

Bill No. CS/HB 29, 2nd Eng.

Amendment No.      Barcode 274826

<u>Senate</u>	CHAMBER ACTION	<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 3, between lines 23 and 24,

15

16 insert:

17 Section 4. 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 5. 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 6. 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 7. 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 8. 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.

27  
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 15, after the semicolon

4

5 insert:

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

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