

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: CS/SB 1266

SPONSOR: Regulated Industries Committee and Senator Posey

SUBJECT: Real Estate Professionals/Regulation

DATE: April 11, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>JU</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill addresses several provisions of the real estate statutes in ch. 475, F.S.

Brokerage relationships

The committee substitute replaces the term “salespersons” with the term “broker associates.” It also replaces the term “salesperson” with the term “sales associate.” These changes are made throughout the bill. It amends the definition of transaction broker to specify that this form of limited representation is designed to facilitate a real estate transaction by providing assistance to both the buyer and the seller. It provides that the parties give up their right to the undivided loyalty of the licensee.

It requires the commission to license a broker associate as an individual or, upon authorization from the Department of State, as a professional corporation or limited partner. It creates the presumption of a transaction brokerage relationship unless a single agent or no brokerage relationship is expressly established in writing with a customer. Effective July 1, 2008, a transaction broker would no longer be required to provide the disclosures existing under current law regarding the duties a transaction broker owes to a buyer or seller of real estate.

Continuing education

The committee substitute eliminates the restriction that a real estate school must advertise only as a school and under the registered name of that school and may not advertise the school in connection with an advertisement of an affiliated broker.

Escrow accounts

The committee substitute would authorize the commission to make rules to set forth circumstances in which a licensee may disburse property from his or her escrow account without

notifying the commission or employing one of the procedures in s. 475.25, F.S. The bill allows brokers to maintain up to \$5,000 of personal or brokerage business funds in the broker's escrow account, and up to \$1000 of personal or brokerage funds in the broker's sales escrow account.

Real Estate Recovery Fund

The bill requires the payment of court costs and attorney fees by the commission when a broker defends an escrow disbursement from the Real Estate Recovery Fund ("the fund"), and increases the amount covered. The commission must also pay attorney's fees and costs if the plaintiff prevails in court.

Disclosures

The bill creates s. 475.423, F.S., which requires certain disclosures in transfers of residential, undeveloped, or commercial land. It provides the form of the disclosures, identifies the information that must be disclosed, and sets requirements for the delivery of the disclosure. It requires liability limits for errors in accuracies and omissions in the disclosure. It requires that third parties who provide the information for the disclosures must maintain insurance in the amount of \$20 million.

Other provisions

The committee substitute amends s. 475.175, F.S., to permit real estate licensure applicants to submit electronically authenticated applications, and eliminates the requirement that the application include two photographs taken within the preceding year. It requires applicants to, effective July 1, 2006, provide fingerprints in electronic format. The committee substitute requires that the commission must promptly report to the proper prosecuting authority any criminal violation relating to the practice of real estate.

The committee substitute amends s. 475.22(1), F.S., to eliminate the authority of the commission to make rules prescribing the form and minimum dimensions of signs at the entrance to a broker's principal office and each branch office. It creates s. 475.505, F.S., to establish procedures, conditions, and requirements for temporary licensure by brokers licensed in other states.

This bill would take effect on July 1, 2003.

This bill substantially amends the following sections of the Florida Statutes: 83.49, 440.02, 443.036, 475.001, 475.01, 475.011, 475.02, 475.04, 475.17, 475.175, 475.181, 475.182, 475.215, 475.22, 475.23, 475.25, 475.2755, 475.278, 475.31, 475.37, 475.41, 475.42, 475.43, 475.451, 475.453, 475.455, 475.482, 475.483, 475.484, 475.5017, 475.612, 501.604, 687.14, 689.25, 721.20, and 760.29

This bill creates the following sections of the Florida Statutes: 475.161, 475.423, and 475.505.

This bill repeals the following sections of the Florida Statutes: 475.4511, 475.421, and 475.422.

II. Present Situation:

The regulation of real estate brokers and salespersons is established under part I of ch. 475, F.S. The Florida Real Estate Commission (“the commission”) within the Department of Business and Professional Regulation (“the department”) is the agency responsible for implementing and enforcing the provisions of ch. 475, F.S. The Division of Real Estate (“the division”) within the department provides administrative support to the commission. The division is responsible for providing the recordkeeping, examination, legal, and investigative services for the commission.

