

By Senator Diaz

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1 A bill to be entitled
2 An act relating to real estate; creating s. 475.502,
3 F.S.; providing a short title; creating the Florida
4 Real Estate Management Corporation; providing for
5 purpose, duties, requirements, and administration of
6 the corporation; requiring a written contract with the
7 Department of Business and Professional Regulation;
8 providing contract requirements; prohibiting the
9 management corporation from exercising certain
10 authority assigned to the board of directors;
11 providing that the board, rather than the department,
12 receive complaints and investigate and deter the
13 unlicensed practice of real estate; authorizing the
14 use of specified funds of the Florida Real Estate
15 Commission for such activities; providing requirements
16 for investigations by the department; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 475.502, Florida Statutes, is created to
22 read:

23 475.502 Florida Real Estate Management Corporation.-

24 (1) This section may be cited as the "Florida Real Estate
25 Management Corporation Act."

26 (2) The purpose of this section is to create a public-
27 private partnership by establishing a single nonprofit
28 corporation to provide investigative services to the commission.
29 Any additional nonprofit corporations may not be created to

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30 provide these services.

31 (3) The Florida Real Estate Management Corporation is
32 created to provide investigative services to the commission in
33 accordance with chapter 455 and this chapter. The management
34 corporation may hire staff as necessary to carry out its
35 functions. Such staff are not public employees for the purposes
36 of chapter 110 or chapter 112, except that the board and staff
37 are subject to s. 112.061. Section 768.28 applies to the
38 management corporation, which is deemed to be a corporation
39 primarily acting as an instrumentality of the state, but which
40 is not an agency as defined in s. 20.03(11). The management
41 corporation shall:

42 (a) Be a Florida corporation not for profit incorporated
43 under chapter 617.

44 (b) Provide investigative services to the commission in
45 accordance with chapter 455, this chapter, and the contract
46 required by this section.

47 (c) Receive, hold, and administer property and make only
48 prudent expenditures directly related to the responsibilities of
49 the commission in accordance with the contract required by this
50 section.

51 (d) Be approved by the commission and the department to
52 operate for the benefit of the commission and in the best
53 interest of the state.

54 (e) Operate under a fiscal year that begins on July 1 of
55 each year and ends on June 30 of the following year.

56 (f) Have a seven-member board of directors, five of whom
57 are to be appointed by the commission and must be registrants
58 regulated by the commission and two of whom are to be appointed

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59 by the secretary and must be laypersons not regulated by the
60 commission. Each member shall be appointed to a 4-year term. A
61 member may not serve more than two consecutive terms. Failure to
62 attend three consecutive meetings shall be deemed a resignation
63 from the board, and the vacancy shall be filled by a new
64 appointment.

65 (g) Select its officers in accordance with its bylaws. The
66 members of the board who were appointed by the commission may be
67 removed by the commission.

68 (h) Select its president in accordance with its bylaws, who
69 shall also serve as executive director of the board, subject to
70 approval of the commission.

71 (i) Use a portion of the interest derived from its account
72 to offset the costs associated with the use of credit cards for
73 payment of fees by applicants or licensees.

74 (j) Operate under a written contract with the department
75 which is approved by the commission. The contract must provide
76 for, but is not limited to:

77 1. Submission by the management corporation of an annual
78 budget that complies with commission rules which is approved by
79 the commission and the department.

80 2. Annual certification by the commission and the
81 department that the management corporation is complying with the
82 terms of the contract in a manner consistent with the goals and
83 purposes of the commission and in the best interest of the
84 state. Such certification must be reported in the commission's
85 minutes. The contract must also provide for methods and
86 mechanisms to resolve any situation in which the certification
87 process determines noncompliance.

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88 3. Funding of the management corporation through
89 appropriations allocated to the commission and the Professional
90 Regulation Trust Fund.

91 4. The reversion to the commission, or the state if the
92 commission ceases to exist, of moneys, records, data, and
93 property held in trust by the management corporation for the
94 benefit of the commission, if the management corporation is no
95 longer approved to operate for the commission or the commission
96 ceases to exist. All records and data in a computerized database
97 shall be returned to the department in a form that is compatible
98 with the computerized database of the department.

99 5. The securing and maintaining by the management
100 corporation, during the term of the contract and for all acts
101 performed during the term of the contract, of all liability
102 insurance coverage in an amount to be approved by the commission
103 to defend, indemnify, and hold harmless the management
104 corporation and its officers, members, and staff; the department
105 and its employees; and the state against all claims arising from
106 state and federal laws. Such insurance coverage must be with
107 insurers qualified and doing business in the state. The
108 management corporation must provide proof of insurance to the
109 department. The department and its employees and the state are
110 exempt from and are not liable for any sum of money which
111 represents a deductible, which sums shall be the sole
112 responsibility of the management corporation. Violation of this
113 subparagraph shall be grounds for terminating the contract.

114 6. Payment by the management corporation, out of its
115 allocated budget, to the department of all costs of
116 representation by the commission counsel, including salary and

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117 benefits, travel, and any other compensation traditionally paid
118 by the department to other board counsel.

119 7. Payment by the management corporation, out of its
120 allocated budget, to the department of all costs incurred by the
121 management corporation or the commission for the Division of
122 Administrative Hearings of the Department of Management Services
123 and any other cost for utilization of these state services.

124 8. Payment by the management corporation, out of its
125 allocated budget, to the department of reasonable costs
126 associated with the contract monitor.

127 (k) Provide for an annual financial audit of its financial
128 accounts and records by an independent certified public
129 accountant. The annual financial audit report shall include a
130 management letter as defined in s. 11.45(1) and a detailed
131 supplemental schedule of expenditures for each expenditure
132 category. The annual financial audit report must be submitted to
133 the board, the department, and the Auditor General for review.

134 (l) Provide for persons not employed by the management
135 corporation who are charged with the responsibility of receiving
136 and depositing fee and fine revenues to have a faithful
137 performance bond in such an amount and according to such terms
138 as shall be determined in the contract.

139 (m) Submit to the secretary, the commission, and the
140 Legislature, on or before October 1 of each year, a report on
141 the status of the management corporation which includes, but is
142 not limited to, information concerning the property and funds
143 that have been transferred to the management corporation. The
144 report must include the number of complaints received,
145 determined to be legally sufficient, dismissed, or determined to

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146 have probable cause; the number of complaints issued and the
147 status of such complaints; and the number and nature of
148 disciplinary actions taken by the board.

149 (n) Develop and submit to the department performance
150 standards and measurable outcomes for the board to adopt by rule
151 in order to facilitate efficient and cost-effective regulation.

152 (4) The management corporation may not exercise any
153 authority specifically assigned to the board under chapter 455
154 or this chapter, including determining probable cause to pursue
155 disciplinary action against a licensee, taking final action on
156 license applications or in disciplinary cases, or adopting
157 administrative rules under chapter 120.

158 (5) Notwithstanding ss. 455.228 and 455.2281, the duties
159 and authority of the department to receive complaints and to
160 investigate and deter the unlicensed practice of real estate are
161 delegated to the board. The board may use funds of the
162 commission in the unlicensed activity account established under
163 s. 455.2281 to perform the duties relating to unlicensed
164 activity.

165 (6) The department shall retain the independent authority
166 to open or investigate any cases or complaints as necessary to
167 protect the public health, safety, or welfare. In addition, the
168 department shall retain sole authority to issue emergency
169 suspension, restriction, or limitation of a license orders
170 pursuant to s. 120.60.

171 Section 2. This act shall take effect July 1, 2020.