

By Senator Posey

15-364-02

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A bill to be entitled
An act relating to real estate brokers and salespersons; amending s. 475.011, F.S.; exempting certain salaried employees from regulation; amending s. 475.15, F.S.; providing for salespersons to be registered in certain ownership capacities; amending s. 475.22, F.S.; revising broker's sign requirements; amending s. 475.25, F.S.; revising certain escrow requirements; providing requirements for sharing commissions with out-of-state licensees; providing for the comingling of escrow funds in certain situations; creating s. 475.252, F.S.; exempting certain advance rental payments and deposit money from regulation; providing an effective date.

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

Section 1. Section 475.011, Florida Statutes, is amended to read:

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

(1) Any person acting as an attorney in fact for the purpose of the execution of contracts or conveyances only; as an attorney at law within the scope of her or his duties as such; as a certified public accountant, as defined in chapter 473, within the scope of her or his duties as such; as the personal representative, receiver, trustee, or master under, or by virtue of, an appointment by will or by order of a court of competent jurisdiction; or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and

1 intent whereof is charitable, is philanthropic, or provides
2 for those having a natural right to the bounty of the donor or
3 trustor.†

4 (2) Any individual, corporation, partnership, trust,
5 joint venture, or other entity which sells, exchanges, or
6 leases its own real property; however, this exemption shall
7 not be available if and to the extent that an agent, employee,
8 or independent contractor paid a commission or other
9 compensation strictly on a transactional basis is employed to
10 make sales, exchanges, or leases to or with customers in the
11 ordinary course of an owner's business of selling, exchanging,
12 or leasing real property to the public.†

13 (3) Any employee of a public utility, a rural electric
14 cooperative, a railroad, or a state or local governmental
15 agency who acts within the scope of her or his employment, for
16 which no compensation in addition to the employee's salary is
17 paid, to buy, sell, appraise, exchange, rent, auction, or
18 lease any real property or any interest in real property for
19 the use of her or his employer.†

20 (4) Any salaried employee of an owner, or of a
21 registered broker for an owner, of an apartment community who
22 works in an onsite rental office of the apartment community in
23 a leasing capacity and who receives only a salary as
24 compensation.†

25 (5) Any person employed for a salary as a manager of a
26 condominium or cooperative apartment complex as a result of
27 any activities or duties which the person may have in relation
28 to the renting of individual units within such condominium or
29 cooperative apartment complex if rentals arranged by the
30 person are for periods no greater than 1 year and if such
31 person only receives a salary as compensation.†

1 (6) Any person, partnership, corporation, or other
2 legal entity which, for another and for compensation or other
3 valuable consideration, sells, offers to sell, advertises for
4 sale, buys, offers to buy, or negotiates the sale or purchase
5 of radio, television, or cable enterprises licensed and
6 regulated by the Federal Communications Commission pursuant to
7 the Communications Act of 1934. However, if the sale or
8 purchase of the radio, television, or cable enterprise
9 involves the sale or lease of land, buildings, fixtures, and
10 all other improvements to the land, a broker or salesperson
11 licensed under this chapter shall be retained for the portion
12 of the transaction which includes the land, buildings,
13 fixtures, and all other improvements to the land. ~~or~~

14 (7) Any full-time graduate student who is enrolled in
15 a commission-approved degree program in appraising at a
16 college or university in this state, if the student is acting
17 under the direct supervision of a licensed broker or a
18 licensed or certified appraiser and is engaged only in
19 appraisal activities related to the approved degree program.
20 Any appraisal report by the student must be issued in the name
21 of the supervising individual.

22 (8)(a) An owner of one or part of one or more
23 timeshare periods for the owner's own use and occupancy who
24 later offers one or more of such periods for resale.

25 (b) An exchange company, as that term is defined by s.
26 721.05(14), but only to the extent that the exchange company
27 is engaged in exchange program activities as described in and
28 is in compliance with s. 721.18.

29 (9) Any person registered, licensed, or certified by
30 the department under part II as an appraiser or assistant
31 appraiser performing appraisals in accordance with that part.

1 (10) Any person who appraises under the unit-rule
2 method of valuation a railroad or railroad terminal company
3 assessed for ad valorem tax purposes pursuant to s. 193.085.

