

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: PCS/CS/SB 608 (138190)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Regulated Industries Committee; and Senator Stargel

SUBJECT: Real Estate Brokers and Appraisers

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 608 authorizes the Florida Real Estate Commission (commission) within the Department of Business and Professional Regulation (department) to adopt rules to permit a real estate brokerage to register a broker on a temporary, emergency basis if a sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

The bill exempts persons who hold a higher degree in real estate, such as a Master's or Doctorate Degree, from the pre-licensure and post-licensure education requirements.

The bill allows the commission to reinstate a license that has become void if it is determined that the individual failed to comply because of illness or economic hardship, as defined by rule.

To conform to federal standards the bill:

- Requires the documents that appraisers and appraisal management companies retain are the same as required by the Uniform Standards of Professional Appraisal Practice.
- Allows the department to inspect or copy the records of an appraisal management company at any time; and
- Repeals the ability of the Florida Real Estate Appraisal Board to enter into written agreements for reciprocal licensing of out-of-state appraisers.

The bill has no fiscal impact.

II. Present Situation:

The Florida Real Estate Commission (commission) within the Division of Real Estate in the Department of Business and Professional Regulation (department) administers and enforces the laws governing real estate brokers and can adopt rules to implement the provisions of part I of ch. 475, F.S.

The Florida Real Estate Appraisal Board (board) within the department administers and enforces the laws governing real estate appraisers and can adopt rules to implement the provisions of part II of ch. 475, F.S.

The Appraisal Foundation is a private, non-profit educational organization formed to promote professionalism in the valuation industry. The Appraisal Standards Board within the Appraisal Foundation establishes the generally-accepted standards of the profession, known as the Uniform Standards of Professional Appraisal Practice (USPAP).¹

The rules created by the commission, the board and the standards found in the USPAP govern the real estate brokers, appraisers and appraisal management companies as well as appraisals within the state of Florida.

Real Estate Brokerage Registration Requirements

Section 475.15, F.S., requires that a partnership, limited liability partnership, limited liability company, or corporation that acts as a broker to register with the commission and renew the licenses or registrations of its members, officers, and directors for each license period. For a limited partnership, only the general partners must be licensed brokers or registered brokerage corporations. The registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during the period of time the entity does not have at least one broker who has an active license or registration.

Real Estate Broker Education Requirement Exemption

Section 475.17, F.S., sets forth the qualifications for practice for a real estate broker. In part, an applicant must complete a pre-licensing course.² Further the commission may require licensees to meet post licensure education requirements in order to maintain valid sales associate's or broker's licenses.³ The required education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.⁴ The schools or sponsors may provide the instruction through classroom courses, distance learning courses, or both. For a person who cannot attend the courses as offered, courses must be made available by correspondence or other suitable means.⁵

¹ The Appraisal Foundation, *Authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications*, available at <https://netforum.avectra.com/eweb/StartPage.aspx?Site=taf&WebCode=HomePage> (last visited Mar. 25, 2015).

² Section 475.17(2)(a), F.S.

³ Sections 475.17(3)(a), and (4)(a), F.S.

⁴ *Id.*

⁵ Sections 475.17(2), and (5), F.S.

A person who has received a 4-year degree in real estate from an accredited institution of higher education is exempt from pre-licensure education course requirements as well as post-licensure education requirements.⁶ Currently, these exemptions do not apply to a person who has a higher degree in real estate, such as a Master's or Doctorate degree.

Real Estate Brokers – Inactive License

Section 475.183, F.S., provides for the activation of licenses that have become voluntarily or involuntarily inactive. Licenses that have been involuntarily inactive for more than 2 years automatically expire, and become null and void without any further action by the commission or department. The department is required to give notice to the licensee 90 days prior to expiration of the license. The commission adopted a \$45 late fee for the late renewal of an involuntarily inactive license.⁷

The Appraisal Subcommittee Fee

The Appraisal Subcommittee (ASC) was created in 1989, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The ASC is an independent agency that oversees the states' appraisal regulatory programs including Florida's appraiser regulatory program.⁸

The ASC maintains a database of state certified and licensed real estate appraisers called the National Registry. State appraiser regulatory agencies submit appraiser information to the registry. An appraiser must be listed on the National Registry to be eligible to perform appraisals in connection with federally related transactions, including mortgage transactions. The ASC requires an annual \$40 fee from certified or licensed appraisers to support the ASC National Registry.⁹ The state agency that oversees appraisers is required to collect the fee from appraisers and transmit it to the ASC annually. The real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board within the Division of Real Estate in the department.¹⁰

Real Estate Licensed Appraisers

The ASC and the Appraisal Foundation have adopted standard designation for appraisers, including "state certified general appraiser" and "state certified appraiser." As of July 1, 2003, the department cannot issue licenses for the category of licensed appraiser.¹¹ In 2013, the Legislature removed the term "licensed appraiser" from the definition of "supervisory appraiser;" and the reference to "licensed" appraisers from the supervisory requirements for

⁶ Section 475.17(6), F.S.

