



**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
December 14 and 15, 2004
Meeting**

Chairman Guy Sanchez, Jr. called the meeting of the Florida Real Estate Commission to order, at approximately 8:45 a.m., at Orlando, Florida, on this 14th day of December, 2004.

The Chairman introduced the members of the Commission and its legal counsel. The following Commission members were in attendance: Guy Sanchez, Jr., Chairman; Nancy B. Hogan, Vice-Chairman; Poul Hornsleth, Carlos L. Valdes and Bob Beals. Commissioner Noel McDonell appeared briefly via phone and was excused for the remainder of the meeting. Commissioner Matey Veissi joined the meeting at approximately 2:30 p.m. and was excused from the morning. The Chairman declared a quorum present. Mr. John J. Rimes appeared as counsel for the Commission.

Department and Division staff present at the meeting: James Blount, Chief of Staff; Michael Murphy, Acting Deputy Secretary; Mark Reddinger, Senior Management Analyst II for Unlicensed Activity; Elizabeth P. Vieira, Director; Sharon Thayer, Deputy Director; Juana C. Watkins, Chief Attorney; Kathleen Koeberich, Bureau Chief; Chris J. DeCosta, James P. Harwood, Alpheus C. Parsons, Jason W. Holtz and Alfonso Santana, Prosecutors; Fred Clanton and David Guerdan, Investigator Supervisors; JoEllen Peacock, Education Coordinator; Dan Combs, Education Development Specialist; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407-896-1813) provided court reporter services.

FREC Approval of Appointment of Division Director

Chief of Staff James Blount presented Elizabeth P. Vieira as the newly appointed Director of the Division of Real Estate. Director Vieira provided a brief description of her previous professional experience. Mr. Blount asked the Commission to approve her appointment. Commissioner ~~Veissi~~ Hornsleth moved to approve the appointment of Elizabeth P. Vieira as Director of the Division of Real Estate. Commissioner ~~Hornsleth~~ Hogan seconded. The motion carried unanimously.

Legal Matters

At approximately 9:00 a.m., the Commission took up the Legal Agenda, consisting of 28 items. The Commission heard 27 items and continued 1. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Recovery Fund Claim Order

Senior Attorney DeCosta presented Appellant Barbara Abrass's Motion to Vacate Order and Motion for Stay of Mandate Pending Review styled Barbara Abrass v. Florida Real Estate Commission; Case No. RFC-2002012361; DCA Case No. 1D04-0054. At the direction of Mr. Rimes the Commission took no action.

New Commission Business

ARELLO Conference

Chairman Sanchez requested that the Division provide the Commission a list of dates of ARELLO events for 2005. He stated that the conferences are very educational and suggested that the Commission and Division have representation at the conferences. Chairman Sanchez further requested the Division confirm with ARELLO that they received the contact list reflecting the recent changes.

Commissioner Veissi advised the Division that ARELLO has a national disciplinary data bank and suggested that the Division investigate becoming a participating member.

Mutual Recognition Request from Pennsylvania

The Chairman opened for discussion the mutual recognition request from Pennsylvania and the Bureau of Education's findings. The Vice-Chairman stated that the only concern she has is that some of the people have no intention of living in Florida and that the Commission should seriously consider requests from other states prior to approval. Commissioner Veissi stated that if we have mutual recognition with another state, could the Commission deny licensure to the individual when they have followed the guidelines according to the mutual recognition agreement. The Chairman received comments from members of the audience. Mr. Rimes stated that Section 475.180, *Florida Statutes*, is extremely broad in granting the Commission discretion as to what the standards are which allows the Commission to enter into the agreement. Commission Hornsleth moved to table this discussion until a future meeting. Commissioner Beals seconded the motion. The motion carried unanimously.

Probable Cause Panel Schedule for 2005

The Chairman entered into discussion regarding the probable cause schedule for 2005. The Chairman stated that he received notification from Ms. Crawford advising him of the difficulty in finding a member available to sit for the panel and instructed her to cancel the meeting for December. Chairman Sanchez stated that the Commissioners would prefer to schedule Probable Cause on the Monday before the meeting. Ms. Crawford stated that she would adjust the schedule and provide a copy to the Commissioners.

Ratification of Suspended Licenses

Chief Attorney Watkins requested that the Commission ratify the reinstatements of Jack W. Allen, David A. Earhart, Robert E. Mulready, Marcia Villiers and Kathleen Jo Wheeler who have met the requirements for reinstatement. The Commission ratified the actions unanimously.

