



**Minutes of  
THE FLORIDA REAL ESTATE COMMISSION  
February 15 and 16, 2005  
Meeting  
(as amended)**

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 15<sup>th</sup> day of February, 2005.

The Chairman introduced the members of the Commission and its legal counsel. The following Commission members were in attendance: Guy Sanchez, Jr., Chairman; Matey Veissi, Poul Hornsleth, Bob Beals, and Carlos L. Valdes. Commissioner Noel McDonell joined the meeting at 9:40 a.m. Vice-Chairman Nancy Hogan was excused. The Chairman declared a quorum present. Ms. Barbara R. Edwards, from the Office of the Attorney General, appeared as counsel for the Commission.

Department and Division staff present at the meeting: James Andrew Edwards, Deputy Secretary of Professional Regulation; Michael Murphy, Director of Administration; Michael Martinez, Special Counsel to the 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; James P. Harwood, Alpheus C. Parsons, Jason W. Holtz, Joe Solla and Alfonso Santana, Prosecutors; David Guerdan, Investigator Supervisor; Fred Seli, OPS Unlicensed Activity Supervisor; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407-896-1813) provided court reporter services.

**Legal Matters**

At approximately 8:45 a.m., the Commission took up the Legal Agenda, consisting of 27 items. The Commission heard 20 items, withdrew 3 and continued 4. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

**Commission Business**

Mr. Michael Murphy, Director of Administration, introduced the newly appointed Deputy Secretary of Professional Regulation, James Andrew Edwards. Deputy Secretary Edwards provided a brief description of his previous professional experience.

Commissioner Valdes respectfully suggested that Deputy Secretary Edwards review minutes and transcripts of the FREC meetings for the past five years in order to have a better understanding of the Commission's issues.

FREC Counsel Barbara R. Edwards introduced herself to the Commission and staff providing a brief summary of her past legal experience. The Commission inquired if she was familiar with the Commission's issues. Ms. Edwards stated that she was apprised very recently of some of the issues. Ms. Edwards stated that she has reviewed Chapter 455, *Florida Statutes*, and would be reviewing Chapter 475 prior to the next meeting. Chairman Sanchez

suggested that Ms. Edwards speak with Marti Hils, assistant to Mr. John Rimes, regarding some of the issues that he had been working on with Mr. Rimes. Chairman Sanchez thanked Ms. Edwards for attending.

### Reports

#### 1. Report Regarding Financial Assistance to Research Self-regulation

Mr. Michael Martinez, Special Counsel to the Secretary, stated that this was a report that should have been provided by FREC Counsel. Commissioner Valdes stated that last month the Commission was informed that there were no monies available from the Education Foundation. Commissioner Valdes stated that he spoke with Ms. Hartley regarding the Scholarship Program and she reported that she has been making every effort to find students, who might be interested in the program, but so far no scholarship money has been awarded. Commissioner Valdes further stated that Ms. Hartley indicated that she would be in full agreement if the Commission wanted to amend the contract. Commissioner Valdes requested to set aside \$40,000 to assist the Commission in selling this proposal to the Legislature and inquired as to how the Commission could secure funds to move forward with getting assistance pursuant to the Commission's motion last month. Mr. Martinez stated that the money has been encumbered and that any allocation of these funds must meet the spending authority. Commissioner Veissi stated that Section 475.045, Florida Statutes, is rather ambiguous. Commissioner Valdes requested that FREC Counsel Edwards research this issue and provide written confirmation to the Commission stating whether \$40,000 from the Education Foundation Fund may be used to research and pursue the privatization issue.

#### 2. Report Regarding Public Service Announcements

Mr. Reddinger provided a final report and detailed explanation of the 2003-2004 Fiscal Year Public Service Announcement (PSA) campaign. Mr. Reddinger also stated that the Department is proposing a new contract with the Florida Association of Broadcasters targeted to begin in March 2005 and inquired whether the Commission would approve allocating a portion of the money from the Unlicensed Activity fund for a new contract. Commissioner Valdes stated he feels that the Department is throwing money away and that he would prefer putting the money into Full Time Employee (FTEs) positions in lieu of advertising. Mr. Martinez stated that this money could not be used in any general area within the Division of Real Estate, but used only for positions for unlicensed activity. Commissioner Veissi stated that she did approve the spending for the previous PSA, however, does not feel that the PSAs are as effective as additional FTEs for enforcement would be. The Commissioners continued the discussion of funding PSAs versus FTEs. Commissioner Valdes moved not to support an advertising campaign. Commissioner Veissi seconded the motion. The motion carried 3 to 2.

