

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 667 Real Estate Brokers and Appraisers

**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee; Business & Professional Regulation Subcommittee; Porter

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 852

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 0 N, As CS	Collins	Luczynski
2) Rulemaking Oversight & Repeal Subcommittee	11 Y, 0 N, As CS	Miller	Rubottom
3) Regulatory Affairs Committee	15 Y, 0 N	Collins	Hamon

### SUMMARY ANALYSIS

The bill amends ch. 475, F.S., to comply with policies promulgated by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and the Appraisal Qualifications Board of the Appraisal Foundation. Specifically, the bill:

- Removes the term “licensed appraiser” from the definition of “supervisory appraiser;”
- Eliminates the reference to “licensed” appraisers from the supervisory requirements for trainee real estate appraisers;
- Eliminates the Florida Real Estate Appraisal Board’s ability to consider the subsequent passage of time and good behavior when considering the application of a person who has prior discipline and criminal history, and instead requires the applicant to meet the conditions set forth by the Appraisal Qualifications Board; and
- Updates a reference regarding the adoption of the most recent Appraisal Qualifications Board Qualification Criteria.

Additionally, the bill amends s. 475.215(1), F.S., to place additional limitations on additional brokers’ licenses. Specifically, the bill:

- Provides that an additional license may not be issued if that license will be used in a manner that is likely to be harmful to any person;
- Provides the Florida Real Estate Commission with the ability to deny a multiple license request in certain circumstances; and
- Provides that a final order of discipline against the primary brokers’ license applies to both the primary license and to any multiple licenses held by that broker at the time the final order becomes effective.

The bill has an indeterminate, but insignificant fiscal impact on state funds. See fiscal comments.

The bill is effective upon becoming law, except as otherwise expressly provided.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background of the Appraisal Industry**

##### The Appraisal Foundation

The Appraisal Foundation (TAF) is a private, non-profit educational organization that was formed in 1987 to promote professionalism in the valuation industry.<sup>1</sup> TAF is governed by a Board of Trustees, which oversees three independent boards:

- The Appraisal Standards Board (ASB), which establishes the generally-accepted standards of the profession, known as the Uniform Standards of Professional Appraisal Practice (USPAP);
- The Appraiser Qualifications Board (AQB), which establishes the minimum education, experience, and examination requirements for appraisers; and
- The Appraisal Practices Board (APB), which is responsible for developing best practices and voluntary guidance to professionals.<sup>2</sup>

##### The Appraisal Subcommittee (ASC)

###### *Generally*

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council was created in 1989, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).<sup>3</sup> Because the savings and loan crisis of the 1980s was caused in part by questionable real estate lending practices, the purpose of Title XI was to ensure real estate appraisals pertaining to federally related real estate transactions, including those insured or guaranteed through various federal programs, were in writing, met uniform standards, and were prepared by appraisers who met standards of competence and were subject to effective supervision.<sup>4</sup> The ASC is charged with monitoring the states' appraisal regulatory programs.<sup>5</sup> Moreover, it is responsible for monitoring and reviewing the activities of the Appraisal Foundation and its three Boards.<sup>6</sup> As such, the ASC oversees Florida's appraiser regulatory program, administered by the Department of Business and Professional Regulation (Department).

The ASC has six members, designated by the heads of the:

- Board of Governors of the Federal Reserve System (FRB);
- Federal Deposit Insurance Corporation (FDIC);
- Office of the Comptroller of the Currency (OCC);
- Office of Thrift Supervision (OTS);
- National Credit Union Administration (NCUA); and
- Department of Housing and Urban Development (HUD).<sup>7</sup>

###### *Reviews and Enforcement*

The ASC conducts biennial on-site reviews of each state's appraisal agency, with more frequent visits to states with weak enforcement programs.<sup>8</sup> The ASC has the ability to disapprove a state's appraisal regulatory program, which effectively disqualifies that state's appraisers from conducting appraisals for

<sup>1</sup> <https://www.asc.gov/About-the-ASC/ASCHistory.aspx>, last visited on February 27, 2013.

