

Jonathan Zachem, Secretary

Rick Scott, Governor

**Amended Minutes of
THE FLORIDA REAL ESTATE APPRAISAL BOARD
June 5, 2017
General Meeting**

Chair Clay Ketcham called the meeting of the Florida Real Estate Appraisal Board to order at approximately 8:35 a.m., in Orlando, Florida, on this Monday, the 5th day of June 2017.

The following Board members were present: Chair Clay Ketcham, Vice-Chair Michael Roy, Members Cristy Conolly, Armando del Valle, Joshua Harris, Tamara McKee, and Fran Oreto, and Janet Rabin. Member Bush had an excused absence. Assistant Attorney General Rachel Clark appeared as counsel for the Board. Executive Director Crawford declared a quorum present.

Department and Division staff present at the meeting: Juana Watkins, Director; Lori Crawford, Executive Director; Allison McDonald, Deputy Chief Attorney; Sara Kimmig, Chief, Bureau of Enforcement; Neal Lawson, Assistant General Counsel appeared by video conference; Jocelyn Pomales, OMCII; Susan Bailey, Administrative Assistant, III; Johanne Knudson, and Beverly Ridenauer, Government Analysts. American Court Reporting, Inc. (407.896.1813) provided court reporter services.

General Session
Approval of Minutes

The minutes of the April 6, 2017 General Meeting were presented. Ms. Oreto moved, seconded by Mr. Roy to approve the minutes as amended. The motion carried without dissent.

Reports

Executive Director Crawford presented the Exam Summary and License Count Reports and noted that the Financial Reports would be presented later. Ms. Crawford responded to questions from the Board.

Legal Case Report

Deputy Chief Attorney McDonald presented the Year Old Case report to the Board and addressed questions and comments from the Board.

Legal Appearance Docket

The Board addressed the Legal Appearance Docket, hearing 2 docket items with the following results:

Tab A – Case No. 2016041428, KENNETH P. RIGGS – Respondent’s Request for Informal

Kenneth P. Riggs was present and was not represented by counsel. Ms. McKee was recused due to participation on the probable cause panel.

Mr. Lawson represented the Department and presented the case to the Board. The Board granted the informal hearing and entered into discussion. Following discussion, Mr. Harris moved; Mr. Roy seconded; motion carried unanimously to impose the following:

Penalty imposed: Dismissed.

Tab B – Case No. 2016025416, DENNIS GORGA – Petitioner’s Motion for Waiver and Entry of Final Order

Dennis Gorga was not present and was not represented by counsel. Ms. Oreto was recused due to participation on the probable cause panel.

Mr. Lawson represented the Department and presented the case to the Board. The Board granted the informal hearing and entered into discussion. Following discussion, Mr. del Valle moved; Mr. Roy seconded; motion carried unanimously to impose the following:

Penalty imposed: Revocation; fine \$5,000.00; investigative costs of \$1,047.75. Violation: Florida Statutes 475.624(4) by failing to provide the Department with a copy of the Appraisal Report work file upon reasonable notice.

General Session Continued

Summary of Applicants – Reconsideration

Tanya Batten was present with Counsel, Nancy Campiglia. Board Counsel Clark provided guidance to the Board regarding the statutory authority and rules governing Ms. Batten’s situation. The Board heard comments from Ms. Campiglia and their counsel, Ms. Clark. The Board entered into discussion.

Following discussion, Ms. Oreto moved; Ms. Conolly seconded; motion carried unanimously to find the default provision does not apply because the 90th day of processing time fell on a Sunday; the Board ruled on the application the following business day, Monday.

Summary of Applicants – New Applicants

Henry K. Adamson – Certified General Appraiser by mutual recognition (KS) – The applicant was present, to address the Board. Following discussion, Ms. McKee moved; Mr. Harris seconded; motion carried unanimously to approve the application.

Suzanne Ecton-Yack – The applicant was not present. Following discussion, Mr. del Valle moved; Mr. Roy seconded; motion carried unanimously to deny the application.

