

**STORAGE NAME:** h1097.sgc.doc  
**DATE:** April 19, 2001

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE  
COUNCIL FOR SMARTER GOVERNMENT  
ANALYSIS**

**BILL #:** HB 1097  
**RELATING TO:** Real Estate Brokers  
**SPONSOR(S):** Representative(s) Kyle

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS REGULATION YEAS 9 NAYS 0
  - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

The Florida Real Estate Commission under the Division of Real Estate within the Department of Business and Professional Regulation administers regulation of real estate brokers and salespersons. A real estate broker, in simplified terms, means a person who for compensation buys, sells or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation that acts as a broker.

A "fiduciary" is a broker in a relationship of trust and confidence between that broker, as agent, and the seller or buyer, as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

Penalties for violations of the real estate statutes include administrative sanctions and criminal sanctions of a second degree misdemeanor.

This bill is designed to further clarify the application of the term real estate broker. The bill specifies the term broker includes a trustee of a land trust. The bill prohibits the breach of fiduciary duties for which the Florida Real Estate Commission may institute disciplinary action and it provides for a second degree misdemeanor penalty for a violation of the fiduciary relationship.

The bill does not have a fiscal impact on state or local government.

The Council For Smarter Government adopted a strike everything amendment that is traveling with the bill. The bill is designed to clarify the application of the term real estate broker. The amendment places this clarification in the definition section of chapter 475, F.S. by stating the provisions of this chapter apply to a broker acting as a trustee or in a fiduciary capacity.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Regulation of real estate brokers and salespersons is established under part I of chapter 475, F.S. The Florida Real Estate Commission under the Division of Real Estate of the Department of Business and Professional Regulation administers this program. Regulation is designed to assure the minimal competency of real estate practitioners in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Currently, several real estate terms are used in chapter 475, F.S., including the following:

The term "broker" is statutorily defined as a person who for compensation buys, sells or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation which acts as a broker.

A "single agent" is a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction. A "dual agent" is a broker who works as an agent for both the buyer and seller and is specifically prohibited in Florida, s. 475.278, F.S.

A "transaction broker" is a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent, and no fiduciary duties exist, except for the duty of accounting and the duty to use skill, care, and diligence. However, the transaction broker must treat the buyer and seller with honesty and fairness and must disclose all known facts materially affecting the value of the property in residential transactions to both the buyer and seller.

A "fiduciary" is a broker in a relationship of trust and confidence between that broker, as agent, and the seller or buyer, as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

The term real estate broker has been the focus of extensive litigation. Nevertheless, confusion or disagreement can arise under certain, usually complicated circumstances or arrangements, as to the application of the provisions of chapter 475, F.S. to particular brokerage relationships.

**C. EFFECT OF PROPOSED CHANGES:**

The bill expands the definition of the term "broker" in chapter 475, F.S., to include trustees of a land trust. It also includes a person acting in a management capacity for a business entity operating to acquire real property for compensation using funds of others.

The bill creates administrative and criminal penalties applicable to a broker who violates fiduciary duties when acting as a trustee of a land trust or acting in a management capacity for a business entity operating to acquire real property for others.

The effective date of the bill is upon becoming law.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Amends s. 475.01, F.S., to further define the term "broker" to include trustees of a land trust and individuals buying and selling real estate with the funds of others for compensation.

**Section 2.** Amends s. 475.25, F.S., to authorize administrative sanctions for breaching fiduciary duties of certain real estate brokers.

**Section 3.** Amends s. 475.42, F.S., to create criminal penalties for breaching fiduciary duties of certain real estate brokers.

**Section 4.** Reenacts s. 468.383, 475.25, and 475.274, F.S., to incorporate references to the term "broker" as amended by the bill.

**Section 5.** Provides the act shall take effect upon becoming a law.

**III. 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:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 18, 2001, the Council For Smarter Government adopted a strike everything amendment that is traveling with the bill. The bill is designed to clarify the application of the term real estate broker. The amendment places this clarification in the definition section of chapter 475, F.S. by stating the provisions of this chapter apply to a broker acting as a trustee or in a fiduciary capacity.

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VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Alan W. Livingston

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Staff Director:

Paul Liepshutz

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AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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Don Rubottom

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