

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 Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 608 (138190)

INTRODUCER: Appropriations Subcommittee on General Government; Regulated Industries Committee; and Senator Stargel

SUBJECT: Real Estate Brokers and Appraisers

DATE: March 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 608 authorizes the Florida Real Estate Commission (commission) within the Department of Business and Professional Regulation (department) to adopt rules to permit a real estate brokerage to register a broker on a temporary, emergency basis if a sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

The bill clarifies the exemption to post-licensure education and the education course requirements applies to persons who have received a four year degree, or higher, in real estate from an accredited institution of higher education.

The bill authorizes the commission to reinstate a license that has become void if the commission determines that the individual failed to comply because of illness or economic hardship, as defined by rule.

The bill specifies the work file documentation that appraisers and registered appraisal management companies must retain and requires that the appraiser's work file must meet the standards of the Appraisal Standards Board of the Appraisal Foundation, as established by rule of the Florida Real Estate Appraisal Board (board) within the department. The bill deletes the prohibition that the department cannot inspect or copy the records of an appraisal management company except in connection with a pending investigation or complaint.

The bill deletes the requirement of a written agreement between Florida and other states for the reciprocal licensing of out-of-state appraisers.

The bill has no fiscal impact.

The bill provides a July 1, 2015 effective date.

II. Present Situation:

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

The regulation of the real estate appraisers is overseen by the Florida Real Estate Appraisal Board (board) within the department. The board administers and enforces the provisions of part II of ch. 475, F.S.

Real Estate Brokers - Qualifications

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.

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,¹ complete a pre-licensing course,² pass the Florida Real Estate Brokers' Examination,³ and participate in post-licensure education.⁴

The commission may require licensees to meet a post-licensure education requirement in order to maintain a valid sales associate's license. The post-licensure education requirement may not exceed 45 classroom hours of 50 minutes each, inclusive of examination, prior to the first renewal following initial licensure. The post-licensure education requirement may consist of one or more commission-approved courses which total at least 45 classroom hours on one or more subjects which include, but are not limited to, property management, appraisal, real estate finance, the economics of real estate management, marketing, technology, sales and listing of properties, business office management, courses teaching practical real estate application skills, development of business plans, marketing of property, and time management. The required post-licensure education courses must be provided by an accredited college, university, or community

¹ Section 475.17(2)(b), F.S.

² Section 475.17(2)(a), F.S.

³ Section 475.175, F.S.

⁴ Section 475.17(3)(a), F.S.

college, by a career center, by a registered real estate school, or by a commission-approved sponsor.⁵

Section 475.17(6), F.S., provides an exemption to the post-licensure education and the education course requirements for an applicant or licensee who has received a four year degree in real estate from an accredited institution of higher education.

Section 475.15, F.S., requires that a partnership, limited liability partnership, limited liability company, or corporation that acts as a broker must register with the commission and renew the licenses or registrations of its members, officers, and directors for each license period. For a limited partnership, only the general partners must be licensed brokers or registered brokerage corporations. The registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during the period of time the entity does not have at least one broker who has an active license or registration.

Real Estate Brokers - Inactive License

Section 475.183, F.S., provides for the activation of licenses that have become voluntarily or involuntarily inactive. Licenses that have been involuntarily inactive for more than two years automatically expire, and become null and void without any further action by the commission or department. The department is required to give notice to the licensee 90 days prior to expiration of the license. The commission must by rule impose a fee not to exceed \$100 for the late renewal of an involuntarily inactive license.⁶ The commission adopted a \$50 late fee.⁷

The Appraisal Subcommittee

The Appraisal Subcommittee (ASC)⁸ 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).⁹ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended several sections of Title 11 of FIRREA.

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

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

- Board of Governors of the Federal Reserve System (FRB);
- Federal Deposit Insurance Corporation (FDIC);

⁵ *Id.*

⁶ Section 475.183(2)(b), F.S.

⁷ Rule 61J2-1.011(5)(c), L.O.F.

⁸ For information about the Appraisal Subcommittee (ASC): <https://www.asc.gov/About-the-ASC/ASCHistory.aspx> (last visited on February 26, 2015). *See also* s. 475.611(1)(b), F.S.

⁹ *See, generally*: 12 U.S.C. s. 3331-3351.

¹⁰ 12 U.S.C. s. 3332(a).

¹¹ 12 U.S.C. s. 3332(b).

- 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).¹²

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.”¹³

The ASC conducts biennial on-site reviews of each state’s appraisal agency, with more frequent visits to states with weak enforcement programs. 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.¹⁴ 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.¹⁵ 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.

