



**Minutes of  
THE FLORIDA REAL ESTATE COMMISSION  
January 20 and 21, 2004  
Meeting  
(as amended)**

Chairman Carlos L. Valdes called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at the Division of Real Estate Headquarters, Orlando, Florida, on this 20<sup>th</sup> day of January, 2004.

The Chair introduced the members of the Commission and its legal counsel. The following Commission members were in attendance: Carlos L. Valdes, Chairman; Guy Sanchez, Jr., Vice-Chairman; Matey H. Veissi, Noel McDonell, Poul Hornsleth, Nancy B. Hogan and Bob Beals. The Chair declared a quorum present. Daniel Villazon appeared as counsel for the Commission.

Division of Real Estate staff present at the meeting: Julie Baker, Deputy Secretary; Jason Steele, Director; Keith Chapman, Deputy Director; Juana C. Watkins, Chief Attorney; Kathleen Koeberich, Bureau Chief; Chris DeCosta, Alfonso Santana, James Harwood, Alpheus Parsons and Jason W. Holtz, Prosecutors; Matthew Fuller, Management Review Specialist; Lori Crawford, Regulatory Supervisor/Consultant; Jocelyn Pomaes, Regulatory Specialist II. American Court Reporting Service (407-324-4290) provided court reporter services.

**Legal Matters**

At approximately 8:30 a.m., the Commission took up the Legal Agenda, consisting of 43 items. It heard 31 items, continued 10 and withdrew 2. The Commission's decisions on these matters are attached to the official minutes.

Commissioner Hogan requested to address the issue of the "question nine" cases and the amount of time that is consumed to hear the Respondents, which takes away from hearing cases relating to escrow or practice violations. Chairman Valdes stated that he understands her concerns, but that it is an obligation of the Commission. Commissioner Hogan suggested that the question nine cases not be heard until the end of the legal agenda. Chairman Valdes agreed and requested that next month the appearances regarding the applicant cases be heard last. Commissioner McDonell stated that as the Commission reviews and approves more stipulations the attorneys will be able to offer stipulations to the Respondents with sanctions acceptable to the Commission. Chief Attorney Watkins reported that Commission would begin to see more stipulations in the future relating to this issue.

**Commission Business**

**New Business**

FREC Counsel Daniel Villazon presented the third Notice of Change for Rule 61J2-3.020 for the Commission's approval. Mr. Villazon stated that Mr. Dick Fryer of IFREC and his attorney Thomas Infantino found some discrepancies relating to the proposed language published in the

second Notice of Change. Mr. Villazon agreed with Mr. Fryer and his counsel that the language was to mirror the same standards used in 61J2-3.008. Chief Attorney Juana Watkins stated that the language in question is the language previously marked "i." now marked "9.". Ms. Lori Rodgers from Bert Rodgers School stated that there are additional discrepancies in reference to Sections (2)(b)7 and (7) relating to the hours of availability of the instructors. Commissioner McDonell moved to adopt the recommended changes. Vice-Chair Sanchez seconded. The motion carried unanimously.

FREC Counsel Daniel Villazon presented comments from the Joint Administrative Procedures Committee (JAPC) regarding the following rules:

Rule 61J2-3.012 - The JAPC stated that the first sentence is fragmented and Mr. Villazon agreed and recommended modifying the language. Commissioner Hogan moved to adopt the recommended changes. Vice-Chair Sanchez seconded. The motion carried unanimously.

Rule 61J2-5.018 - The JAPC stated that there is no statutory authority for the current language. Mr. Villazon agreed and recommended modifying the language. Attorney Jim Mitchell stated that the language was modified pursuant to a Recommended Order an Administrative Law Judge issued in 1998. He added that the Commission adopted the Recommended Order as an interpretation of this rule and amended the language to reflect the Order. Mr. Villazon said that he would discuss it with the JAPC. Commissioner Hornsleth moved to adopt the recommended changes. The motion was seconded and it carried unanimously.

Rule 61J2-5.019 - Mr. Villazon stated that he and Ms. Watkins explained to the JAPC why a corporation needs a qualifying broker. Ms. Watkins added that the language "other than as provided in Rule 61J2-5.018" should be stricken. Commissioner Hogan moved to adopt the recommended changes. Vice-Chair Sanchez seconded. The motion carried unanimously.