Christian Gonzalez– The applicant was not present. Following discussion, Ms. Oreto moved; Ms. Rabin seconded; motion carried unanimously to deny the application.

Jeffrey L. Hansen– The applicant was not present. Following discussion, Ms. Oreto moved; Mr. del Valle seconded; motion carried unanimously to approve the application.

Antonio J. Padilla, III – The applicant was present to address the Board. Following discussion, the applicant withdrew the application at the meeting.

J. Bruce Ricciuti– The applicant was not present. Following discussion, Mr. del Valle moved; Mr. Roy seconded; motion carried with one nay vote to approve the application.

Eliza V. Wattiez– The applicant was not present. Following discussion, Mr. del Valle moved; Ms. McKee seconded; motion carried with two nay votes to approve the application.

Director Watkins reported that as of July 1, 2017 there will be a new program in place to aid with the applications that have issues with experience. The process will be very similar to the education course review that is currently in use. It will include referral to a certified appraiser who will use an existing checklist to determine if the sample

reports submitted as part of the application approval process meet the minimum guidelines established by the Appraisal Subcommittee, the Appraiser Qualifications Board and Florida Statutes and Rules. Any questions that may exist following the completion of the checklist will then be submitted, with information that is more concise, for the Board's review.

Real Estate Appraisal Education Courses for Approval or Denial – *Jocelyn Pomales, Education Coordinator*

Valuation Resources for Solar Photovoltaic Systems – New Course (4 hours, Specialty) – Application No. 6694 – Appraisal Institute

No representative from the organization was present in support of the application. The Board discussed the matter. Following discussion Mr. Harris moved; Mr. Roy seconded to approve the course. The motion carried unanimously.

Rules Discussion

Rule 61J1-2.005 Inactive Registration

Ms. Clark presented the proposed amendment to Rule 61J1-2.005. The Board discussed the proposed language amendment. Following discussion, Ms. McKee moved; Ms. Oreto seconded; motion carried without dissent to open the rule for rule development.

Ms. Clark asked the Board to adopt the proposed changes. Ms. McKee moved; Ms. Oreto seconded; motion carried unanimously to strike the words "licensed or" from Subsection (3) as follows:

61J1-2.005 Inactive Registration.

(1) - (2) No Change.

(3) At any time after obtaining registration as an appraiser the registrant does not have on record with the Department of Business and Professional Regulation the name of a ~~licensed or~~ certified appraiser as a primary supervisor, the registration shall be designated inactive.

(4) - (7) No Change.

Rulemaking Authority 475.614, 475.619 FS. Law Implemented 475.613(2), 475.618, 475.619 FS. History—New 9-22-93, Amended 7-5-94, 5-8-06, 11-4-15, _____.

Ms. Clark asked the Members to consider if the proposed change would create a negative impact to small business or have fiscal impact of more than \$200,000.00 to regulatory entity within one year of implementation of the rule. Mr. Harris moved; Ms. Conolly seconded; motion carried unanimously to find there will be no impact.

61J1-4.007 Renewal of Inactive Registrations, Licenses and Certifications

Ms. Clark explained this rule came to the attention of the Appraisal Subcommittee because the language is not clear that 7 of the 30-hour continuing education must be the 7-Hour National USPAP that is taught by an AQB approved instructor. Ms. Oreto moved; Mr. Harris seconded; motion carried without dissent to open the rule for rule development.

The Board discussed the proposed amendment to Subsection (2). Following discussion, Ms. Rabin moved; Ms. Oreto seconded; motion carried unanimously to approve the amended text as presented.

61J1-4.007 Renewal of Inactive Registrations, Licenses and Certifications.

(1) No change

(2) At any time after the registration, license, or certification becomes inactive, the registration, license, or certification may be renewed and reactivated upon application to the Department of Business and Professional

Regulation, payment of the required fee(s) in Rule 61J1-2.001, F.A.C., and the satisfactory completion of the educational requirements listed below. Seven hours of the total required education for each level must include a 7-hour National USPAP update course or its equivalent which must be taught by an AQP certified instructor.

