

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1382

SPONSOR: Senator Laurent

SUBJECT: Real Estate Brokers

DATE: March 14, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill includes in the definition of “broker” any person who is otherwise subject to the provisions of Part I, chapter 475, F.S., and who is acting, for compensation, in the capacity of a trustee of a land trust or of an official of a similar business entity. The bill provides that any broker who breaches a fiduciary duty owed to a principal, including a beneficiary, partner, or stockholder of a land trust, is subject to administrative discipline and to prosecution for a second-degree misdemeanor.

The bill substantially amends the following sections of the Florida Statutes: 475.01, 475.25, and 475.42.

II. Present Situation:

Part I of Chapter 475, F.S., provides for the regulation of real estate brokers and salespersons. 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.

Section 475.01(1)(a), F.S., defines “broker” as a person who, for another, and for compensation, appraises, auctions, sells, exchanges, buys, or rents any business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or any person who attempts or agrees to perform these acts, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of performing these acts, or who takes any part in the procuring of

sellers, purchasers, lessors, or lessees of such properties, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in such a property transaction. The term broker also includes all persons who advertise rental property information or lists, any person who is a general partner, officer, or director of a partnership or corporation that acts as a broker, and any person who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons.

Section 475.01(1)(f), F.S., provides that a broker is a fiduciary and is 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.

Section 475.25, F.S., provides that if the Real Estate Commission finds that a broker has committed any of a list of acts subject to discipline, it may impose sanctions, including denying of an application for licensure, registration, or permit, or renewal thereof; placing a licensee, registrant, or permittee on probation; suspending a license, registration, or permit for a period not exceeding 10 years; revoking a license, registration, or permit; imposing an administrative fine not to exceed \$1,000 for each count or separate offense; and issuing a reprimand.

Additionally, s. 475.42(2), F.S., makes it a misdemeanor of the second degree to commit any of a list of violations.

III. Effect of Proposed Changes:

The bill includes in the definition of “broker” any person who is otherwise subject to the provisions of Part I, chapter 475, F.S., and who is acting in the capacity of a trustee of a land trust or as a general partner, officer, or director of a partnership or corporation formed to acquire real property with the funds of others, and who receives compensation for the purchase or sale of the real property.

The bill amends s. 475.25, F.S., to provide that any broker who breaches a fiduciary duty owed to a principal, including a beneficiary, partner, or stockholder of a land trust, is subject to administrative discipline.

The bill amends s. 475.42, F.S., to make such a breach of fiduciary duty a second-degree misdemeanor.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.