Definitions

Section 475.01, F.S., defines several real estate terms as used in ch. 475, F.S., including the following:

A “broker” is a person who for another and for compensation buys, sells, or leases real property or negotiates the transaction. The definition includes a general partner, officer, or director of a partnership or corporation which acts as a broker. The term also includes any person or entity that undertakes to list or sell one or more timeshare periods or plans per year.

A “broker-salesperson” is a person qualified to be issued a license as a broker but who operates as a salesperson in the employ of another.

A “single agent” is a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction. Section 475.278, F.S., prohibits a broker from acting a “dual agent,” who works as an agent for both the buyer and seller.

A “transaction broker” is a broker who provides limited representation to a buyer, a seller, or both in the same transaction. The transaction broker does not represent either the buyer or seller as an agent.

A “fiduciary” is a broker in a relationship of trust and confidence with the 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. The broker also has the duty to use skill, care, and diligence.

A “salesperson” is defined in s. 475.01, F.S., as:

[A] person who performs any act specified in the duties of a broker, but performs the act under the direct supervision, control or management of another person.

Brokerage Relationship Disclosure Act

The term “agency” describes the legal relationship between two persons in which one person, known as the agent, acts on behalf of, or represents, the other person, known as the principal. The term “agency law” in the context of real estate transactions refers to laws regulating the legal relationship between real estate licensees and the buyers and sellers of real estate. Persons owning property often employ an agent to sell, market, and negotiate the sale of their property. At common law, a real estate agent owes a duty of loyalty solely to the party paying the commission. A real estate commission is usually, but not always, paid exclusively by the seller. Therefore, a buyer under the common law rule would rarely be represented in the real estate

transaction. However, it has become common practice for buyers to hire agents to represent them. This has caused a level of confusion among consumers as to the nature of their relationship with real estate licensees.

Chapter 475, F.S., addresses the issue of agency relationships and attempts to ameliorate this confusion. Section 475.255, F.S., provides that the mere payment or promise to pay compensation to a licensee does not without consideration of the facts and circumstances mean that an agency or transactional brokerage relationship exists. Sections 475.2701-475.2801, F.S., constitute the “Brokerage Relationship Disclosure Act” (“the act”). The act’s purpose is to eliminate the confusion and to provide for better understanding on the part of consumers in real estate transactions. To achieve this goal, the act:

- Expressly revokes disclosed dual agency representation.
- Establishes disclosure requirements for brokerage representation.
- Provides that single agents may represent either a buyer or a seller, but not both, in a real estate transaction.
- Provides that transaction brokers provide a limited form of non-fiduciary representation to a buyer, seller, or both in a real estate transaction.

Section 475.2755, F.S., authorizes a broker to designate salespersons to act as single agents for different customers in the same transaction, provided that the seller and buyer have assets of \$1 million or more and the buyers request the representation. This provision does not apply to residential real estate transactions.

Section 475.278, F.S., establishes three real estate licensee relationships with real estate buyers and sellers, i.e., brokerage relationships. The three relationships are: the transaction brokerage relationship, the single agent relationship, and the no brokerage relationship.

Brokerage Relationship

Section 475.278(1), F.S., authorizes a real estate licensee to enter into a brokerage relationship as either a single agent or as a transaction broker with potential buyers and sellers. A licensee cannot operate as a dual agent, which represents both the buyer and the seller in the same real estate transaction, whether the dual agency is disclosed or not. A brokerage relationship once established may be changed by written disclosure and consent by the buyer or seller.

Transaction Broker Relationship

Section 475.278(2), F.S., establishes the duties of a transaction broker. A transaction broker does not represent the buyer or seller in a fiduciary capacity or as a single agent. This is a limited form of representation. The act requires that the duties of a transaction broker must be disclosed in writing to the buyer or seller at the time of or before entering into, a listing agreement or an agreement for representation before showing the property. The act sets forth the form and content of the disclosure. The duties of a transaction broker are to:

1. Deal honestly and fairly.
2. Account for all funds.
3. Use skill, care, and diligence in the transaction.
4. Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer.
5. Present all offers and counteroffers in a timely or agreed manner.

