

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: SB 1424

SPONSOR: Senator Posey

SUBJECT: Real Estate Professionals

DATE: March 30, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	RI	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends a provision relating to real estate brokers by creating an exception to the section that requires specific criteria for the return of escrowed property.

The bill also requires registered assistant real estate appraisers to work under the supervision of certified or licensed appraisers and provides supervisory guidelines. The bill limits direct payment to the registered assistants for services.

This bill amends sections 475.25 and 475.622 and creates section 475.6221 of the Florida Statutes.

II. Present Situation:

Chapter 475 provides for the regulation of real estate brokers, sales persons, (licensee) and appraisers by the Florida Real Estate Commission (commission), under the Department of Business and Professional Regulation (DBPR). Section 475.25, Florida Statutes, provides guidelines for disciplinary actions by the commission. It is a violation of this section if a licensee fails to return any personal property in his possession that he is not entitled to retain. Where the licensee doubts who is entitled to the accounting and delivery of escrowed property, or if conflicting demands have been made upon him, the licensee is required to notify the commission and take specified action. The licensee must request that the commission issue an escrow disbursement order; seek adjudication of the matter by a court; or with the consent of all parties, submit the matter for arbitration or mediation. If the licensee takes the prescribed action, no complaint may be filed against the licensee.

This section also includes a provision that authorizes a licensee to return escrowed property to the buyer without notification of the commission or initiating any of the procedures required by the statutes when the purchaser of a residential condominium unit delivers to a licensee written notice of the buyer's intent to cancel the contract for sale and purchase.

Section 475.622, F.S., requires certain disclosures and display of an appraiser's licensure, certification, or registration. DBPR currently has rules similar to the requirements set forth in the bill. (See Rules 61J1-7.010, 61J1-7.006, and 61J1-7.007, Florida Administrative Code.) The statutes do not provide requirements for the employment of registered assistant real estate appraisers.

III. Effect of Proposed Changes:

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 licensee must notify the 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 by the buyer to obtain financing. The proposed change to s. 475.25(1)(d)1., F.S., provides that a licensee may disburse escrowed property to a purchaser if the licensee determines that the buyer of real property in good faith failed to satisfy the terms of the financing clause of a contract for sale and purchase. If the licensee properly follows this provision, he or she is not required to notify the commission of the escrow dispute in this instance and would not be subject to the disciplinary provisions of s. 475.25(1), F.S. This provision places the liability of the decision regarding the escrowed property with the licensee. The DBPR is not required to review and make a recommendation to the commission for this type of escrow dispute.

The bill further 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 co-signatures, license numbers, and professional titles on the work product of an assistant appraiser. The bill requires the primary supervisor to approve a finance arrangement where direct payments are made to an assistant appraiser. Specifically, the proposed change to s. 475.622, F.S., codifies DBPR's above reference rule that requires a state-registered real estate appraiser and the supervisor to disclose their appropriate designation and number any time the assistant is required to disclose this information, and that the supervisor also must sign any appraisal report signed by the state-registered assistant appraiser.

The new section 475.6221, F.S., also codifies the above-referenced rules requiring that a registered assistant must be supervised by a primary supervisor and permits the designation of a secondary supervisor. The bill provides guidelines regarding the affiliation and business address of the appraiser. It provides that a registered assistant may not receive payment directly for services unless the appraiser agrees to the payment arrangement. The proposed statutory change is in concert with current practice.

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:

None.

C. Government Sector Impact:

There should be no impact to DBPR as the proposed changes codify current practices.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.