The Appraisal Foundation

The Appraisal Foundation (TAF)¹⁶ 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. The 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 qualifications for appraisers; and
- The Appraisal Practices Board (APB), which is responsible for developing best practices and providing voluntary guidance to professionals.¹⁷

Real Estate Appraisers

Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate in 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;

¹² 12 C.F.R. 1102.303(b).

¹³ *Supra*, note 8.

¹⁴ *See*, generally: 12 U.S.C. s. 3347 and 12 C.F.R. 1102 Subpart B.

¹⁵ 12 U.S.C. s. 3350(4).

¹⁶ For information about the Appraisal Foundation, *see* <https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=TAF> (last visited March 2, 2015).

¹⁷ *Id.*

- 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.

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.

Real Appraiser License Classifications

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

a certified residential appraiser,¹⁸ or a certified general appraiser¹⁹ 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

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."

¹⁹ 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."

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:

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.

Real Estate Appraisers Qualifications

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, 2015.²⁰ 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.

Real Estate Appraisers – Retention of Records

Section 475.629, F.S., requires that registered, licensed, or certified appraisers and registered appraisal management companies must retain, for five years or the period specified in the Uniform Standards of Professional Appraisal Practice (USPAP),²¹ whichever is greater, original or true copies of any contracts engaging the appraiser's or appraisal management company's services, appraisal reports, and supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services. The retention period runs from the date of the submission of the appraisal report to the client, unless otherwise specified in the USPAP.

²⁰ 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 February 25, 2015).

²¹ Uniform Standards of Professional Appraisal Practice also specifies a five-year records retention period. A copy of the Uniform Standards of Professional Appraisal Practice may be found at <https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=TAF&WebCode=USPAP> (last visited February 25, 2015).

The appraiser or appraisal management company must make the records available for inspection or copying by the department upon reasonable notice to the appraiser or company. The department may not inspect or copy the records of an appraisal management company except in connection with a pending investigation or complaint. If an appraisal has been the subject of or has served as evidence for litigation, reports and records must be retained for at least two years after the trial or the period specified in the USPAP, whichever is greater.

The USPAP requires that a work file of an appraiser must be established and must include:

- The name of the client and the identity, by name or type, of any other intended users;
- True copies of any written reports, documented on any type of media. (A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies that requirement of a true copy.);
- Summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification;
- All other data, information, and documentation necessary to support the appraiser's opinions and calculations and to show compliance with USPAP, or reference to the location(s) of such other documentation; and
- A work file in support of a Restricted Appraisal Report must be sufficient for the appraiser to produce an Appraisal Report.

Real Estate Appraisers – Nonresident Licenses and Certifications

Section 475.631, F.S., authorizes the board to enter into written agreements with other states, territories or jurisdictions of the United States that have similar appraiser licensing requirements as Florida to ensure that Florida residents have the same opportunity to become licensed in those states that is afforded to their residents in Florida. If the board determines that other jurisdictions' requirements do not offer nonresident licensure or certification to Florida-certified appraisers that are substantially comparable to those afforded to certified appraisers or licensees of that jurisdiction, the board must require that certified appraisers or licensees of that jurisdiction who apply for nonresident certification meet the education, experience, and examination requirements substantially comparable to those required by that jurisdiction with respect to Florida-certified appraisers who seek nonresident licensure or certification.

Effective July 1, 2013, F.S., the FIRREA requires states to have in place a policy for issuing a reciprocity certification or license to an appraiser from another state. The state's reciprocity provision must meet the following conditions:

1. The appraiser licensing and certification program of the other State is in compliance with the provisions of FIRREA Title XI; and
2. The appraiser holds a valid certification from a State with requirements for certification or licensing that meet or exceed the certification and licensure standards established by the State where an individual seeks reciprocity.²²

²² 12 U.S.C. s. 3350(4); and Appraisal Subcommittee Policy 6.

The FIRREA does not require written agreements between states.

Section 475.631(2)(a), F.S., provides that any resident state-certified appraiser who becomes a nonresident must, within 60 days, notify the board of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.624, F.S.

Section 475.631(2)(b), F.S., authorizes the board to adopt rules for the regulation of nonresident certified appraisers and licensees. The board's rule permits out-of-state certified residential and certified general appraisers to become certified in Florida based upon their education, experience, and national exam grades from other states. Out-of-state appraisers are only required to complete a 40-question Florida supplemental exam on Florida's laws.²³

III. Effect of Proposed Changes:

Real Estate Brokers - Qualifications

The bill amends s. 475.15, F.S., to require the Florida Real Estate Commission (commission) to adopt rules that allow a brokerage to register a broker on a temporary, emergency basis if a sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

The bill amends s. 475.17(6), F.S., to allow the current exemption to the post-licensure education and the education course requirements apply to persons who hold a degree in real estate greater than a four year degree, such as a Master's or Doctorate Degree.

