

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 852

INTRODUCER: Regulated Industries Committee and Senator Bean

SUBJECT: Real Estate Brokers and Appraisers

DATE: April 16, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Davis	DeLoach	AGG	Favorable
3.	Davis	Hansen	AP	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 852 relates to the regulation of real estate brokers and real estate appraisers. Regarding real estate brokers, the bill places limitations on additional brokers' licenses. Specifically, the bill:

- Permits brokers to be issued an additional license if that license will not be used in a manner that is likely to be harmful to any person;
- Authorizes the Florida Real Estate Commission within the Department of Business and Professional Regulation (department) to deny a multiple license request; and
- Provides a final order of discipline against the primary broker's 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 will have no fiscal impact on the department or the Florida Real Estate Commission.

In addition, the bill amends s. 475.215(1), F.S., to conform the chapter to provisions promulgated by the Appraisal Subcommittee and Appraisal Qualifications Board. The bill:

- Deletes references to “licensed appraiser;”
- 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 meet the conditions adopted by the Appraiser Qualifications Board on December 9, 2011, as prescribed by rule of the department’s Real Estate Appraiser Board; and
- Changes the term “Appraisal Qualifications Board” to the “Appraiser Qualifications Board” effective January 1, 2014. The delayed effective date would allow sufficient time for rule changes.

The bill takes effect upon becoming law, except as otherwise expressly provided.

This bill substantially amends the following sections of the Florida Statutes: 475.215, 475.611, 475.612, 475.615, and 475.6221.

II. Present Situation:

Qualifications - Real Estate Brokers

The regulation of real estate brokers is overseen by the Florida Real Estate Commission (commission) within the Division of Real Estate in the department. The commission administers and enforces the provisions of part I of ch. 475, F.S.

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.¹

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,² complete a pre-licensing course,³ pass the Florida Real Estate Brokers’ Examination,⁴ and participate in post-licensure education.⁵

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.⁶

¹ Section 475.17(1)(a), F.S.

² Section 475.17(2)(b), F.S.

³ Section 475.17(2)(a), F.S.

⁴ Section 475.175, F.S.

⁵ Section 475.17(3)(a), F.S.

⁶ Section 475.215(1), F.S.

According to the department, it may only impose discipline through the license that is specifically charged in the administrative complaint. According to the department, in order to impose discipline on any additional brokers' licenses, the complaining party must have charged each additional license number in the administrative complaint. The department advises that it is currently 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.

Multiple Licenses

Section 475.215, F.S., permits a licensed broker to be issued, upon request, additional licenses as a broker whenever it is clearly shown that the request for additional licenses is necessary to the conduct of a real estate brokerage business and that the additional licenses will not be used in a manner likely to be prejudicial to any person, including a licensee under this chapter. According to the department, when the division issues a complaint against a broker licensee, the discipline is only imposed against the license charged in the administrative complaint.

Real Estate Appraisers

Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of the department, which administers and enforces the provisions of part II of ch. 475, F.S. The board is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved education courses;
- Establish standards for real estate appraisers; and
- Establish standards for and regulate supervisory appraisers.⁷

The board's headquarters is located in Orlando, Florida.

Section 475.611(1), F.S., defines the term "appraisal" or "appraisal services" to mean:

... the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as

⁷ Section 475.613(2), F.S.

analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.

3. “Appraisal review assignment” denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser’s appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser’s opinion of value.

The Appraisal Foundation

The Appraisal Foundation (TAF) of the Federal Financial Institutions Examination Council is a private, non-profit educational organization that was formed in 1987 to promote professionalism in the valuation industry.⁸ The Appraisal Foundation 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 qualifications for appraisers; and
- The Appraisal Practices Board (APB), which is responsible for developing best practices and providing voluntary guidance to professionals.⁹

The Appraisal Subcommittee

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).¹⁰ The Appraisal Subcommittee is the federal agency charged with oversight of the states’ appraisal regulatory programs.¹¹ It is responsible for monitoring and reviewing the activities of the Appraisal Foundation and its three boards.¹² Appraisal Subcommittee oversees Florida’s appraiser regulatory program.

The Appraisal Subcommittee 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).¹³

⁸ For information about the Appraisal Subcommittee (ASC): <https://www.asc.gov/About-the-ASC/ASCHistory.aspx> (Last visited on March 11, 2013.) *See also* s. 475.611(1)(b), F.S.

⁹ *Id.*

¹⁰ *See, generally:* 12 U.S.C. s. 3331-3351.

¹¹ 12 U.S.C. s. 3332(a).

¹² 12 U.S.C. s. 3332(b).

¹³ 12 C.F.R. 1102.303(b).

On September 22, 1997, the ASC adopted the most recent version of the Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers. These policy statements are intended to “assist the States in the continuing development and maintenance of appropriate organizational and regulatory structures for certifying, licensing and supervising real estate appraisers.”¹⁴

The Appraisal Subcommittee conducts biennial on-site reviews of each state’s appraisal agency, with more frequent visits to states with weak enforcement programs. The Appraisal Subcommittee 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.¹⁵ 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.¹⁶

According to information provided by the department, there are 7,064 Florida-licensed appraisers on the National Registry of State Certified and Licensed Appraisers, which lists the individuals who have received a state certification or license to perform appraisals upon the payment of a \$25 registration fee. An appraiser must be listed on the National Registry to be eligible to perform appraisals in connection with federally related transactions, which would include mortgage transactions.