6. Not disclose the price that the buyer or seller is willing to pay or accept.
7. Perform any additional duties that are mutually agreed to with a party.

Single Agent Relationship

Section 475.278(3), F.S., established the duties of a single agent. The single agent is in a fiduciary relationship with the buyer or seller who engages his or her services. A single agent owes the following duties to the buyer or seller:

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. Obedience;
5. Full disclosure;
6. Accounting for all funds;
7. Skill, care, and diligence in the transaction;
8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

The act requires that the duties of a single agent must be disclosed in writing to the buyer or seller at the time of or before entering into a listing agreement or an agreement for representation and before showing the property. The act also sets forth the form and content of the disclosure.

No Brokerage Relationship

A real estate licensee owes to the potential buyer or seller with whom the licensee has no brokerage relationship the following duties:

1. Dealing honestly and fairly;
2. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer; and
3. Accounting for all funds entrusted to the licensee.

The act requires that the duties of a real estate licensee with out a brokerage relationship must be disclosed in writing to the potential buyer or seller at the time of or before entering into a listing agreement or an agreement for representation and before showing the property. The act also sets forth the form and content of the disclosure.

Registration of Limited Partners

Section 475.15, F.S., requires partnerships, limited liability partnerships, limited liability companies, and corporations that act as a broker to register with the commission. If the partnership is a limited partnership, only the general partners must be licensed brokers or registered brokerage corporations.

Exemptions

Section 475.011, F.S., provides several exemptions from licensure. Section 475.011(4), F.S., provides an exception for a salaried employee of an owner, or a registered broker for an owner, of an apartment community who works in an onsite rental office in a leasing capacity. Section 475.011(5), F.S., provides an exception for a person employed as a manager of a condominium

or cooperative apartment complex engaged in the renting of individual units for rental periods no greater than one year.

Signage

Section 475.22, F.S., requires that an operating broker must maintain an office consisting of at least one enclosed room in a building of stationary construction, and must maintain a sign on or about the entrance to the broker's principal office and at each branch office a sign that is easily observable and readable by any person about to enter such office. Section 475.22, F.S., authorizes the commission to adopt rules to establish standards for the minimum dimensions and form of those signs.

Escrow Funds

Section 475.25(1)(d)1., F.S., authorizes discipline of a licensee for failure to account for or deliver a deposit to the party entitled to it "at the time which has been agreed upon or is required by law..." If a licensee in good faith doubts whether a person is entitled to the accounting and delivery of escrowed property, typically cash, or if there are conflicting demands on the licensee for the escrowed property in his or her escrow or trust account, the licensee must:

- Request that the commission issue a disbursement order determining who is entitled to the escrowed property;
- Submit the matter to arbitration with the consent of all the parties;
- Seek adjudication of the matter by a court through interpleader or other process; or
- Submit the matter to mediation by consent of all the parties.

If a licensee promptly uses one of these procedures to resolve a conflict involving escrowed property, and if the licensee abides with any order or judgment resulting from these procedures, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property. Also under s. 475.25(1)(d)1., F.S., a licensee does not have to notify the commission or follow any of the above procedures if the buyer of a residential condominium unit cancels the contract for sale and purchase, or in good faith fails to satisfy the terms for financing.

Discipline

Section 475.25(1)(g), F.S., authorizes discipline for a licensee for sharing a commission, fee, or other compensation with a person not properly licensed as a broker, broker sales person, or sales person. Section 475.25(1)(k), F.S., authorizes discipline for a licensee who fails to hold monies in trust "until disbursement thereof is properly authorized..." There is no statute of limitations under current law for filing an administrative complaint against a licensee.

