

**Charles W. Drago**, Secretary

**Charlie Crist**, Governor

**Minutes of  
THE FLORIDA REAL ESTATE COMMISSION  
May 19 and 20, 2009  
General Meeting**

Chair Ralph McCoig called the meeting of the Florida Real Estate Commission to order, at approximately 8:45 a.m., in Orlando, Florida, on this 19th day of May, 2009.

The following Commission members were in attendance: Chair Ralph McCoig, Vice-Chair Roger Enzor, Richard DeNapoli, Richard "Dick" Fryer, 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.

Department and Division staff present at the meeting: Michelle Franckhauser, Systems Project Analyst; Michelle Milnes, Systems Project Administrator; Jason Frees, Systems Project Analyst; Thomas O'Bryant, Jr., Director and Executive Director; James Harwood, Chief Attorney; Patrick Cunningham, Jennifer Blakeman, and Allison McDonald, 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**

Commissioner Ruffier moved to approve the Minutes of the April 21 and 22, 2009, General Meeting, as written. Commissioner Guju seconded the motion. The motion carried unanimously.

**Unlicensed Activity Report**

Executive Director O'Bryant presented the Unlicensed Activity Report and the Enforcement Report. Director O'Bryant and Chief Attorney Harwood addressed questions from the Commissioners.

Commissioner Guju inquired whether there were any statutory provisions in place which mandate the licensee to immediately cease real estate activity which may be considered egregious and allegedly illegal pending an investigation. Director O'Bryant reported that there are procedures in place and certain criteria which must be met before the Secretary signs an Emergency Suspension Order. He stated that he would provide a copy of that information to the Commission.

### **Petition for Declaratory Statement**

FREC Counsel Barnhart presented the Petition for Declaratory Statement regarding Section 475.01(1)(a), *Florida Statutes*, received from Auction Educators, Inc. and requested the Commission address the petition. Attorney Jed Berman appeared in support of the petition on behalf of Auction Educators, Inc. and presented his position summarizing the activities giving rise to the petition request. FREC Counsel Barnhart stated that his concern is that this petition does not rise to the level of a substantial interest. The Commission considered the Petitioner's position and received input from Mr. Barnhart and Director O'Bryant. Director O'Bryant recommends the Commission not issue a statement. Mr. Barnhart suggested that the Petitioner amend the petition. Mr. Berman stated with the permission of the Commission he would like to readdress this petition or an amended petition at a future meeting. Commissioner Hornsleth moved to deny the petition without prejudice. Commissioner DeNapoli seconded the motion. The motion carried unanimously.

### **Statement of Estimated Regulatory Costs**

#### **61J2-24.001 – Disciplinary Guidelines**

Director O'Bryant stated that the Commission approved amendment of this rule in February 2008 to strike the language in (3)(x) in its entirety. Director O'Bryant presented the Statement of Estimated Regulatory Costs for the Commission's consideration. The Commission considered the Statement of Estimated Regulatory Costs and agreed that there are no costs in association with the change to this rule. Commissioner Fryer moved to accept the proposed determination of impact on small businesses. Commissioner Guju seconded the motion. The motion carried unanimously.

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

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

1. Buying A Home? Questions You Must Ask

Commissioner Guju moved to approve the continuing education course listed above as it complies with Section 475.182, *F.S.* Commissioner Fryer seconded the motion. The motion carried unanimously.

2. Real Estate Etiquette – Gaining the Extra Edge

Commissioner Ruffier moved to deny the continuing education course listed above as it does not comply with Section 475.182, *F.S.* Commissioner DeNapoli seconded the motion. The motion carried unanimously.

3. Real Estate IRAs: For Realtors

Commissioner DeNapoli moved to approve the continuing education course listed above as it complies with Section 475.182, *F.S.* Commissioner Fryer seconded the motion. The motion carried unanimously.

4. Swimming Pool, Spa and Deck Safety

Commissioner Ruffier moved to deny the continuing education course listed above as it does not comply with Section 475.182, *F.S.* Commissioner Fryer seconded the motion. The motion carried unanimously.