<sup>2</sup> Id.

<sup>3</sup> See, generally: 12 U.S.C. ss. 3331-3351.

<sup>4</sup> 12 U.S.C. s. 3331.

<sup>5</sup> 12 U.S.C. s. 3332(a).

<sup>6</sup> 12 U.S.C. s. 3332(b).

<sup>7</sup> 12 C.F.R. s. 1102.303(b).

<sup>8</sup> <https://www.asc.gov/About-the-ASC/ASCHistory.aspx>, last visited on February 27, 2013.

federally-related transactions.<sup>9</sup> A “federally-related transaction” is any real estate-related financial transaction which: 1) a federal financial institution’s regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and 2) requires the services of an appraiser.<sup>10</sup>

### The Florida Real Estate Appraisal Board

The Florida Real Estate Appraisal Board (FREAB), within the Division of Real Estate at the Department, administers and enforces the state’s real estate appraiser laws.<sup>11</sup> Specifically, through its rules, the FREAB has the power to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisers; and
- Establish standards for and regulate supervisory appraisers.<sup>12</sup>

As discussed above, the ASC has oversight over the state’s appraisal regulatory program, as administered by the FREAB within the Department.

### Administrative Procedures for Disciplinary Cases

#### The Administrative Procedure Act and Appraiser Disciplinary Proceedings

##### *Investigation, Probable Cause, and Filing the Formal Complaint*

Disciplinary cases before the FREAB are investigated and prosecuted by the Department.<sup>13</sup> A case begins when a complaint<sup>14</sup> is filed with the Department. As the Department may investigate only legally sufficient complaints,<sup>15</sup> upon receipt a complaint is reviewed by intake staff for compliance with the statutory standard.

- This initial step typically is accomplished within 10 working days from receipt.

If necessary to determine legal sufficiency the Department may request additional information. Such correspondence with complainants will extend this determination for an indefinite period before a case is assigned for investigation.

Legally sufficient complaints are investigated by the Department.<sup>16</sup> The case is assigned to a Department investigator and a copy of the complaint sent to the registrant for response.<sup>17</sup>

- The statute fixes no set time to investigate complaints;<sup>18</sup> according to the Department, investigations of complaints against appraisers typically take more than 100 days.

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<sup>9</sup> See, generally: 12 U.S.C. s. 3347 and 12 C.F.R. s. 1102 Subpart B.

<sup>10</sup> 12 U.S.C. s. 3350(4).

<sup>11</sup> See, generally: s. 475.613, F. S.

<sup>12</sup> Section 475.613(2), F. S.

<sup>13</sup> Section 455.225, F.S.

<sup>14</sup> Most complaints must be in writing and signed by the complainant, although the statute makes limited provision for anonymous complaints or those made by confidential informants.

<sup>15</sup> “A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred.” Section 455.225(1)(a), F.S.

<sup>16</sup> Section 455.225(1)(a), F.S. The statute provides an alternative to the investigation process by authorizing the Department to issue “notices of noncompliance” to registrants for minor violations that neither cause harm, nor demonstrate professional incompetence, nor threaten public health, safety, or welfare. Section 455.225(3)(a), F.S.

<sup>17</sup> Section 455.225(1)(b), F.S. The registrant has 20 days from receipt to file a response.

<sup>18</sup> “The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints.” Section 455.225(2), F.S. These terms are not defined in the statute and are given

Once the investigation is complete the Department submits the investigative report to a probable cause panel of the FREAB.<sup>19</sup> A typical report details the Department's investigative findings, provides copies of the complaint and all relevant documents, contains the Department's legal recommendation as to whether further action is warranted, and provides a draft administrative complaint for the panel's consideration (if that is the Department's recommendation).

