

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 707 Real Estate Brokers and Appraisers

**SPONSOR(S):** Regulatory Affairs Committee; Business & Professions Subcommittee; Burton

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 608

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	White	Topp
3) Regulatory Affairs Committee	13 Y, 0 N, As CS	Butler	Hamon

### SUMMARY ANALYSIS

This bill amends Florida's Real Estate law related to real estate licensure, rulemaking, and appraisers.

The bill requires the Florida Real Estate Commission to adopt rules to allow a brokerage to register a temporary broker in an emergency situation when the sole broker of a brokerage office dies or unexpectedly cannot remain a broker.

The bill extends the current pre-licensing and post-licensing education exemption for real estate salesperson and broker applicants who hold a four-year degree in real estate to also include applicants who hold a degree in real estate greater than a four-year degree, such as a Master's or Doctorate Degree.

The bill grants authority to the Florida Real Estate Commission to adopt rules to reinstate a license that has become null and void, under certain circumstances. The Commission may reinstate such a license if the request for reinstatement is within six months of the license becoming null and void, and the applicant was unable to comply due to illness or economic hardship.

The bill clarifies several records retention requirements for appraisers and appraisal management companies, to align Florida's retention requirements with the Federal requirements. The bill deletes a limited exception to the restriction on the Department's authority to inspect or copy the records of an appraisal management company and provides full authority to inspect such records.

To conduct federally related appraisal transactions, an appraiser, in any state, must be certified by a state licensure board that meets the federal minimum appraisal standards, one of which is a requirement that the state offer reciprocity to any appraiser licensed or certified by another state, so long as the other state's licensure requirements meet or exceed the host state's requirements. Appraisers nationwide complete two examinations for certification, a national-level generalized exam and a state-specific exam.

In order to comply with federal reciprocity requirements, the bill removes the authority for the Florida Real Estate Appraisal Board to have a "mutual agreement" with another state for an out-of-state appraiser to become licensed in Florida without having to fulfill all of Florida's education, experience, and examination requirements for licensure. Florida will only require out of state certified appraisers to complete the Florida specific examination to become certified in Florida.

The bill has a minimal negative fiscal impact on the Department of Business and Professional Regulation; however, the impact can be handled with existing resources. There is no fiscal impact on local funds.

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Florida Real Estate Commission (FREC), within the Division of Real Estate (Division), within the Department of Business and Professional Regulation (Department) administers and enforces the real estate license law, ch. 475, Part 1, F.S. The FREC is also empowered to adopt rules that enable it to implement its statutorily authorized duties and responsibilities. The rules are contained in ch. 61J2, F.A.C.

The Florida Real Estate Appraisal Board (FREAB), within the Division of the Department, administers and enforces the real estate appraiser license law within Florida, in conjunction with standards promulgated by the Appraisal Foundation. The FREAB is empowered to pass rules that enable it to implement its statutorily authorized duties and responsibilities to properly protect the health, safety, and welfare of the general public.

The Appraisal Foundation is composed of over eighty organizations, corporations, and government agencies that provide guidelines for uniform standards for appraisers and appraisals. The Appraisal Standards Board within the Foundation adopts the Uniform Standards of Professional Appraisal Practice (USPAP) which is recognized throughout the nation as the generally accepted standards of professional appraisal practice.

The rules of the FREAB, along with the licensing requirements of the FREC, and the standards of the USPAP, provide guidance for appraisers, appraisals, and appraisal management companies (AMC) throughout the nation.

##### Real Estate Brokerage Registration Requirements

In order for a real estate brokerage to act as a real estate broker in Florida, at least one active member of the brokerage must be licensed or registered as a broker at all times. If the real estate firm does not have at least one broker within the firm, the registration of the firm, usually a corporation, limited liability company, limited liability partnership, or partnership, is canceled automatically during the period of time that no broker is registered.<sup>1</sup> Additionally, all sales associates registered under the brokerage must stop all work during the period when a brokerage has no member broker. The FREC does not have any statutory authority to establish rules regarding vacancies at a real estate firm, should a firm suddenly lose its only broker.

##### Real Estate Broker Education Requirements

Individuals with a four-year degree in real estate from an accredited institution of higher learning are exempt from the pre-licensing and post-licensing education requirements of licensure as a broker or sales associate.<sup>2</sup>

This statute allows individuals to avoid retaking real estate education courses if the individual already has a higher education degree focused on real estate; however, if an individual does not have a four-year real estate degree, but has a higher degree, such as a Masters or a Doctorate degree in real estate, that individual is unable to take advantage of this exemption.<sup>3</sup>

##### Reinstatement of Null and Void License

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<sup>1</sup> s. 475.15, F.S.

<sup>2</sup> s. 475.17(6), F.S.

<sup>3</sup> Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 680, p. 2 (Feb. 26, 2015) (Senate Bill 608 is identical to House Bill 707).