Nonresident Licensees

Section 475.180, F.S., grants the commission the discretion to enter into written agreements with licensing authorities of other states or foreign national jurisdictions to provide Florida licensees nonresident licensure opportunities comparable to those afforded to nonresidents by Florida law. Whenever the commission determines that another jurisdiction does not offer nonresident licensure to Florida licensees substantially comparable to those afforded to licensees of that jurisdiction by this section, licensees from that jurisdiction who apply for nonresident licensure in Florida must meet requirements substantially comparable to those required of Florida licensee's in the nonresident applicant's jurisdiction.

Attorney General Approval of Independent Legal Counsel

Section 475.03, F.S., authorizes the commission to retain independent legal counsel to provide legal advice to the commission. The independent legal counsel must be approved by the Attorney General.

Continuing Education

Section 475.04, F.S., requires that the commission must foster the education of real estate licensees in the ethical, legal, and business principals which should govern their conduct. The commission is authorized to prescribe and approve real estate education courses. Section 475.17(5)(c), authorizes the commission to approve distance learning courses. Current law does not authorize the commission to certify or approve the delivery mechanism for distance learning courses, or who may provide the learning content.

Section 475.182, F.S., requires that during their 2-year licensure period, brokers and salespersons must, as a prerequisite to renewal of their licensure, complete continuing education courses of at least 14 classroom hours of 50 minutes each in courses approved by the commission.

Real Estate Recovery Fund.

Section 475.482, F.S., establishes the Real Estate Recovery Trust Fund. The fund pays persons who have been adjudged by a court of competent jurisdiction to have suffered monetary damages by reason of any act committed, as a part of any real estate brokerage transaction involving real property in this state, by any licensed broker or salesperson. The acts must be in violation of ss. 475.25 or 475.42, F.S.

III. Effect of Proposed Changes:

Section 1. Purpose.

The bill amends s. 475.001, F.S., which expresses the legislative intent to regulate real estate licensees. The bill substitutes the term “salespersons” with the term “broker associates.” This change is made throughout the bill.

Section 2. Definitions.

The bill amends s. 475.01, F.S., to replace the term “broker salesperson” with the term “broker associate,” and replaces the term “salesperson” with the term “sales associate.” The bill defines a broker associate as a person who is qualified to be licensed as a broker but who operates as a sales associate.

The bill amends the definition of transaction broker to specify that this form of limited representation is designed to facilitate a real estate transaction by providing assistance to both the buyer and the seller. The bill provides that the parties give up their right to the undivided loyalty of the licensee. The bill further provides that the transaction broker may not work to represent one party to the detriment of another.

Section 3. Exemptions.

The bill amends s. 475.011, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 4. Florida Real Estate Commission.

The bill amends s. 475.02, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 5. Duty of commission to educate members of profession.

The bill amends s. 475.04, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 6. Licensing of broker associates and sales associates.

The bill creates s. 475.161, F.S., to require the commission to license a broker associate as an individual or, upon authorization from the Department of State, as a professional corporation or limited partner. The license must be issued in the legal name of the licensee, which when appropriate must include the entity designation. The committee substitute provides that this section does not permit a broker associate or sales associate to register or be licensed as a general partner, member, officer, or director of a brokerage firm under s. 475.15, F.S.

The department has explained that a limited liability company may be member-managed or manager-managed. The department reasons that the intent of this provision is to bar a non-broker licensee from being at the highest level of the entity structure. However, the bill does not include the role of manager as one of the offices that a non-broker licensee is prohibited from holding. The department contends that this provision should be amended to prohibit a broker associate or sales associate to register or be licensed as a manager of a brokerage firm.

Section 7. Qualifications for practice.

The bill amends s. 475.17, F.S., to expand the examples of subjects included in the post licensure education requirement for sales associates (currently pertaining to salespersons). The bill bars the commission from approving any prelicensure or postlicensure distance learning courses for brokers, broker associates, and sales associates by correspondence methods, except in instances of hardship as provided in this section. This section also substitutes term “salesperson” with the term “sales associate.”

Section 8. Examinations.

