



**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
September 20 and 21, 2005
Meeting
(as amended)**

Chairman Nancy B. Hogan called the meeting of the Florida Real Estate Commission to order, at approximately 8:35 a.m., at Orlando, Florida, on this 20th day of September, 2005.

The Chairman introduced the members of the Commission and its legal counsel. The following Commission members were in attendance: Chairman Nancy B. Hogan; Vice-Chairman S. W. Ellis; Matey H. Veissi, Bob Beals; James D. Varnado. Commissioner Poul Hornsleth was excused. The Chairman declared a quorum present. Ms. Barbara R. Edwards appeared as counsel for the Commission.

Department and Division staff present at the meeting: Simone Marstiller, Secretary; James Blount, Chief of Staff; Andy Edwards, Deputy Secretary; Michael E. Murphy, Acting Division Director; Sharon Thayer, Deputy Director; Bennett M. Miller, Chief Attorney; Kathleen Koeberich, Bureau Chief of Enforcement; James P. Harwood, Alpheus C. Parsons, Alfonso Santana and Joe Solla, Senior Attorneys; David Guerdan and Fred Clanton, Investigator Supervisors; Fred Seli, OPS Supervisor for Unlicensed Activity; JoEllen Peacock, Education Coordinator; Dan Combs, Examination Development Specialist; Lori Crawford, Regulatory Supervisor/Consultant; Jeanne Adkinson, Regulatory Specialist III; Laurie A. Roessler-Solis, Regulatory Specialist II; Jan Dodd, Regulatory Specialist II; and American Court Reporting, Inc. (407-896-1813) provided court reporter services.

Chairman Hogan welcomed newly appointed Secretary Simone Marstiller. Secretary Marstiller thanked Ms. Hogan and stated that it was her pleasure to attend the meeting. Secretary Marstiller further stated that she is in her sixth week as Secretary of the Department of Business and Professional Regulation and that she is looking forward serving this Department. Secretary Marstiller assured the FREC Members that she will be accessible to the Commissioners for any information they need and any questions or concerns they may have. Secretary Marstiller stated that the Division of Real Estate is here to support the Commission as we have a growing responsibility to protect the public and to regulate reasonably and that it is important to her and the Governor that we all work together as a team. Secretary Marstiller added that she believes over the last few months the Division has come along way. Secretary Marstiller assured the Commission that she will do her best to continue to work on issues that have been brought to her attention and that she is committed to moving forward. Chairman Hogan thanked Secretary Marstiller for her comments and stated that the Commissioners look forward to moving ahead in the right direction to protect the public.

Approval of the Minutes

The Commission unanimously approved the Minutes of the August 15, 2005, Biennial Rule Review, as written.

The Commission unanimously approved the Minutes of the August 16 and 17, 2005, General meeting, as written.

Legal Matters

At approximately 8:45 a.m., the Commission took up the Legal Agenda, consisting of 31 items. The Commission heard 27 items 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

Division Follow-Up

Unlicensed Activity Report

OPS Supervisor, Fred Seli, and Bureau Chief of Enforcement, Kathleen Koeberich, presented the monthly report regarding unlicensed activity. Mr. Seli addressed several questions from the Commissioners regarding the report, including the procedures of the investigation of unlicensed activity.

Ms. Koeberich added that the contracts for the ads are finished and should be published in the near future.

New Business

Petition for Declaratory Statement Regarding 475.01(1)(a), Florida Statutes, received from Susan A. Abramson, Esquire on behalf of Marci Metzger and Joseph Bernard

Counsel Edwards asked the Commission to address the Petition for Declaratory Statement regarding Section 475.01(1)(a), Florida Statutes. Mr. Timothy A. Smith, Attorney for Petitioners, presented his client's position providing a brief summary of the Petition. Ms. Edwards provided guidance to the Commission. Vice-Chairman Ellis moved to deny the Declaratory Statement. Commissioner Varnado seconded the motion. Motion carried.

Escrow Disbursement Orders

Upon recommendation of the Legal Section, the Commission unanimously issued 73 Escrow Disbursement Orders and 2 Orders. A list of the Orders is attached to the official minutes.

Summary of Applicants

At approximately 3:40 p.m. Jan Dodd, 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 part of these minutes.

