

By the Committee on Regulated Industries; and Senator Posey

315-2254-02

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

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23 Be It Enacted by the Legislature of the State of Florida:
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25 Section 1. Paragraph (j) of subsection (1) of section
26 475.01, Florida Statutes, is amended to read:

27 475.01 Definitions.--
28 (1) As used in this part:
29 (j) "Salesperson" means a person who performs any act
30 specified in the definition of "broker," but who performs such
31 act under the employment ~~direction, control, or management~~ of

1 another person. A salesperson renders a professional service
2 and is a professional within the meaning of s. 95.11(4)(a).
3 Nothing in this definition shall be construed to limit a
4 salesperson from registering as an officer or director of a
5 brokerage corporation or a general partner of a brokerage
6 partnership. A salesperson may also form a partnership,
7 limited liability company, limited liability partnership, or
8 corporation with brokers and other salespersons.

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

11 475.011 Exemptions.--This part does not apply to:

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

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

26 Section 3. Section 475.15, Florida Statutes, is
27 amended to read:

28 475.15 Registration and licensing of general partners,
29 members, officers, and directors of a firm.--Each partnership,
30 limited liability partnership, limited liability company, or
31 corporation which acts as a broker shall register with the

1 commission and shall renew the licenses or registrations of
2 its members, officers, and directors for each license period.
3 However, if the ~~partnership is a limited partnership, only the~~
4 ~~general partners must be licensed brokers or brokerage~~
5 ~~corporations registered pursuant to this part.~~ If the license
6 or registration of at least one active broker member is not in
7 force, the registration of a corporation, limited liability
8 company, limited liability partnership, or partnership is
9 canceled automatically during that period of time.

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

12 475.22 Broker to maintain office and sign at entrance
13 of office; registered office outside state; broker required to
14 cooperate in investigation.--

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

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

31 475.25 Discipline.--

1 (1) The commission may deny an application for
2 licensure, registration, or permit, or renewal thereof; may
3 place a licensee, registrant, or permittee on probation; may
4 suspend a license, registration, or permit for a period not
5 exceeding 10 years; may revoke a license, registration, or
6 permit; may impose an administrative fine not to exceed \$1,000
7 for each count or separate offense; and may issue a reprimand,
8 and any or all of the foregoing, if it finds that the
9 licensee, registrant, permittee, or applicant:

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

3 a. Request that the commission issue an escrow
4 disbursement order determining who is entitled to the escrowed
5 property;

6 b. With the consent of all parties, submit the matter
7 to arbitration;

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

10 d. With the written consent of all parties, submit the
11 matter to mediation. The department may conduct mediation or
12 may contract with public or private entities for mediation
13 services. However, the mediation process must be successfully
14 completed within 90 days following the last demand or the
15 licensee shall promptly employ one of the other escape
16 procedures contained in this section. Payment for mediation
17 will be as agreed to in writing by the parties. The
18 department may adopt rules to implement this section.

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20 In the alternative, a licensee may promptly disburse property
21 from a licensee's escrow account without notifying the
22 commission or employing one of the procedures listed in
23 sub-subparagraphs a.-d. and, notwithstanding any civil
24 liability that may exist, no administrative complaint may be
25 filed against a licensee solely because the licensee disbursed
26 escrowed property without first notifying the commission or
27 employing one of the procedures listed in sub-subparagraphs
28 a.-d.~~If the licensee promptly employs one of the escape~~
29 ~~procedures contained herein, and if she or he abides by the~~
30 ~~order or judgment resulting therefrom, no administrative~~
31 ~~complaint may be filed against the licensee for failure to~~

1 ~~account for, deliver, or maintain the escrowed property. If~~
2 ~~the buyer of a residential condominium unit delivers to a~~
3 ~~licensee written notice of the buyer's intent to cancel the~~
4 ~~contract for sale and purchase, as authorized by s. 718.503,~~
5 ~~or if the buyer of real property in good faith fails to~~
6 ~~satisfy the terms in the financing clause of a contract for~~
7 ~~sale and purchase, the licensee may return the escrowed~~
8 ~~property to the purchaser without notifying the commission or~~
9 ~~initiating any of the procedures listed in sub-subparagraphs~~
10 ~~a.-d.~~

11 2. Has failed to deposit money in an escrow account
12 when the licensee is the purchaser of real estate under a
13 contract where the contract requires the purchaser to place
14 deposit money in an escrow account to be applied to the
15 purchase price if the sale is consummated.

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

3 Section 6. This act shall take effect upon becoming a
4 law.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 SB 2008

9 -Amends the definition of the term "salesperson" under ch.
10 475, F.S., and makes clarifications within the definition
11 regarding a salesperson's ability to participate in, and to
12 form, certain partnerships and corporations.

13 -Makes a conforming amendment to s. 475.15, F.S., by deleting
14 language that provides that only licensed brokers or brokerage
15 corporations may be general partners in a limited partnership.

16 -Requires a licensee to notify the commission and seek an
17 escrow disbursement order, arbitration, or court adjudication
18 only when the licensee entertains doubt over the ownership of
19 the property. The reference to entertaining doubt "in good
20 faith" is removed. In the alternative, a licensee may promptly
21 disburse property from the licensee's escrow account without
22 notifying the commission or following the procedures set forth
23 above and, notwithstanding any potential civil liability, an
24 administrative complaint may not be filed against the licensee
25 solely upon those grounds.

26 - Authorizes licensed real estate salespersons or entities
27 formed by a salesperson who have been compensated by real
28 estate brokers to compensate persons associated with the
29 salesperson or legal entity. Removes a provision of the bill
30 clarifying compensation by brokers to out-of-state licensees.

31 -Provides for the discipline of real estate brokers who fail
to deposit certain property in an escrow account in a manner
consistent with the broker's fiduciary obligations and
requirements of timely disbursement. Requires real estate
brokers to invest certain escrow property upon the consent of
the parties.

-Authorizes real estate licensees to keep up to \$5,000 of
personal or brokerage business funds in the broker's escrow
account and provides a reasonable amount of time to correct
escrow errors under certain conditions. Provides that it is
the intent of the Legislature that the disbursement of escrow
account funds shall not be delayed due to a legal dispute
regarding ownership of personal or brokerage funds.