



**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
July 20 and 21, 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 20th day of July, 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. Mr. Daniel Villazon appeared as counsel for the Commission.

Department and Division staff present at the meeting: Diane Carr, Secretary; James Blount, Chief of Staff; Mark Whitten, Acting Deputy Secretary; Michael Martinez, Special Counsel to the Secretary; Mark Reddinger, Senior Management Analyst II for Unlicensed Activity; Juana C. Watkins, Acting Director; Sharon Thayer, Deputy Director; Christopher J. DeCosta, Acting Chief Attorney; Kathleen Koeberich, Bureau Chief; James Harwood, Alpheus Parsons, Alfonso Santana 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. (407-896-1813) 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 provide an update as to some of the Commission's issues as well as touch upon a couple of other issues under Unfinished Business.

Education Scholarship Program

Secretary Carr reported that the first disbursement is scheduled for August, about which the Department is very excited.

Agenda Materials Provided Electronically

Secretary Carr stated that the Department has been contemplating putting a procedure in place. Secretary Carr further stated that the Department is analyzing the cost benefit by taking a very systematic look at models currently in place. Secretary Carr added that the Department is also looking at how some other agencies are easing into electronic transmission of materials because the Commission receives such a large volume of materials every month, which are very costly to reproduce and post.

FREC Meetings via Web Cast

Secretary Carr reported that the meeting room would be soon wired for web cast so that whoever would like to watch the Commission exercise their quasi-judicial authority when it convenes in August would be able to do so. Secretary Carr stated that this is something that the Department is looking forward to, as not only it is entirely consistent with Government in the Sunshine and how Governor Bush hopes to bring government to the people.

Privatization

Secretary Carr provided the Commission with a flow chart outlining the steps the Commission must follow in order to privatize. Secretary Carr provided some history on the Department 's experience with privatization relating to the Board of Professional Engineers and the Board of Architecture. Secretary Carr explained that the Department used the Engineers' not-for-profit model, which has been in effect for the last five years, for the development and enactment of the privatization road map, while also incorporating several improvements. Secretary Carr added that one criticism was that there has not been sufficient legislative oversight of the current privatization efforts as the Legislature is the exclusive appropriating body, and therefore the Legislature adopted the revised model, which provides a roadmap for a better understanding of the requirements. Secretary Carr stated that the oversight is on the front end wherein the Legislative Budget Commission would review the business case, essentially looking at the structure for the privatized corporation. Secretary Carr added that two reasons the improved model was developed was to stamp out any vehicles whereby any efforts of fraud could be perpetrated and to make sure that the Department does not duplicate them.

Secretary Carr provided a detailed summary relating to various aspects of privatization answering various questions of the Commission.

Unlicensed Activity

Acting Deputy Secretary Whitten provided a brief report regarding unlicensed activity. Mr. Whitten stated that Chairman Valdes and Vice-Chairman Sanchez have been very instrumental in the implementation of the Unlicensed Activity Taskforce. Mr. Whitten reported several of the accomplishments, including visiting 57 offices, checking and verifying over 850 licenses, identifying 4 concerns which are being investigated. Mr. Whitten further reported that an arrest warrant was executed on an individual who was subsequently convicted on July 15, 2004. Mr. Whitten stated that the Department is adding resources to the Complaint Section as the Department is taking this issue very seriously and plans to make great strides in fighting unlicensed activity. Mr. Whitten added that the Commission would start seeing arrests and convictions on the monthly Unlicensed Activity Report.

Acting Deputy Secretary Whitten requested that the Commission consider giving the Department citation authority allowing a \$2,500 citation on sight for a first offense and there is no consumer harm, explaining that the individual would have the opportunity to dispute and go to a formal hearing or not dispute and pay. Mr. Whitten added that however for a second offense the Department would want law enforcement to effect an arrest. Mr. Whitten stated that he feels that this would make a positive impact in the industry. Commissioner McDonell asked if the Department has statutory authority. Mr. Villazon stated the Department does have authority.

Secretary Carr stated that the Department has cracked the code in other professions on how to make the cases with the State Attorneys Office and the Department is applying those methods that have worked well in other agencies to Real Estate. Chairman Valdes stated that he was very optimistic and feels that the Secretary has shown a genuine interest in this issue, however it will also take a concerted effort from every licensee in the industry to report unlicensed activity to the Department. The Commissioners expressed their support. Commissioner McDonnell moved to approve the imposition of a \$2,500 citation for first offense. Commissioner Hogan seconded. The motion carried unanimously. Vice-Chairman Sanchez stated that he was very impressed at the progress the Department has made.

Chairman Valdes requested that Mr. Randy Schwartz, counsel for the Florida Association of Realtors (FAR), allocate about an hour for the Secretary and himself to address members regarding unlicensed activity and what is being done to resolve this issue and request feedback from the members.

