

Charles W. Drago, Secretary

Charlie Crist, Governor

**Minutes of  
THE FLORIDA REAL ESTATE COMMISSION  
January 20 and 21, 2009  
General Meeting**

Chair Ralph McCoig called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., in Orlando, Florida, on this 20<sup>th</sup> day of January, 2009.

The following Commission members were in attendance: Chair Ralph McCoig, Vice-Chair Roger Enzor, Richard DeNapoli, S.W. Ellis, Poul Hornsleth, Michael Guju and John Ruffier. Tom Barnhart, Senior Assistant Attorney General, appeared as counsel for the Commission. Mr. Barnhart declared a quorum present.

Division staff present at the meeting: Thomas O'Bryant, Jr., Director and Executive Director; James P. Harwood, Chief Attorney; Jennifer Blakeman, Patrick Cunningham, Jason Holtz, Allison McDonald, Robert Minarcin and Joseph Solla, Senior Attorneys; Denise Johnson, OMC II; Zack Hayhurst, Regulatory Specialist III; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407) 896-1813 provided court reporter services.

**Approval of the Minutes**

The Commission unanimously approved the Minutes of the December 16 and 17, 2008, General Meeting, as amended.

**Unlicensed Activity Report**

Executive Director O'Bryant presented the Unlicensed Activity Report and the Enforcement Report. Commissioner Guju moved to accept the report. Vice-Chair Enzor seconded the motion. The motion carried unanimously.

**Presentation Regarding Broker Price Opinion**

Chair Joni Herndon, Florida Real Estate Appraisal Board, appeared before the FREC to discuss the intended use and purpose of "broker price opinions" (BPO). Senior Assistant Attorney General Mary Ellen Clark, Counsel to the Appraisal Board was also present. Chair Herndon wanted to ensure the FREC is aware of the potential legal issues BPOs may cause their members. One of her concerns is that the BPO form and the appraisal form are quite similar. Vice-Chair Enzor provided a copy of a form used by his office. He suggested making some clarifications to the form used by real estate licensees. Chair Herndon stated that the form was very similar to the ones she has seen. She suggested possible

continuing education opportunities related to the proper use of BPOs and that they may be beneficial to FREC members. Commissioner DeNapoli expressed that BPOs were a valuable means of income in today's real estate market and that he would not support doing away with them. Vice-Chair Enzor agreed with this assessment. Chair Herndon reiterated a number of times that she is not trying to argue against the use of BPO's by FREC members. Chair Herndon said her intention is to start the discussion now in an attempt to prevent future issues. Chair McCoig thanked Chair Herndon for her presentation. Chair Herndon addressed further questions and comments from the Commissioners.

### **Presentation Regarding Security Deposits for Renters**

Mr. Randy Schwartz, Counsel for the Florida Association of Realtors (FAR), and Mr. James R. Mitchell, Esquire appeared to present information relating to Section 83.49(d), Florida Statutes, Deposit Money or Advance Rent; Duty of Landlord and Tenant. Mr. Schwartz provided an overview and history of this section and the intention of the amendments made to it. Mr. Mitchell provided additional historical information related to this statute. Mr. Schwartz and Mr. Mitchell addressed questions from the Commissioners.

Senior attorney Joseph Solla added clarification as to the department's role regarding this statute.

Mr. Schwartz stated the FREC needs to come to a determination as to what type of relationship is being encountered; landlord/tenant or otherwise. Commissioner Hornsleth made a motion to receive "a memorandum to enter into lease, or similar document, signed by a prospective tenant or landlord or his/her representative is prima facia evidence of a landlord/tenant relationship." Commissioner Guju assisted Commissioner Hornsleth with crafting the language of the motion.

Commissioner DeNapoli recommended a change be made to the law, and that this request be added to the next legislative agenda. Tom Barnhart suggested putting the language for discussion on the agenda for February 2009 FREC meeting. Commission requested James Mitchell and Randy Schwartz provide proposed language at the February meeting. Commissioner Hornsleth withdrew his motion.

