



**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
March 15 and 16, 2005
Meeting**

Acting Chairman Nancy B. Hogan called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at Orlando, Florida, on this 15th day of March, 2005.

The Acting Chairman introduced the members of the Commission and its legal counsel. The following Commission members were in attendance: Nancy B. Hogan, Acting Chairman; Matey Veissi, Poul Hornsleth, Carlos L. Valdes, Bob Beals and Noel McDonell. Chairman Guy Sanchez, Jr. was excused. The Acting Chairman declared a quorum present. Ms. Barbara R. Edwards appeared as counsel for the Commission.

Division staff present at the meeting: 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 and Alfonso Santana, Prosecutors; Fred Clanton, Investigator Supervisor; Fred Seli, OPS Supervisor for Unlicensed Activity; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant; Nick Seamster, Regulatory Specialist II. American Court Reporting, Inc. (407-896-1813) provided court reporter services.

Approval of the Minutes

The Commission unanimously approved the Minutes of the February 15 and 16, 2005, General meeting, as amended.

Legal Matters

At approximately 8:40 a.m., the Commission took up the Legal Agenda, consisting of 39 items. The Commission heard 33 items, continued 4 and withdrew 2. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Commissioner Valdes inquired whether the electronic fingerprinting would decrease the number of cases wherein the applicant did not disclose criminal convictions on their application. Chief Attorney Watkins stated that as she understands the process, the report would be available within 72 hours and the Division would be able to retrieve that information much more quickly so that the Commission is in a better position to make an informed decision. Ms. Watkins further stated that the Division would then be able to use its resources prosecuting the more serious cases. Commissioner McDonell inquired as to how the electronic fingerprint would make a difference in prosecution as the records from the National Crime Information Center (NCIC) would be inadmissible as evidence and the Division would still have to obtain certified records. Ms. Watkins stated that the Department would be able to bring them before the Commission as a Summary of Applicants agenda item, and not as a prosecution case for failing to disclose. Ms. Watkins stated that the Department would be able to use the reports as

a screening mechanism to determine whether we need additional information and would take the applicant out of the ninety-day loop.

Commissioner Hogan stated that she has concerns that the Commission can not consider the charges that came up on the FDLE report that the applicant did not disclose because the records are not available. Ms. Watkins stated that by getting the NCIC and FCIC up front, even though we would not have conclusive evidence, we now have the reason to ask the question and that puts the burden on the applicant to prove that they can not get the information. Commissioner Valdes stated that is why he recommended changing the rule to require the applicant to submit the FDLE report with the application. Commissioner Beals explained that he has researched this issue extensively and the unequivocal answer is there is no statutory authority. Commissioner Beals explained further that if we violate search and seizure laws the evidence is inadmissible, even though the criminal has the evidence in hand. Commissioner Beals stated that the Commission is bound by what the prosecutor charges and should not even be talking about what is in the investigative report if it is not referenced in the Administrative Complaint. Commissioner McDonell elaborated that the NCIC and FCIC is inadmissible because it is not proof that the applicant has been convicted; anyone who gets pulled over and uses an alias, the charge is made against the individual under the alias; it is simply a tool that law enforcement uses to ascertain whether or not someone may have a criminal conviction.

Ratification of Suspended Licenses

Chief Attorney Watkins requested that the Commission ratify the reinstatements of Willie Bryant, Leroy McKnight, Jr. and Esrom Williams who have met the requirements for reinstatement. The Commission ratified the actions unanimously.

Commission Business

Report Regarding Financial Assistance to Research Privatization

Ms. Barbara Edwards presented her report regarding the Commission's request to research the legality of acquiring financial assistance from the Education and Research Foundation fund to educate the Legislature about the advantages of privatization. Ms. Edwards stated that in her opinion the statutes do not provide that the Commission may allocate funds from the Education and Research Foundation fund to hire assistance to educate the Legislature as it is considered political advocacy. Ms. Edwards responded to various questions from the Commission. Commissioner Beals complimented Ms. Edwards' diligent efforts in researching this issue and agrees with her findings. Commissioner Veissi inquired whether the Commission could get financial assistance from its budget to fund this request. Ms. Edwards stated that the Commission would have to obtain Department approval.