Real Estate Brokers - Inactive License

The bill creates s. 475.183(4), F.S., to authorize the commission to reinstate a license that has become void if the commission determines the individual failed to comply because of illness or economic hardship, as defined by rule. To reactivate the license, the individual must apply to the commission for reinstatement within six months after the date that the license became void. An individual whose license is reinstated must meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure.

Real Estate Appraisers

The bill amends ss. 475.611(1)(r) and 475.612(5), F.S., to delete the term "licensed" appraiser to provide that it is a certified appraiser that has direct supervision over the registered trainee appraiser.

The bill amends s. 475.621(2), F.S., to provide that the Department of Business and Professional Regulation (department) must transmit the annual fee that is collected from persons who perform or seek to perform appraisals in federally related transactions to the Appraisal Subcommittee

²³ Rule 61J1-3.004, F.A.C.

(ASC) of the Federal Financial Institutions Examinations Council instead of to the Federal Financial Institutions Examinations Council.

Real Estate Appraisers – Retention of Records

The bill clarifies several records retention requirements for appraisers and appraisal management companies to align Florida's retention requirements with federal requirements. Specifically, the bill amends s. 475.629, F.S., to specify the documents an appraiser or an appraisal management company must retain. The bill requires that each appraiser or appraisal management company prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting agreement. The work file must be maintained for at least five years, or for a greater period if specified by the Uniform Standards of Professional Appraiser Practice.

The retained work file must contain:

- Original or true copies of any contracts engaging the appraiser or appraisal management company's services;
- Appraisal reports;
- Supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services; and
- All other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as established by rule of the board.

Additionally, the bill requires that, in accordance with administrative rules adopted by the board, an appraisal management company must also retain:

- company accounts,
- correspondence,
- memoranda,
- papers,
- books, and
- other records.

The bill amends s. 475.6295, F.S., to allow authorized agents and employees of the department to inspect appraisal management companies in addition to the other licensees under ch. 475, F.S.

The bill also amends s. 475.629, F.S., to delete the prohibition that the department cannot inspect or copy the records of an appraisal management company except in connection with a pending investigation or complaint.

There are pending federal rules that impose these requirements on appraisal management companies.²⁴ The proposed language will ensure that Florida is in compliance with federal law.²⁵ Failure to comply with the requirements of federal law could result in sanctions that could prohibit appraisers licensed in Florida from conducting federally related appraisal transactions.²⁶

²⁴ Department of Business and Professional Regulation, 2015 Agency Legislative Bill Analysis: SB 608 (February 26, 2015).

²⁵ *Id.*

²⁶ *Id.*

Real Appraiser License Classifications

The bill repeals the reciprocity provisions of s. 473.631(1), F.S., requiring written agreements between Florida and other states. Beginning July 1, 2013, the Dodd-Frank Act requires appraiser licensure reciprocity between states.²⁷ Therefore, the department allows out-of-state certified residential and certified general appraisers to become certified in Florida based upon his or her education, experience, and national exam grades from other states.²⁸ According to the department, out-of-state licensees who wish to become licensed in Florida must complete a 40-question Florida supplemental exam on Florida specific appraisal laws.²⁹ The requirement that a written agreement be established between states is no longer permitted based on federal law changes.³⁰

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:

PCS/CS/SB 608, according to the Department of Business and Professional Regulation, requires minimal information technology system changes related to process applications, track licenses, complaints and legal proceedings. These programming expenditures can be absorbed with existing resources.³¹

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 475.15, 475.17, 475.183, 475.611, 475.612, 475.621, 475.629, 475.6295, and 475.631.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on March 17, 2015:

The committee substitute deletes duplicative language relating to the Florida Real Estate Commission's discretion to reinstate a license that has become void under certain circumstances.

CS by Regulated Industries Committee on March 4, 2015:

- Deletes the term "licensed" appraiser in regards to provide that it is a certified appraiser that has direct supervision over the registered trainee appraiser.
- Provides that the department must transmit the annual fee that the department must collect from persons who perform or seek to perform appraisers in federally related transactions to the appraisal subcommittee instead of to the Federal Financial Institutions Examinations Council.
- Requires the appraiser's work file contain all other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of The Appraisal Foundation, as established by rule of the board.

- B. **Amendments:**

None.