### **Review and Consideration of the Real Estate Continuing Education Courses**

Director O'Bryant presented the following continuing education courses for the Commissions' consideration:

1. Tax Law Changes and Tax Planning
2. Tax Write-offs for the Self Employee
3. 2009 Tax Update
4. Protecting Homes From Termites, Water Damage, and Mold
5. Homeowner's Guide to Hurricane Protection & Insurance Discounts
6. Fundamentals of Florida Mortgage Brokerage
7. Borrow Smart

Commissioner Hornsleth moved to deny the continuing education courses listed above. Commissioner Ruffier seconded the motion. The motion carried unanimously.

### **Ratification of Suspended License**

Director O'Bryant requested the Commission ratify reinstatement of the real estate licenses of Anthony L. Arone and Wolfgang Tweraser who have met all requirements for reinstatement. The Commission ratified the action unanimously

### **Mortgage Fraud Task Force Proposal**

Director O'Bryant reported that the Office of General Counsel and the Miami-Dade Police Department are entering into a Memorandum of Understanding with absolute measurables in lieu of a contract. Director O'Bryant stated that upon completion, the Memorandum of Understanding will be presented to the Commission for its review and approval. The Commission requested that the measurables be reviewed by the Commission monthly. Director O'Bryant stated he will continue to keep the Commission updated regarding the measurables. Director O'Bryant reported that the Office of General Counsel informed him that they are addressing some legal issues to ensure the proposal meets all the requirements of Chapter 475, Florida Statutes. The Office of Financial Services, the Department and the Miami-Dade Police Department are working toward a resolution. The Office of Financial Services will not release the money until every aspect of the proposal meets statutory guidelines. Director O'Bryant will provide an update at the next general meeting.

### **Course Review**

Director O'Bryant reported that the policy and procedures have been evaluated and changed to promote efficiency, i.e. distribution of duties, additional employees. Renewals received by the BET are included on the next list of courses provided to the Division for review and the Division will turn them around within three days of receipt. Director O'Bryant addressed comments and questions from the Commissioners and members of the public.

### **Letter to State Attorney's Offices**

Director O'Bryant reported that the letter the Office of General Counsel drafted has been sent to the State Attorney's Offices. The Commission was provided with a copy of the letter and supporting documents sent to the State Attorney Offices. Commissioner Hornsleth requested that Mr. O'Bryant provide a follow-up report on how many of the State Attorney's Offices responded to the Department's letter. Director O'Bryant addressed comments and questions from the Commissioners. The Commission thanked Director O'Bryant for his efforts.

### **Service Window**

Director O'Bryant reported that there are walk-up service windows in Tallahassee and they have been there for quite some time. Commissioner Ellis stated that she has gone to the window to renew her license and pay her fees, but that they could not provide any further information regarding her license. Commissioner Hornsleth stated the issue is with individuals attempting to open a corporation. He expressed that these individuals should be able to speak with a DBPR employee and get assistance with filing the proper paperwork. Director O'Bryant addressed additional related questions from the Commissioners.

### Escrow Disbursement Orders

Senior Attorney Joe Solla presented 16 Escrow Disbursement Orders and 1 Order for the Commission's consideration. Upon recommendation of the Legal Section, the Commission issued 16 Escrow Disbursement Orders and 1 Order. Commissioner Hornsleth moved to approve the Legal Section recommendation. Vice-Chair Enzor seconded the motion. The motion carried unanimously.

### Recovery Fund Claims

**DBPR Case No. 2008054422 -- Elizabeth Simmonds v. Josephina Simon.** Mr. Solla stated that the claimant does not qualify to receive payment from the recovery fund and recommended the Commission deny the request. The Commission considered the facts and agreed that payment should be denied. Commissioner Hornsleth moved to deny payment from the recovery fund. Commissioner Guju seconded the motion. The motion carried unanimously.