Commissioner Veissi moved that the Director ask the Department to allocate \$40,000 to educate the Legislature regarding self-regulation. Commissioner Valdes seconded the motion for discussion. Commissioner Hornsleth inquired as to what agenda is being pushed, who would be presenting it, what would be said and exactly how the money would be used. Commissioner Valdes stated that agenda would be for political advocacy and the money would be used to hire a lobbyist to deliver a message to the Legislature. Commissioner Valdes further stated that there have been major concerns for many years so when the legislators make decisions in how to allocate the budget, they would understand the Commission's position. Acting Chairman Hogan stated that it is her understanding that the Commission has input on the

budget, however, the Commission has not been afforded the opportunity to provide input and expressed concerns that the Division is unable to effectively protect the public due to inadequate staffing. Commissioner McDonell stated that this request should come directly from the Commission (Chairman and Vice-Chairman) not the Director, as it is the Commission's job to inform Secretary Carr and send a copy to the Governor. Commissioner McDonell recommended that the letter indicate that a majority of the Commissioners are requesting specific line item budget monies to educate the Legislature regarding the benefits of either privatization or self-regulation of the real estate industry. Commissioner McDonell stated that she is not in support of this movement at all and does not believe that this profession has the infrastructure to self-regulate. Mr. Randy Schwartz, Counsel to the Florida Association of Realtors (FAR), stated that this is not part of FAR's legislative package. Commissioner Veissi stated that the Commission is just exploring alternative solutions to resolve problems that have been in existence for a long time. Ms. Edwards stated that she does not believe as a body the Commission is in agreement on what it wants to do. Commissioner Valdes stated that the Commissioners have studied the issue, and upon receiving the report, decided that they want to move the concept forward, which includes visiting with the policymakers and explaining the ongoing problems. Commissioner Veissi stated that the majority of the Commission is trying to create a process that gives it the tools to sit before the Legislature and provide information that backs up this problem. Commissioner Veissi moved to withdraw her motion and table this discussion until next month. Commissioner Valdes seconded the motion. The motion carried. Commissioner Valdes suggested that FREC Counsel draft a letter requesting funding to send to Secretary Carr, for the Commission to review and approve at the next FREC meeting. Ms. Edwards requested clarification of the Commission's request. Commissioner Valdes stated that the Commission is trying to build a process that gives it the tools to be able to present the Commission's issues, with supporting information, before the Legislature so that when it is allocating funds it has a clear picture of the Commission's concerns.

Commissioner Hornsleth asked for the floor to discuss a couple of issues, the first involving the Sunshine Law. Commissioner Hornsleth inquired if the Commissioners are allowed to discuss issues outside the public meetings. Ms. Edwards stated that the Commission is prohibited from discussing anything outside the public meeting. Commissioner Hornsleth inquired if he was permitted to speak as an individual with the Florida Association of Realtors, with the Director of the Division or with Secretary Carr one-on-one. Ms. Edwards responded that it was permissible provided that it was made abundantly clear that he was not speaking on behalf of the Commission. Ms. Edwards suggested in lieu of contacting Secretary Carr directly that he ask the Director to forward any requests he may have or that he ask the Chairman to submit a letter to the Secretary. Ms. Edwards also suggested that the Chairman write a letter to the legislative committees. Ms. Edwards further suggested that the Commission try to lobby FAR for support because it is her experience that all other Boards who have self-regulated or privatized has done it through the lobbying efforts of the professional associations. Commissioner Valdes stated that as past Chairman of the FREC, he has put FAR on notice and has not received any support. Commissioner Valdes further stated that it is his assumption that FAR may provide support once the Commission provides the leadership, which is what the Commission is trying to do. Commissioner Hornsleth stated that he would like the opportunity to speak as an individual with FAR.