#### 5. Building A Strong Transaction Team

Commissioner Fryer moved to deny the continuing education course listed above as it does not comply with Section 475.182, *F.S.* Commissioner Hornsleth seconded the motion. The motion carried unanimously.

### **Florida Statutes**

455.213, F.S. – Director O’Bryant stated that the Office of General Counsel recently provided a ruling, which includes all professions under the Department of Business of Professional Regulation, that all applications must include a social security number for the purpose of Administration under the Child Support Act, or the application will not be processed.

475.182, F.S. – Director O’Bryant stated that if the Commission did not have any questions regarding this item, then it can be removed. The Commission had no questions concerning this statute.

### **Update Regarding Letter to State Attorney’s Office**

Director O’Bryant reported that there are no updates available and requested that this item be removed from the agenda. Commissioner DeNapoli stated he will make an inquiry periodically at future Commission meetings and that this topic may be removed from the agenda.

### **Mortgage Fraud Taskforce**

Director O’Bryant stated that the Secretary appointed him to serve on the Mortgage Fraud Taskforce for the Attorney General. He reported that this taskforce, composed of agency heads from both government and law enforcement, met recently. Director O’Bryant stated that it was a wonderful opportunity and provided a brief summary of the many ideas arising from the meeting. One accomplishment, in particular was the completion of a contact manual for every section of the State whereby law enforcement has contact information for the various agencies and the related functions and purpose. Commissioner DeNapoli stated that this is very good to hear that this program has been successful thus far.

Director O’Bryant reported that he conducted a final review of the Mortgage Fraud Bill as it relates to the Division of Real Estate. Director O’Bryant explained that this bill is a complete rewrite for the Office of Financial Regulation and it is currently on the Governor’s desk for signature. Director O’Bryant stated that it is an outstanding bill and he would provide the Commission a copy. Commissioner Fryer stated that this bill had to be passed in order to enact the “Safe Act”. Director O’Bryant addressed questions and comments from the Commissioners.

### **Recovery Fund Claim Final Order**

Flying Colors Group, LP v. Debra Nesor – DBPR Case No. 2008014493. Mr. Solla presented this matter to the Commission. Neither the claimant nor the licensee was present. Mr. Solla advised 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. Commissioner DeNapoli moved to approve payment. Vice-Chair Enzor seconded the motion. The motion carried unanimously.

### **DOAH Recommended Order - Applicant**

#### **Jamie Chapman v. FREC – DOAH Case No. 09-0646**

FREC Counsel Tom Barnhart presented the Recommended Order of the Administrative Law Judge (ALJ). Mr. Barnhart presented Exceptions to the ALJ's Recommended Order. Petitioner's Counsel appeared in support of the Recommended Order. The Commission considered the Exceptions and Recommended Order. The Commission accepted Respondent's Exceptions 1, 3, and 4 and rejected Exception 2. Commissioner Ruffier moved to adopt the Findings of Fact and Conclusions of Law set forth in the ALJ's Recommended Order subject to the matters the Commission took exception to and grant the Petitioner a sales associates license with the provision that the licensee completes the 45-hour post-license course and a 3-hour ethics course within 3 months of initial licensure. Vice-Chair Enzor seconded the motion. The motion carried unanimously.

### **Landlord/Tenant Disputes**

Chief Attorney Harwood addressed the Commission regarding Chapter 83.49, F.S., as it relates to Section 475.25(1)(d), F.S. Mr. Randy Schwartz, Counsel for the Florida Association of Realtors, read Section 83.49(3)(d), F.S. Mr. Harwood stated the Department agrees that if it is investigating a complaint relating to Section 475.25(1)(d)1, F.S. and the licensee can provide proof that they are significantly complying with 83.49, F.S. then the Department would recommend dismissal at the probable cause level on the basis that this satisfies the requirement of 475.25(1)(d)1, F.S. Mr. Harwood stated that the Legal Department has had in depth discussions relating to this issue and it holds the position that under Chapter 475, F.S. it has oversight of provisions of Chapter 83, F.S. relative to the duties of a real estate licensee. The Commission thanked Mr. Harwood for his comments.