The bill amends s. 475.175, F.S., to permit real estate licensure applicants to submit electronically authenticated applications, and eliminates the requirement that the application include two photographs taken within the preceding year. The bill requires that applicants must, effective July 1, 2006, provide fingerprints in electronic format.

Section 9. Licensure.

The bill amends s. 475.181, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 10. Renewal of license; continuing education.

The bill amends s. 475.182, F.S., to require that the approval or denial of specialty continuing education courses must be based on the content of the courses and the extent to which the course focuses on issues relevant to the modern practice of real estate, including technology. This section also substitutes the term “salesperson” with the term “sales associate.”

Section 11. Multiple licenses.

The bill amends s. 475.215, F.S., to substitute the terms “broker associates” and “sales associates” for the terms “broker salesperson” and “salesperson,” respectively.

Section 12. Broker to maintain sign at entrance of office.

The bill amends s. 475.22(1), F.S., to eliminate the authority of the commission to make rules prescribing the form and minimum dimensions of signs at the entrance to a broker’s principal office and each branch office. The bill adds the requirement that the sign must include the name of the broker and a designation that the person is licensed. It requires that at minimum the words “licensed real estate broker,” or “lic. real estate broker” must appear on the office entrance signs. This section also substitutes term “salesperson” with the term “sales associate.”

Section 13. License to expire on change of address.

The bill amends s. 475.23, F.S., to add the requirement that when a broker or real estate school changes its business address, it must notify the commission of its business change of address, and that the same notice also fulfills the change-of-address notification requirement for brokers and broker associates employed by the brokerage and the instructors employed by the real estate school. The bill requires that a broker or real estate school must notify the commission of a business change of address, along with the names of any sales associates or instructors who are no longer employed by the brokerage or school. This section also substitutes the term “salesperson” with the term “sales associate.”

Section 14. Discipline.

The bill amends s. 475.25, F.S., to authorize the commission to make rules to set forth circumstances in which a licensee may disburse property from his or her escrow account without notifying the commission or employing one of the procedures in this section. The bill would permit brokers, with the consent of the parties, to invest escrow moneys in financial instruments, including bonds, notes, commercial paper, and mortgage securities.

The bill allows brokers to maintain up to \$5,000 of personal or brokerage business funds in the broker’s escrow account, and up to \$1000 of personal or brokerage funds in the broker’s sales escrow account. It gives the broker gives a reasonable amount of time to correct escrow account errors if there is no shortage of funds and the errors pose no significant threat of economic harm to the public.

The bill adds s. 475.25(5), F.S., to provide a limitation on when administrative actions may be filed against a broker or broker associate. The bill provides that such actions must be filed within 5 years after the act giving rise to the complaint occurred or within 5 years after the act is discovered or should have been discovered with the exercise of due diligence.

The bill adds s. 475.25(6), F.S., to provide that the commission must notify a licensee's employer in writing any time that it places a licensee on probation, or reprimands, suspends, revokes the license of, or imposes an administrative fine on, or takes any other disciplinary action against a licensee.

The bill adds s. 475.25(7), F.S., to provide that the commission must promptly report to the proper prosecuting authority any criminal violation relating to the practice of real estate.

This section also substitutes the terms "broker associates" and "sales associates" for the terms "broker salesperson" and "salesperson," respectively.

Section 15. Designated sales associate.

The bill amends the designated salesperson provisions in s. 475.2755, F.S., to substitute the term "salesperson" with the term "sales associate."

Section 16.

Authorized brokerage relationships; presumption of brokerage; required disclosures.

The bill amends s. 475.278, F.S., to create a presumption of a transaction brokerage, unless a single agent or no brokerage relationship is established. The bill provides that the disclosures in 475.278 (2)(b), F.S., for a transaction brokerage relationship expire on July 1, 2008.

Accordingly, after July 1, 2008, a broker in a transaction brokerage relationship does not have to disclose the duties a transaction broker owes to a buyer or seller of real estate. The bill would permit a single agent relationship to be changed to a transaction brokerage relationship if he or she obtains the principal's consent. It also set forth a new written disclosure form for the transaction broker relationship.