As with most regulatory boards, meetings of the FREAB probable cause panel coincide with regular meetings of the board. The FREAB currently meets bi-monthly. The statute imposes no specific time by which the Department must submit its investigative report for consideration of probable cause. Although meetings of probable cause panels for licensing boards under the Department are not open to the public before a finding of probable cause (unless the registrant waives such confidentiality),<sup>20</sup> because of concerns expressed by ASC the Department and FREAB permit the registrant to appear before the panel and respond to the investigative report.

The panel has 30 days from receiving the final investigative report to determine probable cause.<sup>21</sup> If the panel neither acts to determine probable cause nor issues the registrant a letter of guidance in lieu of finding probable cause, the Department has 10 days to determine probable cause.<sup>22</sup>

If the panel finds probable cause for administrative action against the registrant, at the same meeting the chair of the panel typically signs the finding that directs the Department to file the formal complaint. Because of the confidentiality requirement discussed above, in cases where the registrant has not waived confidentiality the Department waits until the 10 day period expires before filing the formal complaint. The Department files the formal administrative complaint with its agency clerk and initiates the administrative proceeding by serving a copy of the complaint on the registrant.<sup>23</sup> Initial service typically is by certified mail in order to document the date the registrant receives the formal complaint.

- Use of certified mail adds 5 days to the time for response.<sup>24</sup>
- The registrant has 21 days from receiving the formal complaint to respond to the allegations and request a hearing.<sup>25</sup>
- Because a failure to respond within 21 days waives the right to a hearing,<sup>26</sup> the Department normally waits at least 5 days after the 21 day deadline before proceeding to allow time for delivery of a request postmarked on the 21<sup>st</sup> day. Thus, in a typical case up to 31 days may elapse before the Department receives a response to the formal complaint.

The registrant's response to the formal complaint determines the type and length of administrative proceedings before the FREAB takes final action. If the registrant does not respond, the attorney for the Department will notify counsel for the FREAB<sup>27</sup> who will prepare a final order for consideration and action at the next board meeting. If the registrant responds but does not dispute any alleged material fact, the Department grants a hearing to be set before the FREAB at its next meeting. The registrant is

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their "ordinary and customary" definitions. "Expeditious" means to act with speed and efficiency. *The American Heritage Dictionary of the English Language* (4<sup>th</sup> ed.), 625.

<sup>19</sup> Determination of probable cause to proceed with filing administrative action against the subject of the investigation is made by a panel of the FREAB, not the Department. Rule 61J1-1.009(1), F.A.C.

<sup>20</sup> All meetings of the probable cause panel are exempted from the requirements for public meetings in s.286.011, F.S., until 10 days after a finding of probable cause. Section 455.225(4), F.S. This includes the notice and agenda requirements for public meetings under s. 120.525, F.S.

<sup>21</sup> Section 455.225(4), F.S. The statute provides the panel 15 days from receiving the initial report to make a reasonable request for additional information; the 30 day period would begin only after the requested information is furnished. The Secretary of the Department may extend the 15 and 30 day periods.

<sup>22</sup> Section 455.225(4), F.S. The Department has not yet responded to an inquiry from staff as to the percentage of cases presented to the FREAB panel that result in a finding of probable cause.

<sup>23</sup> Rule 28-106.2015(3), F.A.C.

<sup>24</sup> Rule 28-106.103, F.A.C.

<sup>25</sup> Rule 28-101.111(2), F.A.C.

<sup>26</sup> Rule 28-106.111(4), F.A.C.

<sup>27</sup> Section 455.221, F.S. The Department contracts with the Department of Legal Affairs to provide separate counsel for FREAB. Under s. 455.221(3), F.S., the same attorney cannot both prosecute a case and provide counsel for the board on the same matter.

notified of the opportunity to appear before the FREAB and respond to the application of law and imposition of discipline proposed in the formal complaint, including the opportunity to present matters mitigating the proposed discipline.<sup>28</sup> At the conclusion of the hearing the FREAB directs board counsel to prepare a final order for execution by the executive director of the FREAB<sup>29</sup> (see discussion on Final Orders by the FREAB, below). If the registrant responds and disputes the facts of the formal complaint, the Department has 15 days to grant the hearing request and refer the case to the Division of Administrative Hearings (DOAH).<sup>30</sup>

- The Department typically contacts the registrant (or the registrant's attorney or qualified representative if the response was signed on behalf of the registrant) to negotiate a settlement before referring the case to DOAH.
- There is no fixed time for these negotiations.