A license is considered in involuntary inactive status when the license is not renewed at the end of the license period prescribed by the Department.<sup>4</sup> The license may subsequently be renewed only if the licensee meets the educational and other qualifications specified in s. 475.183, F.S. Section 475.183(2)(b), F.S., provides that any license that has been involuntarily inactive for more than two years shall automatically expire and become null and void without further action.

Additionally, a license for a sales associate or broker can become null and void if the sales associate or broker does not complete the post licensure education requirements prior to the first renewal following initial licensure.<sup>5</sup>

Once a license becomes null and void, the licensee is required to re-apply for licensure and meet the initial requirements that a new applicant is required to complete: a new application, fees, fingerprints, pre-licensing education, and successful completion of the state exam.

### Appraiser Records Retention

An appraiser or AMC must retain original and true copies of contracts, appraisal reports, supporting documentation, and other documents involved in engaging an appraiser's services for five years or longer, if required by the USPAP.

These documents must be made available to the Department for inspection and copying; however, the Department may only inspect or copy such documents of an AMC if there is a pending investigation or complaint against the AMC.

The Department may inspect the offices of individual appraisers and firms offering appraisal services to determine if the provisions of law governing the practice of appraisers are being upheld.

### Mutual Agreements with Other States

The FREAB may enter into written agreements with other states that have similar licensing requirements as Florida to provide out-of-state licensees an opportunity to become licensed in Florida without having to go through the entirety of Florida's licensing process. Absent one of these "mutual agreements," an out-of-state licensee must meet all of Florida's education, experience, and examination requirements to become licensed in Florida as an appraiser.

As part of the Federal reform of financial services, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires that states offer reciprocity to any appraiser licensed or certified by another state, so long as the other state's licensure requirements meet or exceed the host state's requirements.<sup>6</sup>

To conduct federally related appraisal transactions, an appraiser, in any state, must be certified by a state licensure board that meets the federal minimum appraisal standards. Appraisers nationwide complete two examinations for certification, a national-level generalized exam and a state-specific exam.

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<sup>4</sup> s. 475.01(g), F.S.

<sup>5</sup> ss. 475.17(3)(c) & 475.17(4)(c), F.S.

<sup>6</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, PL 111-203, July 21, 2010, 124 Stat 1376.

## Licensed or Certified Appraisers

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council, who are charged with monitoring the states' appraisal regulatory programs, have established two title designations for appraisers, "state licensed" and "state certified." The ASC strongly urges states to use these federally-recognized designations or titles in order to decrease confusion among the states' different regulatory programs.

Since July 1, 2003, Florida does not issue new credentials for "licensed" appraisers. Further, the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, who establishes the minimum education, experience, and examination requirements for appraisers, no longer permits "licensed" appraisers to supervise trainee appraisers. Only "certified" appraisers may act as supervisors of trainee appraisers.

Chapter 2013-144, Laws of Florida, amended Florida law to align with the AQB, and removed "licensed" appraisers from the definition of "supervisor appraiser." Consequently, only "certified" appraisers are recognized to be a "supervisor appraiser" in Florida law.

## **Effect of the Bill**

### Real Estate Brokerage Registration Requirements

The bill provides authority for the FREC to adopt rules that will allow a real estate brokerage firm to register a broker on a temporary, emergency basis, when the sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

The rules adopted in accordance with this authority should allow businesses and licensees to operate the business without interruption during a period of unexpected loss of its licensed broker.

### Real Estate Broker Education Requirements

The bill provides authority for license applicants to be exempt from pre-licensing education requirements and allows licensees to be exempt from the post-licensing education requirement if the applicant holds a degree that is considered higher than a four-year degree, such as a Master or Doctorate degree. Such degree must be in real estate from an accredited institution of higher education.

### Reinstatement of Null and Void License

The bill allows the FREC to reinstate the license of an individual whose license has become null and void, if the commission determines that the individual failed to comply within the time requirements and his delay was because of illness or economic hardship. The FREC will define "illness or economic hardship" by rule.

The individual must apply for reinstatement within six months of the license becoming null and void. The bill requires that the individual also meet all continuing education requirements, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure.

### Appraiser Records Retention

The bill clarifies what documents, and in what form, an appraiser or AMC must retain records and other specified documents. The bill requires that each appraiser prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting agreement. The bill requires that each AMC prepare and retain an order file for each appraisal, appraisal review, or appraisal consulting assignment. The work file or order file must be maintained for at least five years, or for a greater period if specified by the USPAP.

The retained work file shall contain:

- Original or true copies of any contracts engaging the appraiser or AMC'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 FREAB.

The retained order file shall contain:

- Original or true copies of any contracts engaging the appraiser's services;
- Appraisal report or reports;
- Any engagement materials or instructions from the client; and,
- All other documents required for the development or communication of a real estate appraisal.

AMCs are required to maintain general contracts and materials pertaining to impaneling of an appraiser but are not required to maintain them within the order file. Additionally, the bill requires that AMCs retain company accounts, correspondence, memoranda, papers, books, and other records in accordance with administrative rules adopted by the FREAB.