⁷ Section 475.183(2)(b), F.S., and R. 61J2-1.011(5)(c), F.A.C.

⁸ Appraisal Subcommittee, Federal Financial Institutions Examination Council, *ASC History*, available at <https://www.asc.gov/About-the-ASC/ASCHistory.aspx> (last visited Mar. 27, 2015). See also s. 475.611(1)(b), F.S.

⁹ 12 U.S.C. s. 3332(a) and 3338(a)(4). See ASC Rules of Operation 2.01 Assessments (Feb. 12, 2014).

¹⁰ Section 475.613(2), F.S.

¹¹ Section 475.611(1)(q), F.S. According to the department, there are remaining licensed appraisers, but the number continues to decline.

trainee real estate appraisers. These changes conformed Florida law to federally recognized standards that only allow a “certified” appraiser to act as a supervisor for a trainee appraiser.¹²

Currently under Florida law both a licensed or certified appraiser can supervise a “registered trainee appraiser,”¹³ which does not conform to federal standards.

Real Estate Appraisers – Retention of Records

Florida law and the USPAP have different record retention requirements.

Section 475.629, F.S., requires all registered, licensed, or certified appraisers and registered appraisal management companies to retain the following documents for 5 years:¹⁴

- Original or true copies of any contracts engaging the appraiser's or appraisal management company's services;
- Appraisal reports; and
- Supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services.

These records must be available for inspection or copying by the department. However, the department may only inspect or copy the records of an appraisal management company in connection with a pending investigation or complaint. The department is able to inspect any appraiser or appraisal office for the purposes of determining if any of the provisions of chs. 475 or 455, F.S., or any rule is being violated.¹⁵ However, the department does not have the authority to inspect appraisal management companies.¹⁶

The USPAP requires the appraiser to make a work file which must include:

- The name of the client and the identity, by name or type, of any other intended users;
- True copies of any written reports, documented on any type of media. (A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies that requirement of a true copy.);
- Summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification;
- All other data, information, and documentation necessary to support the appraiser's opinions and calculations and to show compliance with USPAP, or reference to the location(s) of such other documentation; and
- A work file in support of a Restricted Appraisal Report must be sufficient for the appraiser to produce an Appraisal Report.

¹² Chapter 2013-144, L.O.F. The Real Property Appraiser Qualifications Criteria and Interpretations of the Criteria, March 2015, p. 10, available at <https://appraisalfoundation.sharefile.com/download.aspx?id=s8b5c316aad040a1b> (last visited Mar. 25, 2015).

¹³ Section 475.611(1)(r), F.S.

¹⁴ The statute requires the documents to be retained which ever period is longer, 5 years or the period required by the USPAP. The USPAP also requires a 5-year retention period. The Uniform Standards of Professional Appraisal Practice is available at <https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=TAF&WebCode=USPAP> (last visited Mar. 25, 2015).

¹⁵ Section 475.6295, F.S.

¹⁶ *Id.*

Real Estate Appraisers – Nonresident Licenses and Certifications

Florida requires out-of-state licensees to meet all of the requirements for appraiser licensure. However, s. 475.631, F.S., allows the board to enter into agreements with other states that have similar licensure requirements. These agreements afford Florida certified appraisers to become licensed in another state without having to meet that all of that state's requirements and vice versa.¹⁷

Dodd-Frank Wall Street Reform and Consumer Protection Act

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to “promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail,’ to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.”

The Dodd-Frank Act became effective on July 1, 2013.¹⁸ The Dodd-Frank Act amended the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and requires states to have in place a policy for issuing a reciprocity certification or license to an appraiser from another state.

The state's reciprocity provision must meet the following conditions: 1. The appraiser licensing and certification program of the other state is in compliance with the provisions of FIRREA; and 2. The appraiser holds a valid certification from a state with requirements for certification or licensing that meet or exceed the certification and licensure standards established by the state where the individual seeks reciprocity.¹⁹ The FIRREA does not require written agreements between states.

Another effect of the Dodd-Frank Act was that it established minimum requirements for the registration and supervision of appraisal management companies that will apply to the states.²⁰ As a result, rules have been proposed by the affected federal agencies to implement these requirements and are pending at this time. Failure to comply with the requirements of federal law could result in sanctions that could prohibit appraisers licensed in Florida from conducting federally related appraisal transactions.²¹

¹⁷ See R. 61J1-3.004, F.A.C. If the board determines that other states do not offer comparable nonresident licensure or certification to Florida certified appraisers that Florida offers to those states, the board must require certified appraisers or licensees of that jurisdiction to meet the education, experience, and examination requirements of other nonresident licensure or certification. s. 475.631(1), F.S.

¹⁸ Appraisal Subcommittee, Federal Financial Institutions Examination Council, *The Dodd-Frank Wall Street Reform and Consumer Protection Act*, available at <https://www.asc.gov/Legal-Framework/DoddFrank.aspx> (last visited Mar. 25, 2015).