Section 17. Final Orders.

The bill amends s. 475.31, F.S., which relates to final orders, to substitute the term "broker associates" for the term "salespersons." The bill also amends s. 475.31, F.S., to specify that a broker associate license becomes involuntarily inactive, but not cancelled (as is provided under current law) when the license of the broker employing the broker associate is revoked or suspended.

Section 18. Effect of reversal of order of court or commission.

The bill amends s. 475.37, F.S., relating to the effect of the reversal of a court or commission order that denies licensure or imposes discipline, to substitute the term "salesperson" with the term "sales associate."

Section 19. Contracts of unlicensed person for commission invalid.

The bill amends s. 475.41, F.S., to substitute the term "salesperson" with the term "sales associate."

Section 20. Violations and penalties.

The bill amends s. 475.42, F.S., to make the violations in subsection (1) a felony of the third degree. Violations of those provisions are misdemeanors of the second degree under current law.

It provides that a person may not disseminate or cause to be disseminated by any means any false or misleading information for the purpose of offering for sale, or inducing a person to purchase, lease, or rent real estate or an interest in title to real estate. A violation of this provision would constitute a felony of the third degree. The bill also substitutes the term “salesperson” with the term “sales associate.”

Section 21. Property identification disclosure statement.

The bill creates s. 475.423, F.S., which requires that certain disclosures be made for any transfer by sale, exchange, or installment land sale contract of residential, undeveloped, or commercial land. The bill provides the form of the disclosures, identifies the information that must be disclosed, and sets requirements for the delivery of the disclosure. The bill provides liability limits for errors inaccuracies and omissions in the disclosure. It requires that third parties who provide the information for the disclosures must maintain insurance in the amount of \$20 million.

The disclosures in the bill relate to the property’s proximity to certain areas. The bill requires disclosure of proximity to the property in the following areas:

- A special flood hazard area.
- Soils with very severe constraints for development.
- An area impacted by sinkhole activity.
- Within one quarter mile of a wellhead protection area.
- A priority wetland zone.
- A strategic habitat conservation area.
- Within a quarter mile of an airport influence area.
- Within a quarter mile of an environmental hazard site.
- Within a mapped radon gas potential zone.

This section provides exceptions to the required disclosures, including exceptions for judicial transfers, transfers by a trustee in bankruptcy, and transfers by a foreclosure sale.

Section 22. Presumptions.

The bill amends s. 475.43, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 23. Schools teaching real estate practice.

The bill amends s. 475.451, F.S., to substitute the term “broker associate” for the term “salesperson.” The bill decreases from 15 to 7 the minimum number of classroom hours of instruction needed to renew an instructor permit. The bill eliminates an historical reference exempting persons holding a school instructor permit on October 1, 1983, from the instructor examination requirements.

Section 24. Advertising by real estate schools.

The bill repeals subsection (4) of s. 475.4511, F.S., which relates to advertising by real estate schools. The bill eliminates the requirement that a school must advertise only as a school and under the registered name of that school and shall not advertise the school in connection with an

advertisement of an affiliated broker, except that a school may advertise with an affiliated broker if there is a distinctive separation in the advertisement.

Section 25. Rental information; contract or receipt; refund; penalty.

The bill amends s. 475.453, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 26. Exchange of disciplinary information.

The bill amends s. 475.455, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 27. Real Estate Recovery Fund.

The bill amends s. 475.482, F.S., to raise the revenue ceiling of the Real Estate Recovery Fund from \$750,000 to \$1 million. The bill substitutes the term “salesperson” with the term “sales associate.”

Section 28. Conditions for recovery; eligibility.

The bill amends s. 475.483, F.S., to require payment of court costs and attorney fees by the commission when a broker defends an escrow disbursement from the Real Estate Recovery Fund (“the fund”). The commission must also pay attorney’s fees and costs if the plaintiff prevails in court. Under current law the commission may, but is not required to, pay court costs and attorney fees when a broker defends an escrow disbursement from the fund. The bill also substitutes the term “salesperson” with the term “sales associate.”