**DBPR Case No. 2008025184 -- Peter O. Dalton v. DBPR.** Mr. Solla stated that the claimant qualifies to receive payment from the recovery fund and recommended the Commission approve the request. The Commission considered the facts and agreed that payment should be approved. Vice-Chair Enzor moved to approve payment. Commissioner Guju seconded the motion. The motion carried unanimously.

### Legal Docket

The Commission addressed the Legal Agenda, consisting of 50 docket items. The Commission considered 40 docket items and approved the continuance or withdrawal of 10 docket items.

The Chair adjourned the meeting at approximately 6:45 p.m.

### January 21, 2009

Chair Ralph McCoig reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., in Orlando, on this 21<sup>st</sup> day of January, 2009.

The following Commission members were in attendance: Chair Ralph McCoig, Vice-Chair Roger Enzor, Richard DeNapoli, S.W. Ellis, Poul Hornsleth, Michael Guju and John Ruffier. Tom Barnhart, Senior Assistant Attorney General, appeared as counsel for the Commission. Mr. Barnhart declared a quorum present.

Division staff present at the meeting: Thomas W. O'Bryant, Jr., Director and Executive Director; Jason Holtz and Jennifer Blakeman, Senior Attorneys; Denise Johnson OMC II; JoEllen Peacock, Education Coordinator; Jeannie Adkinson, Regulatory Specialist III; Zack Hayhurst, Regulatory Specialist III. American Court Reporting, Inc. (407) 896-1813, provided court reporter services.

**Consent Agenda**

The Commission considered 26 applicants from the Consent Agenda and required 8 applicants to appear at a future meeting.

**Summary of Applicants**

Denise Johnson, OMC II, presented 40 Summary of Applicants requesting to sit for the real estate examination.

**Executive Director's Comments**

Director O'Bryant updated the Commission regarding two items. First, regarding House Bill 425 he stated this accomplishes two main things for the Division of Real Estate. It will remove the requirements for the notarization of applications. And secondly, it will clarify the exemption for continuing education for attorneys.

Director O'Bryant updated the Commissioners regarding the application streamlining process. He indicated that as a way to maintain quality control, random surveys will be done of applicants regarding their experience navigating the process. He hopes the process will be in place and complete by the end of this current fiscal year. Vice-Chair Enzor inquired as to whether or not the Division may again be moved outside of the Department of Business and Professional Regulation. Chair McCoig requested that Vice-Chair Enzor prepare a presentation regarding this matter for the next meeting. Director O'Bryant addressed questions and comments from the Commission.

**Chair's Remarks**

Chair McCoig expressed his concern and well wishes for a speedy recovery for Deputy Director Watkins. Commissioner Hornsleth praised Deputy Director Watkins for her character and service. A moment of silent reflection was taken on her behalf.

Chair McCoig addressed a letter that was sent to the Office of General Counsel regarding the Commission's ability to utilize Education Funds for travel. Chair McCoig discussed with the Commissioners and Director O'Bryant the ongoing inquiry by the Commission as to their ability to utilize funds from the Education and Research Fund to travel to ARELLO Conferences. There were questions posed by the Commissioners to Senior Assistant Attorney General Tom Barnhart and Director O'Bryant as to who has the authority to allocate those funds.

**Public Comments**

Commissioners received comments from the audience.

**Adjournment**

There being no further business and no objection, the Chair adjourned the meeting at approximately 1:00 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for February 17 and 18, 2009, in Orlando, Florida.



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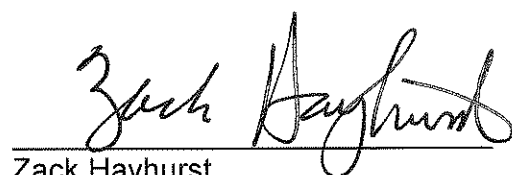
Ralph McCoig, Chair  
Florida Real Estate Commission



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Thomas W. O'Bryant, Jr.,  
Executive Director  
Florida Real Estate Commission

Respectfully submitted,



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Zack Hayhurst  
Regulatory Specialist III