

Bill No. CS for SB 1428

Amendment No. Barcode 335504

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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11 Senator Posey moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 1, line 18,

15

16 insert:

17 Section 1. Paragraph (j) of subsection (1) of section

18 475.01, Florida Statutes, is amended to read:

19 475.01 Definitions.--

20 (1) As used in this part:

21 (j) "Salesperson" means a person who performs any act

22 specified in the definition of "broker," but who performs such

23 act under the employment direction, control, or management of

24 another person. A salesperson renders a professional service

25 and is a professional within the meaning of s. 95.11(4)(a).

26 Nothing in this definition shall be construed to limit a

27 salesperson from registering as an officer or director of a

28 brokerage corporation or a general partner of a brokerage

29 partnership. A salesperson may also form a partnership,

30 limited liability company, limited liability partnership, or

31 corporation with brokers and other salespersons. However, any

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1 partnership, limited liability company, limited liability
2 partnership, or corporation formed by a salesperson must
3 include the salesperson's registered employer as a member or a
4 partner.

5 Section 2. Subsections (4) and (5) of section 475.011,
6 Florida Statutes, are amended to read:

7 475.011 Exemptions.--This part does not apply to:

8 (4) Any salaried employee of an owner, or of a
9 registered broker for an owner, of an apartment community who
10 works in an onsite rental office of the apartment community in
11 a leasing capacity, provided the salaried employee works
12 without any other compensation being paid in addition to the
13 salary;

14 (5) Any person employed for a salary as a manager of a
15 condominium or cooperative apartment complex as a result of
16 any activities or duties which the person may have in relation
17 to the renting of individual units within such condominium or
18 cooperative apartment complex if rentals arranged by the
19 person are for periods no greater than 1 year, provided the
20 person works without any other compensation being paid in
21 addition to the salary;

22 Section 3. Section 475.15, Florida Statutes, is
23 amended to read:

24 475.15 Registration and licensing of general partners,
25 members, officers, and directors of a firm.--Each partnership,
26 limited liability partnership, limited liability company, or
27 corporation which acts as a broker shall register with the
28 commission and shall renew the licenses or registrations of
29 its members, officers, and directors for each license period.
30 However, if the ~~partnership is a limited partnership, only the~~
31 ~~general partners must be licensed brokers or brokerage~~

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1 ~~corporations registered pursuant to this part. If the license~~
2 or registration of at least one active broker member is not in
3 force, the registration of a corporation, limited liability
4 company, limited liability partnership, or partnership is
5 canceled automatically during that period of time.

6 Section 4. Subsection (1) of section 475.22, Florida
7 Statutes, is amended to read:

8 475.22 Broker to maintain office and sign at entrance
9 of office; registered office outside state; broker required to
10 cooperate in investigation.--

11 (1) Each active broker shall maintain an office, which
12 shall consist of at least one enclosed room in a building of
13 stationary construction. Each active broker shall maintain a
14 sign on or about the entrance of her or his principal office
15 and each branch office, which sign may be easily observed and
16 read by any person about to enter such office ~~and shall be of~~
17 ~~such form and minimum dimensions as shall be prescribed by the~~
18 ~~commission.~~ Each sign shall contain the name of the broker,
19 together with the trade name, if any. For a partnership or
20 corporation, the sign shall contain the name of the firm or
21 corporation or trade name of the firm or corporation, together
22 with the name of at least one of the brokers. At a minimum,
23 the words "licensed real estate broker" or "lic. real estate
24 broker" shall appear on the office entrance signs.

25 Section 5. Paragraphs (d), (h), and (k) of subsection
26 (1) of section 475.25, Florida Statutes, are amended to read:

27 475.25 Discipline.--

28 (1) The commission may deny an application for
29 licensure, registration, or permit, or renewal thereof; may
30 place a licensee, registrant, or permittee on probation; may
31 suspend a license, registration, or permit for a period not

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1 exceeding 10 years; may revoke a license, registration, or
2 permit; may impose an administrative fine not to exceed \$1,000
3 for each count or separate offense; and may issue a reprimand,
4 and any or all of the foregoing, if it finds that the
5 licensee, registrant, permittee, or applicant:

6 (d)1. Has failed to account or deliver to any person,
7 including a licensee under this chapter, at the time which has
8 been agreed upon or is required by law or, in the absence of a
9 fixed time, upon demand of the person entitled to such
10 accounting and delivery, any personal property such as money,
11 fund, deposit, check, draft, abstract of title, mortgage,
12 conveyance, lease, or other document or thing of value,
13 including a share of a real estate commission if a civil
14 judgment relating to the practice of the licensee's profession
15 has been obtained against the licensee and said judgment has
16 not been satisfied in accordance with the terms of the
17 judgment within a reasonable time, or any secret or illegal
18 profit, or any divisible share or portion thereof, which has
19 come into the licensee's hands and which is not the licensee's
20 property or which the licensee is not in law or equity
21 entitled to retain under the circumstances. However, if the
22 licensee, ~~in good faith,~~ entertains doubt as to what person is
23 entitled to the accounting and delivery of the escrowed
24 property, ~~or if conflicting demands have been made upon the~~
25 ~~licensee for the escrowed property, which property she or he~~
26 ~~still maintains in her or his escrow or trust account,~~ the
27 licensee shall promptly notify the commission of such doubts
28 or conflicting demands and shall promptly:

29 a. Request that the commission issue an escrow
30 disbursement order determining who is entitled to the escrowed
31 property;

