



**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
February 17 and 18, 2004
Meeting**

Vice-Chairman Guy Sanchez, Jr. called the meeting of the Florida Real Estate Commission to order, at approximately 8:40 a.m., at the Division of Real Estate Headquarters, Orlando, Florida, on this 17th day of February, 2004.

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

Department and Division of Real Estate staff present at the meeting: Julie Baker, Deputy Secretary; Mark Whitten, Director of Division of Professions; Jean Whitten, Director of Office of Planning & Budget; George Ayrish, Senior Management Analyst Supervisor; Jason Steele, Director; Keith Chapman, Deputy Director; Juana C. Watkins, Chief Attorney; Kathleen Koeberich, Bureau Chief; Chris DeCosta, James Harwood and Jason W. Holtz, Prosecutors; Brian Piper and David Guerdan, Investigator Supervisors; JoEllen Peacock, Education Coordinator; Matthew Fuller, Management Review Specialist; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting Service (407-324-4290) provided court reporter services.

Commission Business

Unfinished Business

Deputy Secretary Julie Baker reported that several Boards, including the Real Estate Commission, have contributed a total of approximately \$393,000 for Public Service Announcements (PSAs) regarding unlicensed activity. Ms. Baker stated that in the past the Department has found the PSAs to be very effective. Ms. Baker further reported that the Department is in negotiations with a company to advertise on radio and TV, in English and Spanish. She added that the company is offering to give the Department a discounted price for airtime and stated that the Department would continue to provide reports as the program progresses.

Director Steele announced that Investigator Supervisor Brian Piper would be the primary contact person for the unlicensed activity program for the Division of Real Estate. Mr. Steele added that all unlicensed activity program reports would be submitted to Mr. Piper. He reported that the Department is researching various other avenues to spend the additional monies, such as developing an outreach program regarding unlicensed activities, which he plans to discuss with the Commissioners. Mr. Steele further reported that the Department is drafting a letter to send to the State Attorney's offices and that he and Director Whitten would be traveling throughout the State to meet with state attorneys.

Investigator Supervisor Brian Piper provided a brief summary of the Division's plan regarding unlicensed activity. He reported that the plan is two-tier, involving both public awareness and enforcement. He stated that in addition to the PSA program and public speaking, the Department would also take a proactive role in relation to enforcement such as conducting sweeps and stings. Mr. Piper added that the Department hopes to coordinate with the Department of Insurance (DI) and the Division of Financial Services (DFS) to include in their newsletters disciplinary actions taken by our Department against their licensed mortgage brokers and educate them of the recent law changes, which include upgrading unlicensed real estate practice to a 3rd degree felony.

Director Mark Whitten, Division of Professions and Regulation, reported that they are working with the Division of Real Estate to coordinate enforcement efforts and that they would provide assistance in networking with the local state attorneys offices. He stated that he and Director Steele are recommending instituting a 24-hour response time. He reported that the Divisions of Professions and Regulation has conducted 86 sweeps and 9 stings resulting in over 70 arrests and criminal convictions and that they would assist the Division of Real Estate in implementing these procedures. He added that Director Steele and he would be traveling throughout the state to educate the state attorneys and the economic crimes units on what the requirements are for evidence and prosecution to enhance enforcement capabilities. He also recommended making presentations to the associations, title insurance companies, DFS and other related entities to get the word out.

Director Steele presented a PSA regarding unlicensed activity to the Commission. Upon conclusion of the PSA, Director Steele added that the Department could readily adapt this PSA with additional information.

Deputy Secretary Baker stated that Brian Piper, as the contact person, would be providing a monthly report. The Commissioners communicated to Mr. Piper what figures the report should reflect. Vice-Chair Sanchez inquired about particulars regarding the stings and sweeps. Mr. Piper stated that the Division would probably accompany Regulation on a few stings but that the exact procedures are being formulated. Ms. Baker also added that the Department's plan is in the preliminary stages and that it would be looking for the Commission's feedback. Ms. Baker added that the Department would also like to coordinate with the DFS on related issues.

Mr. Ray Glen commented that the Department should educate the public as to what the Department considers unlicensed activity and make people aware that it prosecutes individuals for unlicensed activity. Director Steele stated that the Department is making a very concise effort to take care of this problem.

New Business

Director of Planning and Budget Jean Whitten provided a copy of the Department's Financial Report. Ms. Whitten provided a brief overview of the State's budgeting process explaining that the Governor's budget has been released and the Legislative Committees are working on their appropriation bills. Ms. Whitten reported that the Governor's budget recommended 4 positions and the issue is now before the legislature. Ms. Whitten also briefly explained the Appropriations Act, which allows the Legislature to transfer unappropriated cash balances from trust funds, with the exception of funds that are statutorily protected, to the working capital trust fund, which this year was \$25 million. The Commission had several questions regarding this issue, which were explained

in detail. In conclusion, Ms. Baker stated that if the Commission had any further questions regarding the financials to please contact her or Director Steele.

FREC Counsel Daniel Villazon presented Rule 61J2-3.020 for discussion stating that this is not a rule development workshop. He added that if the Commission recommends rule development then it would be properly noticed.