Legal Matters

At approximately 9:20 a.m., the Commission took up the Legal Agenda, consisting of 41 items. It heard 29 items, withdrew 3 and continued 9. The Commission's decisions on these matters are attached to the official minutes.

Chairman Valdes inquired as to where aiding and abetting unlicensed activity comes into play as it relates to a real estate licensee. Mr. Villazon stated that a lot of aiding and abetting comes from a licensee paying compensation to an unlicensed assistant to perform real estate activities, because they are providing the ability and resources, enabling or encouraging this unlicensed activity to occur.

Chairman Valdes inquired if FAR is notified when licensees are revoked. Acting Director Watkins stated that the Division would begin sending a list to FAR so that they can shut down their access to the Multiple Listing Service.

Unfinished Business continued

Meeting in Panhandle

Chairman Valdes requested that this issue be removed from the agenda until further notice.

Photo ID Badges

Per Secretary Carr's explanation last month that there are no funds to implement this procedure, Chairman Valdes requested that this item be removed from the agenda until further notice. Chairman Valdes stated that this issue would again be on the agenda when appropriate, possibly during the Legislative Session. Chairman Valdes added that the Commission would need the support of the Department to accomplish this task. Commissioner Hogan expressed her concern regarding the fact that there are more licensees, less investigators and no money. Mr. Schwartz stated that this issue along with privatization is on the FAR Legislative Committee's agenda at the upcoming meeting.

Vice-Chairman Sanchez inquired about the Uniform Complaint Form instructions. Acting Director Watkins stated that she would take a look at the form. Ms. Watkins further stated that

the Department added a couple of boxes to assist the complaint analyst in determining the type of complaint.

Unlicensed Activity (PSAs)

Mr. Mark Reddinger, Senior Management Analyst II for Unlicensed Activity, presented a breakdown of the expenditures for the Public Service Announcements (PSA). Chairman Valdes stated that last month he requested that the Department provide the Commission a more detailed breakdown of where, when, and how often the PSAs were being aired. Mr. Reddinger explained that at the end of each month the ad agencies are going to provide affidavits as to the particulars, which the Department will forward upon receipt. Mr. Reddinger reported that \$41,500.00 has been spent on PSAs and that \$4,055.43 was spent on the FREC Newsletter. Acting Director Watkins stated that the total amount to print the newsletter was \$8,110.00.

Acting Director Watkins stated that Modern Mailer sent approximately 239,726 newsletters. Chairman Valdes requested a breakdown of the costs. Ms. Watkins provided a breakdown of the charges from Modern Mailer. Chairman Valdes stated that the Division should request a post office receipt from Modern Mailer showing exactly how many newsletters were mailed.

Reports

The Commission discussed the following reports: Bureau of Enforcement Investigative Report, Legal Case Inventory and Fine Collection Report.

Commissioner Hogan inquired about the report regarding unpaid fines and how the Department addresses this issue. Acting Director Watkins stated that the unlicensed cases are sent to Tallahassee to pursue in civil court. However, in cases wherein the licensee signed a stipulation their license is suspended until the fine is paid; or the Department opens a new case, which would come back before the Commission for an additional penalty.

Chairman Valdes raised the issue of the cases in the Legal Section. Mr. Whitten stated that the Legal staff is very optimistic in that with the additional attorney position and OPS position they will be able to significantly reduce the backlog.

Mr. Reddinger advised the Commission of additional ways the Department is informing the public about unlicensed activity. Mr. Reddinger reported that he does a radio show for about 1½ hours once a month and in September plans to address unlicensed activity as it relates to real estate. He further reported that at the end of July the Department would be doing a TV show in Miami.

Acting Director Watkins provided the Commission a breakdown of the unlicensed cases. Chairman Valdes inquired how the Department would impose the citation for unlicensed activity. Mr. Whitten provided a brief narrative of the process.

New Business

Rule Development Workshop

FREC Counsel Daniel Villazon presented Rule 61J2-2.027 for discussion. Mr. Villazon stated that the Commission requested to add language to the rule that would require the applicant to provide a complete certified criminal history report from the Florida Department Law

Enforcement (FDLE) with the initial application. Acting Director Watkins stated that one of the issues that is important to the Department is to offer electronic fingerprinting earlier than 2006. Ms. Watkins reported that the General Counsel for the Department has been working very closely with the Department of Education on this issue to establish a service level agreement to be able offer this as an alternative to the hard copy fingerprint card process. Ms. Watkins added that the Department would like to have this in place by the end of the year. Ms. Watkins stated further that what the Department needs is the Commission's permission for a rule development workshop. Mr. Whitten stated that he would have the General Counsel and the Director of Service Operations meet with all the involved parties and tell them to move it as fast as possible. Chairman Valdes stated that he would like the Department to move forward with the rulemaking. The Commission unanimously approved to move forward with the rulemaking to incorporate new language requiring the application to submit an FDLE report with the initial application.

