

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Business Regulation offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause

and insert:

Section 1. Paragraph (j) of subsection (1) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.--

(1) As used in this part:

(j) "Salesperson" means a person who performs any act specified in the definition of "broker," but who performs such act under the employment direction, control, or management of another person. A salesperson renders a professional service and is a professional within the meaning of s. 95.11(4)(a). Nothing in this definition shall be construed to limit a salesperson from registering as an officer or director of a brokerage corporation or a general partner of a brokerage partnership. A salesperson may also form a partnership, limited liability company, limited liability partnership, or corporation with brokers and other salespersons.

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

3 475.011 Exemptions.--This part does not apply to:

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

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

18 Section 3. Section 475.15, Florida Statutes, is
19 amended to read:

20 475.15 Registration and licensing of general partners,
21 members, officers, and directors of a firm.--Each partnership,
22 limited liability partnership, limited liability company, or
23 corporation which acts as a broker shall register with the
24 commission and shall renew the licenses or registrations of
25 its members, officers, and directors for each license period.
26 However, if the ~~partnership is a limited partnership, only the~~
27 ~~general partners must be licensed brokers or brokerage~~
28 ~~corporations registered pursuant to this part. If the license~~
29 or registration of at least one active broker member is not in
30 force, the registration of a corporation, limited liability
31 company, limited liability partnership, or partnership is

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1 canceled automatically during that period of time.

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

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

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

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

23 475.25 Discipline.--

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

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1 licensee, registrant, permittee, or applicant:

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

25 a. Request that the commission issue an escrow
26 disbursement order determining who is entitled to the escrowed
27 property;

28 b. With the consent of all parties, submit the matter
29 to arbitration;

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

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1 d. With the written consent of all parties, submit the
2 matter to mediation. The department may conduct mediation or
3 may contract with public or private entities for mediation
4 services. However, the mediation process must be successfully
5 completed within 90 days following the last demand or the
6 licensee shall promptly employ one of the other escape
7 procedures contained in this section. Payment for mediation
8 will be as agreed to in writing by the parties. The
9 department may adopt rules to implement this section.

10
11 In the alternative, a licensee may promptly disburse property
12 from a licensee's escrow account without notifying the
13 commission or employing one of the procedures listed in
14 subparagraphs a.-d. and, notwithstanding any civil liability
15 that may exist, no administrative complaint may be filed
16 against a licensee solely because the licensee disbursed
17 escrowed property without first notifying the commission or
18 employing one of the procedures listed in sub-subparagraphs
19 a.-d.~~If the licensee promptly employs one of the escape~~
20 ~~procedures contained herein, and if she or he abides by the~~
21 ~~order or judgment resulting therefrom, no administrative~~
22 ~~complaint may be filed against the licensee for failure to~~
23 ~~account for, deliver, or maintain the escrowed property. If~~
24 ~~the buyer of a residential condominium unit delivers to a~~
25 ~~licensee written notice of the buyer's intent to cancel the~~
26 ~~contract for sale and purchase, as authorized by s. 718.503,~~
27 ~~or if the buyer of real property in good faith fails to~~
28 ~~satisfy the terms in the financing clause of a contract for~~
29 ~~sale and purchase, the licensee may return the escrowed~~
30 ~~property to the purchaser without notifying the commission or~~
31 ~~initiating any of the procedures listed in sub-subparagraphs~~

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

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

24 (k) Has failed, if a broker, to immediately place,
25 upon receipt, any money, fund, deposit, check, or draft
26 entrusted to her or him by any person dealing with her or him
27 as a broker in an escrow account ~~with a title company, banking~~
28 ~~institution, credit union, or savings and loan association~~
29 ~~located and doing business in this state, or to deposit such~~
30 ~~funds in a trust or escrow account maintained by her or him~~
31 ~~with some bank, credit union, or savings and loan association~~

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

21 Section 6. This act shall take effect upon becoming a
22 law.

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

26 And the title is amended as follows:

27 On page 1, lines 2-27,
28 remove: all of said lines

29
30 and insert:

31 An act relating to real estate brokers and

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1 salespersons; amending s. 475.01, F.S.;

2 revising a definition; amending s. 475.011,

3 F.S.; clarifying application of certain

4 exemptions; amending s. 475.15, F.S.; deleting

5 a provision requiring only general partners of

6 a limited partnership to be registered;

7 amending s. 475.22, F.S.; specifying certain

8 sign requirements; amending s. 475.25, F.S.;

9 revising certain provisions relating to

10 disciplinary actions; providing an alternative

11 procedure for disbursing moneys from an escrow

12 account; authorizing salespersons to compensate

13 certain associated persons under certain

14 circumstances; authorizing brokers to place and

15 maintain moneys in an escrow account under

16 certain circumstances; providing procedures for

17 withdrawal of moneys from the account;

18 providing an effective date.

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