### Report of the Education Foundation Annual Report

Commissioner Valdes inquired as to who submitted the Education and Research Foundation Annual Report for the 2003-2004 Fiscal Year and was any Commissioner involved in submitting this report. Director Vieira responded that the Department prepared the report. Commissioner Valdes stated that the report, which has been sent to the Governor, is erroneous in that the report reflects the Commission conducted no activities relating to the Education and Research Foundation. Mr. Martinez stated that this is actually a budget issue and the vote to provide education scholarships did not occur in the 2003-2004 Fiscal Year, but that the actual budget expenditure did not occur until August 2004.

The Commissioners expressed concerns that the Education and Foundation Annual Reports were submitted without the Commission's approval. Commissioner Valdes stated that the Commission should review and sign the reports prior to submission. Mr. Martinez responded that the Commission would be given the opportunity to make suggestions or provide information for the annual and to review the final reports prior to submission.

3. Report Regarding Unlicensed Activity

Mr. Fred Seli introduced Ms. Laura Gaffney, Chief Attorney for Unlicensed Enforcement from the Office of the General Counsel. Director Vieira announced that Fred Seli was recently appointed as the OPS Unlicensed Activity Supervisor. Mr. Seli provided an oral report of unlicensed activities for January. Ms. Gaffney provided a report summarizing unlicensed activity for all boards. Ms. Gaffney also provided a summary of the Department's enforcement procedures for unlicensed activity. Ms. Gaffney responded to various questions from the Commission. Chairman Sanchez stated that he and other Commissioners feel that Cease and Desist Orders are ineffective. Ms. Gaffney stated that generally a citation is issued in conjunction with the Cease and Desist order. Mr. Seli stated that the Division of Real Estate has not issued any citations. Commissioner Valdes stated that many months ago the Department indicated to the Commission that the Division of Real Estate could start issuing citations for unlicensed activity as the statutes provides for, yet the Division is not using the tools available to them. Ms. Gaffney stated that she does not see why investigators could not start issuing citations in the amount of \$500.00 for unlicensed practice of real estate. Commissioner Valdes stated that the Department represented to the Commission that citations could be issued for \$2,500.00. Mr. Martinez stated that when this issue was discussed the Commission inquired what the maximum penalty could be, and former Acting Deputy Secretary Mark Whitten stated that \$2,500 would not be a problem. Mr. Martinez stated that after researching the current rule it was determined that to issue a citation for any amount over \$500.00 the Department would have to modify the existing rule or implement a specific rule to exceed \$500.00.

Ms. Gaffney stated that since the Department is currently in the process of amending rules relating to unlicensed activity. The Commission requested that the fine be increased to \$5,000.00 for violations as set forth in the proposed new Administrative Code Rule 62-32.002(1)(a) and (b). Ms. Gaffney stated that she would speak with the attorney handling rule making for the Department regarding the Commission's desire to increase the citation to \$5,000.00.

Ms. Gaffney suggested that perhaps advertisements should be placed in the real estate magazines, which are distributed in front of all convenience stores where most of the unsophisticated buyers go to find real estate. Chairman Sanchez and Commissioner Valdes suggested advertising in the mortgage broker and title company trade magazines because mortgage brokers and title companies are the biggest contributors to unlicensed activity. Ms. Gaffney stated that she has not seen many cases in that situation, however, if the case is related to a licensed case then the related Division reviews the cases and she does not receive them. Ms. Gaffney explained that they have determined that companion cases involving unlicensed activity and a licensee are more effectively processed together.

4. Report Regarding the Education Foundation Scholarship Program

The Commission reviewed the report from Ms. Sandra Hartley, Executive Director of Communities In Schools of Putnam County, Inc., for the month of February. Commissioner

Valdes requested to contact Ms. Hartley via speakerphone in order to address questions the Commission may have. Chairman Sanchez directed the Division to contact Ms. Hartley, Director of Communities In Schools of Putnam County, Inc. (CISPCI). Chairman Sanchez asked Ms. Hartley when she provided her report to the Division. Ms. Hartley responded that she faxed it Friday, February 11, 2005, and stated that the report is self-explanatory. Ms. Hartley stated that if there are no more requests, it would be their recommendation not to draw the January and March payments, in the event there is an additional Commission project. Commissioner Valdes stated that it appears that about 98% of the money has not been expended and that every effort has been made through CISPCI in promoting the scholarship program. Ms. Hartley agreed and explained the various methods they have attempted to communicate that scholarships are available. Ms. Hartley suggested that they continue to promote the program until the end of May and revisit this issue at the end of the Department's Fiscal Year and if the monies were not expended then CISPCI would send it back. Chairman Sanchez and Commissioner Valdes thanked Ms. Hartley for her report.

5. Service Operations Report

The Commission reviewed the report from Service Operations and had several comments. Director Vieira stated that Scott Stewart, Director of Service Operations provided this report, which was requested by the Commission.