### *Proceedings before DOAH*

The normal hearing process before DOAH is conducted pursuant to ss. 12.569 and 120.57(1), F.S. Five days from receiving a hearing referral from the Department, DOAH issues an initial order designating the administrative law judge (ALJ) to whom the case is assigned, providing additional information, and advising of the availability of the summary hearing procedure in s. 120.574, F.S.<sup>31</sup> The initial order requires the parties to file within 7 days a notice of basic information. Usually within a day of receiving this response the ALJ issues an order scheduling the case for final hearing, typically within less than 90 days from the date of the scheduling order.

Within the time constraints established by the scheduled hearing, the Department and the registrant may conduct discovery.<sup>32</sup> In a typical case, if a party requests a continuance of the final hearing on good grounds the ALJ will grant at least one such continuance. If so, the final hearing likely will be conducted more than 100 days after referral by the Department. According to the Department, final evidentiary hearings in cases against FREAB registrants usually take no more than 4 hours.

The Department is responsible for preserving the testimony at the hearing and providing a transcript at actual cost.<sup>33</sup> This is commonly done by contract with a certified court reporter. The ALJ usually allows the parties 10 days from the filing of the official transcript to submit proposed recommended orders, and then completes and submits to the Department a recommended order within 30 days from the date the transcript is filed.<sup>34</sup>

### *Final Orders by the FREAB*

For cases referred to DOAH, once the ALJ enters the recommended final order both the Department and registrant have 15 days to file exceptions to the recommended findings of fact and conclusions of law, followed by 10 days to respond to the other's exceptions.<sup>35</sup>

- If these documents are delivered by mail 5 days is added to each deadline, so that the final filing may be due as much as 35 days after the ALJ enters the recommended order.

The recommended order and any exceptions and responses thereto are submitted for consideration by the FREAB at its next meeting. The board rules on the various exceptions and whether to accept the

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<sup>28</sup> Section 120.57(2), F.S., Rule 28-106.302, F.A.C.

<sup>29</sup> Under s. 455.203(2), F.S., the Department appoints the executive director of FREAB, subject to board approval.

<sup>30</sup> Section 120.569(2)(a), F.S. However, the only consequence if an agency does not comply with the 15 day time limit is the possibility of the respondent seeking a writ of mandamus from circuit court to compel the referral.

<sup>31</sup> Section 120.574(1)(a), F.S.

<sup>32</sup> Section 120.569(2)(f), F.S., Rule 28-106.206, F.A.C.

<sup>33</sup> Section 120.57(1)(g), F.S., Rule 28-106.214, F.A.C.

<sup>34</sup> Rule 28-106.216, F.A.C.

<sup>35</sup> Section 120.57(1)(k), F.S., Rule 28-106.217, F.A.C.

ALJ's recommendations.<sup>36</sup> After reviewing the recommended order and exceptions from a DOAH proceeding, or conducting the hearing under s. 120.57(2), F.S., if the registrant did not dispute the material facts, the FREAB directs board counsel to prepare the final order. If the registrant did not respond to the formal complaint, the FREAB may consider a proposed final order prepared by board counsel and either approves the proposal or direct counsel to prepare a different order.

According to the Department, once the FREAB approves the final order an additional 30 – 60 days is required for board counsel and staff to generate, execute, file, and serve the final order.