4 (11) Any person, partnership, corporation, or other
5 legal entity which, for another and for compensation or other
6 valuable consideration, rents or advertises for rent, for
7 transient occupancy, any public lodging establishment licensed
8 under chapter 509.

9 (12) Any dealer registered under the Securities and
10 Exchange Act of 1934, as amended, or any federally insured
11 depository institution and any parent, subsidiary, or
12 affiliate thereof, in connection with the sale, exchange,
13 purchase, or rental of a business enterprise to or by a person
14 who is an accredited investor as defined by 15 U.S.C. s. 77b,
15 the Securities Act of 1933, or any regulation adopted
16 thereunder. This exemption applies whether stock or assets of
17 the business enterprise are purchased or sold. The exemption
18 does not apply to a sale, exchange, purchase, or rental of
19 land, buildings, fixtures or other improvements to the land
20 which is not made in connection with the sale, exchange,
21 purchase, or rental of a business enterprise. Any reference to
22 rental in this subsection includes a lease transaction.

23 (13) Any property management firm or any owner of an
24 apartment complex for the act of paying a finder's fee or
25 referral fee to an unlicensed person who is a tenant in such
26 apartment complex provided the value of the fee does not
27 exceed \$50 per transaction. Nothing in this subsection
28 authorizes an unlicensed person to advertise or otherwise
29 promote the person's services in procuring or assisting in
30 procuring prospective lessees or tenants of apartment units.
31 For purposes of this subsection, "finder's fee" or "referral

1 fee" means a fee paid, credit towards rent, or some other
2 thing of value provided to a person for introducing or
3 arranging an introduction between parties to a transaction
4 involving the rental or lease of an apartment unit. It is a
5 violation of s. 475.25(1)(h) and punishable under s. 475.42
6 for a property management firm or any owner of an apartment
7 complex to pay a finder's fee or a referral fee to an
8 unlicensed person unless expressly authorized by this
9 subsection.

10 Section 2. Section 475.15, Florida Statutes, is
11 amended to read:

12 475.15 Registration and licensing of general partners,
13 members, officers, and directors of a firm.--

14 (1) Each partnership, limited liability partnership,
15 limited liability company, or corporation which acts as a
16 broker shall register with the commission and shall renew the
17 licenses or registrations of its members, officers, and
18 directors for each license period. However, if the partnership
19 is a limited partnership, only the general partners must be
20 licensed brokers or brokerage corporations registered pursuant
21 to this part. If the license or registration of at least one
22 active broker member is not in force, the registration of a
23 corporation, limited liability company, limited liability
24 partnership, or partnership is canceled automatically during
25 that period of time.

26 (2) A salesperson may be registered as an officer or
27 director of a brokerage corporation or as a general partner of
28 a brokerage partnership and may form and participate in
29 partnerships, limited liability companies, limited liability
30 partnerships, professional corporations, or corporations.

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1 Section 3. Subsection (1) of section 475.22, Florida
2 Statutes, is amended to read:

3 475.22 Broker to maintain office and sign at entrance
4 of office; registered office outside state; broker required to
5 cooperate in investigation.--

6 (1) Each active broker shall maintain an office, which
7 shall consist of at least one enclosed room in a building of
8 stationary construction. Each active broker shall maintain a
9 sign on or about the entrance of her or his principal office
10 and each branch office, which sign may be easily observed and
11 read by any person about to enter such office ~~and shall be of~~
12 ~~such form and minimum dimensions as shall be prescribed by the~~
13 ~~commission.~~ Each sign must contain the words "Licensed Real
14 Estate Broker" or "Lic. Real Estate Broker" and the name of
15 the broker and any trade name. A partnership or corporation
16 sign must contain the name or trade name of the firm or
17 corporation and the name of at least one broker.

18 Section 4. Subsection (1) of section 475.25, Florida
19 Statutes, is amended to read:

20 475.25 Discipline.--

21 (1) The commission may deny an application for
22 licensure, registration, or permit, or renewal thereof; may
23 place a licensee, registrant, or permittee on probation; may
24 suspend a license, registration, or permit for a period not
25 exceeding 10 years; may revoke a license, registration, or
26 permit; may impose an administrative fine not to exceed \$1,000
27 for each count or separate offense; and may issue a reprimand,
28 and any or all of the foregoing, if it finds that the
29 licensee, registrant, permittee, or applicant:

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1 (a) Has violated any provision of s. 455.227(1) or s.
2 475.42. However, licensees under this part are exempt from the
3 provisions of s. 455.227(1)(i).