Appraiser License Classifications

Section 475.611(1)(u), F.S., defines the term “supervisory appraiser” to mean:

a licensed appraiser, a certified residential appraiser,¹⁷ or a certified general appraiser¹⁸ responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers.

Section 475.611(1)(q), F.S., defines the term “licensed appraiser” to mean “a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. Section 475.611(1)(q), F.S., also prohibits, as of July 1, 2003, the department from issuing licenses for the category of licensed appraiser.

Section 475.611(1)(r), F.S., defines the term “registered trainee appraiser” to mean:

¹⁴ For more information about the ASC, see: <https://www.asc.gov/About-the-ASC/ASCHistory.aspx>, (Last visited on February 27, 2013.)

¹⁵ See, generally: 12 U.S.C. s. 3347 and 12 C.F.R. 1102 Subpart B.

¹⁶ 12 U.S.C. s. 3350(4).

¹⁷ Section 475.611(1)(k), F.S., defines the term “certified general appraiser” to mean “a person who is certified by the department as qualified to issue appraisal reports for any type of real property.”

¹⁸ Section 475.611(1)(l), F.S., defines the term “certified residential appraiser” to mean “a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.”

a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

According to the department, there are remaining licensed appraisers, but the number continues to decline. According to the department, the ASC does not permit licensed appraisers to supervise trainee appraisers.

Appraisal Subcommittee - Appraiser Designations

The Appraisal Subcommittee has established two title designations for appraisers: “state licensed” and “state certified.”¹⁹ The Appraiser Qualifications Board has approved a third designation, “certified residential appraiser,” which the ASC has also recognized.²⁰ The Appraisal Subcommittee 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.²¹

Qualifications – Appraisers

Section 475.615, F.S., provides the qualifications for registration or certification of appraisers, as outlined by the Real Property Appraiser Qualification Criteria of the AQB. In December 2011, the AQB adopted the latest version of the Real Property Appraiser Qualification Criteria with an effective date of January 1, 2015.²² An appraiser applicant must be competent to handle appraisals with safety to those with whom they may undertake a relationship of trust and confidence. If an applicant has been denied a prior registration or certification application, or has had a license, registration, or certification revoked or suspended in any jurisdiction, the applicant is deemed not to be qualified. The board may grant the application if, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.

Registered Trainee Real Estate Appraiser

Section 475.6221, F.S., provides that a registered trainee real estate appraiser must perform appraisal services under the direct supervision of a licensed or certified appraiser who is designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional licensed or certified appraisers as secondary supervisory appraisers.

¹⁹ Appraisal Subcommittee, *Appraisal Subcommittee Policy Statements*, Statement 2: Appraiser Classifications. A copy of the *Appraisal Subcommittee Policy Statements* is available at: <https://www.asc.gov/Statement2.aspx> (Last visited March 11, 2013).

²⁰ *Id.*

²¹ *Id.*

²² A copy of the AQB’s *Real Property Appraiser Qualification Criteria* is available at: <https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=taf&WebCode=RPCriteria> (Last visited March 12, 2013).

III. Effect of Proposed Changes:

Multiple Licenses – Real Estate Brokers

The bill amends s. 475.215(1), F.S., to provide 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 bill authorizes the Florida Real Estate Commission to deny an additional license request pursuant to s. 475.17(1)(a), F.S., which provides qualification requirements for brokers. The bill also provides a final order of discipline against the primary license applies against any multiple licenses held by the broker at the time the final order becomes effective.

Licensed Appraisers

The bill amends s. 475.611, F.S., to delete the term “licensed appraiser” from the definition for the term “supervisory appraiser.” As of 2003, the department has been prohibited from issuing licenses for the category of licensed appraiser.²³

The bill also amends ss. 475.612(1) and 475.6221(1), F.S., to delete the reference to licensed appraiser from the supervisory requirements for trainee real estate appraisers.

Qualifications – Appraisers

The bill amends s. 475.615(2), F.S., to authorize the board to adopt rules to modify or waive certification requirements to conform to the federal Appraiser Qualifications Board requirements adopted by the AQB on December 9, 2011. Section 475.615(6), F.S., is amended to provide an applicant who has a disciplinary history or history of unlawful conduct in Florida or another state must meet the standards of the AQB to be considered for licensure by the Florida Board of Appraisers.

The bill also deletes the provision allowing the board to consider the lapse of time and subsequent good conduct and reputation when considering the license application of an applicant with prior discipline history or history of unlawful conduct. The bill maintains the criteria that the board must consider that the interest of the public is not likely to be endangered by the granting of certification.

The bill amends ss. 475.615(2) and (6), F.S., to change the term “Appraisal Qualifications Board” to the “Appraiser Qualifications Board.” These provisions would take effect on January 1, 2014. According to the department, the delayed effective date would give it time to reflect the change by rule.

Effective Date

The bill would take effect upon becoming law, except as otherwise expressly provided.

²³ See s. 475.611(1)(q), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 21, 2013:

The committee substitute (CS) deleted a provision to provide a mandatory summary hearing procedure before the Division of Administrative Hearings for disciplinary cases against real estate appraisers.

The CS amends s. 475.612(1), F.S., to delete the reference to the licensed appraiser classification.

The CS amends ss. 475.615(2) and (6), F.S, to reference the December 9, 2011, date on which the Appraiser Qualifications Board of the Appraisal Foundation adopted the licensing requirements. It also provides a January 1, 2014, effective date for the amendment to s. 475.615(6), F.S.

B. Amendments:

None.