Approval of the Minutes

The Commission unanimously approved the Minutes of the November 16 and 17, 2004, General meeting, as written.

Escrow Disbursement Orders

Upon recommendation of the Legal Section, the Commission unanimously issued 173 Escrow Disbursement Orders, 1 Amended Escrow Disbursement Order and 2 Orders. A list of the Orders is attached to the official minutes maintained at the Division headquarters.

Mr. Solla advised the Commission that he reviewed the FAR 8 and will provide a report at a future meeting.

Unfinished Business

Recommendations of the Task Force Regarding FREC Legislative Issues

Chairman Sanchez stated that in October a Task Force meeting was held to discuss FREC's legislative issues and requested that the recommendations be re-addressed.

Chairman Sanchez addressed the following issues:

1. Multiple licenses

Chairman Sanchez suggested that the Commission require a licensee appear before it prior to receiving a multiple license.

Director Vieira provided a breakdown of multiple licenses as listed on the report.

Commissioner Veissi inquired if this would take a revision of the statute or rule. Mr. Rimes responded that unless there was some authority in the statute to preclude someone from having a multiple license then it would require a statutory change.

Commissioner Valdes stated that the issue is not limiting the number of businesses a licensee should have but the Commission should make every broker of record responsible for every licensee registered under that broker. Commissioner Valdes requested that the Division provide a report of how many brokers with three or more licenses have come before the Commission for discipline and of those the number licensees registered under that multiple broker. Mr. Valdes further stated that based on the report changing the statute would only affect 10% of the licensee population.

The recommendation of the Commission is to change the statute to only allow two licenses per individual.

2. Failure to notify the Department of a mailing address change

The Vice-Chairman moved to change the rule to increase the citation fine from \$100.00 to \$500.00. Commissioner Hornsleth seconded the motion. Motion carried.

3. Failure to notify the Department of an address change of the branch office

The recommendation of the Commission was to increase the citation fine to \$500.00.

4. Requiring brokers offices to maintain all contract files on site for up to one year

The recommendation was to require that contract files must be accessible by the Department during business hours upon an office visit if related to a case or investigation within one year. Commissioner Valdes stated that he disagrees that the Commission should put the burden on the broker to maintain paper copies of all files. Mr. Rimes stated that the Commission has very broad authority as to setting the record retention requirements to which the broker must follow. Chief Attorney Watkins stated that the Division has had a number of formal hearings in recent years charging the Respondent with failure to provide records, failure to maintain records and obstructing or hindering an investigation and the Administrative Law Judges have been reluctant to find the Respondent guilty unless the Division afforded the licensee a reasonable opportunity to provide the records.

Mr. Rimes stated that the Commission might want to consider setting forth by rule what the Commission considers reasonably retrievable.

The Vice-Chairman suggested that Mr. Rimes review the recommendations to determine which issues could be addressed by a rule change. Mr. Rimes stated that he would review the recommendations.

5. Brokerage home office

The recommendation was to require a broker to comply with all federal, state and county guidelines in order to maintain an office within their residential home. The Chairman suggested that the broker attach an occupational license with the application for a home office. Mr. Ray Glynn stated that there are rules in place now that requires the broker to following county ordinances. Mr. Rimes stated that enforcing restrictions upon brokers with home office would require a statutory change.

6. HUD posters

The recommendation was to impose a \$300 citation for not posting an equal opportunity housing poster. Commissioner Valdes stated that this is a RESPA violation. Mr. Rimes stated that he would research to determine whether the Commission has enforcement ability regarding a complaint for a violation of RESPA, which would be cognizable by the Commission and be investigated by the Department.

7. Identification

The recommendation was to require that licensees print their real estate license numbers on business cards and carry a picture identification card.

Mr. Rimes stated that unless the Commission has authority it would require a statutory change.

8. Unlicensed assistants

The recommendation was to establish a list of activities an unlicensed personal assistant may perform. Mr. Rimes stated that the Commission needs statutory authority to initially adopt the standards, which then would allow the Commission to set forth standards via rule.

Mr. Ray Glynn stated that in addition to adopting standards for the unlicensed assistant the Commission should hold the licensee responsible for the unlicensed assistant. Mr. Rimes stated that he would provide standard language to generically set up how the Commission would regulate unlicensed assistants which would give the Commission rule making authority to delineate the legal activities the unlicensed assistant may perform.