(a) No change

(b) Level Two Reactivation is when the inactive status is more than one (1) year but does not exceed two (2) years. The reactivation education for all appraiser categories is as follows: thirty (30) hours of approved pre-certification education with end of course exam applicable to the licensee's licensure category as defined in Rules 61J1-10.002, 61J1-10.003 and 61J1-10.004, F.A.C.; minimum three (3) hour Supervisor and Trainee course as defined in Rule 61J1-4.010, F.A.C.; and thirty (30) hours of appraiser continuing education (ACE).

(c) Level Three Reactivation is when the inactive status is more than two (2) years but does not exceed the four (4) year period. The reactivation education for all appraiser categories is as follows: seventy-five (75) hours of approved pre-certification education with end of course exam applicable to the licensee's licensure category as defined in Rules 61J1-10.002, 61J1-10.003 and 61J1-10.004, F.A.C.; minimum three (3) hour Supervisor and Trainee course as defined in Rule 61J1-4.010, F.A.C.; and thirty (30) hours of appraiser continuing education (ACE).

(3) through (4) No change

Rulemaking Authority 475.614, 475.619 FS. Law Implemented 475.618, 475.619 FS. History—New 8-8-93, Amended 2-16-04, 3-1-06, 8-29-06, 12-4-06, 8-19-10, 2-2-16, _____.

Ms. Clark asked the Members to determine if the proposed change would create a negative impact to small business or have fiscal impact of more than \$200,000.00 to regulatory entity within one year of implementation of the rule. Mr. Harris moved; Mr. Roy seconded; motion carried unanimously to find there will be no impact.

Rule 61J1-4.009 Post-Licensing Education for Registered Trainee Appraisers

Ms. Clark reported that this rule may be repealed due to statutory changes during this Legislative Session. Ms. Oretto moved; Ms. McKee seconded; motion carried without dissent to repeal this rule.

Ms. Clark asked the Members to determine if the repeal of this rule would create a negative impact to small business or have fiscal impact of more than \$200,000.00 to regulatory entity within one year of implementation of the rule. Mr. Harris moved; Ms. Conolly seconded; motion carried unanimously to find there will be no impact.

Rule 61J1-6.001 Experience Requirement

Counsel Clark explained that the rule contains language describing reporting options that do not match the current reporting options provided under the Uniform Standards of Professional Appraisal Practice. The board discussed the language of Subsection (5)(a)(2), noting that the current version allows applicants to submit older reports to gain experience credit.

Following discussion, Ms. Rabin moved; Mr. Roy seconded; motion carried unanimously to keep current language of the rule.

Rule 61J1-8.003 Notice of Noncompliance

Ms. Clark explained that this rule is before the Board for consideration of adding other violations of Statute that may be resolved by means of a notice of noncompliance. Director Watkins reported that all of the professions within the agency are being encouraged to assess the notice of noncompliance rule to determine whether or not there are any other offenses that could be resolved with a notice of noncompliance. This review is particularly relevant to appraisers because even one minor disciplinary issue triggers multiple actions against that license in other jurisdictions.

Ms. Watkins asked the Board to keep in mind that citations become final orders and are therefore reported to the National Registry. She asked the Board to consider other violations that may be added to the existing list provided it is

a minor violation, poses no harm to the public, and can be resolved easily. The Board took no further action at this meeting.

Rule 61J1-10.002 Registered Trainee Real Estate Appraiser

Ms. Clark introduced the rule, noting that it was discussed by the Appraisal Subcommittee due to the inconsistent language of the rule. Mr. Harris moved; Ms. Oreto seconded; motion carried unanimously to open the rule for development.

The Board discussed the proposed change to the language. Ms. McKee moved; Mr. Harris seconded; motion carried unanimously to approve the proposed text, which is as follows:

Rule 61J1-10.002 Registered Trainee Real Estate Appraiser.

