



**Minutes of  
THE FLORIDA REAL ESTATE COMMISSION  
June 15 and 16, 2004  
Meeting**

Chairman Carlos L. Valdes called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at Orlando, Florida, on this 15<sup>th</sup> day of June, 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, Poul Hornsleth, Noel P. McDonell, Nancy B. Hogan and Bob Beals. The Chair declared a quorum present. Daniel Villazon appeared as counsel for the Commission.

Department and Division staff present at the meeting: Diane Carr, Secretary; James Blount, Chief of Staff; Juana C. Watkins, Acting Director; Keith Chapman, Deputy Director; Christopher J. DeCosta, Acting Chief Attorney; Kathleen Koeberich, Bureau Chief; James Harwood and Jason W. Holtz, Prosecutors; Fred Clanton, David Guerdan and Brian Piper, Investigator Supervisors; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407-324-4290) provided court reporter services.

**Commission's Issues with the Secretary**

Chairman Valdes welcomed Secretary Carr to the meeting. Secretary Carr stated that she was here to take up the issues listed in the letter she received from Chairman Valdes. Chairman Valdes read the letter he addressed to Secretary Carr outlining the Commission's issues, which included the FREC newsletter, unlicensed activity, photo ID badges, increasing the number of investigators, backlog of real estate cases and privatization.

**FREC Newsletter**

Secretary Carr stated that it is her understanding that the Commission would like to have two newsletters printed and mailed annually, which she stated is feasible, adding that some of the money would come from the unlicensed activity fund. Commissioner Hornsleth stated that publishing the disciplinary actions in a newsletter makes more of an impact than posting them on the web. Commissioner Hogan inquired as to why the newsletter stopped, especially with the amount of revenue the licensees produce increasing every year. Commissioner McDonell stated that, unlike the Florida Bar where the attorneys collect their own annual dues, monitor their own testing and continuing education and print their own publication, real estate is under the auspices of the state. Commissioner McDonell added that licensing fees do not only impact real estate, it is the Government's money and as the state is responsible to its constituents, money collected for real estate is not allocated dollar for dollar for real estate. Mr. Villazon reported that the publication of the newsletter was reduced because disciplinary information was made available on-line.

### Education Foundation Scholarship Program

Secretary Carr advised the Commission that the contract for distribution of monies for the Education Scholarship Program has been finalized. Secretary Carr explained the terms of the contract, stating that it was fairly straightforward adding that from a legal perspective the contract is suitable for execution and that if the Commission is comfortable with the contract she would sign it. Chairman Valdes stated for the record that the Commission recommends the contract be executed. Commissioner McDonell moved to approve. Commissioner Sanchez seconded. The motion carried unanimously.

### Unlicensed Activity

Secretary Carr proposed creating an unlicensed activity task force, which would consist of the FREC Chairman, Mark Whitten, Mark Reddinger, Brian Piper, Kathleen Koeberich and a prosecutor from Real Estate and hiring OPS for investigations which would be directed by the tactical team under her leadership. Secretary Carr stated that she would propose implementing this course of action for six months to gain control of this issue. Secretary Carr explained that prior to about four years ago the investigation and prosecution of unlicensed activity was handled out of the Tallahassee office and thereafter that function was delegated to Real Estate. Secretary Carr added that it seems that over the years some of the institutional knowledge for whatever reason has been lost and that Real Estate does not have the same relationship with the law enforcement agencies as Tallahassee. Secretary Carr further explained that the model Tallahassee uses has been successful and would be cost effective across the board in terms of one Division assisting another Division, which is done frequently because the Department has one of the broadest jurisdictions of any of the executive branch agencies. Secretary Carr reported that the leadership team would be meeting by July 1, 2004.

Commissioner McDonell raised one of the issues that is close to her heart which has been unsuccessfully addressed. Commissioner McDonell reported that the Commission attempted to ingratiate themselves before the Florida Prosecuting Attorney Association (FPAA) requesting to be included on its agenda of the annual FPAA meeting in July. Commissioner McDonell stated that she feels this is an issue that should be addressed by the Governor on down. Commissioner McDonell added that from the unique over-worked perspective of a prosecutor, local state attorneys are not going to make this an issue close to their heart unless they are in a position where they have no option. Secretary Carr stated that she would work with Commissioner McDonell on this issue.