9. Office site operations

The recommendation was to possibly require the brokerage to disclose all conflicts and affiliations to all parties involved in a transaction. Mr. Rimes explained that there are various regulatory methods, however this would require changing the federal laws. The Commission took no action.

10. Advertisement by Licensed Realtors

The initial recommendation was to prohibit brokerage offices and or associates from placing "For Sale Buy Owner" signs as a blind advertisement, using personal or business contact numbers.

Mr. Glynn stated that should be governed under the advertising rule and that the prosecutors should be able to prosecute for not including the broker's name, as it is an advertisement of real estate in which they are participating. The Commissioners explained that when a potential buyer calls the number on the "For Sale Buy Owner" they get a real estate licensee. Ms. Watkins stated that the Division would need to investigate, adding that the advertising statute is very broad and the argument could be made that the advertisement was misleading. The Chairman inquired as to what the penalty is currently. Mr. Rimes responded that the penalty, according to the guideline is \$1,000 fine and up to a one-year suspension.

The Chairman recognized Mr. Robert Delmar. Mr. Delmar stated that one issue that was not addressed is the fact that the Department may not notify an employing broker when a complaint is made against a licensed employee. Mr. Delmar stated that the managing broker responsible for the licensee should be informed. Mr. Rimes stated that this is a legislative issue. Section 455.225, *Florida Statutes*, provides that once a complaint is filed, the complaint is confidential as to any and all individuals, unless confidentiality is waived or until probable cause is found. Mr. Glynn suggested that the Commission direct the Department to send copies of any Administrative Complaints against sales associates to the employing broker ten days after probable cause has been found. The Vice-Chairman so moved. Commissioner Hornsleth seconded. The motion carried 5 to 1.

The Chairman again recognized Mr. Robert Delmar. Mr. Delmar stated that he is requesting that the Commission address an outline, which he provided, at the January meeting.

Report from Language Resource, Inc., Regarding Deregulation/Self-regulation

The Chairman turned the discussion over to Commissioner Valdes. Commissioner Valdes welcomed any questions regarding this issue. Mr. Rimes stated that there are entities that have a great deal of ability to act outside the confines of the state regulatory bureaucratic scheme. Mr. Rimes suggested that the Commission is going to have to have some tie to government. Mr. Rimes explained that if there were no relationship with the government then the Commission would be violating the anti-trust law by precluding other individuals from practicing the profession without the state immunities. Commissioner Valdes stated that this is

preliminary and would require more research. Commissioner Hornsleth inquired if Commissioner Valdes received any opinion from the Florida Association of Realtors. Commissioner Valdes responded that he has solicited an opinion from FAR several months ago and has not received a response. Commissioner Valdes suggested that some of the monies available from the Education Foundation be used to hire a lobbyist to represent the Commission to regarding this issue. Mr. Rimes is not familiar with the statute relating to the Education Foundation and does not know whether the Commission has the authority to contract, or whether this use would fall within the confines of the statutory authority of the Education Foundation. General discussion continued.

Commissioner Valdes stated that the intent is to create a new entity, which would be a professional, self-regulatory, non-government ruling body responsible for establishing and enforcing rules and standards. Commissioner Valdes read into the record the study provided by Language Resource, Inc. and asked that the Commission consider allocating monies from the Education Foundation to research this proposal further. Mr. Rimes stated that the Education Foundation statute provides that the Commission could study recommended changes to the state statutes and municipal ordinances provided the study is requested by the Governor or by the presiding officer of the Legislature and that the Foundation shall maintain political non-advocacy. Commissioner Veissi suggested that the Commission explore the possibility of this proposal.

Commissioner Valdes moved to proceed with further research of this proposal using funds from the Education Foundation, if permissible. Commissioner Veissi seconded. The motion carried unanimously.

The Chairman recessed the meeting at approximately 6:20 p.m., December 14, 2004.

December 15, 2004

Chairman Guy Sanchez, Jr. reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at Orlando, Florida, on this 15th day of December, 2004.

The following Commission members were in attendance: Chairman Guy Sanchez, Jr.; Vice-Chairman Nancy Hogan; Matey H. Veissi, Poul Hornsleth, Carlos L. Valdes and Bob Beals. Commissioner McDonnell was excused. The Chairman declared a quorum present. Mr. John J. Rimes appeared as counsel for the Commission.