4 (b) Has been guilty of fraud, misrepresentation,
5 concealment, false promises, false pretenses, dishonest
6 dealing by trick, scheme, or device, culpable negligence, or
7 breach of trust in any business transaction in this state or
8 any other state, nation, or territory; has violated a duty
9 imposed upon her or him by law or by the terms of a listing
10 contract, written, oral, express, or implied, in a real estate
11 transaction; has aided, assisted, or conspired with any other
12 person engaged in any such misconduct and in furtherance
13 thereof; or has formed an intent, design, or scheme to engage
14 in any such misconduct and committed an overt act in
15 furtherance of such intent, design, or scheme. It is
16 immaterial to the guilt of the licensee that the victim or
17 intended victim of the misconduct has sustained no damage or
18 loss; that the damage or loss has been settled and paid after
19 discovery of the misconduct; or that such victim or intended
20 victim was a customer or a person in confidential relation
21 with the licensee or was an identified member of the general
22 public.

23 (c) Has advertised property or services in a manner
24 which is fraudulent, false, deceptive, or misleading in form
25 or content. The commission may adopt rules defining methods of
26 advertising that violate this paragraph.

27 (d)1. Has failed to account or deliver to any person,
28 including a licensee under this chapter, at the time which has
29 been agreed upon or is required by law or, in the absence of a
30 fixed time, upon demand of the person entitled to such
31 accounting and delivery, any personal property such as money,

1 fund, deposit, check, draft, abstract of title, mortgage,
2 conveyance, lease, or other document or thing of value,
3 including a share of a real estate commission if a civil
4 judgment relating to the practice of the licensee's profession
5 has been obtained against the licensee and said judgment has
6 not been satisfied in accordance with the terms of the
7 judgment within a reasonable time, or any secret or illegal
8 profit, or any divisible share or portion thereof, which has
9 come into the licensee's hands and which is not the licensee's
10 property or which the licensee is not in law or equity
11 entitled to retain under the circumstances. However, if the
12 licensee, ~~in good faith,~~ entertains doubt as to what person is
13 entitled to the accounting and delivery of the escrowed
14 property, ~~or if conflicting demands have been made upon the~~
15 ~~licensee for the escrowed property, which property she or he~~
16 ~~still maintains in her or his escrow or trust account,~~ the
17 licensee may ~~shall promptly~~ notify the commission of such
18 doubts ~~or conflicting demands~~ and ~~shall promptly~~:

19 a. Request that the commission issue an escrow
20 disbursement order determining who is entitled to the escrowed
21 property;

22 b. With the consent of all parties, submit the matter
23 to arbitration;

24 c. By interpleader or otherwise, seek adjudication of
25 the matter by a court; or

26 d. With the written consent of all parties, submit the
27 matter to mediation. The department may conduct mediation or
28 may contract with public or private entities for mediation
29 services. However, the mediation process must be successfully
30 completed within 90 days following the last demand or the
31 licensee shall promptly employ one of the other escape

1 procedures contained in this section. Payment for mediation
2 will be as agreed to in writing by the parties. The department
3 may adopt rules to implement this section.

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5 A licensee may disburse moneys from the licensee's escrow
6 account without employing one of the procedures in
7 sub-subparagraphs a.-d. and, notwithstanding any civil
8 liability that may exist, an administrative complaint may not
9 be filed against a licensee solely because the licensee
10 chooses another means to account for, deliver, or maintain the
11 escrowed property.~~If the licensee promptly employs one of the~~
12 ~~escape procedures contained herein, and if she or he abides by~~
13 ~~the order or judgment resulting therefrom, no administrative~~
14 ~~complaint may be filed against the licensee for failure to~~
15 ~~account for, deliver, or maintain the escrowed property. If~~
16 ~~the buyer of a residential condominium unit delivers to a~~
17 ~~licensee written notice of the buyer's intent to cancel the~~
18 ~~contract for sale and purchase, as authorized by s. 718.503,~~
19 ~~or if the buyer of real property in good faith fails to~~
20 ~~satisfy the terms in the financing clause of a contract for~~
21 ~~sale and purchase, the licensee may return the escrowed~~
22 ~~property to the purchaser without notifying the commission or~~
23 ~~initiating any of the procedures listed in sub-subparagraphs~~
24 ~~a.-d.~~