Rule Development Workshop

1. Rule 61J2-24.001 – Disciplinary Guidelines

FREC Counsel Barbara Edwards explained the changes reflected in the proposed language. Chief Attorney Watkins stated that she has concerns with the new language for failure to timely notify and maintain records. Ms. Watkins further stated that in the past the Commission has been very firm in its position in disciplining licensees who fail to produce records and wanted to make sure that the three month suspension is in line with what the Commission has done in the past. She added that this language might limit the Commission in imposing a longer suspension or revocation unless they site to some aggravation. Discussion was held regarding the reference to the word “timely” in the rule and what is considered timely. The Commission received comments from members of the audience. Commissioner McDonell moved to postpone the discussion of the rule until the next meeting. Commissioner Veissi seconded the motion. The motion carried unanimously.

2. Rule 61J2-24.002 – Citation Authority

Commissioner McDonell moved to postpone the discussion of the rule until the next meeting. Commissioner Veissi seconded the motion. The motion carried unanimously.

Discussion of Proposed Statutory Changes

The Commission discussed two proposed statutes submitted by FREC Counsel John R. Rimes.

1. Registration and Regulation of Nonlicensed Personal Assistants

Commissioner Veissi stated that she does not support this language. Chairman Sanchez stated that he attempted to reach Mr. Rimes to discuss the issue of creating an outline

of what services an unlicensed assistant may or may not perform. Commissioner McDonell added that the Department does not have authority over the assistant because they are not licensed. Commissioner McDonell moved that the Commission not support Section 475.xxx, Registration and Regulation of Non-licensed Personal Assistants. Commissioner Veissi seconded the motion. The motion carried unanimously.

Commissioner Veissi inquired whether the Commission would want to entertain providing guidelines of what services an unlicensed assistant may perform. The Commission received comments from members of the audience. Commissioner McDonell commented that in making a list of all the services an unlicensed assistance can or cannot perform, it might be interpreted that anything not on the list would be considered acceptable. The Commissioners agreed that they should not provide a list and no action was taken.

## 2. Disclosure of Affiliations, Sharing of Office Facilities

Commissioner Valdes stated that he must take issue with this language. Commissioner Valdes explained that the language, for example, would not allow him to operate in the same office as a broker and as a CPA. Commissioner McDonell stated that this would also not allow mortgage brokers to share an office with a real estate broker. Commissioner McDonell moved that the Commission not support Section 475.xxx, Disclosure of Affiliations, Sharing of Office Facilities. Commissioner Veissi seconded the motion. The motion carried unanimously.

## Correspondence

1. The Commission addressed correspondence from Mr. Manuel Davila, Jr. Mr. Davila requested that the Commission grant reinstatement of his null and void license. Commissioner McDonell moved that FREC counsel notify Mr. Davila that the Commission has no statutory authority to reinstate a null and void license. Commissioner Beals seconded the motion. The motion carried unanimously.

2. The Commission addressed correspondence from Mr. Graham Ginsberg regarding advertisements using the term "Private Beaches". Commissioner McDonell stated that this issue is an esoteric distinction that the Department could not begin to enforce. FREC Counsel Edwards stated that upon approval of the Commission she would provide a letter thanking Mr. Graham for expressing his concerns. Commissioner McDonell moved to accept the counsel's suggestion. Commissioner Hornsleth seconded the motion. The motion carried unanimously.

## Ratification of Suspended Licenses

Chief Attorney Watkins requested that the Commission ratify the reinstatements of Jack W. Allen, Jason Jakaitis, Vivian Vega, David J. Virtuoso and First Equity VM, Inc., who have met the requirements for reinstatement. The Commission ratified the actions unanimously.

## Escrow Disbursement Orders

Upon recommendation of the Legal Section, the Commission unanimously issued 115 Escrow Disbursement Orders and 1 Order. A list of the Orders is attached to the official minutes maintained at the Division headquarters.

Mr. Solla reported that he would be meeting with Mr. Randy Schwartz, counsel for the Florida Association of Realtors, on February 16, 2005, regarding the FAR 8 contract. Mr. Schwartz stated that FAR would not change the FAR contract based on the results of the meeting. Mr. Solla stated he does not expect to have immediate effect on the contract, but hopefully in the future that it will influence FAR and the people who make revisions for the FAR 9 contract.

### **Consent Agenda**

The Commission considered the Summary of Applicants Consent Agenda, requiring 30 applicants from the Consent Agenda to appear before it.

### **Approval of the Minutes**

The Commission unanimously approved the Minutes of the January 18 and 19, 2005, General meeting, as written.

The Chairman recessed the meeting at approximately 4:00 p.m., February 15, 2005.

### **February 16, 2005**

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 16<sup>th</sup> day of February, 2005.

The following Commission members were in attendance: Chairman Guy Sanchez, Jr.; Matey H. Veissi, Poul Hornsleth, Bob Beals, and Carlos L. Valdes. Commissioner Noel P. McDonell joined the meeting at 9:15 a.m. Vice-Chairman Nancy B. Hogan was excused. The Chairman declared a quorum present. Ms. Barbara Edwards appeared as counsel for the Commission.