Acting Director Watkins requested that the Commission grant permission for rule development workshop to incorporate language to address electronic fingerprinting. The Commission approved the request.

JAPC Objections to Proposed Rules

Mr. Villazon presented comments from the Joint Administrative Procedures Committee (JAPC) regarding rules 61J2-3.008, 3.009 and 3.020. Mr. Villazon stated that issues are cosmetic and with the Commission permission, he and Chief Acting Attorney DeCosta would respond to Ms. Suzanne Printy of the JAPC. Commissioner Hogan so moved. Commissioner McDonnell seconded it. The motion carried unanimously.

General Correspondence

Mr. Villazon presented correspondence from Joyce Carroll expressing her dissatisfaction with Promissor. Mr. Villazon stated that with the Commission's permission he would provide an appropriate response. The Commissioners expressed their opinions relating to these issues. Mr. Whitten acknowledged the Commissions' concerns and will closely monitor the issues.

Chairman Valdes asked Ms. Linda Crawford to address the letter signed by several individuals who provide real estate pre-licensing education. Ms. Crawford reported that there appears to be a disconnect between the pre-license course content and the subject tested on the state license exams. Ms. Crawford stated that she is asking the Commissioners if they are in agreement, to direct the Bureau of Education and Testing to make sure that the questions on the respective license exams do in fact correspond to the FREC approved syllabuses. The Commission discussed the issue of the pass/fail rate dropping for the last five years and what factors may be contributing to this drop. Mr. Dick Fryer from IFREC also expressed his concerns. Mr. Dan Combs responded that he is the person that assimilates the tests and he follows the appropriate guidelines, which he described in detail. Mr. Villazon stated that the rule specifically states that the test should incorporate the FREC approved syllabuses, therefore the exam should conform to the rule requirement. Commissioner McDonnell moved to approve a rule development workshop for Rule 61J2-2.029. Commissioner Hornsleth seconded it. The motion carried unanimously.

Ms. Crawford respectfully suggested that the Commission conduct an education task force to address this issue further to give the educators an opportunity to get their arms around

this. The Commission unanimously approved scheduling a taskforce meeting. Chairman Valdes appointed Vice-Chairman Sanchez and Commissioner Veissi to the taskforce.

Ratification of Suspended Licenses

Acting Director Watkins requested the Commission ratify the reinstatement of Luis G. Arguello, Margarita Columbie, Jorge Ramos and Rubin Wites who have met the requirements for reinstatement. The Commission ratified the actions unanimously.

Approval of the Minutes

Commissioner McDonell moved to approve the Minutes of the June 15 and 16, 2004, General meeting, as amended. Commissioner Hogan seconded it. The motion carried unanimously.

Escrow Disbursement Orders

Upon recommendation of the Legal Section, the Commission unanimously issued 6 Escrow Disbursement Orders (EDO) and 6 Orders. A list of the Orders is attached to the official minutes.

Recovery Fund Claim Order

Acting Chief Attorney Christopher J. DeCosta presented Recovery Fund Claim styled Darlene Benjamin v. Florida Real Estate Recovery Fund, Case Number 2003087433/Feliciano. Commissioner Hogan moved to deny payment from the recovery fund. Commissioner Sanchez seconded. The motion carried unanimously. A copy of the Commission's decision on this matter is attached to the official minutes.

Summary of Applicants

Consent agenda

The Commission considered the Summary of Applicants Consent Agenda, requiring 9 applicants from the Consent Agenda to appear before it.

Acting Director's remarks

Acting Director Watkins stated that she wanted to take this opportunity to announce Sharon Thayer as the new Deputy Director, who came to the Division from Regulation and has been with the Department for approximately 18 years.

The Chair recessed the meeting at approximately 4:05 p.m., July 20, 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 21st day of July, 2004.

The following Commission members were in attendance: Chairman Carlos L. Valdes; Vice-Chairman Guy Sanchez, Jr.; Matey H. Veissi, Poul Hornsleth, Nancy B. Hogan and Bob

Beals. Commissioner Beals departed early due to personal illness. Commissioner McDonell was excused. The Chair declared a quorum present. Mr. Daniel Villazon appeared as counsel for the Commission.

Department and Division staff present at the meeting: Mark Whitten, Acting Deputy Secretary; Mark Reddinger, Senior Management Analyst II for Unlicensed Activity; Juana C. Watkins, Acting Director; Sharon Thayer, 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. American Court Reporting (407-896-1813) 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.

Adjournment

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 August 17 and 18, 2004, at the Division Headquarters in Orlando, Florida.

Carlos L. Valdes
Chairman

Juana C. Watkins
Acting Division Director

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