¹⁹ 12 U.S.C. s. 3351(b); and Appraisal Subcommittee Policy Statement 5 (June 1, 2013).

²⁰ Federal Register/Vol. 79, No. 68, Proposed Rules, April 9, 2014, available at <http://www.gpo.gov/fdsys/pkg/FR-2014-04-09/pdf/2014-06860.pdf> (last visited Mar. 26, 2015).

²¹ Department of Business and Professional Regulation, 2015 Agency Legislative Bill Analysis: SB 608 (Feb. 26, 2015).

III. Effect of Proposed Changes:

Real Estate Brokerage Registration Requirements – Section 1

The bill amends s. 475.15, F.S., to require the commission to adopt rules that allow a brokerage to register a broker on a temporary, emergency basis if a sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

Real Estate Broker Education Requirement Exemption – Section 2

The bill amends s. 475.17(6), F.S., to exempt persons who hold a higher degree in real estate, such as a Master’s or Doctorate Degree, from the pre-licensure education course requirements and the post-licensure education requirements.

Real Estate Brokers – Inactive License – Section 3

The bill creates s. 475.183(4), F.S., to allow the commission to reinstate a license that has become void if it determines the individual failed to comply because of illness or economic hardship.²² The individual must apply to the commission for reinstatement within 6 months after the date that the license became void. An individual whose license is reinstated must meet all continuing education requirements, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure.

- **The Appraisal Subcommittee Fee – Section 6**

The bill amends s. 475.621(2), F.S., to require the department to transmit the annual ASC fee collected from appraisers who perform or seek to perform appraisals in federally related transactions to the ASC instead of to the Federal Financial Institutions Examinations Council.

Real Estate Licensed Appraisers – Sections 4 and 5

The bill amends ss. 475.611(1)(r), 475.612(5), F.S., to delete the term “licensed.” This deletion results in only a certified appraiser being able to supervise a “registered trainee appraiser.”

Real Estate Appraisers – Retention of Records – Sections 7 and 8

The bill aligns Florida’s document retention requirements with the USPAP and the proposed rules regarding appraisal management companies. Specifically, the bill amends s. 475.629, F.S., to specify the documents an appraiser or an appraisal management company must retain. The bill requires that each appraiser or appraisal management company prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting agreement. The work file must be maintained for at least 5 years, or for a greater period if specified by the USPAP.

The retained work file must contain:

- Original or true copies of any contracts engaging the appraiser or appraisal management company’s services;
- Appraisal reports;

²² Illness or economic hardship is to be defined by rule.

- Supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services; and
- All other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as established by rule of the board.

Additionally, the bill requires that, in accordance with administrative rules adopted by the board, an appraisal management company must also retain:

- Company accounts;
- Correspondence;
- Memoranda;
- Papers;
- Books; and
- Other records.

The bill deletes the provision limiting the department to only inspect or copy the records of an appraisal management company when in connection with a pending investigation or complaint. This allows the department to inspect the records of an appraisal management company.

The bill amends s. 475.6295, F.S., to authorize the department to inspect any appraisal management company for the purposes of determining if any of the provisions of chs. 475 or 455, F.S., or any rule is being violated.

The proposed language will ensure that Florida is in compliance with pending federal rules that impose these requirements on appraisal management companies.²³

Real Appraiser – Nonresident Licenses and Certifications – Section 9

The bill repeals the reciprocity provisions of s. 473.631(1), F.S., allowing the board to enter to agreements between Florida and other states. As of July 1, 2013, the Dodd-Frank Act requires appraiser licensure reciprocity between states, but the requirement for a written agreement is no longer permitted.²⁴

Effective Date – Section 10

The bill is effective July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²³ Department of Business and Professional Regulation, 2015 Agency Legislative Bill Analysis: SB 608 (February 26, 2015).

²⁴ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation, the bill requires minimal information technology system changes related to process applications, and to track licenses, complaints, and legal proceedings. These programming expenditures can be absorbed with existing resources.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the Department of Business and Professional Regulation to adopt rules relating to the registry of a broker on a temporary, emergency basis and the reinstatement of a void license due to illness or economic hardship.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 475.15, 475.17, 475.183, 475.611, 475.612, 475.621, 475.629, 475.6295, and 475.631.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on March 17, 2015:

²⁵ *Id.*

The committee substitute deletes duplicative language relating to the Florida Real Estate Commission's discretion to reinstate a license that has become void under certain circumstances.

CS by Regulated Industries Committee on March 4, 2015:

- Deletes the term "licensed" appraiser in regards to provide that it is a certified appraiser that has direct supervision over the registered trainee appraiser.
- Provides that the department must transmit the annual fee that the department must collect from persons who perform or seek to perform appraisers in federally related transactions to the appraisal subcommittee instead of to the Federal Financial Institutions Examinations Council.
- Requires the appraiser's work file contain all other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of The Appraisal Foundation, as established by rule of the board.

B. Amendments:

None.