Rule 61J2-5.020 - Ms. Watkins stated that this rule has the same issue as 5.019 and no additional changes are needed. Vice-Chair Sanchez moved to make no additional changes. Commissioner Hogan seconded. The motion carried unanimously

Rule 61J2-6.006 - Ms. Watkins stated that the JAPC had the same concerns with this rule and after discussion did not have any objections. Commissioner Hogan moved to make no additional changes. Vice-Chair Sanchez seconded. The motion carried unanimously

Rule 61J2-14.012 - Mr. Villazon stated that he and Ms. Watkins alerted Ms. Printy to Section 475.5015, *Florida Statutes*, which allows the Commission to obtain records. Vice-Chair Sanchez moved to make no additional changes. Commissioner Hogan seconded. The motion carried unanimously.

Director Steele stated that George Ayrish is asking the Commission to define "correspondence". Mr. Villazon stated that if the Commission provides a definition today without any official notification, the Commission could be accused of unpromulgated rulemaking. Mr. Villazon stated that with the Commission's permission a workshop would be noticed in the Florida Administrative Weekly. Ms. Watkins stated that Mr. Ayrish is requesting some guidance as to what is considered correspondence.

### **Approval of the Minutes**

Commissioner Hogan moved to approve the Minutes of the December 16 and 17, 2003, General meeting, as written. Commission Veissi seconded it. The motion carried unanimously.

### **Unfinished business**

The Chair referred to the issues of unfinished business. Deputy Secretary Julie Baker stated that the Department has created a tiger team to address unlicensed activity. Ms. Baker added that she is serving on the tiger team, which is beginning to develop a two-fold plan. First, they are meeting every other week to look at what has worked in the past and to look at creative ways to make further improvements and to see how all the Boards affected by this issue can assist each other. Second, the Department intends to develop a long-term unlicensed activity plan and to avoid spending money just to spend money. Deputy Secretary Baker added that the Boards may not see significant results now but a long-term plan will allow the Boards to see the benefits progress in time. Ms. Baker stated that the Legislature dictates how much money and how many full time employees the Department receives, however, the Department may be able to contract the work out or hire temporary staff that would not require Legislative approval.

Deputy Secretary Baker reported that the Department is discussing the use of some unlicensed activity money for Public Service Announcements (PSA) adding that the Accountancy and Construction Industry Licensing Boards each agreed to give the Department \$100,000 from the unlicensed activity fund. She stated that the Department is asking the Commission to also give \$100,000 of the \$300,000 appropriated for this fiscal year with the understanding that the Department works with the Florida Association of Realtors regarding the advertisement. Ms. Baker further reported that they have met with the Florida Association of Broadcasters in Tallahassee who has proposed PSAs that cover all the professions in general and as well as PSAs specific to each profession. Vice-Chair Sanchez stated several reasons why he would oppose PSAs. Director Steele stated that he respectfully recommends that the Commission approve the allocation of \$100,000 for the PSA as the Department is making headway. Chairman Valdes stated that his position is not to spend any money until the Commission reviews the proposed plan. Commissioner Hogan inquired whether the PSAs would run on television or the radio. Deputy Secretary Baker responded that the PSAs would run on television and radio in English and Spanish. Commissioner McDonnell suggested that the Department put a PSA on a recorded message while a caller is on hold awaiting to be transferred to a state agency. Commissioner Hogan suggested looking into billboard advertisements. Ms. Baker responded that the Department is looking into that as well. Commissioner Hornsleth moved that the Commission authorize the use of the \$100,000 from the unlicensed activity fund. Chairman Valdes stated that he was not ready to entertain that motion. Motion was not considered.

Deputy Secretary Baker stated that inasmuch that Chapter 455, *Florida Statutes*, gives the Department the right to use the money it will try to work together with the Boards so that the members feel the funds are being used appropriately. Chairman Valdes stated that he understands, however the Commission members present at the November Taskforce meeting unanimously agreed that the money should not be used for PSAs. Commissioner Hornsleth stated that the Commission should show good faith and approve the expenditure. Chairman Valdes expressed concern that though he trusts the Deputy Secretary, he has difficulty trusting the Department because of his past experience. The Commission discussed this issue at length to no resolution.

Deputy Secretary Baker expressed that one benefit of the reengineering project is that the Department realized that each division was operating in silos and the divisions did not know what other divisions were doing. Ms. Baker added that the centralization has brought the divisions together to share each division's successes. Ms. Baker further stated that she understands the Commission's reluctance, but again asks for the Commission's approval to use \$100,000. She added that she would come back with the Department's proposal to see if the Commission has any additional suggestions. FAR Attorney Randy Schwartz interjected that PSAs for unlicensed activity have been run in the past. Director Steele stated that last year matching funds were paid by FAR. Chairman Valdes requested a copy of the contract for the Commission. Director Steele said that he would get a copy and provide it to the Commission.