### **Legal Docket**

The Commission addressed the Legal Agenda, consisting of 33 docket items. The Commission considered 27 docket items and approved the continuance or withdrawal of 6 docket items. The Commission's decisions on these matters are attached hereto and made a part of these minutes.

### **Ratification of Suspended Licenses**

Director O'Bryant requested the Commission ratify reinstatement of the real estate license of Mike Causey, Kathy M. Lee and Fania Silbermann who have met all requirements for reinstatement. The Commission ratified the actions unanimously.

### **Informal Hearing Request – Real Estate Continuing Education Course**

#### **Fundamentals of Mortgage Brokerage**

The Commission reviewed and considered this CE application course in November and issued a Notice of Intent to Deny. Applicant Richard Fryer requested an informal hearing and submitted written document in support of his request for approval. Commissioner Fryer recused himself and did not participate in the discussion or final decision. The Commission considered

the request. Commissioner Enzor moved to vacate the prior Notice of Intent to Deny and approve renewal of the continuing education course as it meets the requirements of Section 475.182, F.S. Commissioner Hornsleth seconded the motion. The motion carried unanimously six to none.

### **Consent Agenda**

The Commission considered 36 applicants from the Consent Agenda and required 12 applicants to appear at a future meeting

### **Public Comments**

The Commission received comments from the public.

There being no further business and no objection, the Chair adjourned the meeting at approximately 3:30 p.m.

### **May 20, 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 20<sup>th</sup> day of May, 2009.

The following Commission members were in attendance: Chair Ralph McCoig, Vice-Chair Roger Enzor, Richard DeNapoli, Richard "Dick" Fryer, 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.

Department and Division staff present at the meeting: Michelle Franckhauser, Systems Project Analyst; Michelle Milnes, Systems Project Administrator; Jason Frees, Systems Project Analyst; Thomas O'Bryant, Jr., Director and Executive Director; Juana C. Watkins, Deputy Director; Patrick Cunningham, Senior Attorney; Denise Johnson OMC II; Jeannie Adkinson, Regulatory Specialist III; Zack Hayhurst, Regulatory Specialist III; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407) 896-1813, provided court reporter services.

### **Summary of Applicants**

Denise Johnson, OMC II, presented 35 Summary of Applicants requesting to sit for the real estate examination.

### **Executive Director's Comments**

DBPR Website – Director O'Bryant encouraged the Commissioners to visit the newly updated DBPR website which the Department has simplified. In response to Commissioner DeNapoli's question, the Director reported that as a part of amending all applications, the Department first concentrated on the website issues, which is now complete. He further reported the Department is now focusing on the actual application forms. Once the real estate applications are changed the Division will put together focus groups from around the state to test the effectiveness and ease of the application before setting it into production. Director O'Bryant addressed questions and comments from the Commission.

OnBase Project – Director O’Bryant wanted to give Deputy Director Watkins a special tribute and word of thanks for her leadership to ensure the OnBase project ran as smoothly as possible.

**Commission Remarks**

The Commissioners stated that they were pleasantly surprised with the OnBase system and ease of navigating the meeting materials electronically. The Commission recognized that it was cost effective and time efficient.

Chair McCoig inquired when the Commissioners would receive a training manual and when the Division was going to schedule the Commission training session. Director O’Bryant stated that the Commissioners would receive a training manual at the training session which will occur in June or July. Director O’Bryant stated that he did not want to introduce OnBase and conduct training in the same month.

Commissioner DeNapoli inquired whether the Department has heard anything regarding its Legislative Budget Request. Director O’Bryant stated there has been no indication when the results of the LBR for FY 2009/2010 will be available, perhaps in June or July.

**Public Comments**

The Commission received comments from the public.

**Adjournment**

There being no further business and no objection, the Chair adjourned the meeting at approximately 12:00 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for June 16 and 17, 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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Lori L. Crawford  
Deputy Clerk