#### *Summary proceedings under s. 120.574*

The APA provides a summary hearing procedure as an alternative to conventional hearings before DOAH.<sup>37</sup> After the Department refers a case to DOAH, any party may move for a summary hearing within 15 days from the ALJ's service of the initial order; if all parties consent to using the summary hearing procedure, the final summary hearing is conducted within 30 days from the date all parties agree.<sup>38</sup> Available discovery is very restricted.<sup>39</sup> A party may move at any time to continue the final hearing or to have the proceedings conducted under the normal hearing process of ss. 120.569 and 120.57(1), F.S. If the case proceeds under the summary procedure, the ALJ, not the FREAB, renders the final order in the case no later than 30 days after the conclusion of the hearing or the filing of the transcript, whichever is later.<sup>40</sup>

#### Federal Concerns with Florida Disciplinary Process

ASC policy encourages state regulators to resolve appraisal cases within one year.<sup>41</sup> When following the current administrative hearing process as outlined above, the Department currently is unable to resolve all cases within one year.<sup>42</sup> This inability to achieve 100% compliance with ASC Policy Statement 10E<sup>43</sup> places the Department at risk of the ASC initiating a written finding that would disapprove Florida's regulatory process and "de-certify" all appraisers in Florida from providing appraisals for federal transactions.<sup>44</sup>

Recently, the ASC released its compliance review report for the Department for the period of December 2009 through December 2011. The review found that at the time of the review, Florida had 415 outstanding complaints, 101 of which were unresolved for more than one year. Only four were considered "special documented circumstances," and thus, exempt from the one-year policy. The effect is that twenty-three percent of Florida's complaints were unresolved for more than one year at the time of the review.<sup>45</sup> Moreover, in 2010, the state had a similar negative review by the ASC.<sup>46</sup>

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<sup>36</sup> The Department has not yet responded to an inquiry from staff as to the percentage of cases in which the FREAB adopts the recommended conclusions of law pertaining to finding violations of ch. 475, Part I, F.S., or the rules of the board, and the percentage of cases in which the board accepts the recommended sanctions.

<sup>37</sup> Section 120.574, F.S.

<sup>38</sup> Section 120.574(1)(b), F.S.

<sup>39</sup> Section 120.574(2)(a)2., F.S.

<sup>40</sup> Section 120.574(2)(f), F.S.

<sup>41</sup> "Appraisal Subcommittee Policy Statements" (Oct. 2008), Statement 10E, page 19. Title XI is silent on the time required for state regulators to complete disciplinary cases but authorizes the ASC to disapprove a state's appraiser certifications if that state "fails to recognize and enforce the standards, requirements, and procedures prescribed pursuant to this chapter ..." 12 U.S.C. s. 3347(b)(1). Although the 12 month standard has been a policy for over 10 years, it is not supported by any empirical data showing a pronounced increase in risk to economic transactions or the general public if a case takes longer than 12 months to complete. (From statements by Jim Park, Director of ASC, in a meeting attended by House and Senate Staff, the Department, and DOAH, 3/8/2013).

<sup>42</sup> The Department has indicated its inability to routinely comply with ASC Policy Statement 10E, which provides that appraisal cases be resolved within one year. Department of Business and Professional Regulation 2013 Legislative Analysis, page 2, dated February 18, 2013, on file with BPR subcommittee.

<sup>43</sup> Policy Statement 10E does allow for proceedings exceeding 12 months in "special documented circumstances." The Department takes the position that the present administrative adjudicatory process leaves it unable to process even routine contested cases in less than 12 months.

<sup>44</sup> 12 U.S.C. s. 3347(b).

<sup>45</sup> Appraisal Subcommittee Compliance Review Report, page 5, dated June 13, 2012, on file with BPR subcommittee.

