

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: CS/SB 1428

SPONSOR: Regulated Industries Committee and Senator Garcia

SUBJECT: Real Estate Brokers/Trustees

DATE: February 13, 2002 REVISED: _____

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

I. Summary:

The committee substitute clarifies that ch. 475, F.S., applies to real estate brokers acting as trustees of a trust created under ch. 689, F.S., with certain exceptions. The committee substitute adds the term “other entity” to s. 689.071, F.S., to recognize the ability of limited partnerships and limited liability companies to act as trustees of land trusts. Finally, the committee substitute allows a surviving co-owner of a joint tenancy with rights of survivorship or tenancy by the entirety to make a tax-qualified disclaimer under section 2518 of the Internal Revenue Service Code within nine months of the cotenant’s death; clarifies that the disclaimed interest does not become homestead property for the purposes of ss. 732.401 and 732.4015, F.S.; and clarifies that the disclaimed interest is equal to one-half of the property interest.

This committee substitute substantially amends the following sections of the Florida Statutes: 475.01, 689.071, and 689.21.

II. Present Situation:

Conveyances of Land and Declarations of Trust

Chapter 689, F.S., addresses conveyances of land and declarations of trust. Land trusts transferring interests in real estate are addressed under s. 689.071, F.S. The statute provides that every conveyance of real property by recorded instrument to any person, corporation, bank, or trust company qualified to act as a fiduciary in this state that designates the person, corporation, bank, or trust company as “trustee” without naming the beneficiary of the trust, creates a vested interest in that property on behalf of the trustee.

Section 689.21, F.S., addresses disclaimers of interest in property passing under nontestamentary instruments or under certain powers of appointment. The statute requires that disclaimers be filed

within 12 months after the effective date of the transfer creating the interest sought to be disclaimed. Section 2518 of the Internal Revenue Code, however, authorizes a surviving co-owner to make a tax-qualified disclaimer of a survivorship interest in real property held as joint tenants with right of survivorship or as tenants by the entirety within nine months from the date the first co-owner dies.

Intestate Succession and Wills

Pursuant to ss. 732.401 and 723.4015, F.S., homestead property descends in the same manner as intestate property. If the decedent is survived by a spouse and lineal descendants, the surviving spouse takes a life estate, with a vested remainder to the lineal descendants. This provision does not apply to property owned by the decedent and surviving spouse as tenants by the entirety.

Real Estate Brokers

Regulation of real estate brokers and salespersons is established under part I of ch. 475, F.S. The Florida Real Estate Commission within the Department of Business and Professional Regulation administers this program. Regulation is designed to assure the minimal competency of real estate practitioners in order to protect the public. Applicants for licensure must meet character and educational requirements, submit to a criminal background check, and pass an examination.

Section 475.01, F.S., provides the following definitions:

The term “broker” is defined as a person who for compensation buys, sells, or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation which acts as a broker.

A “single agent” is a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction. A “dual agent” is a broker who works as an agent for both the buyer and seller and is specifically prohibited in Florida under s. 475.278, F.S.

A “transaction broker” is a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent, and no fiduciary duties exist, except for the duty of accounting and the duty to use skill, care, and diligence. The transaction broker must, however, treat the buyer and seller with honesty and fairness, and must disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller.

A “fiduciary” is a broker in a relationship of trust and confidence between that broker, as agent, and the seller or buyer, as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

Though not specifically defined in either ch. 475 or ch. 689, F.S., the term “trustee” is defined by Black’s Law Dictionary as “one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.”

III. Effect of Proposed Changes:

Section 1 creates subsection (4) of s. 475.01, F.S., to clarify that the provisions of ch. 475, F.S., apply to brokers acting as trustees of a trust created under ch. 689, F.S., unless the trustee is a non-profit organization as defined in s. 259.041(7), F.S., or the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(23), F.S.

Section 2 amends s. 689.071, F.S., to include the term “other entity” to recognize the ability of limited partnerships and limited liabilities companies to act as trustees of land trusts. The change clarifies the existing law and conforms the statute to current practice.

Section 3 amends s. 689.21, F.S., to allow a surviving co-owner of a joint tenancy with rights of survivorship or tenancy by the entirety to make a tax-qualified disclaimer under section 2518 of the IRS Code within nine months of the cotenant’s death. The committee substitute clarifies that a disclaimer does not cause the disclaimed interest to become homestead property for the purposes of ss. 732.401 and 732.4015, F.S. The committee substitute also clarifies that the disclaimed interest is equal to one-half of the property interest.

Section 4 provides that the act takes effect upon becoming a law.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
