

**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 Regulated Industries

BILL: SB 852  
 INTRODUCER: Senator Bean  
 SUBJECT: Real Estate Brokers and Appraisers  
 DATE: March 11, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 852 relates to the regulation of real estate brokers and real estate appraisers. The bill provides a mandatory summary hearing procedure before the Division of Administrative Hearings for disciplinary cases against real estate appraisers. In the summary hearing process, the Administrative Law Judge would issue a final order within 90 days of the date the administrative complaint is filed. This provision would help the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of Department of Business and Professional Regulation (department) comply with the federal requirement that complaints against appraisers must be resolved within one year of the complaint.

Regarding real estate brokers, 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. It also authorizes the Florida Real Estate Commission within the department to deny a multiple license request and that all of the licenses of a broker are subject to a final order of discipline.

The bill deletes references to “licensed appraiser” because, as of 2003, the department has been prohibited under current Florida law from issuing licenses for the category of licensed appraiser.

The bill requires the applicant for an appraiser registration or certification must meet the conditions set forth by the Appraiser Qualifications Board as prescribed by rule of the board.

Effective January 1, 2014, the bill changes the term “Appraisal Qualifications Board” to the “Appraiser Qualifications Board.” According to the department, the delayed effective date would give it time to reflect the change by rule.

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

This bill substantially amends the following sections of the Florida Statutes: 120.574, 475.215, 475.611, 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.<sup>1</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>2</sup> complete a pre-licensing course,<sup>3</sup> pass the Florida Real Estate Brokers' Examination,<sup>4</sup> and participate in post-licensure education.<sup>5</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>6</sup>

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

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

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

<sup>3</sup> Section 475.17(2)(a), F.S.

<sup>4</sup> Section 475.175, F.S.

<sup>5</sup> Section 475.17(3)(a), F.S.

<sup>6</sup> Section 475.215(1), F.S.

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 Department of Business and Professional Regulation (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.<sup>7</sup>

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 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

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<sup>7</sup> Section 475.613(2), F.S.

in the valuation industry.<sup>8</sup> 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.<sup>9</sup>

### **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).<sup>10</sup> The Appraisal Subcommittee is the federal agency charged with oversight of the states' appraisal regulatory programs.<sup>11</sup> It is responsible for monitoring and reviewing the activities of the Appraisal Foundation and its three boards.<sup>12</sup> 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).<sup>13</sup>

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.”<sup>14</sup>

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

<sup>8</sup> 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.

<sup>9</sup> *Id.*

<sup>10</sup> See, generally: 12 U.S.C. s. 3331-3351.

<sup>11</sup> 12 U.S.C. s. 3332(a).

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

<sup>13</sup> 12 C.F.R. 1102.303(b).

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

transactions.<sup>15</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>16</sup>

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.

### **Administrative Procedures for Complaints Against Licensed Appraisers**

According to the department, the current administrative process for resolving administrative complaints in disputed issues of material facts may take longer than one year and it is rarely able to resolve such cases within one year. However, the Appraisal Subcommittee requires that all final state agency administrative decisions regarding complaints that should be resolved occur within one year after the date the complaint is filed, unless there are special documented circumstances to explain the delay.<sup>17</sup>

In Florida, appraisal cases involving disputed issues of material fact are handled pursuant to the Administrative Procedure Act, specifically, s. 120.57(1), F.S. When the board issues an administrative complaint against a licensed appraiser, cases involving disputed issues of material fact are handled pursuant to s.120.57(1), F.S., which provides the administrative procedures for disputes involving material issues of fact. The administrative procedure includes a hearing before an Administrative Law Judge (ALJ) of the Division of Administrative Hearings. Within 30 days following the hearing or the ALJ’s receipt of the hearing transcript, whichever is later, the ALJ must issue a Recommended Order to the board.<sup>18</sup> The parties then have 15 days to file with the agency responsible for rendering final agency action any exceptions to the findings of fact and conclusions of law contained in recommended order.<sup>19</sup>

The recommended order is then presented to the Real Estate Appraisal Board. The board may adopt the recommended order as the final order of the agency. It may reject or modify the ALJ’s conclusions of law but the board may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The board may accept the recommended penalty, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons by citing to the record in justifying the action.<sup>20</sup>

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

<sup>16</sup> 12 U.S.C. s. 3350(4).