There are pending Federal rules that impose these requirements on AMCs. The proposed language will ensure that Florida is in compliance with Federal law. 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.

The bill removes the requirement that the Department must have a pending investigation or complaint in order to inspect or copy, upon reasonable notice, any of the above specified records that are retained by an AMC. Further, the bill affirmatively includes AMCs in the list of appraiser offices that employees of the Department may inspect at reasonable hours for the purpose of determining if any provision of statute or rule is being violated.

#### Mutual Agreements with Other States

In order to comply with federal reciprocity requirements, the bill removes the authority for the Florida Real Estate Appraisal Board to have a "mutual agreement" with another state for an out-of-state appraiser to become licensed in Florida without having to fulfill all of Florida's education, experience, and examination requirements for licensure. Florida will only require out of state certified appraisers to complete the Florida specific examination to become certified in Florida.

These changes would bring Florida's appraiser laws in line with the federal requirements of the Dodd-Frank Act, and allow Florida licensed appraisers to continue to conduct federally related appraisal transactions.

#### Licensed or Certified Appraisers

The bill removes several cross-references to "licensed" appraisers in s. 475.611, F.S. These changes are in line with the requirements of the AQB for a trainee appraiser to be supervised by a "certified" appraiser and not a "licensed" appraiser, and with prior statutory updates in 2013.<sup>7</sup>

#### B. SECTION DIRECTORY:

**Section 1** amends s. 475.15, F.S., requires the FREC to adopt rules to allow a brokerage to register a broker on a temporary, emergency basis, when the sole broker is unexpectedly unable to do so.

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<sup>7</sup> Ch. 2013-144, Laws of Fla.  
STORAGE NAME: h0707e.RAC  
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**Section 2** amends s. 475.17(6), F.S., allows applicants with real estate degrees greater than a four-year degree to be exempt from pre-licensing and post-licensing education requirements.

**Section 3** amends s. 475.183, F.S., creates a new subsection (4) to allow the FREC to reinstate an individual with a null and void license under certain conditions.

**Section 4** amends s. 476.611, F.S., to clarify the supervision requirements of trainee appraisers.

**Section 5** amends s. 475.612(5), F.S., to clarify the supervision requirements of trainee appraisers.

**Section 6** amends s. 475.621(2), F.S., to clarify where the annual fee for persons who seek to perform federally related transactions is sent.

**Section 7** amends s. 475.629, F.S., to clarify records retention requirements for appraisers and AMCs, and to align with Federal retention requirements.

**Section 8** amends s. 475.6295, F.S., to include AMCs in the list of licensees that the Department may inspect at any reasonable time.

**Section 9** amends s. 473.631, F.S., to remove the requirements that out-of-state appraisers must be licensed in a state with a mutual agreement with Florida in order to bypass the new licensee education, experience and exam requirements.

**Section 10** provides an effective date of July 1, 2015.

## 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:

This bill has a minimal negative fiscal impact on the Department of Business and Professional Regulation that can be handled with existing resources.<sup>8</sup>

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

This bill may prevent a brokerage which would otherwise need to close due to the death or unexpected loss of its only broker from closing by appointing a new, temporary broker in his place. The actual economic impact of such an event is indeterminable.

### D. FISCAL COMMENTS:

None.

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<sup>8</sup> Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 680, p. 7-8 (Feb. 26, 2015) (Senate Bill 608 is identical to House Bill 707).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not Applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

**Section 1** would allow the FREC to establish procedures by rule, and allow the amendment of the existing rule. A prior rule was created prior to more stringent rulemaking requirements and the FREC has been unable to amend it. This section would also likely require the FREC to adopt rules to allow a brokerage to register a broker on a temporary basis.

**Section 2** would likely require the FREC to amend rules to review and consider education transcripts of graduate degrees in real estate in place of the pre-licensing and post-licensing education requirements of sales associates and brokers.

**Section 3** allows the FREC to amend its rules to accommodate licensees that did not previously have the ability to request reinstatement of null and void licenses due to hardship. It will also likely require the commission to adopt a reinstatement fee and define "illness or economic hardship."

**Section 7** would require the FREAB to amend its rules to incorporate any finalized federal regulations.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the term "appraisal consulting assignment" which is not defined by statute or rule, and the meaning of this term appears to rely on a federal definition. The reliance on a federal definition, which may be changed at any time, may raise concerns of an unconstitutional delegation of legislative authority.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Business & Professions Subcommittee adopted three amendments. The amendments clarify the supervision requirements for trainee appraisers, clarify the documents required in an appraiser's work file, and clarify the legislative intent for rulemaking related to reinstating a real estate broker or salesperson license that is null and void. The bill was reported favorably as a committee substitute.

On April 1, 2015, the Regulatory Affairs Committee adopted one amendment. The amendment provides that an AMC shall prepare and retain an order file for each appraisal, appraisal review, or appraisal consulting assignment. The amendment provides requirements and clarity on the contents of the order file. The bill was reported favorably as a committee substitute.

The staff analysis is drafted to reflect the committee substitute