### Photo ID badges

Secretary Carr stated that there is nothing in the Practice Act that would prohibit the Commission from making a rule that would prescribe that members of the real estate profession be required to carry photo ID badges. Secretary Carr stated further, however, that the Administrative Procedures Act (APA) does prohibit this, adding that the APA was overhauled in 1996 and it now strictly requires specific statutory authority. Secretary Carr explained that the Legislature has to specifically delegate to an executive branch agency a very detailed authority of what it can and can not do in the context of rulemaking. Secretary Carr further explained that to undertake something like this without statutory authority, the rule would not likely withstand a challenge, especially when this industry has a universe of over 300,000 licensees. Secretary Carr outlined the foundational underpinning the Commission must follow and hurdles it must overcome to accomplish this task adding that it would not be so easily done. Commissioner McDonell stated that it is not a matter of policy but a matter of getting the legislators to agree to

change the statute. Chairman Valdes stated that the Commission would only need statutory change to mandate this requirement, however, the Department could automatically issue a license with a photograph to the licensees. Secretary Carr stated that she would not be comfortable doing this without legislative authority. Secretary Carr added that the Department does not have the money to install this equipment around the state and it would require great expense. Commissioner Hornsleth stated that he believes that photo IDs would prevent a lot of fraud. Secretary Carr stated that her experience differs in that the Division of Alcoholic Beverages and Tobacco spends a great deal of time regulating people who have fraudulent photo IDs. Chairman Valdes stated that the cosmetology licenses have photos. Secretary Carr responded that the cosmetologists put their own photograph on the license and the statute was put in place prior to 1996 which distinguishes the two situations. Commissioner McDonell suggested that the Department or Commission could recommend that business not be negotiated without presenting photo identification in the next newsletter. Commissioner McDonell stated that even if the Department generated a license with a photo it could also be reproduced unless it has the safeguards. Secretary Carr agreed and explained further that they have found that unless the identification contains some biometric measure of the individual that is unique to that individual then it could be fraudulently reproduced.

Secretary Carr stated that if the Commission wants to move forward and change the statute and get the appropriation, the first hurdle they must clear is the Governor's office. Chairman Valdes inquired if the Department would support the statutory change. Secretary Carr stated that she does not know, but it probably does not constitute a compelling case. Secretary Carr provided the example of the Chapter 475 rewrite of which some changes had a fiscal impact, which the Legislature would not allow to go further unless the provision regarding fiscal impact was taken out, which would be the same hurdles with this issue.

Chairman Valdes asked FAR Counsel Randy Schwartz to convey this issue to its members and Legislative Committee and obtain input as he would like to know where FAR stands on this issue. Mr. Schwartz stated that this could not be done until August when they meet. Secretary Carr stated that would be an excellent avenue to pursue because it is a trade association and it does not have to navigate systems the Department has to navigate.

#### Increasing the Numbers of Investigators

Secretary Carr stated that the Legislature approved the adoption of a statewide constitutional ban of smoking in restaurants without the additional support of inspectors to enforce the ban. Secretary Carr further stated that last year this Division was reassessed and this was the only Division that received four new positions, which was a huge victory. Secretary Carr stated that the Department has become very creative and enterprising in how to manage hot spots and one way is that the Department is proposing to use some of the unlicensed activity money to hire OPS investigators as a part of the task force, which has been done before. Secretary Carr added that it is the Department's goal to solve problems and answer questions, and also try to manage your expectations of the likelihood of getting additional investigators.

#### Backlog of Cases

Secretary Carr stated that this issue is not foreign to those of us who have been in government, but it does seem to be something that is chronic and acute to Real Estate. Secretary Carr proposed sending her best diagnosticians to determine why it appears to be acute to Real Estate. Commissioner McDonell stated that she would like to know whether the

backlog is due to a backlog of trial preparation or due to how many cases the Commission could accommodate. Secretary Carr stated that this information would be available by July or August.