Consent Agenda

The Commission considered 282 applicants from the Summary of Applicants Consent Agenda, requiring 19 applicants from the Consent Agenda to appear before it at a future meeting.

Division Follow-Up continued

State Attorney's Office - FREC Inquiry of Prosecutorial Guidelines

Counsel Edwards informed the Commission that there are no specific guidelines used and every office has discretion to bring a case forward. She added that the State Attorney's Office base their decision on what is going on in their jurisdiction at any particular time. Ms. Edwards recommended that the best thing investigators can do is develop relationships with the various State Attorney's offices to persuade them to act on unlicensed activity complaints. Chairman Hogan expressed concerns regarding this issue.

Commissioner Veissi inquired whether the Department could impose discipline administratively. Counsel Edwards responded that she would have to defer to the Department. Additional discussion held on measures being taken with unlicensed activity. Commissioner Veissi moved that the Department look into prosecuting individuals for unlicensed activity and imposing administrative discipline. Commissioner Varnado seconded the motion. Motion carried. Commissioner Beals stated that perhaps this type of request would require a cost analysis to determine the funds needed and from where the money is allocated. Commissioner Veissi stated that she would include in her motion to obtain an accounting report of the Unlicensed Activity Fund and estimate how much money is needed or available to prosecute unlicensed activity.

Acting Director Murphy addressed the Commissioner's various questions regarding the procedures and budget for unlicensed activity. Mr. Murphy stated that this is the type of input the Department is looking for from the Commission in order to do the analysis Commissioner Beals suggests to submit a request to the Legislature to allocate additional money and authority for each ensuing fiscal year. Chairman Hogan stated that she believes the general licensee population is concerned that this Department should be the flagship because of the amount of money that comes into real estate and it is not. Mr. Murphy stated that the Secretary agrees that this Division is a flagship and that the Department is committed in making this a significant priority and is moving forward to have additional spending authority.

Acting Director Murphy further stated that the Secretary and the Department is committed to finding the necessary funding to fill all vacant positions in the Division and has committed to put forward a request for ten additional positions to the Legislation for consideration, based upon the recent analysis, which would increase the spending authority.

Chief Attorney Miller provided a brief report of the procedures set in place to discipline unlicensed activity.

What Constitutes Unlicensed Activity

Counsel Edwards addressed the Commission regarding the issue of identifying what activities constitute unlicensed activity. Chairman Hogan mentioned that she was under the impression that this report would be submitted to the Commission in writing. Ms. Edwards proceeded with a brief explanation of what constitutes unlicensed activity and the different license statuses. Ms. Edwards stated that she would provide a written report on this subject, as requested by Chairman Hogan. Chairman Hogan suggested the Division's website display this information so that everyone understands what constitutes unlicensed activity.

Budget Committee Report

Commissioner Varnado reported that draft copies of the Budget and Finance reports were disbursed at the Budget Committee meeting, which the Department pointed out. Mr. Murphy confirmed that those documents were still in draft due to the fact that the reports were being repopulated. Chairman Hogan deferred this discussion to next month's meeting so that the Commissioners would have the opportunity to review the reports. Mr. Murphy stated that the Commission would be provided with a final version of the reports for the next meeting.

Revised Draft of Commission Meeting Conduct Guidelines

Chief Attorney Miller addressed the Commission to inform that after much research, he believes that it is in the best interest of the Commission to consult with their counsel on this matter. Chairman Hogan added that she would like to take this under advisement for discussion next month.

Report on the Education Foundation Scholarship Program

Deputy Director Sharon Thayer reported that the contracts are in the signature process and should be in place by the next FREC meeting. Ms. Thayer also reported that she spoke with Ms. Hartley regarding FIU and that Ms. Hartley was anxious to speak to the contact person for FIU.

New Business continued

Communications/Sunshine Regarding E-mails

Counsel Edwards stated that when the Sunshine Law came into effect communication was more limited than it is today and wanted to specifically point out what communications are governed by the Sunshine Law. Ms. Edwards stated that any communication regarding any topics or issues that may be addressed at the meeting should not be discussed with other Commissioners via e-mail, letter, fax, cell phone or land line and suggested to the Commissioners that when there is a situation or there is knowledge of a situation that could possibly arise, they call her, not a fellow Commissioner.