Mr. Ray Glynn, a Realtor member of FAR, stated that he does not represent FAR, however, he has 400 FAR members working for him and stated that their concern is that they do not know exactly what the Commission is proposing. Mr. Glynn further stated that he has seen the report and it sounds more like a mission statement an not a detailed report of how self-regulation would work, who is going to run it, how it is going to be run and who would be hired.

Mr. Glynn added that the licensees in the field want specific details. Mr. Glynn also stated that he has concerns with the Commission going to the Legislature and stating that the industry has numerous problems but does not know how to resolve them and then ask the Legislature, who does not understand this industry to fix them without providing a complete package for it to adopt. Commissioner Valdes reiterated that the Commission's intent is to inform the Legislature of the problems and why they are looking for better ways to resolve the issues so to get legislative authority to fix the problems.

Commissioner McDonell inquired of Ms. Edwards what statutory authority enables the Commission to take the position to lobby the Legislature regarding privatization or deregulation. Ms. Edwards stated that the Commission has the same authority as other boards have, which requires budget approval, as the Commission does not have the authority to spend the money it generates. Acting Chairman Hogan clarified that Commissioner McDonell is asking whether the Commission has the authority, within the law, to ask so the Commission may progress forward with this issue. Acting Chairman Hogan suggested tabling this discussion to next month to allow Ms. Edwards time to research this issue further, since Ms. Edwards just recently became counsel to the Commission and asked the Commissioners to provide specific questions in order to move forward with some direction. Commissioner Valdes suggested that counsel draft a letter, for their approval, to send to Secretary Carr informing her of the Commission's intent of making this budgetary request. The Commission tabled this issue.

Commissioner Valdes stated that at a previous meeting, Chairman Sanchez said that he was going to meet with the Governor to explain some of the frustrations the Commissioners have and was asked by Director Vieira to give her the opportunity to research these issues. Commissioner McDonell stated that Secretary Carr made two separate requests for Chairman Sanchez to meet with her in Tallahassee to discuss the issues and he declined and added that other members of the Commission were not informed that this opportunity was offered, when in fact the Commission can appoint anyone to represent the position of the Commission. Commissioner Valdes stated that Commissioner McDonell misunderstood his comment. Commissioner Valdes stated that it was his understanding from the last conversation he had with Chairman Sanchez that he intends to go to the Governor's office to present these issues of concerns. Commissioner McDonell stated that the rest of the Commission was unaware of this and that it is inappropriate for a member of the Commission to go to the Governor over Secretary Carr's head, without first discussing it with Secretary Carr. Commissioner Veissi stated that Chairman Sanchez is not present to defend himself. Ms. Edwards asked Commissioner McDonell to reiterate her initial question. Commissioner McDonell stated that the Commission must have a statutory basis to question the Secretary to justify self-regulation and must have authority to take a position on self-regulation before they can ask for the monies to support it and inquired as to what is the statutory authority to take a position on self-regulation.

Acting Chairman Hogan stated that in all fairness to FAR, it is her understating from reading the copy of the letter sent to former President Grooms, that several issues were brought up, and perhaps the Commission could politely ask FAR to bring that to the legislative committee. Mr. Dick Fryer, current member of FAR's Legislative Committee, stated that FAR is working on issues that Chairman Sanchez has as an individual, by forming a subcommittee chaired by Gina Stuart, former FREC Chairman, to specifically address issues raised by the FREC members that were listed in Chairman Sanchez's letter to the Secretary. Commissioner McDonell stated that she did not receive the letter being referenced and it is inappropriate for the Commission to be voting on matters when the entire Commission is not privy to all the information. Ms. Edwards stated that she would have expected the Commission to know that the Chairman was meeting with FAR.