Department and Division staff present at the meeting: Mark Reddinger, Senior Management Analyst II for Unlicensed Activity; Elizabeth P. Vieira, Director; Sharon Thayer, Deputy Director; Juana C. Watkins, Chief Attorney, Christopher J. DeCosta, Senior Attorney; Kathleen Koeberich, Bureau Chief; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant; Jeannie Adkinson, Regulatory Specialist III; Maxine Carter, Regulatory Specialist II. American Court Reporting (407-896-1813) provided court reporter services.

Unfinished Business cont.

Unlicensed Activity Report

Bureau Chief Kathleen Koeberich provided a report outlining case statistics. Commissioner Valdes inquired how many unlicensed cases have been completed since the Unlicensed Activity program began. Ms. Watkins responded that Laura Gaffney, Chief Attorney of Unlicensed Activity, is handling the prosecution of unlicensed activity cases. Mr. Mark Reddinger, Senior Management Analyst II for Unlicensed Activity, stated that Ms. Gaffney took over some of the unlicensed activity responsibilities as that is her primary function in the Department for all professions. Mr. Reddinger reported that she has received over 200 unlicensed activity real estate cases that she is actively working. Mr. Reddinger stated that he would get an accurate account from Ms. Gaffney reflecting the data the Commission has requested.

Commissioner Valdes inquired whether the Department has implemented the citation procedures that the Commission approved. Mr. Reddinger stated that the Department has issued one citation. Ms. Watkins explained that Ms. Gaffney has been in contact with Ms. Koeberich as to how she would like the investigations completed. The Commission expressed their concerns regarding the handling of the unlicensed activity cases in reference to issuing Cease and Desist Orders in lieu of citations. Mr. Reddinger explained that the Cease and Desist Orders might be given in conjunction with a citation in cases where a lessor violation occurred but not in cases involving consumer harm. He added that when there is consumer harm the Department wants the attorney to be able to prosecute the case to the fullest extent. General discussion continued. Mr. Reddinger stated that there are safeguards in place to manage situations so that an individual is not issued citations time and time again. The Vice-Chairman requested that Mr. Reddinger asked Ms. Gaffney to attend the next meeting.

Investigator Ratio per Division

Mr. Reddinger provided a brief explanation of the report reflecting the numbers of investigators per division or profession and the number of licensees per division or profession. The Commissioners expressed their concerns regarding the results stating that they are now seeing the results of the drastic reduction in the numbers of investigators. Commissioner Veissi asked Mr. Reddinger to explain in detail the numbers of investigators in relation to each profession and to the number of licensees. Commissioner Veissi stated that the monies allocated to each division or profession according to the number of licensees and complaints to effectively regulate the respective industries. Mr. Reddinger provided detailed responses to the Commissioners' questions regarding the report.

FAR Letter

Commissioner Valdes asked Randy Schwartz, Counsel for the Florida Association of Realtors, about the letter he sent as Chairman of the Commission to FAR President Russell Grooms. Mr. Schwartz suggested that Commissioner Valdes bring his issues to the new leadership of FAR. Commissioner Valdes stated for the record that the Commission has worked very hard on the issues addressed in the letter.

Tabled Items

The Chairman requested to table the report for the public service announcements and the complaint report from Service Operations until the next meeting.

Summary of Applicants - Bureau of Licensing

At approximately 9:30 a.m. Jeannie Adkinson, Regulatory Specialist III, 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.

Consent Agenda

The Commission considered the Summary of Applicants Consent Agenda, requiring 54 applicants from the Consent Agenda to appear before it.

Chairman's Remarks

Chairman Sanchez expressed his dissatisfaction with the Division and the Department regarding several issues including, but not limited to, better communication, staff accessibility, disrespect and unanswered requests and that he would like to see improvements.

Commissioner Veissi stated that she believes the Division is understaffed forcing the Division to perform reactively instead of proactively. Commissioner Veissi further stated that she has issues with Central Intake relating to licensure response time and misinformation the Call Center provides.

Director Vieira stated that she would note all their concerns.

Adjournment

There being no further business and no objection, the Chairman adjourned the meeting at approximately 3:00 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for January 18 and 19, 2005, at the Division Headquarters in Orlando, Florida.

Guy Sanchez, Jr.
Chairman

Elizabeth P. Vieira
Division Director