Chairman Hogan asked Counsel Edwards who should Commissioners contact when they want to place something on the agenda. Mr. Murphy stated that they may contact Lori Crawford and she will communicate the matter to him and if appropriate will forward it to FREC Counsel. Mr. Murphy added that if they preferred, they could contact him directly.

Commissioner Veissi addressed Counsel Edwards to inquire as to who actually should set up the monthly agenda. Ms. Edwards stated that in her experience the executive director sets the agenda. Ms. Edwards replied that she has not found anything in the statutes which specifies that is up to the Division or the Commission.

Discussion of Applicant Reconsideration Guidelines, Amending Application Proceedings and Tie Vote

Chairman Hogan addressed the Commission in regards to implementing guidelines for what should constitute reconsiderations and what should be allowed to be placed on the agenda.

Outreach to Hurricane Katrina Victims

Counsel Edwards addressed the Commission on this matter and stated that she received communication inquiring whether individuals licensed in Mississippi and Alabama, who were displaced by the hurricane, living in Florida, could still practice real estate in the state they are licensed. Ms Edwards stated that she responded that it would depend upon the laws in Mississippi and Alabama, however there is nothing in the Florida Real Estate License Law that would preclude them from living in Florida and practicing real estate in another state if duly licensed in that state. Ms. Edwards further stated that in terms of mutual recognition, someone would have to make an application for mutual recognition under normal procedures and the Department would recognize their license.

The Chairman recessed the meeting at approximately 8:15 p.m., September 20, 2005.

September 21, 2005

Chairman Nancy B. Hogan reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:35 a.m., at Orlando, Florida, on this 21st day of September, 2005.

The following Commission members were in attendance: Chairman Nancy B. Hogan; Vice-Chairman S. W. Ellis; Matey H. Veissi; and James D. Varnado. Commissioners Poul Hornsleth and Bob Beals were excused. The Chairman declared a quorum present. Ms. Barbara R. Edwards appeared as counsel for the Commission.

Department and Division staff present at the meeting: Sharon Thayer, Deputy Director; Bennett M. Miller, Chief Attorney; Kathleen Koeberich, Bureau Chief of Enforcement; Racquel A. White, Senior Attorney; Lori Crawford, Regulatory Supervisor/Consultant; JoEllen Peacock, Education Coordinator; Jeannie Adkinson, Regulatory Specialist III; Laurie A. Roessler-Solis, Regulatory Specialist II; Jan Dodd, Regulatory Specialist II; and American Court Reporting (407-896-1813) provided court reporter services.

Summary of Applicants

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 hereto and made part of these minutes.

Other matters discussed

Chief Attorney Miller informed the Commission that he was unable to compile the information requested regarding unlicensed activity to provide to the Commission today. He added that he provide a written report as well as provide an oral report at the next meeting.

Division Follow-Up Continued

Tie Vote Regarding Summary of Applicants

Chairman Hogan asked Chief Attorney Miller to provide guidance as to what should be done when there is a tie vote. Mr. Miller cited to Section 120.60(1), *Florida Statutes* for clarification in how to proceed in this situation and explained that this section provides for a

default provision and outlines the procedures the applicant must follow. Mr. Miller further stated that this is more of an undecided question. There was further discussion as to whether the Commission has the authority to interpret the law in this subject. Commissioner Veissi moved to defer this matter to the next month's agenda. The motion was not seconded. Mr. Miller suggested that the Commissioners defer to their counsel for the scope of their authority. Ms. Edwards stated that the Commission has the ability to interpret Chapter 475 and Florida Administrative Code Rules 61J2 and any portions of Chapter 455 which apply to the Commission. Mr. Miller added that he could assist Ms. Edwards in preparing something to this effect which could be addressed at the next meeting.

Chief Attorney Miller suggested it may be helpful to have an overview of Commission meeting procedures. Chairman Hogan agreed and stated this issue could be addressed at a future meeting.

Adjournment

There being no further business and no objection, the Chairman adjourned the meeting at approximately 1:00 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for October 18 and 19, 2005, at the Division Headquarters in Orlando, Florida.

Nancy B. Hogan
Chairman

Michael E. Murphy
Acting Director, Division of Real Estate

Respectfully submitted,

Laurie A. Roessler-Solis

Lori L. Crawford