Due to ASC concerns about the time for resolving complaints, the Department must submit quarterly complaint logs to the ASC staff for review.<sup>47</sup> Further, the ASC has indicated it would place additional requirements upon the Department if progress is not made.<sup>48</sup>

Some states such as Mississippi are in compliance with the ASC policies. The Mississippi Appraisal Board (MAB) conducts all disciplinary proceedings under rules of the board. Similar to Florida, complaints initially are reviewed for legal sufficiency. If so, a response is requested from the registrant within 20 days. Unlike Florida, the investigation begins once this 20 day response period expires.<sup>49</sup> Unlike Florida, there is no probable cause panel; if the investigation indicates a violation occurred the hearing process may commence. Hearings are conducted by a hearing officer appointed by the MAB but the board issues the final order making findings of fact and conclusions of law and imposing the requisite discipline.<sup>50</sup> This process appears to have few fixed time frames, allowing flexibility to move more quickly while preserving the right of the registrant to notice and a meaningful hearing.

## **Definition of “Appraiser”**

### **Current Situation**

The ASC has established two title designations for appraisers: “state licensed” and “state certified.” The AQB approved a third designation, “certified residential appraiser,” which the ASC also recognizes. The ASC strongly urges states to use these federally-recognized designations or titles in order to decrease the likelihood of confusion among users, and to prevent the employment of appraisers who do not have the required designation to perform the appraisal for which they are engaged.<sup>51</sup>

Since July 1, 2003, Florida does not issue new credentials for “licensed” appraisers. Moreover, the AQB no longer permits licensed appraisers to supervise trainee appraisers- only certified appraisers may act as supervisory appraisers.<sup>52</sup> Despite this new criteria, Florida’s statutory language still defines a “supervisory appraiser” as a licensed appraiser, a certified residential appraiser, or a certified general appraiser who is responsible for the direct supervision of one or more trainee appraisers.<sup>53</sup>

### **Effect of Proposed Changes**

The bill amends s. 475.611(1)(u), F.S., to remove the term “licensed appraiser” from the definition of “supervisory appraiser.” Instead, the term “supervisory appraiser” only includes the various forms of “certified appraisers.” This conforms the definition of “supervisory appraiser” to existing federal policy.

Similarly, the bill amends ss. 475.612(1) and 475.6221(1), F.S., to eliminate the reference to “licensed” appraisers from the supervisory requirements for trainee real estate appraisers. This conforms the supervisory requirements for trainee real estate appraisers to existing federal policy.

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<sup>46</sup> The ASC compliance review report for the period of December 2007 through December 2009 found that thirty-three percent of all of the Department’s cases were unresolved for longer than one year. ASC Compliance Review Report, page 3, dated June 14, 2010, on file with BPR subcommittee.

<sup>47</sup> Appraisal Subcommittee Compliance Review Report, page 5, dated June 13, 2012, on file with BPR subcommittee.

<sup>48</sup> Id. The Department has expressed concern that ASC could penalize the Department, including the imposition of fines. When asked whether ASC had such authority, and its source, ASC personnel only generally refer to the amendments to Title XI made by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1473(k) of the Dodd-Frank Act amends 12 U.S.C. s. 3347 by providing greater specificity for ASC’s oversight function, including in these criteria a standard for state regulatory programs to resolve complaints “in a reasonable time period.” In addition to decertifying the appraisers in a state with a non-complying regulatory program the ASC now has the authority to remove appraisers from the national registry for up to 90 days pending state licensing or regulatory proceedings. The authority of the ASC to impose sanctions against a state is limited to those described in 12 U.S.C. s. 3347 as amended by Dodd-Frank s. 1473(k), which does not appear to provide authority to impose fines against a state.

<sup>49</sup> Code of Mississippi State Regulations 30-1502-3.2, at [http://www.mrec.state.ms.us/mab/license\\_law.html](http://www.mrec.state.ms.us/mab/license_law.html) (accessed 3/21/2013).

<sup>50</sup> Code of Mississippi State Regulations 30-1502-3.3, at [http://www.mrec.state.ms.us/mab/license\\_law.html](http://www.mrec.state.ms.us/mab/license_law.html) (accessed 3/21/2013).

<sup>51</sup> Appraisal Subcommittee Policy Statements, Statement 2, page 8, on file with BPR subcommittee.

