

By Senator Laurent

17-1276-01

See HB

1 A bill to be entitled
2 An act relating to real estate brokers;
3 amending s. 475.01, F.S.; expanding the
4 definition of the term "broker"; amending s.
5 475.25, F.S.; specifying additional actions for
6 which the Florida Real Estate Commission may
7 institute disciplinary action; amending s.
8 475.42, F.S.; prohibiting specified breach of
9 fiduciary duties and providing penalties
10 therefor; reenacting ss. 468.383(7),
11 475.25(1)(h), and 475.274, F.S., to incorporate
12 the amendment to s. 475.01(1)(a), F.S., in
13 references thereto; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Paragraph (a) of subsection (1) of section
19 475.01, Florida Statutes, is amended to read:

20 475.01 Definitions.--

21 (1) As used in this part:

22 (a) "Broker" means a person who, for another, and for
23 a compensation or valuable consideration directly or
24 indirectly paid or promised, expressly or impliedly, or with
25 an intent to collect or receive a compensation or valuable
26 consideration therefor, appraises, auctions, sells, exchanges,
27 buys, rents, or offers, attempts or agrees to appraise,
28 auction, or negotiate the sale, exchange, purchase, or rental
29 of business enterprises or business opportunities or any real
30 property or any interest in or concerning the same, including
31 mineral rights or leases, or who advertises or holds out to

1 the public by any oral or printed solicitation or
2 representation that she or he is engaged in the business of
3 appraising, auctioning, buying, selling, exchanging, leasing,
4 or renting business enterprises or business opportunities or
5 real property of others or interests therein, including
6 mineral rights, or who takes any part in the procuring of
7 sellers, purchasers, lessors, or lessees of business
8 enterprises or business opportunities or the real property of
9 another, or leases, or interest therein, including mineral
10 rights, or who directs or assists in the procuring of
11 prospects or in the negotiation or closing of any transaction
12 which does, or is calculated to, result in a sale, exchange,
13 or leasing thereof, and who receives, expects, or is promised
14 any compensation or valuable consideration, directly or
15 indirectly therefor; and all persons who advertise rental
16 property information or lists. A broker renders a
17 professional service and is a professional within the meaning
18 of s. 95.11(4)(a). Where the term "appraise" or "appraising"
19 appears in the definition of the term "broker," it
20 specifically excludes those appraisal services which must be
21 performed only by a state-licensed or state-certified
22 appraiser, and those appraisal services which may be performed
23 by a registered assistant appraiser as defined in part II.
24 The term "broker" also includes any person who is a general
25 partner, officer, or director of a partnership or corporation
26 which acts as a broker. The term "broker" also includes any
27 person or entity who undertakes to list or sell one or more
28 timeshare periods per year in one or more timeshare plans on
29 behalf of any number of persons, except as provided in ss.
30 475.011 and 721.20. The term "broker" also includes any
31 person, otherwise subject to the provisions of this part,

1 acting in the capacity of a trustee of a land trust, or as a
2 general partner, officer, or director of a partnership or
3 corporation formed or caused to be formed as a part of an
4 undertaking by such person to acquire real property with the
5 funds of others and who receives, expects, or is promised any
6 compensation or valuable consideration, directly or
7 indirectly, for the acquisition of such real property or its
8 subsequent sale.

9 Section 2. Paragraph (u) is added to subsection (1) of
10 section 475.25, Florida Statutes, to read:

11 475.25 Discipline.--

12 (1) The commission may deny an application for
13 licensure, registration, or permit, or renewal thereof; may
14 place a licensee, registrant, or permittee on probation; may
15 suspend a license, registration, or permit for a period not
16 exceeding 10 years; may revoke a license, registration, or
17 permit; may impose an administrative fine not to exceed \$1,000
18 for each count or separate offense; and may issue a reprimand,
19 and any or all of the foregoing, if it finds that the
20 licensee, registrant, permittee, or applicant:

21 (u) Has breached any of his or her fiduciary duties,
22 as defined in s. 475.01(1)(f), owing to a principal,
23 including, without limitation, any beneficiary, partner, or
24 stockholder of any land trust, partnership, or corporation
25 formed or caused to be formed by the licensee as part of an
26 undertaking by the licensee to acquire real property with the
27 funds of the principal, and who receives, expects, or is
28 promised any compensation or valuable consideration, directly
29 or indirectly, for the acquisition of such real property or
30 its subsequent sale.

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1 Section 3. Paragraph (f) of subsection (1) and
2 subsection (2) of section 475.42, Florida Statutes, are
3 amended to read:

4 475.42 Violations and penalties.--

5 (1) VIOLATIONS.--

6 (f) No person shall commit any conduct or practice set
7 forth in s. 475.25(1)(b), (c), (d), ~~or~~ (h), or (u).

8 (2) PENALTIES.--Any person who violates any of the
9 provisions of subsection (1) is guilty of a misdemeanor of the
10 second degree, punishable as provided in s. 775.082 or s.
11 775.083, or, if a corporation, it is guilty of a misdemeanor
12 of the second degree, punishable as provided in s. 775.083,
13 except when a different punishment is prescribed by this
14 chapter. Nothing in this chapter shall prohibit the
15 prosecution under any other criminal statute of this state of
16 any person for an act or conduct prohibited by this section;
17 however, in such cases, the state may prosecute under this
18 section or under such other statute, or may charge both
19 offenses in one prosecution, but the sentence imposed shall
20 not be a greater fine or longer sentence than that prescribed
21 for the offense which carries the more severe penalties. A
22 civil case, criminal case, or a denial, revocation, or
23 suspension proceeding may arise out of the same alleged state
24 of facts, and the pendency or result of one such case or
25 proceeding shall not stay or control the result of either of
26 the others.

27 Section 4. For the purpose of incorporating the
28 amendment to section 475.01, Florida Statutes, in references
29 thereto, subsection (7) of section 468.383, Florida Statutes,
30 paragraph (h) of subsection (1) of section 475.25, Florida
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1 Statutes, and section 475.274, Florida Statutes, are reenacted
2 to read:

3 468.383 Exemptions.--This act does not apply to the
4 following:

5 (7) Auctions conducted as a part of the sale of real
6 property by a real estate broker, as defined in s.
7 475.01(1)(a).

8 475.25 Discipline.--

9 (1) The commission may deny an application for
10 licensure, registration, or permit, or renewal thereof; may
11 place a licensee, registrant, or permittee on probation; may
12 suspend a license, registration, or permit for a period not
13 exceeding 10 years; may revoke a license, registration, or
14 permit; may impose an administrative fine not to exceed \$1,000
15 for each count or separate offense; and may issue a reprimand,
16 and any or all of the foregoing, if it finds that the
17 licensee, registrant, permittee, or applicant:

18 (h) Has shared a commission with, or paid a fee or
19 other compensation to, a person not properly licensed as a
20 broker, broker-salesperson, or salesperson under the laws of
21 this state, for the referral of real estate business, clients,
22 prospects, or customers, or for any one or more of the
23 services set forth in s. 475.01(1)(a). For the purposes of
24 this section, it is immaterial that the person to whom such
25 payment or compensation is given made the referral or
26 performed the service from within this state or elsewhere;
27 however, a licensed broker of this state may pay a referral
28 fee or share a real estate brokerage commission with a broker
29 licensed or registered under the laws of a foreign state so
30 long as the foreign broker does not violate any law of this
31 state.