25 2. Has failed to deposit money in an escrow account
26 when the licensee is the purchaser of real estate under a
27 contract where the contract requires the purchaser to place
28 deposit money in an escrow account to be applied to the
29 purchase price if the sale is consummated.

1 (e) Has violated any of the provisions of this chapter
2 or any lawful order or rule made or issued under the
3 provisions of this chapter or chapter 455.

4 (f) Has been convicted or found guilty of, or entered
5 a plea of nolo contendere to, regardless of adjudication, a
6 crime in any jurisdiction which directly relates to the
7 activities of a licensed broker or salesperson, or involves
8 moral turpitude or fraudulent or dishonest dealing. The record
9 of a conviction certified or authenticated in such form as to
10 be admissible in evidence under the laws of the state shall be
11 admissible as prima facie evidence of such guilt.

12 (g) Has had a broker's or salesperson's license
13 revoked, suspended, or otherwise acted against, or has had an
14 application for such licensure denied, by the real estate
15 licensing agency of another state, territory, or country.

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

1 commission or otherwise compensate persons employed by the
2 salesperson or legal entity. Neither this paragraph nor s.
3 475.41 prevents a broker from sharing a commission on a
4 cooperative real estate transaction, other than a residential
5 sale as defined in s. 475.278(5)(a), with a person who holds
6 an active real estate license in another state or country, if:

7 1. Before the out-of-state licensee performs any act
8 in this state that constitutes professional real estate
9 activity, the licensee and the cooperating Florida broker
10 enter into a written agreement that states the terms of
11 cooperation and compensation and that states that the services
12 set forth in s. 475.01(1)(a), if conducted in this state, will
13 be under the supervision and control of the Florida broker,
14 that the out-of-state licensee will comply with all applicable
15 Florida laws, and that civil actions may be commenced against
16 the licensee in the county in which a claim arises;

17 2. The cooperating Florida broker or a broker engaged
18 by the cooperating broker accompanies the out-of-state
19 licensee and the client during any initial property showings;
20 and

21 3. All subsequent property showings and negotiations
22 regarding the transaction are conducted under the supervision,
23 control, and express permission of the cooperating Florida
24 broker or a broker engaged by the cooperating broker.

25 (i) Has become temporarily incapacitated from acting
26 as a broker or salesperson with safety to investors or those
27 in a fiduciary relation with her or him because of
28 drunkenness, use of drugs, or temporary mental derangement;
29 but suspension of a license in such a case shall be only for
30 the period of such incapacity.

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1 (j) Has rendered an opinion that the title to any
2 property sold is good or merchantable, except when correctly
3 based upon a current opinion of a licensed attorney at law, or
4 has failed to advise a prospective purchaser to consult her or
5 his attorney on the merchantability of the title or to obtain
6 title insurance.

7 (k) Has failed, if a broker, to immediately place,
8 upon receipt, any money, fund, deposit, check, or draft
9 entrusted to her or him by any person dealing with her or him
10 as a broker in an escrow account or, with the written consent
11 of the parties to a transaction, invest the money, fund,
12 deposit, check, or draft in a manner consistent with s.
13 18.10(2), with a title company, banking institution, credit
14 union, or savings and loan association located and doing
15 business in this state, or to deposit such funds in a trust or
16 escrow account maintained by her or him with some bank, credit
17 union, or savings and loan association located and doing
18 business in this state, wherein the funds shall be kept until
19 disbursement thereof is properly authorized; or has failed, if
20 a salesperson, to immediately place with her or his registered
21 employer any money, fund, deposit, check, or draft entrusted
22 to her or him by any person dealing with her or him as agent
23 of the registered employer. The commission shall establish
24 rules to provide for records to be maintained by the broker
25 and the manner in which such deposits shall be made. A broker
26 may place and maintain up to \$5,000 of personal or brokerage
27 business funds in the broker's escrow account, and shall be
28 provided a reasonable amount of time to correct escrow account
29 errors if there is no shortage of funds and such errors pose
30 no significant threat to economically harm the public. Funds
31 deposited into a broker's escrow account must be available for

