

By Representative Bilirakis

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; providing for sharing
 17 commissions on cooperative real estate
 18 transactions under certain circumstances;
 19 authorizing brokers to place and maintain
 20 moneys in an escrow account under certain
 21 circumstances; providing procedures for
 22 withdrawal of moneys from the account;
 23 providing definitions; creating s. 475.252,
 24 F.S.; specifying disposition of certain moneys
 25 relating to rental agreements; providing an
 26 exception to certain application; providing an
 27 effective date.

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 29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (j) of subsection (1) of section
2 475.01, Florida Statutes, is amended to read:

3 475.01 Definitions.--

4 (1) As used in this part:

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

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

18 475.011 Exemptions.--This part does not apply to:

19 (4) Any salaried employee of an owner, or of a
20 registered broker for an owner, of an apartment community who
21 works in an onsite rental office of the apartment community in
22 a leasing capacity, provided the salaried employee works
23 without any other compensation being paid in addition to the
24 salary;

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, provided the
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1 person works without any other compensation being paid in
2 addition to the salary;

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

5 475.15 Registration and licensing of general partners,
6 members, officers, and directors of a firm.--Each partnership,
7 limited liability partnership, limited liability company, or
8 corporation which acts as a broker shall register with the
9 commission and shall renew the licenses or registrations of
10 its members, officers, and directors for each license period.
11 However, if the ~~partnership is a limited partnership, only the~~
12 ~~general partners must be licensed brokers or brokerage~~
13 ~~corporations registered pursuant to this part. If the license~~
14 or registration of at least one active broker member is not in
15 force, the registration of a corporation, limited liability
16 company, limited liability partnership, or partnership is
17 canceled automatically during that period of time.

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

20 475.22 Broker to maintain office and sign at entrance
21 of office; registered office outside state; broker required to
22 cooperate in investigation.--

23 (1) Each active broker shall maintain an office, which
24 shall consist of at least one enclosed room in a building of
25 stationary construction. Each active broker shall maintain a
26 sign on or about the entrance of her or his principal office
27 and each branch office, which sign may be easily observed and
28 read by any person about to enter such office ~~and shall be of~~
29 ~~such form and minimum dimensions as shall be prescribed by the~~
30 ~~commission.~~ Each sign shall contain the name of the broker,
31 together with the trade name, if any. For a partnership or

1 corporation, the sign shall contain the name of the firm or
2 corporation or trade name of the firm or corporation, together
3 with the name of at least one of the brokers. At a minimum,
4 the words "licensed real estate broker" or "lic. real estate
5 broker" shall appear on the office entrance signs.

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

8 475.25 Discipline.--

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

18 (d)1. Has failed to account or deliver to any person,
19 including a licensee under this chapter, at the time which has
20 been agreed upon or is required by law or, in the absence of a
21 fixed time, upon demand of the person entitled to such
22 accounting and delivery, any personal property such as money,
23 fund, deposit, check, draft, abstract of title, mortgage,
24 conveyance, lease, or other document or thing of value,
25 including a share of a real estate commission if a civil
26 judgment relating to the practice of the licensee's profession
27 has been obtained against the licensee and said judgment has
28 not been satisfied in accordance with the terms of the
29 judgment within a reasonable time, or any secret or illegal
30 profit, or any divisible share or portion thereof, which has
31 come into the licensee's hands and which is not the licensee's

1 property or which the licensee is not in law or equity
2 entitled to retain under the circumstances. However, if the
3 licensee, ~~in good faith,~~ entertains doubt as to what person is
4 entitled to the accounting and delivery of the escrowed
5 property, ~~or if conflicting demands have been made upon the~~
6 ~~licensee for the escrowed property, which property she or he~~
7 ~~still maintains in her or his escrow or trust account,~~ the
8 licensee shall promptly notify the commission of such doubts
9 or conflicting demands and shall promptly:

10 a. Request that the commission issue an escrow
11 disbursement order determining who is entitled to the escrowed
12 property;

13 b. With the consent of all parties, submit the matter
14 to arbitration;

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

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

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27 In the alternative, a licensee may promptly disburse moneys
28 from a licensee's escrow account without notifying the
29 commission or employing one of the procedures listed in
30 subparagraphs a.-d. and, notwithstanding any civil liability
31 that may exist, no administrative complaint may be filed

1 against a licensee solely because the licensee chooses another
2 means to account for, deliver, or maintain the escrowed
3 property.~~If the licensee promptly employs one of the escape~~
4 ~~procedures contained herein, and if she or he abides by the~~
5 ~~order or judgment resulting therefrom, no administrative~~
6 ~~complaint may be filed against the licensee for failure to~~
7 ~~account for, deliver, or maintain the escrowed property. If~~
8 ~~the buyer of a residential condominium unit delivers to a~~
9 ~~licensee written notice of the buyer's intent to cancel the~~
10 ~~contract for sale and purchase, as authorized by s. 718.503,~~
11 ~~or if the buyer of real property in good faith fails to~~
12 ~~satisfy the terms in the financing clause of a contract for~~
13 ~~sale and purchase, the licensee may return the escrowed~~
14 ~~property to the purchaser without notifying the commission or~~
15 ~~initiating any of the procedures listed in sub-subparagraphs~~
16 ~~a.-d.~~

17 2. Has failed to deposit money in an escrow account
18 when the licensee is the purchaser of real estate under a
19 contract where the contract requires the purchaser to place
20 deposit money in an escrow account to be applied to the
21 purchase price if the sale is consummated.