Commissioner Valdes asked that he could speak with the Director of the Division of Real Estate but is not permitted to speak to another Commissioner. Ms. Edwards responded that a Commissioner may speak with the Division Director but not to any other Commissioner outside the public meeting. Ms. Edwards further stated that any issues discussed on behalf of the Commission outside of a public meeting without the consent of the Commission, would be a violation of the Sunshine Law. Ms. Edwards cautioned the members of the Commission to follow the provisions as set forth in the Sunshine Law. Commissioner McDonell stated that the issue is that two Commissioners knowing that one Commissioner is acting in a manner unbeknownst to the other Commissioners. Ms. Edwards added that there should be no discussion between any two Commission members about anything that conceivably could be on the agenda for the Commission to discuss. Commissioner Valdes inquired as to whom the Commissioners report. Ms. Edwards stated that in accordance with Section 455.09, F.S., the Commissioners do not report to the Governor, it provides that the Commission members are accountable to the Governor for their actions. The Commission tabled this issue for discussion next month.

Report regarding Real Estate Scholarship Disbursements

Ms. Sandra Hartley, Executive Director of Communities In Schools of Putnam County, Inc. (CISPCI), provided a brief explanation of the monthly report. Ms. Hartley further stated that since this report, CISPCI has received three additional requests. Ms. Hartley stated that there have been disbursements in the amount of approximately \$26,000 to date and they are continuing to receive new candidates. Ms. Hartley inquired about the recent contract the Department provided which was amended to reflect a cap of \$75,000 total. Acting Chairman Hogan inquired as to why the difference is \$375,000. Ms. Hartley stated that at the last meeting the discussion was that CISPCI would not draw down the last \$200,000 payment if they have not disbursed the initial \$200,000. Ms. Hartley explained that the amended contract provides for the scholarship disbursement not to exceed \$75,000 and that they would return \$125,000 back to the Commission by April 1, 2005. Ms. Hartley stated that she just needs direction as to what to tell the students. Ms. Watkins explained that last month the Commission requested to amend the contract to release \$40,000 of the scholarship money to pursue obtaining assistance for self-regulation and after speaking with Ms. Hartley, proposed amending the contract to reflect \$200,000. Commissioner Valdes stated that in light of the opinion of Ms. Edwards stating that the Commission could not use the funds in the manner it requested, and in light of receiving additional candidates, he suggested that the contract not be amended. Ms. Watkins explained that the contract would have to be amended to put the funds back into the Education and Research Foundation or the unused funds would be in limbo. Commissioner Valdes recommended that the Commission revisit this issue at the end of this fiscal year to see where things are and requested that Ms. Hartley not sign the addendum to the contract.

Unlicensed Activity Monthly Report

Mr. Fred Seli provided a brief summary of the report pointing out that nine citations were issued within the last two weeks. Mr. Fred Seli provided a summary for the month of February of enforcement activities regarding unlicensed real estate activity. Mr. Seli addressed various questions from the Commissioners. Ms. Kathleen Koeberich stated that the Division is sending all the inexperienced unlicensed activity investigators to Counsel Licensure Enforcement and Regulation (CLEAR) training which is an extensive training of investigative techniques, interviewing, hearings, etc.

Ms. Watkins updated the Commission as to the status of the rule amendment increasing the maximum penalty for citations to \$2,500 reporting that the rule has been filed with Joint Administrative Procedures Committee.

Ms. Koeberich provided a report of research she conducted regarding advertising in Homes and Land throughout the state. Commissioner Valdes stated that he would prefer to address this next month when she has completed her research and they can review the entire package in advance. The Commission thanked Ms. Koeberich for her report.

Service Operations Monthly Report

Ms. Thayer provided a brief explanation of the report provided by Service Operations.

Escrow Disbursement Orders

Upon recommendation of the Legal Section, the Commission unanimously issued 151 Escrow Disbursement Orders and 3 Orders. Commissioner Hornsleth inquired about several Orders to which Mr. Solla responded. A list of the Orders is attached to the official minutes maintained at the Division headquarters.

Mr. Solla stated that he met with Mr. Schwartz regarding FAR 8. Mr. Solla reported that as a result of this meeting Mr. Schwartz represented that the next time FAR updates the contract it would consider the issues Mr. Solla raised.