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1 b. With the consent of all parties, submit the matter
2 to arbitration;
3 c. By interpleader or otherwise, seek adjudication of
4 the matter by a court; or
5 d. With the written consent of all parties, submit the
6 matter to mediation. The department may conduct mediation or
7 may contract with public or private entities for mediation
8 services. However, the mediation process must be successfully
9 completed within 90 days following the last demand or the
10 licensee shall promptly employ one of the other escape
11 procedures contained in this section. Payment for mediation
12 will be as agreed to in writing by the parties. The
13 department may adopt rules to implement this section.
14
15 In the alternative, a licensee may promptly disburse property
16 from a licensee's escrow account without notifying the
17 commission or employing one of the procedures listed in
18 sub-subparagraphs a.-d. and, notwithstanding any civil
19 liability that may exist, no administrative complaint may be
20 filed against a licensee solely because the licensee disbursed
21 escrowed property without first notifying the commission or
22 employing one of the procedures listed in sub-subparagraphs
23 a.-d.~~If the licensee promptly employs one of the escape~~
24 ~~procedures contained herein, and if she or he abides by the~~
25 ~~order or judgment resulting therefrom, no administrative~~
26 ~~complaint may be filed against the licensee for failure to~~
27 ~~account for, deliver, or maintain the escrowed property. If~~
28 ~~the buyer of a residential condominium unit delivers to a~~
29 ~~licensee written notice of the buyer's intent to cancel the~~
30 ~~contract for sale and purchase, as authorized by s. 718.503,~~
31 ~~or if the buyer of real property in good faith fails to~~

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1 ~~satisfy the terms in the financing clause of a contract for~~
2 ~~sale and purchase, the licensee may return the escrowed~~
3 ~~property to the purchaser without notifying the commission or~~
4 ~~initiating any of the procedures listed in sub-subparagraphs~~
5 ~~a.-d.~~

6 2. Has failed to deposit money in an escrow account
7 when the licensee is the purchaser of real estate under a
8 contract where the contract requires the purchaser to place
9 deposit money in an escrow account to be applied to the
10 purchase price if the sale is consummated.

11 (h) Has shared a commission with, or paid a fee or
12 other compensation to, a person not properly licensed as a
13 broker, broker-salesperson, or salesperson under the laws of
14 this state, for the referral of real estate business, clients,
15 prospects, or customers, or for any one or more of the
16 services set forth in s. 475.01(1)(a). For the purposes of
17 this section, it is immaterial that the person to whom such
18 payment or compensation is given made the referral or
19 performed the service from within this state or elsewhere;
20 however, a licensed broker of this state may pay a referral
21 fee or share a real estate brokerage commission with a broker
22 licensed or registered under the laws of a foreign state so
23 long as the foreign broker does not violate any law of this
24 state. However, when a broker has compensated a salesperson or
25 a legal entity formed and controlled by a salesperson, that
26 salesperson may compensate persons associated with the
27 salesperson or legal entity.

28 (k) Has failed, if a broker, to immediately place,
29 upon receipt, any money, fund, deposit, check, or draft
30 entrusted to her or him by any person dealing with her or him
31 as a broker in an escrow account ~~with a title company, banking~~

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1 ~~institution, credit union, or savings and loan association~~
2 ~~located and doing business in this state in a manner~~
3 ~~consistent with the broker's fiduciary obligations and~~
4 ~~requirements of timely disbursement, or to deposit such funds~~
5 ~~in a trust or escrow account maintained by her or him with~~
6 ~~some bank, credit union, or savings and loan association~~
7 ~~located and doing business in this state, wherein the funds~~
8 ~~shall be kept and, with the written consent of the parties to~~
9 ~~a transaction, invested in a manner not inconsistent with s.~~
10 18.10(2), until disbursement thereof is properly authorized;
11 or has failed, if a salesperson, to immediately place with her
12 or his registered employer any money, fund, deposit, check, or
13 draft entrusted to her or him by any person dealing with her
14 or him as agent of the registered employer. The commission
15 shall establish rules to provide for records to be maintained
16 by the broker and the manner in which such deposits shall be
17 made. A broker may place and maintain up to \$5,000 of personal
18 or brokerage business funds in the broker's escrow account and
19 shall be provided a reasonable amount of time to correct
20 escrow account errors if there is no shortage of funds and
21 such errors pose no significant threat to economically harm
22 the public. It is the intent of the Legislature that, in the
23 event of legal proceedings concerning a broker's escrow
24 account, the disbursement of escrowed funds shall not be
25 delayed due to any dispute over the personal or brokerage
26 funds that may be present in the escrow account.

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28 (Redesignate subsequent sections.)

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, line 2, delete that line

4

5 and insert:

6 An act relating to real estate; amending s.
7 475.01, F.S.; revising a definition; amending
8 s. 475.011, F.S.; clarifying application of
9 certain exemptions; amending s. 475.15, F.S.;
10 deleting a provision requiring only general
11 partners of a limited partnership to be
12 registered; amending s. 475.22, F.S.;
13 specifying certain sign requirements; amending
14 s. 475.25, F.S.; revising certain provisions
15 relating to disciplinary actions; providing an
16 alternative procedure for disbursing moneys
17 from an escrow account; authorizing
18 salespersons to compensate certain associated
19 persons under certain circumstances;
20 authorizing brokers to place and maintain
21 moneys in an escrow account under certain
22 circumstances; providing procedures for
23 withdrawal of moneys from the account;
24 providing legislative intent; amending s.

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