Department and Division staff present at the meeting: Elizabeth P. Vieira, Director; Sharon Thayer, Deputy Director; Juana Watkins, Chief 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.

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

At approximately 8:30 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.

### **Chairman's Remarks**

Chairman Sanchez opened the floor to the Commissioners for any topics they wished to discuss. Commissioner McDonell stated that she received a facsimile from Secretary Carr and was concerned that she did not receive the underlying letter which the Chairman submitted initially. Commissioner McDonell stated that if there are official letters being sent on behalf of the Commission, then a copy should be provided to all members of the Commission, adding that this has been a repeated problem for her. Chairman Sanchez stated that at the last meeting he

had addressed several issues he wished to send to the Governor's Office, and out of courtesy inquired if any other Commissioners had issues they wanted to address, which he incorporated in the letter. Commissioner McDonell stated she understands the Chairman's point, but her point is that if the Chairman sends something representing members of the Commission, it is imperative, under Government-in-the-Sunshine Law, that all Commissioners receive a copy. Commissioner Valdes suggested that our staff send a copy to everyone. Commissioner McDonell stated that the letter sent to Secretary Carr appears to address the Chairman's issues as well as issues of other Commissioners. Commissioner McDonell further stated that concerns or issues, whether the Commission as a whole takes a position, or only if some of the Commissioners individually have an issue with the Department, should be represented accordingly. Chairman Sanchez stated that from this point forward the Commissioners should contact the Director personally to address any concerns or issues they may have.

Commissioner Hornsleth stated that he would like details of Secretary Carr's response, specifically as to the issue of Secretary Carr requesting Chairman Sanchez meet with her. Chairman Sanchez explained that he reports to a supervisor and must use his vacation time to attend the FREC meetings, explaining further that Secretary Carr had called him and asked him to fly to Tallahassee to meet with her. Chairman Sanchez explained to Acting Deputy Secretary Murphy that his supervisor would not allow him to leave his job, and appreciates there are issues to address and explained that he would feel more comfortable addressing issues at the Commission meeting. Commissioner Hornsleth inquired if Chairman Sanchez meant that he wanted Secretary Carr to address the issues with the Commissioners at a FREC meeting. Chairman Sanchez responded affirmatively. Commissioner Hornsleth also asked Chairman Sanchez whether the issues contained in the letter have been resolved to his satisfaction. Chairman Sanchez responded that some of the issues have been resolved.

Commissioner Valdes requested to readdress privatization explaining that the Commission took action to look further into the pros and the cons of privatizing some of the services the Division performs, specifically the prosecution of cases. Commissioner Valdes stated that the Commission understands the Department's position in this matter and that the Commission and Department do not agree on the issue. Commissioner Valdes further stated that the Commission voted to use some of the Foundation dollars to assist in finding a venue for issues of privatization, specifically, can it be done. Commissioner Valdes explained that the Commission is not necessarily saying that it wants to privatize, but to continue looking at privatizing some services the Division provides. Commissioner Valdes inquired whether the law allows the Commission to use some of its monies from the Education Foundation to hire someone to help the Commission with this request. Commissioner Valdes further stated that the Department hires lobbyists to advocate various issues on its behalf, he feels if permissible, the Commission could use some of the money it manages to hire an advocate to tell its side of the story; otherwise the Commission's position is mute.

Ms. Barbara Edwards stated it is her understanding that her role to the Commission is as a whole, and not to the interest of any one Commissioner. Ms. Edwards asked the Commission to clearly state the request. Commissioner McDonell clarified that the Commission is requesting FREC counsel ascertain all the ways, within the governing statute, the Commission can use the educational monies to endorse privatization. Commissioner McDonell stated that she is not endorsing this. Ms. Edwards inquired if the Commission desires to use this money to hire lobbyists. Commissioner Valdes responded affirmatively, but if the term lobbyist is not the appropriate political word to use then the Commission will not use it. Commissioner Valdes explained that the Commission desires to educate the Legislature because the Commission

cannot do anything without the Legislature's approval. Commissioner Valdes provided Ms. Edwards a brief history of events regarding this issue.

Commissioner Valdes moved that FREC counsel assist in getting Commission access to the services of a professional advocate to put together a package of the Commission's request to present to the Legislature. Commissioner Veissi seconded the motion. The motion carried 4 to 2.

**Adjournment**

There being no further business and no objection, the Chairman adjourned the meeting at approximately 1:30 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for March 15 and 16, 2005, at the Division Headquarters in Orlando, Florida.

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Guy Sanchez, Jr.  
Chairman

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Elizabeth P. Vieira  
Director, Real Estate Division

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