### Privatization

Secretary Carr stated that there are nineteen professions operating under the Department of Business and Professional Regulation, of those, two are somewhat privatized. Secretary Carr stated that the Engineers are about five years into the privatization process and the Architects are about three years, and in looking at the two models, one is doing well and the other is not. Secretary Carr added that because of the struggles, the Governor's office was supportive in putting a road map for privatization in place. Secretary Carr stated for example that while the Department performed the services for the Board of Architecture for \$261,000 per year, the vendor just received an increase in appropriations, which totals now more than \$500,000. Secretary Carr added that for this reason the Legislature approved the revised model, which would provide a better understanding of privatization. Secretary Carr stated that she understands that because of the amendments to the privatization act that Chairman Valdes would like the Commission to explore the Florida Bar model or any other model. Secretary Carr pointed out that attorneys are regulated under the judicial branch and the executive branch regulates the Commission. Chairman Valdes suggested that the Commission also explore deregulation. Secretary Carr explained that deregulation means that the Government is no longer involved. Commissioner McDonell stated that deregulation is an expensive proposition to which a very large portion of licensees would not have the money to maintain their license and comparing the Florida Bar Association to the Real Estate Commission would be like comparing apples to oranges. Chairman Valdes stated that he would not argue that point, but it is an option. Secretary Carr stated that it is always an option but that would also require an affirmative action by the Legislature.

Secretary Carr suggested that since they have been discussing this for some time and the agenda is long, perhaps the Commission would like her to come back and give a status report of the progress on these issues next month.

Commissioner Veissi stated that she appreciates the Secretary's candor and that she understands budgetary concerns, and would like to see a model of the privatization act. Secretary Carr stated that the bill was just signed this week and the Department is currently working on the internal templates. Secretary Carr added that the Department could also provide a comparison of privatization verses deregulation and by that time the Department should also have the internal templates developed so that the Commission may make an informed decision. Secretary Carr explained that the Department could provide substantive materials in order for the Commission to decide the pros and the cons. Commissioner Beals stated that privatization does not give the Commission more money. Secretary Carr agreed adding that the Boards or Commissions still have to come through the Department as the budget entity. Chairman Valdes stated that Secretary Carr has a permanent invitation to attend the FREC meetings.

### Legal Matters

At approximately 10:15 a.m., the Commission took up the Legal Agenda, consisting of 45 items. It heard 38 items and continued 7. The Commission's decisions on these matters are attached to the official minutes.

### **Recovery Fund Claim Order**

Mr. DeCosta presented a Recovery Fund Claim Order issued by Division of Administrative Hearings Law Judge J. D. Parrish regarding the matter of Antonella Diabella v. DBPR, Division of Real Estate. Commissioner McDonell moved to adopt the Recommended Order. Commissioner Hogan seconded it. The motion carried unanimously. A copy of the Commission's decisions on this matter is attached to the official minutes.

Commissioner Beals moved to suspend the Legal agenda to address the Rules. Commissioner Sanchez seconded. Motion carried unanimously.

### **Proposed Rulemaking**

Mr. Villazon presented Rule 61J2-3.008 for rulemaking for Commission approval with the correction to the addition to reflect "end-of-course examinations". Commissioner Beals moved to adopt the rule with the correction to the final language. Commissioner Hogan seconded. The motion carried unanimously.

Mr. Villazon presented Rule 61J2-3.009 for rulemaking for Commission approval with the correction to the addition to reflect "end-of-course examinations". Commissioner Hornsleth moved to adopt the rule with the correction to the final language. Vice-Chair Sanchez seconded. The motion carried unanimously.

Mr. Villazon presented Rule 61J2-3.020 for rulemaking for Commission approval with a correction to the addition to reflect "end-of-course examinations". Commissioner Hogan moved to adopt the rule with the correction to the final language. Commissioner Veissi seconded. The motion carried unanimously.

### **Unfinished Commission Business**

#### **Privatization**

Vice-Chair Sanchez stated that he was interested in getting information about deregulation particularly regarding the Florida Bar model. Mr. Villazon stated that the Chairman could call any kind of taskforce meeting, but wanted to make it clear that the Florida Bar is not deregulated as they are under the judicial branch. Mr. Villazon further stated that the Chair could call a taskforce and invite FAR and the public and discuss the pros and cons about the different models. Mr. Sanchez inquired if the Commission could use funds from the education foundation to research this issue. Mr. Villazon stated that he believed that they could. Chairman Valdes stated that he would like to have the participation of FAR to hear from those entities that represent the dues-paying members and what they expect. Mr. Villazon stated that someone would have to make a proposal that the Commission would review. Chairman Valdes requested that this issue remain on the agenda for a taskforce workshop and FAR could help in getting the message to its members.