Chairman Valdes entertained the motion offered by Commissioner Hornsleth. Commissioner Hornsleth moved that the Commission authorize the use of the \$100,000 from the unlicensed activity fund with the condition that the PSA include reference to the fact that unlicensed activity has been raised from a misdemeanor to a felony. Commissioner McDonell seconded the motion. The motion carried by a 5 to 2 vote. Ms. Baker thanked the Commission and stated that this issue should remain as unfinished business until the Department has a plan that meets the Commission's approval. Commissioner Hornsleth suggested that a letter be sent to law enforcement agencies and the state attorney's offices informing them of the change to the statute. Commissioner McDonell suggested that the Department and FAR may want to weigh in on the state attorneys' lobbying efforts for funds to establish a white collar crime unit.

Chairman Valdes inquired about the Education Foundation Scholarship program for discussion. Deputy Secretary stated that the Division has forwarded the proposal and that she is consulting with the Secretary and the General Counsel's Office and will do her best to have a response by next month.

Chairman Valdes inquired about the 2-day **FREC** meeting being held in Miami in May. Deputy Secretary Baker stated that other boards travel throughout the state and that the Division should contact other boards to obtain information as to facilities. Director Steele stated that one option being considered is the Biltmore Hotel. The Department has also given approval for a Commission meeting in the Panhandle sometime during the next fiscal year.

Director Steele stated that regarding the matter of Legislation for property managers, he believes that the FAR has taken the position in opposition to the Property Management Bill. Mr. Schwartz confirmed that the FAR is opposed to the proposed bill because there are enough exemptions to the real estate license law. Commissioner Veissi moved to oppose the proposed legislation. Commissioner Hogan seconded it. The motion carried unanimously. Mr. Villazon stated that he would draft a letter to that effect and have all the Commissioners sign it.

Chairman Valdes inquired as to the status of the FREC Newsletter. Director Steele stated that he and the Deputy Secretary have discussed it. The Deputy Secretary stated that the Department would provide an annual or bi-annual newsletter via direct mail, which they are currently working on. Deputy Secretary Baker encouraged the Commissioners to submit articles to the Department.

Chairman Valdes inquired about status of providing rewards for contributing information regarding unlicensed activity. Vice-Chair Sanchez stated that the Department of Financial Services

offers a similar program. Director Steele stated that is a part of the suggestion that would be presented to the Tiger Team.

Chairman Valdes inquired about the issue of the privatization of investigations. The Deputy Secretary stated that the Department currently has boards that are privatized explaining that the Board of Engineers is fully privatized and the Board of Architecture and Interior Design is partially privatized. She further reported that the Department is filing a bill this year that will be a privatization model for the Boards that wish to choose the privatization route. Commissioner McDonell suggested that the Department look into increasing the investigative costs to offset costs of privatizing investigation and prosecution. Ms. Baker stated that it is a statutory issue and if the Commission wants to recommend legislation, the Department would consider carrying a proposal to the next session. Chairman Valdes requested a report regarding this issue. Ms. Baker stated that she would provide a report on privatization for the general meeting scheduled for February.

Vice-Chair Sanchez requested a copy of the agreement between the Department and Promissor at the next FREC meeting. Director Steele stated that he would ask Gus Ashoo, Bureau Chief of Education and Testing, to provide a copy. Commissioner McDonell cautioned the Commission to be careful in venturing into its own investigation. She added that it is the Department's function to bring these issues before the Commission so that it may provide an objective opinion. Commissioner McDonell stated that she does not want a copy of the agreement.

Chairman Valdes asked Randy Schwartz of FAR if he contacted the FAR members regarding the Commissioners offering to speak to the associations regarding unlicensed activity. Mr. Schwartz stated that he did and has had only one response. Chairman Valdes stated that there appears to be a lack of interest on the part of the licensees.

Vice-Chairman Sanchez stated he thought it was interesting that Department heads and individuals from homeowner associations had a taskforce meeting regarding key issues and asked if the Department would create a taskforce involving key members of title companies and the mortgage and real estate industries to discuss unlicensed activity. Deputy Secretary Baker stated that the Governor created the taskforce regarding homeowners. Vice-Chair asked if the Department could talk to the Governor about creating a taskforce between the key industries regarding unlicensed real estate activities.

Commissioner Beals stated that as a point of information the Board and the Department should be following HUD closely in considering a rule that will go one of two ways. First, regulating all of title insurance and banking industries and second, the interaction between lenders and consumers that may have a lot to do with the focus unlicensed practice. He stated that one option has to do with packaged services for a flat fee and the other is a more simplified and concise good faith estimate. He added that HUD and the State have promised to diligently enforce the new rule if it becomes law.

Commissioner Hogan requested to readdress the unlicensed activity issue, particularly regarding the Director meeting with each of the Commissioners individually. Director Steele stated that he would coordinate with Chairman Valdes as to when to schedule a date. Chairman Valdes stated that this issue should be scheduled for the general FREC meeting.