22 (h) Has shared a commission with, or paid a fee or
23 other compensation to, a person not properly licensed as a
24 broker, broker-salesperson, or salesperson under the laws of
25 this state, for the referral of real estate business, clients,
26 prospects, or customers, or for any one or more of the
27 services set forth in s. 475.01(1)(a). For the purposes of
28 this section, it is immaterial that the person to whom such
29 payment or compensation is given made the referral or
30 performed the service from within this state or elsewhere;
31 however, a licensed broker of this state may pay a referral

1 fee or share a real estate brokerage commission with a broker
2 licensed or registered under the laws of a foreign state so
3 long as the foreign broker does not violate any law of this
4 state. However, when a broker has compensated a salesperson or
5 a legal entity formed and controlled by a salesperson, that
6 salesperson may compensate persons associated with the
7 salesperson or legal entity. Nothing in this paragraph or s.
8 475.41 is intended to prevent a Florida real estate broker
9 from sharing a commission on a cooperative real estate
10 transaction, other than a residential sale as defined in s.
11 475.278(5)(a), with a person who holds an active real estate
12 license in another state or country, provided:

13 1. Before the out-of-state real estate licensee
14 performs any act in this state that constitutes professional
15 real estate activity, the licensee and the cooperating real
16 estate broker in this state shall enter a written agreement
17 that states the terms of cooperation and compensation; that
18 the services set forth in s. 475.01(1)(a), if conducted in
19 this state, will be under the supervision and control of the
20 cooperating broker in this state; that the out-of-state
21 licensee will comply with all applicable laws of this state;
22 and that civil actions may be commenced against the licensee
23 in any court of competent jurisdiction in any county of this
24 state in which a claim may arise.

25 2. The cooperating real estate broker in this state or
26 a real estate broker engaged by the cooperating broker
27 accompanies the out-of-state real estate licensee and the
28 client during any initial property showings.

29 3. All subsequent property showings and all
30 negotiations regarding the cooperative real estate transaction
31 are conducted under the supervision, control, and express

1 permission of the cooperating real estate broker in this state
2 or a real estate broker engaged by the cooperating broker.
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, or to deposit such~~
9 ~~funds in a trust or escrow account maintained by her or him~~
10 ~~with some bank, credit union, or savings and loan association~~
11 ~~located and doing business in this state, wherein the funds~~
12 shall be kept and, with the written consent of the parties to
13 a transaction, invested in a manner not inconsistent with s.
14 18.10(2), until disbursement thereof is properly authorized;
15 or has failed, if a salesperson, to immediately place with her
16 or his registered employer any money, fund, deposit, check, or
17 draft entrusted to her or him by any person dealing with her
18 or him as agent of the registered employer. The commission
19 shall establish rules to provide for records to be maintained
20 by the broker ~~and the manner in which such deposits shall be~~
21 ~~made.~~ A broker may place and maintain up to \$5,000 of personal
22 or brokerage business funds in the broker's escrow account and
23 shall be provided a reasonable amount of time to correct
24 escrow account errors if there is no shortage of funds and
25 such errors pose no significant threat to economically harm
26 the public. Funds deposited into a broker's escrow account
27 shall be available for withdrawal on the second business day
28 following the banking day on which the funds are deposited in
29 the case of a local check, and on the fifth business day
30 following the banking day on which funds are deposited in the
31 case of a nonlocal check. A local check is any check that is

1 drawn on a bank within the same Federal Reserve
2 check-processing region as the bank or branch that accepts the
3 check for deposit. A nonlocal check is any check that is
4 drawn on a bank outside the Federal Reserve check-processing
5 region as the bank or branch that accepts the check for
6 deposit.

7 Section 6. Section 475.252, Florida Statutes, is
8 created to read:

9 475.252 Deposit money and advance rent.--Money
10 provided or advanced to a licensee by a tenant on a rental
11 agreement as rent, advance rent, or security for performance
12 of the rental agreement shall be held pursuant to s. 83.49(1).
13 Such moneys shall not be subject to the requirements of this
14 chapter or the rules of the Florida Real Estate Commission.

15 Section 7. This act shall take effect upon becoming a
16 law.

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19 HOUSE SUMMARY

20
21 Revises provisions regulating real estate brokers and
22 salespersons relating to registration of partners of a
23 limited partnership, sign requirements, and disposition
24 of moneys relating to rental agreements. Revises
25 provisions relating to specified disciplinary actions to
26 provide an alternative procedure for disbursing moneys
27 from a broker's escrow account, authorize salespersons to
28 compensate associated persons, provide for sharing
29 commissions on cooperative real estate transactions,
30 authorize brokers to place and maintain moneys in an
31 escrow account, and provide procedures for withdrawal of
moneys from the account. See bill for details.