#### **FREC Meeting in the Panhandle**

Chairman Valdes asked the Commission to reconsider not having the meeting in the Panhandle, as there was so little interest at the Miami meeting. Commissioner McDonell stated that she would respectfully disagree because there is no representation in the Panhandle, and therefore, feels the Commission should hold a meeting in that region. Vice-Chair Sanchez

agreed. The Commission deliberated on this issue at length. Commissioner Hogan moved to table this discussion until the economic impact has been researched and due to the fact that the meeting in Miami had such little response. Commissioner Beals seconded the motion. The motion carried unanimously.

#### FREC Letterhead

Chairman Valdes stated that he inquired to Mr. Villazon about Commission letterhead, and was told that the Division does not have any. Commissioner McDonnell moved that the Department generate a standard operating letterhead for the Commission sanctioned for official Commission business. Commissioner Hornsleth seconded. Carried unanimously.

Chairman Valdes requested an updated list of Commission members to the Commission members.

#### Unlicensed Activity

Chairman Valdes stated that back in January they were told that the Commission would get a copy of the public service announcement contract regarding unlicensed activity. Mr. Chapman stated that he would look into it. The Chair stated that he would like a breakdown of how much was spent, which markets, what stations and the schedule of airings. Chairman Valdes stated further that the Commission was also told that the Division Director and Director Whitten would travel throughout the state to meet with the State Attorney offices and inquired if that occurred. Mr. Chapman stated that pursuant to Secretary Carr's discussion earlier these issues have already been outlined in the new plan and that the Division of Professions and Regulations has established contacts. He added that the unlicensed activity infrastructure is in place and it may be just a matter of a few phone calls to bring key people up to speed on the real estate aspect of it. Chairman Valdes stated that when it does happen, he would like to have a report of which offices they visited and whom they met with.

#### Miscellaneous Commission Issues

Chairman Valdes stated that the Division was supposed to get with other agencies about including disciplinary action in their newsletters. Mr. Piper reported that they did contact Department of Banking and Finance and Department of Insurance about two months ago and exchanged contact information. Mr. Piper further reported that last Friday they had a meeting with the Department of Insurance exchanging concerns regarding unlicensed activity and discussing possibly publishing information in our newsletter and vice versa. Vice-Chairman Sanchez stated that the Department of Insurance does provide a printed and online newsletter.

Chairman Valdes stated that in March 2002, the Department was going to look into providing materials electronically and heard from the Secretary that the Department was interested in this issue. Mr. Valdes stated that the Board for the Department of Transportation had more paperwork than the Commission and the members received a disk with all the materials. Mr. Valdes stated that he has not received any information regarding this issue. Mr. Chapman stated that he would relay this message to the leadership.

Chairman Valdes further stated that about two years ago the Commission requested a monthly report of fines that have been imposed and what has been collected. Chairman Valdes stated that he would also like to know how many unlicensed cases have been reported to the

State Attorney's office and how many they have prosecuted. Mr. Valdes further requested a report that reflects the breakdown of how the unlicensed activity fee is being used.

The Commission discussed other ideas on how to deal with unlicensed activity stating that the Commission is not putting enough emphasis on the brokers and perhaps we need statutory changes to increase the penalty on the broker in order to send a strong message. Mr. Villazon stated that we do have a statute that covers this issue.

The Commission also discussed the issue regarding brokers who employ a very large number of sales associates, charging them a monthly fee but that do not supervise them.

Chairman Valdes stated that these issues are being compounded by the lack of resources and without resources the issues will not be resolved. He added that he knows there is willingness on the part of DBPR, but he also knows that there are no resources.

Chairman Valdes stated that in March he requested that the applicants that mark "yes" submit their own full background records. Mr. Villazon stated that only law enforcement agencies have access to FBI reports and that the applicant can only get the FDLE report. Chairman Valdes suggested that since it would be fair to say that 80 percent of applicants do not have a national criminal record then the Division should require the applicant to submit the FDLE reports with their application. Chairman Valdes requested that the Division require the applicant to submit the FDLE report with the application. Commissioner Beals moved to hold a rule workshop to discuss requiring the applicant to submit the FDLE report with the application. Commissioner Hogan seconded the motion. The motion carried unanimously.