George Ayrish of Education and Testing requested the Commission's guidance as to the definition of "correspondence" and stated his concerns. FREC Counsel Daniel Villazon stated that

he has concerns regarding the Commission drafting an interpretation without formal notification because that may be considered unpromulgated rulemaking. He stated that the Commission should schedule a workshop to discuss the term "correspondence". Mr. Ayrish stated that his is concern that would delay the approval of the course. Chief Attorney Juana Watkins explained that Mr. Ayrish could not be put in the position to make decisions without guidance from the Commission. After much discussion Mr. Villazon reiterated that he recommends that the Commission not provide an interpretation. Commissioner McDonell moved that the Commission conduct a workshop at the regular meeting to discuss "correspondence". Commissioner Hornsleth seconded it. The motion carried unanimously.

Mr. Evan Butterfield from Dearborn stated that he hopes that the same level of scrutiny will be applied to any course that involves the mail in any way. Commissioner McDonell assured him that they are not looking at his course with a microscope.

The Commission received comments from Attorney Carl Ogden regarding his concerns of the delay in finalizing the distant education rules, which were duly noted.

Director Jason Steele requested the Commission ratify the reinstatement of Larry Morris who has met the requirements for reinstatement. The Commission ratified the action unanimously.

FREC Counsel Daniel Villazon presented correspondence from Linda K. Pearson. Mr. Villazon stated that Ms. Pearson is requesting an extension to complete the post-licensing course to renew her license. He stated that the Commission has no authority and with the Commission's permission he would respond to Ms. Pearson advising her that pursuant to statute the Commission is unable to authorize an extension.

Upon recommendation of the Legal Section, the Commission unanimously issued 63 Escrow Disbursement Orders (EDO) and 2 orders of denial. A list of the Orders is attached to the official minutes.

### **Summary of Applicants Consent Agenda-Bureau of Licensing**

The Commission considered the Summary of Applicants Consent Agenda, requiring 11 applicants from the Consent Agenda to appear before it.

The Chair recessed the meeting at approximately 4:15 p.m., January 20, 2004.

Chairman Carlos L. Valdes reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at the Division of Real Estate Headquarters, Orlando, Florida, on this 21<sup>st</sup> day of January 2004.

The following Commission members were in attendance: Carlos Valdes, Chairman; Guy Sanchez, Jr., Vice-Chairman; Matey H. Veissi, Poul Hornsleth, Noel McDonell, Nancy B. Hogan, and Bob Beals. The Chair declared a quorum present. Daniel Villazon appeared as counsel for the Commission.

Division of Real Estate staff present at the meeting: Jason Steele, Director; Keith Chapman, Deputy Director; Juana C. Watkins, Chief Attorney; Kathleen Koeberich, Bureau Chief; JoEllen Peacock, Education Coordinator; Chris DeCosta, James Harwood, and Joseph Solla, Prosecutors;

David Guerdan and Fred Clanton, Investigator Supervisors; Matthew Fuller, Management Review Specialist; Lori Crawford, Regulatory Supervisor/Consultant; Denise Johnson, Regulatory Specialist III, Jeannie Adkinson, Regulatory Specialist II; Jocelyn Pomales, Regulatory Specialist II; Maxine Carter, Regulatory Specialist I. American Court Reporting Service (407-324-4290) provided court reporter services.

Commissioner Veissi requested to discuss the issue of the Deputy Secretary's request for \$100,000 and requested to see the proposed plan relating to unlicensed activity. Director Steele stated that the Commission would have the opportunity to provide its comments prior to the time that the public service announcements are run. Commissioner Veissi stated that she just wanted to put on the record that she wants the Commission to see the proposed plan prior to the money being used. After much discussion, Mr. Villazon stated that the Commission's concerns are on the record. No further action was taken.

Ms. Watkins stated as a point of information, from the prosecutorial side of unlicensed activity, at the recent unlicensed activity probable cause meeting, the Legal Section presented 29 Administrative Complaints and 13 Cease and Desist Orders to the Department.

#### **Summary of Applicants-Bureau of Licensing**

At approximately 9:30 a.m. Jeannie Adkinson, Regulatory Specialist II, presented the Summary of Applicants requesting to sit for the real estate examination. The Commission's orders on these matters are attached hereto and made a part of these minutes.

There being no further business and no objection, the Chair adjourned the meeting at approximately 2:00 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for February 17 and 18, 2004, at Division Headquarters in Orlando, Florida.

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Carlos L. Valdes  
Chairman

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Jason Steele  
Division Director

Respectfully submitted:

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Lori Crawford  
Deputy Clerk