(1) An applicant for registration as a trainee real estate appraiser must present evidence satisfactory to the Board that the applicant has successfully completed within five (5) years of making application at least 100 classroom hours in approved academic courses in subjects related to real estate appraisal, including the following required curriculum:

(a) through (c) No change

(d) Appraisal Subject Matter Electives (25 hours) which shall include three (3) ~~six (6)~~ hours of the Florida laws and rules.

(2) through (5) No change

Rulemaking Authority 475.614 FS. Law Implemented 475.611(1)(r), (u), (v), 475.613(2), 475.615, 475.617(1) FS. History--New 12-27-07, Amended 3-31-09, 7-17-11, 12-23-12, 8-6-14, 1-11-15, _____.

Ms. Clark asked the Members to determine if the change to this rule would create a negative impact to small business or have fiscal impact of more than \$200,000.00 to regulatory entity within one year of implementation of the rule. Ms. McKee moved; Mr. Harris seconded; motion carried unanimously to find there will be no impact.

Rules Report

Board Counsel Clark provided the Rules Report for May 2017 and presented a letter from the Joint Administrative Procedures Committee (JAPC) regarding Rule 61J1-4.010. She asked to Board to consider amending the text of Subsection (2)(f) pertaining to discipline for failure to properly file the form to register the supervising appraiser.

The Board discussed the intent of the language. Following discussion Mr. Roy moved; Ms. Conolly seconded; motion carried unanimously to remove the reference to discipline being imposed on the trainee appraiser.

Ms. Clark asked the Members to determine if the change to this rule would create a negative impact to small business or have fiscal impact of more than \$200,000.00 to regulatory entity within one year of implementation of the rule. Mr. Roy moved; Mr. Harris seconded; motion carried unanimously to find there will be no impact.

The proposed revision to the text of the rule is as follows:

61J1-4.010 Supervision and Training of Registered Trainee Appraisers

(1) No change.

(2) The supervisory appraiser shall be responsible for the training and direct supervision of the registered trainee appraiser by:

(a) through (e) No change.

(f) Registering the trainee appraiser with Department through use of DBPR FREAB 14, Supervisor Designation/Termination Form as set forth in the Department's Rule 61-35.026, F.A.C. Failure to properly file form DBPR FREAB 14 shall subject ~~both~~ the supervisor ~~and~~ trainee appraiser to disciplinary action. Any experience gained by the trainee while not properly registered shall not count toward the required training for an appraiser.

(3) through (9) No change.

(11) renumbered (10) No change.

Rulemaking Authority 475.611, 475.614, 475.615 FS. Law Implemented 475.611, 475.615, 475.6221, 475.6222 FS. History–New 2-16-04, Amended 3-1-06, 12-4-06, 8-12-07, 11-25-07, 5-3-10, 12-11-11, 6-3-13, 4-15-15, 2-2-16,_____.

Special Agenda

Legislative Update

Director Watkins outlined the details of House Bill 927, which passed the Legislature this Session. She noted that the Bill is effective on October 1, 2017 and identified key portions of the Bill that will affect how the Board conducts business. The changes will impact the following sections of Chapter 475, Part I and Part II:

- Section 475.451 Schools teaching real estate practice.
- Section 475.611 Definitions.
- Section 475.612 Certification, licensure, or registration required.
- Section 475.6175 Registered trainee appraiser; postlicensure education required.
- Section 475.621 Registry of licensed and certified appraisers.
- Section 475.6235 Registration of appraisal management companies required; exemptions.
- Section 475.6245 Discipline of appraisal management companies.
- Section 475.626 Violations and penalties.
- Section 475.628 Professional standards for appraisers registered, licensed, or certified under this part.
- Section 475.629 Retention of records.