1 withdrawal on the 2nd business day following the banking day
2 on which the funds are deposited for any check that is drawn
3 on a bank within the same federal reserve check processing
4 region as the bank or branch that accepts the check for
5 deposit or on the 5th business day following the banking day
6 on which the funds are deposited for any check that is drawn
7 on a bank outside the federal reserve check processing region
8 of the bank or branch that accepts the check for deposit.

9 (l) Has made or filed a report or record which the
10 licensee knows to be false, has willfully failed to file a
11 report or record required by state or federal law, has
12 willfully impeded or obstructed such filing, or has induced
13 another person to impede or obstruct such filing; but such
14 reports or records shall include only those which are signed
15 in the capacity of a licensed broker or salesperson.

16 (m) Has obtained a license by means of fraud,
17 misrepresentation, or concealment.

18 (n) Is confined in any county jail, postadjudication;
19 is confined in any state or federal prison or mental
20 institution; is under home confinement ordered in lieu of
21 institutional confinement; or, through mental disease or
22 deterioration, can no longer safely be entrusted to
23 competently deal with the public.

24 (o) Has been found guilty, for a second time, of any
25 misconduct that warrants her or his suspension or has been
26 found guilty of a course of conduct or practices which show
27 that she or he is so incompetent, negligent, dishonest, or
28 untruthful that the money, property, transactions, and rights
29 of investors, or those with whom she or he may sustain a
30 confidential relation, may not safely be entrusted to her or
31 him.

1 (p) Has failed to inform the commission in writing
2 within 30 days after pleading guilty or nolo contendere to, or
3 being convicted or found guilty of, any felony.

4 (q) Has violated any provision of s. 475.2755 or s.
5 475.278, including the duties owed under those sections.

6 (r) Has failed in any written listing agreement to
7 include a definite expiration date, description of the
8 property, price and terms, fee or commission, and a proper
9 signature of the principal(s); and has failed to give the
10 principal(s) a legible, signed, true and correct copy of the
11 listing agreement within 24 hours of obtaining the written
12 listing agreement. The written listing agreement shall
13 contain no provision requiring the person signing the listing
14 to notify the broker of the intention to cancel the listing
15 after such definite expiration date.

16 (s) Has had a registration suspended, revoked, or
17 otherwise acted against in any jurisdiction. The record of the
18 disciplinary action certified or authenticated in such form as
19 to be admissible in evidence under the laws of the state shall
20 be admissible as prima facie evidence of such disciplinary
21 action.

22 (t) Has violated any standard for the development or
23 communication of a real estate appraisal or other provision of
24 the Uniform Standards of Professional Appraisal Practice, as
25 defined in s. 475.611, as approved and adopted by the
26 Appraisal Standards Board of the Appraisal Foundation, as
27 defined in s. 475.611. This paragraph does not apply to a real
28 estate broker or salesperson who, in the ordinary course of
29 business, performs a comparative market analysis, gives a
30 broker price opinion, or gives an opinion of value of real
31 estate. However, in no event may this comparative market

1 analysis, broker price opinion, or opinion of value of real
2 estate be referred to as an appraisal, as defined in s.
3 475.611.

4 Section 5. Section 475.252, Florida Statutes, is
5 created to read:

6 475.252 Deposit money and advance rent.--Money
7 provided to a licensee by a tenant under a rental agreement,
8 advance rent, or security for the rental agreement is not
9 subject to the requirements of this chapter or the rules of
10 the Florida Real Estate Commission.

11 Section 6. This act shall take effect July 1, 2002.

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14 SENATE SUMMARY

15 Revises provisions relating to the regulation of real
16 estate brokers and salespersons. Provides licensure
17 exemptions. Allows salespersons to register and hold
18 ownership interests. Provides signage requirements.
19 Revises disbursement requirements for certain funds.
20 Provides for commission sharing with out-of-state
21 licensees. Revises escrow requirements. Exempts certain
22 deposits and advances from regulation.
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