<sup>52</sup> The Real Property Appraiser Qualification Criteria, page 55, on file with BPR subcommittee.

<sup>53</sup> Section 475.611(1)(u), F. S.

## **References to Current AQB Qualification Criteria**

### **Current Situation**

Section 475.615, F.S., sets forth the qualifications for registration or certification of appraisers, as outlined by the Real Property Appraiser Qualification Criteria (Qualification Criteria) of the AQB. Specifically, under s. 475.615(2), F.S., the FREAB is authorized to waive or otherwise modify any education, experience, or examination requirements established in the section in order to conform to the requirements established by the AQB.

The section expressly references the requirements adopted by the AQB on February 20, 2004, which is the date that a previous version of the Qualification Criteria was adopted.<sup>54</sup> A new version of the Qualification Criteria was adopted on December 9, 2011, which will go into effect on January 1, 2015.

### **Effect of Proposed Changes**

The bill amends s. 475.615(2), F.S., to change the reference of the date of the Qualification Criteria version from February 20, 2004 to December 9, 2011. This provision has an effective date of January 1, 2014 in order to allow time for rule adoption by the Department.

## **Qualification for Registration or Certification of Appraisers**

### **Current Situation**

As discussed above, s. 475.615, F.S., sets forth the qualifications for registration or certification of appraisers, as outlined by the Qualification Criteria of the AQB. Generally, the statute requires that an appraiser applicant must be competent to handle appraisals “with safety to those with whom they may undertake a relationship of trust and confidence and the general public.” Denial of a prior registration or certification request, or revocation of suspension of a prior registration or certification in any jurisdiction is a relevant factor in determining competency to practice in Florida. If any of these disciplinary actions have occurred, the applicant is deemed to not be qualified; however, the applicant will still be deemed to be qualified if, because of time and subsequent good conduct and reputation, or by any other reason that is deemed to be sufficient, the FREAB believes that the interest of the public is not likely to be endangered by the granting of the registration or certification.<sup>55</sup>

On December 9, 2011, the AQB adopted a new version of its Qualification Criteria, to require background checks and to disqualify applicants who have certain background issues.<sup>56</sup> Some applicants may qualify with certain offenses and discipline after five years, while certain criminal offenses render the applicant permanently disqualified.<sup>57</sup>

### **Effect of Proposed Changes**

The bill amends s. 475.615(6), F.S., to eliminate the ability of the FREAB to consider the subsequent passage of time and good behavior when considering the license application of an applicant who has prior discipline and criminal history. Instead, the bill requires the FREAB to adopt the specific AQB Qualification Criteria requirements regarding applicant disqualification which were adopted on December 9, 2011, as discussed above. This provision has an effective date of January 1, 2014 in order to allow time for rule adoption by the Department.

## **Multiple or Additional Brokers’ Licenses**

### **Current Situation**

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<sup>54</sup> Section 475.615(2), F. S.

<sup>55</sup> Section 475.615(6), F. S.

<sup>56</sup> The new Qualification Criteria, including the new disqualification provisions, will go into effect on January 1, 2015.

<sup>57</sup> The Real Property Appraiser Qualification Criteria, page 53-54, on file with BPR subcommittee.



Section 475.17(1), F.S., sets forth the qualifications for practice for a real estate broker. Specifically, an applicant must:

- Be a natural person of at least eighteen years of age;
- Hold a high school diploma or its equivalent;
- Be honest, truthful, trustworthy, of good character, and have a good reputation for fair dealing; and
- Be competent and qualified to make real estate transactions and conduct negotiations.<sup>58</sup>

In addition to the requirements provided in s. 475.17(1)(a), F.S., the applicant must also hold an active real estate sales associate license for a specified period of time,<sup>59</sup> complete a pre-licensing course,<sup>60</sup> pass the Florida Real Estate Brokers' Examination,<sup>61</sup> and participate in post-licensure education.<sup>62</sup>