Mr. George Ayrish, Senior Management Analyst Supervisor of Education and Testing, requested that the Commission provide guidance with respect to the Department's approval of distance education on-line courses as it relates to the delivery method, more specifically whether the Commission would consider various delivery methods to be correspondence. Mr. Ayrish explained that the Department has received a course with a CD-ROM from an educator requesting approval. The Commission received comments from the educators in the audience regarding this issue. FREC Counsel Villazon stated that if this course meets the criteria as outlined by the statutes and rules then the course should be approved and the issue of correspondence can be addressed at a rule development workshop. Commissioner Beals moved to approve this particular course that includes a CD-ROM. Commissioner Veissi seconded it. The motion carried unanimously.

Chief Attorney Juana Watkins stated that this issue is similar in nature to the Summary of Applicant process. The Licensing Department is able to determine, based on the guidance the Commission provided how to process the applications. Ms. Watkins stated that Mr. Ayrish is in the position of approving courses and needs Commission's guidance and that he is simply requesting the same guidance from the Commission as it has provided to the Licensing Department.

The Commission received comments from several educators in the audience expressing various concerns regarding the correspondence issue. Mr. Villazon asked Mr. Ayrish to prepare a statement from the Department of Education and Testing explaining correspondence. He added that the FREC could request a rule development workshop regarding this issue which would be properly noticed and that the public would have the opportunity to provide comments at that time.

Legal Matters

At approximately 10:30 a.m., the Commission took up the Legal Agenda, consisting of 30 items. It heard 25 items and continued 5 items. The Commission's decisions on these matters are attached to the official minutes.

Commission Business

New Business continued

Director Steele presented SB 1746 regarding property managers, adding that the HB 0577 companion to SB 1746 has been withdrawn. Mr. Villazon stated that currently the statute allows a tenant to receive a referral fee of \$50 for procuring a new tenant and the new language would extend that exemption to allow employees to be paid a referral fee in addition to their salary without holding a real estate license. Commissioner Veissi moved to send a letter to all members of the Senate and House opposing the new language. Commissioner Hornsleth seconded it. The motion carried unanimously.

Director Steele presented SB 2074 and HB 0947 for the Commissions' review. Deputy Secretary Baker stated that this bill does not change the language, it only changes where the law lies, moving the language from Chapter 689 to 720, which only applies to mandatory homeowner associations.

Upon recommendation of the Legal Section, the Commission unanimously issued 204 Escrow Disbursement Orders (EDO) and 3 orders of denial. A list of the Orders is attached to the official minutes.

Director Jason Steele requested the Commission ratify the reinstatement of the suspended license of Thomas James Kerr who has met the requirements for reinstatement. The Commission ratified the action unanimously.

Mr. Villazon presented a request for mutual recognition from Pennsylvania. Mr. Villazon requested that the Commission direct the Department of Education and Testing to review the education criteria for equivalency and if equivalent, a contract will be drafted and presented to the Commission for its approval. Commissioner Hornsleth moved to approve the Department of Education and Testing's analysis of the education for equivalency. Commissioner Hogan seconded it. The motion carried unanimously.

FREC Counsel Daniel Villazon presented the following correspondence for consideration:

- ◆ Correspondence from Robert J. Burnett, Esquire, requesting FREC's opinion regarding broker associates or sales associates forming a PA, PC or LLC. Mr. Villazon stated that with the Commission's permission, he would call him to discuss this issue further.
- ◆ Correspondence from James E. Felton requesting feedback from the Commission regarding cellular companies performing real estate activities without a license. Mr. Villazon stated it sounds like an unlicensed activity complaint and he would send him a complaint form.
- ◆ Correspondence from David A. Gart, Esquire, requesting the Commission's opinion as to the applicability of the exemption under Section 475.011(4), *Florida Statutes*. Mr. Villazon stated that with the Commission's permission he would advise Mr. Gart that the employees are not exempt from licensing under Section 475.011(4), *Florida Statutes*.
- ◆ Correspondences from Gail Kayajian requesting that her sales associate license be voided due to the circumstances outlined in her letter and allow her to complete the brokers course and exam. Mr. Villazon stated that the FREC does not have the authority and with the Commission's permission he would advise her as such. The Commission requested that this letter be provided to the Call Center supervisor to use for training purposes.
- ◆ Correspondence from Berthony Louis requesting guidance from the Commission relating to offering incentives to promote business for his company. Mr. Villazon stated that he would contact Mr. Louis to explain that he would need additional information in order to advise him in this matter and he would refer him to the appropriate rules of the *Florida Administrative Code*.

- ◆ Correspondence from Robert S. Thurlow, Esquire, requesting the Commission's interpretation of Section 475.161, *Florida Statutes*. Mr. Villazon stated that with the Commission's permission he would advise Mr. Thurlow to read the rules, which strictly state that the licensee may only register in their legal name.
- ◆ Correspondence from Virginia Ferrera requesting an extension to complete the 45-hour post-licensing course due to an employment hardship. Mr. Villazon stated that the rule specifically states due to physical hardship and asked Mr. Steele to have someone from the Division contact her and advise her of this.
- ◆ Correspondence from Perry Johannesburg, School Administrator for Real Estate School Online t/a Florida Real Estate School, requesting permission from the Commission to send their course completion slips via email. Mr. Villazon stated that Section 475.5018, *Florida Statutes* provides for this as long as the school keeps a paper record as well. Ms. Peacock stated that she would relay this information to the school.

