which does, or is calculated to, result in a sale, exchange,  
13 or leasing thereof, and who receives, expects, or is promised  
14 any compensation or valuable consideration, directly or  
15 indirectly therefor; and all persons who advertise rental  
16 property information or lists. A broker renders a  
17 professional service and is a professional within the meaning  
18 of s. 95.11(4)(a). Where the term "appraise" or "appraising"  
19 appears in the definition of the term "broker," it  
20 specifically excludes those appraisal services which must be  
21 performed only by a state-licensed or state-certified  
22 appraiser, and those appraisal services which may be performed  
23 by a registered assistant appraiser as defined in part II.  
24 The term "broker" also includes any person who is a general  
25 partner, officer, or director of a partnership or corporation  
26 which acts as a broker. The term "broker" also includes any  
27 person or entity who undertakes to list or sell one or more  
28 timeshare periods per year in one or more timeshare plans on  
29 behalf of any number of persons, except as provided in ss.  
30 475.011 and 721.20. The term "broker" also includes any  
31 person, otherwise subject to the provisions of this part,

1 acting in the capacity of a trustee of a land trust, or as a  
2 general partner, officer, or director of a partnership or  
3 corporation formed or caused to be formed as a part of an  
4 undertaking by such person to acquire real property with the  
5 funds of others and who receives, expects, or is promised any  
6 compensation or valuable consideration, directly or  
7 indirectly, for the acquisition of such real property or its  
8 subsequent sale.

9           Section 2. Paragraph (u) is added to subsection (1) of  
10 section 475.25, Florida Statutes, to read:

11           475.25 Discipline.--

12           (1) The commission may deny an application for  
13 licensure, registration, or permit, or renewal thereof; may  
14 place a licensee, registrant, or permittee on probation; may  
15 suspend a license, registration, or permit for a period not  
16 exceeding 10 years; may revoke a license, registration, or  
17 permit; may impose an administrative fine not to exceed \$1,000  
18 for each count or separate offense; and may issue a reprimand,  
19 and any or all of the foregoing, if it finds that the  
20 licensee, registrant, permittee, or applicant:

21           (u) Has breached any of his or her fiduciary duties,  
22 as defined in s. 475.01(1)(f), owing to a principal,  
23 including, without limitation, any beneficiary, partner, or  
24 stockholder of any land trust, partnership, or corporation  
25 formed or caused to be formed by the licensee as part of an  
26 undertaking by the licensee to acquire real property with the  
27 funds of the principal, and who receives, expects, or is  
28 promised any compensation or valuable consideration, directly  
29 or indirectly, for the acquisition of such real property or  
30 its subsequent sale.

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1           Section 3. Paragraph (f) of subsection (1) of section  
2 475.42, Florida Statutes, is amended to read:

3           475.42 Violations and penalties.--

4           (1) VIOLATIONS.--

5           (f) No person shall commit any conduct or practice set  
6 forth in s. 475.25(1)(b), (c), (d), ~~or~~ (h), or (u).

7           (2) PENALTIES.--Any person who violates any of the  
8 provisions of subsection (1) is guilty of a misdemeanor of the  
9 second degree, punishable as provided in s. 775.082 or s.  
10 775.083, or, if a corporation, it is guilty of a misdemeanor  
11 of the second degree, punishable as provided in s. 775.083,  
12 except when a different punishment is prescribed by this  
13 chapter. Nothing in this chapter shall prohibit the  
14 prosecution under any other criminal statute of this state of  
15 any person for an act or conduct prohibited by this section;  
16 however, in such cases, the state may prosecute under this  
17 section or under such other statute, or may charge both  
18 offenses in one prosecution, but the sentence imposed shall  
19 not be a greater fine or longer sentence than that prescribed  
20 for the offense which carries the more severe penalties. A  
21 civil case, criminal case, or a denial, revocation, or  
22 suspension proceeding may arise out of the same alleged state  
23 of facts, and the pendency or result of one such case or  
24 proceeding shall not stay or control the result of either of  
25 the others.

26           Section 4. For the purpose of incorporating the  
27 amendment to section 475.01, Florida Statutes, in references  
28 thereto, the sections or subdivisions of Florida Statutes set  
29 forth below are reenacted to read:

30           468.383 Exemptions.--This act does not apply to the  
31 following:

1           (7) Auctions conducted as a part of the sale of real  
2 property by a real estate broker, as defined in s.  
3 475.01(1)(a).  
4           475.25 Discipline.--  
5           (1) The commission may deny an application for  
6 licensure, registration, or permit, or renewal thereof; may  
7 place a licensee, registrant, or permittee on probation; may  
8 suspend a license, registration, or permit for a period not  
9 exceeding 10 years; may revoke a license, registration, or  
10 permit; may impose an administrative fine not to exceed \$1,000  
11 for each count or separate offense; and may issue a reprimand,  
12 and any or all of the foregoing, if it finds that the  
13 licensee, registrant, permittee, or applicant:  
14           (h) Has shared a commission with, or paid a fee or  
15 other compensation to, a person not properly licensed as a  
16 broker, broker-salesperson, or salesperson under the laws of  
17 this state, for the referral of real estate business, clients,  
18 prospects, or customers, or for any one or more of the  
19 services set forth in s. 475.01(1)(a). For the purposes of  
20 this section, it is immaterial that the person to whom such  
21 payment or compensation is given made the referral or  
22 performed the service from within this state or elsewhere;  
23 however, a licensed broker of this state may pay a referral  
24 fee or share a real estate brokerage commission with a broker  
25 licensed or registered under the laws of a foreign state so  
26 long as the foreign broker does not violate any law of this  
27 state.  
28           475.274 Scope of coverage.--The authorized brokerage  
29 relationships described in ss. 475.2755 and 475.278 apply in  
30 all brokerage activities as defined in s. 475.01(1)(a). The  
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1 disclosure requirements of s. 475.278 apply only to  
2 residential sales as defined in s. 475.278(5)(a).

3 Section 5. This act shall take effect upon becoming a  
4 law.

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7 HOUSE SUMMARY

8 With respect to pt. I of chapter 475, expands the  
9 definition of the term "broker" to include trustees of a  
10 land trust. Prohibits specified breach of fiduciary  
11 duties for which the Florida Real Estate Commission may  
institute disciplinary action and provides a second  
degree misdemeanor penalty for violation.

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