New Business

Rule Discussion

1. Rule 61J2-24.001 - Disciplinary Guidelines

Ms. Edwards invited comments from the audience. Mr. Randy Schwartz, Counsel to the Florida Association of Realtors (FAR), stated that the Commission asked him to solicit opinions from people in the industry to ascertain the definition of "timely manner". Mr. Schwartz stated that the general consensus that he received was 5 business days from a receipt of a request. Commissioner Veissi moved to change the language relating to "timely manner to five business days". Commissioner Valdes seconded the motion. The motion carried unanimously.

Commissioner Veissi moved to change 465 to 475; \$5,000 to \$1,000; and make any other necessary technical changes. Commissioner Valdes seconded the motion. The motion carried unanimously.

2. Rule 61J2-24.002 - Citation Authority

Commissioner Veissi moved to amend subsection (ff) to delete "...and the 4 hour instructional Program for Broker Management of Escrow Accounts to be completed within 6 months of the citation becoming a final order." Commissioner McDonell seconded the motion. The motion carried unanimously.

Commissioner Veissi moved to delete subsection (ii). Commissioner McDonell seconded the motion. The motion carried unanimously.

Commissioner Veissi moved to amend subsection (jj) to add "(2)" before "failed to register a school location." Commissioner Beals seconded the motion. The motion carried unanimously.

Commissioner Veissi moved to strike subsection (mm). Commissioner Valdes seconded. The motion carried unanimously.

The Commission discussed amending subsection (nn), however after deliberation took no action.

Commissioner Veissi moved to amend subsection (r) to increase the fine from "\$100" to "\$500" and delete subsections (oo), (pp) and (rr). Commissioner McDonell seconded. The motion carried unanimously.

Correspondence

1. Request from Mr. Paul A. Willax to Register as a P.L.

Commissioner McDonell moved that FREC Counsel draft a letter stating that the Commission does not have the statutory authority to grant his request. Commissioner Hornsleth seconded the motion. The motion carried unanimously.

Consent agenda

The Commission considered the Summary of Applicants Consent Agenda, requiring 16 applicants from the Consent Agenda to appear before it.

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

March 15, 2005

Acting Chairman Nancy B. Hogan 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 March, 2005.

The following Commission members were in attendance: Acting Chairman Nancy B. Hogan; Matey H. Veissi, Poul Hornsleth, Carlos L. Valdes, Noel McDonell and Bob Beals. Chairman Guy Sanchez, Jr. was excused. The Acting Chairman declared a quorum present. Ms. Barbara R. Edwards appeared as counsel for the Commission.

Division staff present at the meeting: Elizabeth P. Vieira, Director; Sharon Thayer, Deputy Director; Juana C. 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; Nicholas Seamster, Regulatory Specialist II. American Court Reporting (407-896-1813) provided court reporter services.

Summary of Applicants- Bureau of Licensing

At approximately 8:40 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 to the official minutes maintained at the Division of Real Estate headquarters.

Commissioner McDonell inquired as to the necessity of the Commission to state specific reasons why an applicant was denied. Commissioner McDonell stated that Mr. Rimes felt that former counsel was too vague and he listed the convictions. Ms. Edwards responded that she must list reasons for denial for purposes of going to a formal hearing.