Mr. Ayrish requested the Commission readdress the issue of the correspondence course. Mr. Ayrish requested the Commission approve a rule development workshop for Rules 61J2-3.008, 3.009 and 3.020 to discuss amendments relating to the end-of-course exams. Commissioner Hornsleth moved to approve the workshop for the March FREC meeting. Commissioner Veissi seconded it. The motion carried unanimously.

There being no objection, the Vice-Chair recessed the meeting at approximately 4:00 p.m., February 17, 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 18th day of February 2004.

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

Department and Division of Real Estate staff present at the meeting: Julie Baker, Deputy Secretary; George Ayrish, Senior Management Analyst Supervisor; Jason Steele, Director; Keith Chapman, Deputy Director; Juana C. Watkins, Chief Attorney; 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; Johanne Knudson, Regulatory Specialist II; Maxine Carter, Regulatory Specialist I. American Court Reporting Service (407-324-4290) provided court reporter services.

Commission Business continued

Chief Attorney Juana Watkins reported on the status of the Education Foundation Scholarship program stating that the Department is preparing to finalize the terms of the scholarship.

She added that she and Mr. Villazon would be meeting to clarify and finalize the details with respect to the proposal for implementing the program. She further added that the Department's contract attorney would then review and possibly redraft the proposal in contract form suitable for the State of Florida. Ms. Watkins stated that the contract would be provided to Mr. Villazon.

Ms. Watkins further reported that she and Mr. Villazon have also discussed ideas with respect to the Foundation and students who are recipients of the scholarship, which may include encouraging some of the students to address unlicensed activity issues. Mr. Villazon explained that the statute provides that the Commission, through the Foundation, is authorized to create a pamphlet to provide to the public explaining unlicensed activity. Chairman Valdes stated that he does not want to see the scholarship fund to be used for unlicensed activity and added that the funds should remain separate. Mr. Villazon further explained that to meet one of the objectives the scholarship fund the recipient must give back to the community and suggested requiring the student provide a thesis regarding unlicensed activity giving or other issues and giving the Department permission to publish it.

Chairman Valdes presented an Education and Research Foundation proposal titled "Unlicensed Practice of Real Estate Explained – Now This Is a Felony" submitted by Professor Glenn Boggs. Commissioner Hornsleth stated that he thought it looked like a worthwhile proposal and moved to authorize this proposal. The motion was not seconded and it failed. Vice-Chair Sanchez respectfully disagreed with the recommendation and moved to deny the proposal. Commissioner Hogan seconded it. The motion carried 5 to 1.

Vice-Chair Sanchez requested to address the FREC Newsletter stating that is very important and inquired if some of the funds from the Education Foundation could be used to fund a portion of the costs in providing a newsletter for educational purposes. Mr. Villazon confirmed that this money could be used for the newsletter. Chairman Valdes asked if money from the unlicensed activity fund could also be used to fund a portion of the newsletter. Mr. Villazon stated that the Department would have to respond to that issue.

Director Steele reported that the newsletter has been formatted and that they are waiting for articles and hope to have it published and distributed in May. Mr. Steele also reported that next year's budget will include two newsletters. Commissioner Hogan suggested checking to see if some of the funding from unlicensed activity could be used in order to provide more publications of the newsletter.

Deputy Director Keith Chapman reported that the meeting arrangements are being finalized with the Airport Hilton and that he would provide an email with specific details.

Approval of the Minutes

Commissioner Poul Hornsleth moved to approve the Minutes of the January 20 and 21, 2004, General meeting, as amended. Commissioner Sanchez seconded it. The motion carried unanimously.

Vice-Chair Sanchez stated that he received a copy of the computer based testing contract and inquired if a change can be made to a new contract prior to renewal. Chairman Valdes commented that he has had several complaints from people requesting to review their exam relating to the

delayed response to their request. Commissioner Veissi commented that it costs \$75 to review and only \$45 to retake the test, therefore it seems that most people would choose to retake the test as opposed to reviewing the test at a greater cost. Director Steele stated that he would ask the Bureau Chief of Education and Testing to research this issue. Vice-Chair Sanchez requested that this issue be placed on the agenda for next month's meeting.

Mr. Villazon briefly addressed the Legislation regarding HB 0461 relating to the Commercial Real Estate Lien Act.

Chairman Valdes inquired if the public would be better served if CAM licenses were regulated under the Division of Real Estate. Deputy Secretary Baker stated that there is a movement by the CAM industry groups to move the CAM regulations back under the Division of Florida Land Sales, Condominiums and Mobile Homes from the Department of Regulation.

Summary of Applicants-Bureau of Licensing

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

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 3:30 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for March 16 and 17, 2004, at Division Headquarters in Orlando, Florida.

Carlos L. Valdes
Chairman

Division Director

Submitted by:

Lori Crawford
Deputy Clerk