

Charles W. Drago, Secretary

Charlie Crist, Governor

**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
February 17 and 18, 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 17th day of February, 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, Robert Minarcin and Joseph Solla, Senior Attorneys; Denise Johnson, OMC II; Zack Hayhurst, Regulatory Specialist III; Jocelyn Pomales, 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 January 20 and 21, 2009, General Meeting.

Unlicensed Activity Report

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

Email Newsletter in PDF Format

Commissioner DeNapoli inquired as to whether or not the newsletter could be sent as an Adobe PDF document in a blast email to all licensees. Director O'Bryant agreed with Commissioner DeNapoli and said he would look into the possibility of moving forward with this suggestion. Chair McCoig requested that Director O'Bryant report back regarding this matter at the next scheduled meeting.

Discussion on Chapter 83.49(3)(d) – Duties

Randy Schwartz, Florida Association of Realtors (FAR), and James R. Mitchell, Baker and Hostetler, addressed the Commission regarding their concerns about the clarity of the language within this statute. Motion by Commissioner Hornsleth for the Commission to interpret this statute as meaning “in a matter involving a residential lease agreement or other residential landlord/tenant relationship, a real estate broker who is holding a security deposit and deposit money in escrow may determine who is entitled to the funds and may disperse same without having to comply with the notice and settlement requirements in Statute 475.25(1)(d), F.S., this applies whether or not there is a written lease agreement and regardless as to whether the tenant ever took occupancy or stayed the entire term. This section prevails over any conflicting provision in Chapter 475.” Commissioner Ruffier seconded this motion for discussion.

Mr. Mitchell provided the Commissioners copies of proposed draft legislation language regarding this statute. Mr. Barnhart suggested a straw vote be taken and that no official action is necessary. Ray Glenn, Remax Partners of Fort Lauderdale, explained his concerns about where this statute authority begins and ends. Commissioner Guju agreed with Mr. Barnhart about taking an informal straw vote on this issue as opposed to an official vote. Mr. Schwartz reiterated that he merely is requesting clarification on the language and is not wishing to take away any authority from the Commission regarding this statute. Commissioner Hornsleth repeated his original motion. The Commission voted and the motion carried unanimously. The Commissioners thanked Mr. Schwartz and Mr. Mitchell for their input.

Review and Consideration of the Real Estate Continuing Education Courses

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

1. The Business of Your Business
2. Harnessing the Power
3. Issues When Buying and Selling a Business
4. Preparing for Unexpected Home Maintenance
5. Digital Photography & Desktop Publishing
6. Sales & Safety Techniques
7. Guide to Legal Forms & Florida Living Network
8. E-Realtor Guide to Planet Realtor
9. Where Does the Time Go
10. SW Florida Market in Transition

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

Ratification of Suspended License

Director O'Bryant requested the Commission ratify reinstatement of the real estate license of Arlene S. Munoz who has met all requirements for reinstatement. The Commission ratified the action unanimously.

Follow-Up on Letter to State Attorney's Office

Director O'Bryant reported that the letters have gone out to the State Attorney's Office and that we will hopefully have a response and update for the March 2009 meeting.

Commissioner Guju reported he received an email from a FREAB member regarding a budget request for DBPR requesting to add more attorneys to represent the FREAB and FREC instead of an attorney from the Attorney General's office. Director O'Bryant stated he has not been involved in this discussion. Director O'Bryant stated he is aware that there is an ongoing discussion between the Office of the Governor and the Attorney General's office. Director O'Bryant reiterated that this is an issue that he has not involved himself, and therefore cannot speak to the details of it. The Commissioners requested to receive continuing updates regarding this issue.

Update by Director O'Bryant on Mortgage Fraud Task Force

Director O'Bryant reported that Miami-Dade is in the process of setting up a 501c(3) to be able to receive those funds proposed by former Commissioners Hogan and Veissi.

Visit by Secretary Drago

Director O'Bryant reported that the Secretary would be in attendance at the March meeting to address questions from the Commission.

Appointment of two Commissioners to attend Mid-year ARELLO meeting in April

Director O'Bryant stated that before the end of this meeting the Commissioners would have to choose two members to attend the mid-Year ARELLO meeting being held in Asheville, North Carolina in April.

Escrow Disbursement Orders

Senior Attorney Joe Solla presented 26 Escrow Disbursement Orders and 3 Order for the Commission's consideration. Upon recommendation of the Legal Section, the Commission issued 25 Escrow Disbursement Orders and 2 Orders. 1 Escrow Disbursement Order and 1 Order were withdrawn and will be presented again at the March meeting. Commissioner Hornsleth moved to approve the Legal Section recommendation. Vice-Chair Enzor seconded the motion. The motion carried unanimously.

A discussion ensued about clarification of language in contracts regarding escrow. It was requested by the Commission that Chief Attorney Harwood provide an explanation and clarification of such terms at the March meeting.

Legal Docket

The Commission addressed the Legal Agenda, consisting of 45 docket items. The Commission considered 37 docket items and approved the continuance or withdrawal of 8 docket items.

Consent Agenda

The Commission considered 34 applicants from the Consent Agenda and required 17 applicants to appear at a future meeting

There being no further business and no objection, the Chair adjourned the meeting at approximately 4:50p.m.

February 18, 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 18th day of February, 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: James P. Harwood, Chief attorney and Acting Director; Alfonso Santana, Senior Attorney, Denise Johnson OMC II; Jeannie Adkinson, Regulatory Specialist III; Zack Hayhurst, Regulatory Specialist III. American Court Reporting, Inc. (407) 896-1813, provided court reporter services.

Summary of Applicants

Denise Johnson, OMC II, presented 39 Summary of Applicants requesting to sit for the real estate examination.

Executive Director's Comments

James Harwood, Chief Attorney and Acting Director, discussed senior attorney Alfonso Santana's role within the Division of now reviewing all incoming complaints to the legal section. He reported Mr. Santana drafts the majority of the Administrative Complaints and Closing Orders. Mr. Harwood reminded the Commission that they needed to choose two commissioners to send to ARELLO. The Commission unanimously agreed to send Commissioner Ellis and Vice-Chair Enzor to the mid-year ARELLO meeting in Asheville, North Carolina. The dates are the 27th through the 29th of April.

Also, as Chief attorney, Mr. Harwood said some kind words with respect to the Commissioners' service to the State on behalf of the Director. Finally, he reported that for the March agenda he would be discussing the new ways the legal section will be handling the prosecution of cases.

Chair's Remarks

Commissioner Ellis requested that the applications for licensure be re-written to include more simplistic language. Mr. Harwood addressed the question by referring to the EZ Apply process that is underway department wide.

Chair McCoig stated that at previous meetings, there have been discussions regarding a training manual for the Commissioners. He requested to see a draft of that at the next meeting if possible.

Public Comments

Commissioners received comments from the audience.

Adjournment

There being no further business and no objection, the Chair adjourned the meeting at approximately 1:15 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for March 17 and 18, 2009, in Orlando, Florida.

Ralph McCoig, Chair
Florida Real Estate Commission

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

Respectfully submitted,

Zack Hayhurst
Regulatory Specialist III