Commissioners' Comments

Commissioner Beals stated that yesterday the Commission had a discussion regarding privatization and that he was not afforded the opportunity to participate because the motion was withdrawn. Commissioner Beals stated that he wanted to take issue with Commissioner Valdes' characterization that all the Commission supported privatization, explaining that his recollection of the motion was that it was the consensus of the Commission is that it would continue to pursue the issue. Commissioner Beals stated that he felt that was slightly different than the impression given yesterday implying that the Commission, as a whole, supported privatization. Commissioner Beals stated that as a consumer member for the last year and a half he has spoken about five minutes but has listened for hours and hours, and he feels the consensus of the Commission is that there is an implicit conspiracy between the Department and Division to ignore and deprive this Commission of information. Commissioner Beals added that the characterizations and criticisms, at times berating, of the Division seems to be completely out of place and completely wrong. Commissioner Beals stated that he does not see a conspiracy, and feels that these people are here to help the Commission in every way possible, which they do not get the credit for. Commissioner Beals stated that we are in a political world and here is the political reality, his first and foremost focus when he was appointed to the Commission was the budget because everyone talked about money. Commissioner Beals added that the budget is what it is; nothing is going to change and that is the political reality, even if we go before the Legislature and ask it to let us keep all the money we collect. Commissioner Beals further stated that in his opinion this implicit conspiracy is reinforced by Commissioner Sanchez's letter that was sent to the Director dated December 28, 2004, in part read, "... the Commission at times feels to be ignored.", adding that he was not consulted for any input regarding any complaints before this letter went out. Commissioner Beals expressed his regret of the fact that the letter appeared to be the opinion of the entire Commission when in fact no one was consulted prior to it being sent and at least one Commissioner never received a copy of it after it was sent. Commissioner Beals stated that yesterday the motion that was withdrawn had no single supporting voice that was the same and FREC counsel even had to ask for specific direction and he felt that the more appropriate response should have been that this is nonsense. Commissioner Beals expressed that he does not think there is a single problem that can not be handled internally and that privatization would do more harm than good. Commissioner Beals stated that the reason he is making this statement is two-fold as he wants Chairman Sanchez and the two new Commissioners to read the minutes so that they know exactly where he stands on the issue of privatization and where his vote is going to be when the time comes and where his vote is going to be when this motion that made no sense comes up again.

Commissioner Beals wanted to recognize Commissioner Valdes and Commissioner McDonell at their last meeting for their efforts, wonderful contribution and tireless work on behalf of this Commission stating that all the Commissioners know how difficult it is to make the time and effort to be here, be prepared and deal with what are very difficult issues. Commissioner Beals moved that the Commission recognize and commend Commissioner Valdes and Commissioner McDonell for their sincerity, commitment and passion in serving on this

Commission. Commissioner Hornsleth seconded the motion. The motion carried overwhelmingly.

Commissioner McDonell requested to make a few parting comments. Commissioner McDonell stated that when she joined this Commission, Commissioner Viessi was kind enough to take her under wing and she found not a sense of obligation but a sense of pure purpose on the Florida Real Estate Commission. Commissioner McDonell apologized for any toes she may have stepped on, but does not apologize for protecting the interest of the State of Florida and consumers. Commissioner McDonell asked that Commissioner James Varnado, who is replacing her, have the same benefit and courtesy that the Commissioners, Attorney General's office and Department have shown her. Finally, Commissioner McDonell wanted to extend her gratitude to her fellow Commissioners for life long friendships and substantial affects that some of them have had on her life, and she leaves this office with no regrets but a little sadness. Commissioner McDonell also thanked Governor Bush because without his support and endorsement she would not have had this opportunity. Acting Chairman Hogan thanked Commissioner McDonell and stated that her knowledge of the law would be missed.

Commissioner Valdes stated that the Governor has given him and others the opportunity to serve the state and that for him it was a special privilege because he has held a real estate license for thirty years. Commissioner Valdes stated that during the past four years he has thanked the staff many times for their hard work. Commissioner Valdes further stated that as Chairman he pushed for better service and to have the tools to protect the public. Commissioner Valdes further stated that he has enjoyed serving on the Commission and looks forward to continuing in the real estate business, adding that hopefully in the future we can look back and say to ourselves that because of the little input the Commission had collectively the profession is better and the public is served with higher standards. Commissioner Valdes thanked the other members for serving with him and thanked the staff for all that they do.

Adjournment

There being no further business and no objection, the Acting Chairman adjourned the meeting at approximately 1:30 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for April 19 and 20, 2005, at the Division Headquarters in Orlando, Florida.

Nancy B. Hogan
Acting Chairman

Elizabeth P. Vieira
Division Director

Respectfully submitted,

Lori L. Crawford