In addition to a primary brokers' license, a licensed broker may also be issued additional brokers' licenses whenever it is clearly shown that the request for additional licenses is necessary to the conduct of the real estate brokerage business, and that the additional licenses will not be used in a manner that is likely to be prejudicial.<sup>63</sup>

Relative to licensee complaints, discipline is only imposed against the license that is specifically charged in the administrative complaint.<sup>64</sup> Consequently, in order to impose discipline on any additional brokers' licenses, the complaining party must have charged each additional license number in the administrative complaint. Currently, it is possible for a broker to obtain an additional license during the enforcement process in order to avoid having disciplinary actions attached to that additional license.<sup>65</sup>

### Effect of Proposed Changes

The bill amends s. 475.215(1), F.S., to provide that an additional license may not be granted if that license will be used in a manner that is likely to be harmful to any person. The limitation that an additional license may not be granted if that license will be used in a manner that is likely to be prejudicial remains intact. The bill also allows the Florida Real Estate Commission (FREC) to deny an additional license request pursuant to s. 475.17(1)(a), F.S., which provides qualification requirements for brokers, as discussed above. Finally, the bill provides that a final order of discipline against the brokers' primary license applies to both the primary license and to any multiple licenses held by that broker at the time the final order becomes effective.

#### B. SECTION DIRECTORY:

**Section 1:** amends s. 475.215(1), F.S., to provide that an additional license may not be issued if that license will be used in a manner that is likely to be harmful to any person; that the FREC may deny an additional license request pursuant to s. 475.17(1)(a), F.S.; and that a final order of discipline against the primary brokers' license applies to both the primary license and to any multiple licenses held by that broker at the time the final order becomes effective.

**Section 2:** amends s. 475.611(1)(u), F.S., to remove the term "licensed appraiser" from the definition of "supervisory appraiser."

**Section 3:** amends s. 475.612(1), F.S., to remove the term "licensed appraiser" from the supervisory requirements for trainee real estate appraisers.

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<sup>58</sup> Section 475.17(1)(a), F. S.

<sup>59</sup> Section 475.17(2)(b), F. S.

<sup>60</sup> Section 475.17(2)(a), F. S.

<sup>61</sup> Section 475.175, F. S.

<sup>62</sup> Section 475.17(3)(a), F. S.

<sup>63</sup> Section 475.215(1), F. S.

<sup>64</sup> Department of Business and Professional Regulation 2013 Legislative Analysis, page 3, dated February 18, 2013, on file with BPR subcommittee.

<sup>65</sup> Id.

**Section 4:** amends s. 475.615(2), F.S., to update the reference to the date of the adoption of the most recent Qualification Criteria by the AQB; and amends s. 475.615(6), F.S., to eliminate the ability of the FREAB to consider the subsequent passage of time and good behavior when considering the license application of an applicant who has prior discipline and criminal history, and instead requires the applicant to meet the conditions set forth by the AQB.

**Section 5:** amends s. 475.6221(1), F.S., to eliminate the reference to “licensed” appraisers from the supervisory requirements for trainee real estate appraisers.

**Section 6:** provides that the bill shall take effect upon becoming law, except as otherwise expressly provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill eliminates the ability of the FREAB to consider the subsequent passage of time and good behavior when considering the license application of an applicant who has prior discipline and criminal

history. Instead, it requires the FREAB to adopt specific AQB Qualification Criteria requirements, by rule. As a result, agency rulemaking is required in order to adopt the new Qualification Criteria.

The bill changes the reference to the date of the AQB Qualification Criteria version from February 20, 2004 to December 9, 2011. As a result, the provision will require agency rulemaking to adopt the new Qualification Criteria.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the Rulemaking Oversight & Repeal Subcommittee amended CS/HB 667 by deleting section 1, thus preserving the full range of hearing rights and protections provided by the APA in disciplinary hearings for registered appraisers (described above in this analysis). This analysis is drawn to the committee substitute for the bill.