<sup>17</sup> Appraisal Subcommittee, *Appraisal Subcommittee Policy Statements*, Statement 10: Enforcement, E. Effective, Consistent, Documented, and Timely Enforcement Process. A copy of the *Appraisal Subcommittee Policy Statements* is available at: <https://www.asc.gov/Legal-Framework/ASC-Policy-Statements/PolicyStatements.aspx> (Last visited March 11, 2013).

<sup>18</sup> Rule 28-106.21, F.A.C.

<sup>19</sup> Section 120.57(1)(k), F.S., and rule 28-106.217, F.A.C.

<sup>20</sup> Section 120.57(1)(l), F.S.

Recently, the ASC released its compliance review report for the department for the period of December 2011 through February 2013. At the time of the review, Florida had 160 outstanding complaints, 13 of which were unresolved for more than one year.<sup>21</sup> One complaint considered “special documented circumstances,” and thus, exempt from the one-year rule.<sup>22</sup>

However, according to the department, 38 states are not in compliance with the one year requirement for resolving complaints.

According to a representative for the ASC, Florida’s continued noncompliance with the requirement that complaints be resolved within one year could result in the state’s licensed appraisers being removed from the National Registry. Appraisal subcommittee refers to this sanction as “non-recognition of the state program.” This would mean that these appraisers would be ineligible to perform appraisals in connection with federally related transactions, including mortgage transactions at financial institutions.

### **Summary Hearings before the Division of Administrative Hearings**

Section 120.574, F.S., provides for summary hearings, which is an expedited procedure for the resolution of disputes before the Division of Administrative Hearings. The procedure includes expedited time sequences, and limited discovery. This procedure is only available if all the original parties in the case agree, in writing, to the summary hearing procedure. In a summary hearing, the ALJ’s decision is final, i.e., it is not a recommended order to the agency. The Administrative Law Judge’s decision must be rendered within 30 days of the hearing. The decision is subject to judicial review by an appellate court under s. 120.68, F.S.

### **Appraiser License Classifications**

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

a licensed appraiser, a certified residential appraiser,<sup>23</sup> or a certified general appraiser<sup>24</sup> 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.

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<sup>21</sup> Appraisal Subcommittee Preliminary Compliance Review of Florida’s appraiser regulatory program, dated February 25, 2013. A copy is on file with the Regulated Industries Committee.

<sup>22</sup> *Id.*

<sup>23</sup> 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.”

<sup>24</sup> 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.”

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:

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.”<sup>25</sup> The Appraiser Qualifications Board has approved a third designation, “certified residential appraiser,” which the ASC has also recognized.<sup>26</sup> 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.<sup>27</sup>

### **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.<sup>28</sup> 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

<sup>25</sup> 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).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> 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).

designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional licensed or certified appraisers as secondary supervisory appraisers.

### III. Effect of Proposed Changes:

#### **Summary Hearings - Appraisers**

The bill creates s. 120.574(3), F.S., to provide that the summary hearing procedures apply to disciplinary cases against real estate appraisers. The bill requires that final orders in such cases must be rendered within 90 days of the date the administrative complaint is filed.

The bill prohibits any party from or the ALJ from suggesting that the case is no longer appropriate for summary hearing disposition, as provide in s. 120.574(2)(a)5., F.S. Unlike the current voluntary summary hearing procedure, the bill would make this the mandatory process for resolving disciplinary cases against real estate appraisers.

The Administrative Law Judge could not grant a motion for continuance absent extraordinary circumstance. In current law, an ALJ may grant a continuance of a hearing upon a showing of good cause.<sup>29</sup>

The bill also authorizes the Division of Administrative Hearings to assign former administrative law judges, circuit or county judges, or special masters to adjudicate summary hearings for appraisal cases. According to the chief judge, the Division of Administrative Hearings can utilize this procedure with its current number of ALJ's.

#### **Multiple Licenses – Real Estate Brokers**

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 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 that 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.<sup>30</sup>

The bill also amends s. 475.6221(1), F.S., to delete the reference to licensed appraiser.

#### **Qualifications – Appraisers**

The bill amends s. 475.615(6), F.S., to eliminate the standard that allows 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. Instead,

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<sup>29</sup> See rule 28-106.210, F.A.C. The rule also requires that, except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

<sup>30</sup> See s. 475.611(1)(q), F.S.



the bill requires that an applicant for an appraiser registration or certification must meet the conditions set forth by the AQB as prescribed by rule of the board.

The bill amends s. 475.615(2), F.S., to change the term “Appraisal Qualifications Board” to the “Appraiser Qualifications Board.” This provision 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.

**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.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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