Chairman Valdes informed the Commissioners that according to statute by January 1 of each year the Commission must provide a report of funds that have been received and disbursed by the Education Foundation to the Governor's Office and the Legislature. Mr. Valdes requested that the Department provide the Commission with copies of the last three reports that were submitted to the Governor and Legislature.

Chairman Valdes stated that a licensee recently contacted him regarding an issue with his application. Chairman Valdes stated that the gentleman stated that he was still waiting from a response from the Department and thought that perhaps Chairman Valdes could provide some assistance. Deputy Director Chapman stated that he would look into this matter.

#### Request for Reciprocity

Mr. Villazon presented a request for reciprocity from Robert E. Praytor, Administrator, from the Mississippi Real Estate Commission. Commissioner McDonnell moved that the Commission request Mr. Villazon to send a letter denying reciprocity. Commissioner Hogan seconded the motion. The motion carried unanimously.

#### General Correspondence

Mr. Villazon presented correspondence from Mr. Cooke requesting to video streamline the FREC meetings. Mr. Villazon stated that since it is an open meeting that he can record it, but since it would be accessible online that he would have to make sure that there is not an appearance that the Commission is endorsing the school. Additionally, if other schools wish to provide this service then the schools would have to come to an agreement to share the camera and he would also have to work out the details with the Department in regard to the particulars.

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Mr. Villazon presented correspondence from Lynda Rippolone regarding her disgruntlement of the fact that there are too many licensees. Commission authorized Mr. Villazon to provide the appropriate response.

Deputy Director Chapman requested the Commission ratify the reinstatement of Robin M. Cobb and Linda Anne Hilliard who have met the requirements for reinstatement. The Commission ratified the actions unanimously.

Upon recommendation of the Legal Section, the Commission unanimously issued 9 Escrow Disbursement Orders (EDO) with the exception of 2004007706 wherein Vice-Chairman Sanchez recused himself. A list of the Orders is attached to the official minutes.

### **Approval of the Minutes**

Commissioner McDonell moved to approve the Minutes of the May 18 and 19, 2004, General meeting, as written. Commissioner Hogan seconded it. The motion carried unanimously.

### **Summary of Applicants**

#### **Consent agenda**

The Commission considered the Summary of Applicants Consent Agenda, requiring 26 applicants from the Consent Agenda to appear before it.

The Chair recessed the meeting at approximately 5:10 p.m., June 15, 2004.

Chairman Carlos L. Valdes reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at Orlando, Florida, on this 16<sup>th</sup> day of June, 2004.

The following Commission members were in attendance: Chairman Carlos L. Valdes; Vice-Chairman Guy Sanchez, Jr.; 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 staff present at the meeting: Keith Chapman, Deputy Director; Christopher J. DeCosta, Acting Chief Attorney; Kathleen Koeberich, Bureau Chief; David Guerdan, Investigator Supervisor; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant; Jeannie Adkinson, Regulatory Specialist II; Maxine Carter, Regulatory Specialist I. American Court Reporting (407-324-4290) provided court reporter services.

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

At approximately 8:30 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.



**Commission Business continued**

Chairman Valdes stated that Secretary Carr appointed him to serve on the unlicensed activity taskforce. Chairman Valdes stated that he is deferring this role to the Vice-Chairman, as he is a true professional and asked Mr. Chapman to relay this to Secretary Carr.

Deputy Director Chapman provided a complaint report from the Department, which included applicant issues relating to Promissor.

Commissioner Hogan suggested that the Department have a backup to takeover the duties of an individual who may be on leave for a long period of time, such as processing the EDOs. Chairman Valdes responded that as Secretary Carr clearly explained the only way to get more people is it would take an act of the Legislature. Commissioner Hogan stated for the record that this is an unacceptable business operation and any other business would have a contingency plan.

Deputy Director Keith Chapman reminded the Commission to submit their financial disclosures prior to July 1, 2004, and also to submit their travel vouchers as quickly as possible as the end of the fiscal year is approaching.

There being no further business and no objection, the Chair adjourned the meeting at approximately 2:30 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for July 20 and 21, 2004, at the Division Headquarters in Orlando, Florida.

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Carlos L. Valdes  
Chairman

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Juana C. Watkins  
Acting Division Director

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