Section 29. Payment from the fund.

The bill amends s. 475.484, F.S., to increase from \$25,000 to \$50,000 the amounts that can be recovered from the fund per event, and per transaction. The bill increases from \$75,000 to \$150,000 the aggregate amount that can be covered against one broker or broker associate. The bill also substitutes the term “salesperson” with the term “sales associate.”

Section 30. Injunctive relief; powers.

The bill amends s. 475.5017, F.S., to increase from \$75,000 to \$100,000 the amount that can be recovered from the fund per receivership.

Section 31. Temporary practice.

The bill creates s. 475.505, F.S., to establish procedures, conditions, and requirements for temporary licensure by brokers licensed in other states. The temporary license is limited to commercial real estate transactions. This section does not limit the length of time that an out-of-state broker may maintain his or her temporary licensure, nor provide for periodic renewal of the temporary license.

Section 32. Certification; licensure, or certification required.

The bill amends s. 475.612, F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 33. Failure to disclose.

The bill amends s. 689.25, F.S., which exempts from disclosure information that an occupant of

real property is or has been infected with HIV or AIDS. The bill would expand the exemption to include homicide, suicide, or death, which the bill provides are not material facts that require disclosure.

Section 34.

The bill repeals ss. 475.421, and 475.422, F.S. Section 475.421, F.S., prohibits the publication of false or misleading information for the purpose of selling or leasing, or acquiring an interest in real estate. A violation of this provision is a misdemeanor of the first degree. The prohibition deleted by this section is comparable to the criminal prohibition added to s. 475.42, F.S., in section 22 of this bill.

Section 475.422, F.S., requires disclosure of termite and roof inspection reports.

Section 35. Deposit money or advance rent.

The bill amends s. 83.49(3), F.S., to substitute the term “salesperson” with the term “sales associate.”

Section 36. Definitions.

The bill amends s. 440.02(15)(d), F.S., to replace the term “salesperson or agent” with the term “licensee” in the definition of the term “employee.”

Section 37. Definitions.

The bill amends s. 443.036(21)(n), F.S., to replace the term “salesperson or agent” with the term “licensee” in the definition of the term “employment.”

Section 38. Exemptions.

The bill amends s. 501.604, F.S., to replace the term “who is a licensed real estate sales person or broker pursuant to chapter 475” with the term “licensed pursuant to chapter 475.”

Section 39. Definitions.

The bill amends s. 687.14, F.S., to replace the term “salesperson” with the term “sales associate.”

Section 40. Licensing requirements.

The bill amends s. 721.20, F.S., to include references to broker associate and to replace the term “salesperson” with the term “sales associate.”

Section 41. Exemptions.

The bill amends s. 760.29, F.S., to replace the term “broker, agent, salesperson” with the term “licensee.”

Section 42.

This bill would take effect on July 1, 2003.

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:

Real estate licensees would have to do business under brokerage relationships established under this act. Real estate instructors would have reduced number of classroom hours needed to satisfy their continuing education requirement. Real estate education institutions would have current restriction on their advertising practices removed. Recovery amounts from the Real Estate Recovery Fund would double.

Licensure applicants could submit electronically authenticated applications, and would no longer have to include in their application two photographs taken within the preceding year. , Effective July 1, 2006, applicants would have to provide fingerprints in electronic format. A licensee would not have to disclose fact that a homicide, suicide, or death occurred at the property.

Licensees would also not have to disclose termite and roof inspection reports.

Persons who transfer residential, undeveloped, or commercial land would have to make the disclosures required under this committee substitute. Third parties who provide the information for the disclosures must maintain insurance in the amount of \$20 million.

C. Government Sector Impact:

The commission would have to approve a delivery mechanism for distance learning continuing education courses. The commission would no longer have the authority of the commission to makes rules prescribing the form and minimum dimensions of signs at the entrance to a broker's principal office and each branch office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
