

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 667	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Rulemaking Oversight & Repeal Subcommittee; Business & Professional Regulation Subcommittee; Porter	117 Y's	0 N's
COMPANION BILLS:	(CS/SB 852)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 667 passed the House on April 17, 2013, and subsequently passed the Senate on April 26, 2013.

The bill provides for changes to part II of 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 provide additional regulation of the issuance and discipline of broker multiple 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 no fiscal impact on state funds.

The bill was approved by the Governor on June 7, 2013, ch. 2013-144, L.O.F., and became effective on that date, except as otherwise expressly provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Background Information

The Appraisal Foundation (TAF) is a private, non-profit educational organization that was formed in 1987 to promote professionalism in the valuation industry.¹ 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.²

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).³ 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.⁴ The ASC is charged with monitoring the states' appraisal regulatory programs.⁵ Moreover, it is responsible for monitoring and reviewing the activities of the Appraisal Foundation and its three Boards.⁶ 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).⁷

The ASC conducts biennial on-site reviews of each state's appraisal agency, with more frequent visits to states with weak enforcement programs.⁸ The ASC has the ability to disapprove a state's appraisal regulatory program, which effectively disqualifies that state's appraisers from conducting appraisals for federally-related transactions.⁹ 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.¹⁰

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

² Id.

³ See, generally: 12 U.S.C. ss. 3331-3351.

⁴ 12 U.S.C. s. 3331.

⁵ 12 U.S.C. s. 3332(a).

⁶ 12 U.S.C. s. 3332(b).

⁷ 12 C.F.R. s. 1102.303(b).

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

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

¹⁰ 12 U.S.C. s. 3350(4).

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.¹¹ 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.¹²

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

Definition of Appraiser

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.¹³

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.¹⁴ 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.¹⁵

References to Current AQB Qualification Criteria

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.¹⁶ A new version of the Qualification Criteria was adopted on December 9, 2011, which will go into effect on January 1, 2015.

¹¹ See, generally: s. 475.613, F. S.

¹² Section 475.613(2), F. S.

¹³ Appraisal Subcommittee Policy Statements, Statement 2, page 8, on file with Business & Professional Regulation Subcommittee.

¹⁴ The Real Property Appraiser Qualification Criteria, page 55, on file with Business & Professional Regulation Subcommittee.

¹⁵ Section 475.611(1)(u), F. S.

¹⁶ Section 475.615(2), F. S.

Qualification for Registration or Certification of Appraisers

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.¹⁷

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.¹⁸ Some applicants may qualify with certain offenses and discipline after five years, while certain criminal offenses render the applicant permanently disqualified.¹⁹

Multiple or Additional Brokers’ Licenses

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.²⁰

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,²¹ complete a pre-licensing course,²² pass the Florida Real Estate Brokers’ Examination,²³ and participate in post-licensure education.²⁴

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.²⁵

Relative to licensee complaints, discipline is only imposed against the license that is specifically charged in the administrative complaint.²⁶ 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.²⁷

¹⁷ Section 475.615(6), F. S.

¹⁸ The new Qualification Criteria, including the new disqualification provisions, will go into effect on January 1, 2015.

¹⁹ The Real Property Appraiser Qualification Criteria, page 53-54, on file with Business & Professional Regulation Subcommittee.

²⁰ Section 475.17(1)(a), F. S.

²¹ Section 475.17(2)(b), F. S.

²² Section 475.17(2)(a), F. S.

²³ Section 475.175, F. S.

²⁴ Section 475.17(3)(a), F. S.

²⁵ Section 475.215(1), F. S.

²⁶ Department of Business and Professional Regulation 2013 Legislative Analysis, page 3, dated February 18, 2013, on file with Business & Professional Regulation Subcommittee.

²⁷ Id.

Effect of Changes

Definition of Appraiser

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.

References to Current AQB Qualification Criteria

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

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

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.

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.