Director Watkins responded to questions as the Board discussed the implications of this new law. The Board took no action other than to consider the impact of the changes. The topics discussed in detail included:

- The current status of rulemaking at the federal level impacts actions the department needs to take to implement the new changes prior to the AMC effective date of August 10, 2018
- Changes to the regulation of Appraisal Management Companies: definitions, panel size, renewal process and the AMC National Registry
- Potential confusion about definitions and standards for appraisals and evaluation

Board Business

Foundation News and Updates

Director Watkins presented the Meeting Summary for the April 6, 2017 meeting of the Appraiser Qualifications Board of the Appraisal Foundation. She reported that changes to the experience requirements as well as some education changes are in the future. Staff had a follow-up meeting with key Tallahassee teams after the AQB meeting to discuss items that need to be monitored for any future action. The Board considered the item to be information only and took no action at the meeting.

Customary and Reasonable Fees

Chair Ketcham introduced the topic noting that the State of Georgia has completed a customary and reasonable fees survey. He commented that he just wanted to bring it to the attention of the other Board members and any others who may be interested in the information.

Tennessee Legislation

Member del Valle commented that the topic of the legislation is a Statute of Limitations, which he found to be interesting. He asked Director Watkins for her comments as she had said this topic has been discussed before by the Board.

Ms. Watkins explained that the topic was discussed previously when mandatory reporting became effective. Banks were filing appraisal complaints for work that had been completed in 2006 and 2007. Many States felt it was inappropriate to open cases based upon records that were beyond record retention provision. At that time, states were reminded by the Appraisal Subcommittee (ASC) that an appraiser should be able to recreate a report no matter when it was completed.

The Director further stated the ASC has expressed concern to some states that have a statute of limitations enacted. Title XI § 1118 (a), 12 U.S.C. § 3347 and ASC Policy Statement 7 all require states to regulate, supervise and discipline their credentialed appraisers. The Board further discussed the topic, but took no other action.

Legislative Session Comments

Member del Valle thanked Director Watkins for her efforts in crafting the language for this Legislative Session. He commented that he also contacted his Legislator as she had suggested. He found it to be an interesting process.

Composition and Size of Board

Member del Valle said the composition of the Board concerns him. He would like to see the size of the Board reduced and only one member for the AMC, Consumer and User Member seats. He would also like to see some type of control to not allow the Residential or General Appraiser members to be employees of an AMC.

In response to the question of how to change the composition of the Board, Counsel Clark explained it will take a statutory change to amend the size of the Board.

Mr. Roy commented that with the ruling regarding the North Carolina Board of Dentistry, this Board needs to be cautious about the composition of the Board to avoid law suits being filed.

Following a discussion of the topic and review of the history of how the Board came to the current number of seats, Director Watkins reported that the department's attempt to indemnify board members did not pass this Legislative Session, which creates a concern for all.

Supervision of Registered Trainee Real Estate Appraisers and Independent Contractor Status

Member del Valle introduced the topic which is a big concern for certified appraisers who may want to hire and train registered trainee appraisers. He has heard complaints from appraisers saying if they hire a trainee they must make them an employee of the company. For this reason, certified appraisers do not want to hire trainees.

He feels some of the employment issues could be resolved if trainees could be considered to be independent contractors, similar to a real estate salesperson. It would be easier for trainees to be hired by a certified appraiser who would train them. It would allow a trainee appraiser to work a schedule that does not require the employer to cover breaks, lunch, insurance, etc.; it would open the door for many trainees and certified appraisers.

The Board discussed the language of Chapter 475.622, Florida Statutes, which sets the guidelines for employment and training of registered trainee appraisers. There was a discussion of the federal definition of employee, independent contractor, and the existing tax laws established by the Internal Revenue Service,

which place a substantial burden on employers who hire independent contractors. The Board took no further action.

Director's Comments

Director Watkins presented the Financial Reports for the Third Quarter. She reported that at this time, the Board is financially stable.

The Director reminded the Board that their financial disclosure forms are due on July 3, 2017.

Chair's Comments

Chair Ketcham reported that he was very pleased to have been able to attend the Association of Appraiser Regulatory Officials (AARO) conference in April in Tampa. He said that it is such a worthy event and wished funding would allow everyone to attend. The Conference presentations are available for viewing on the AARO website at http://www.aaro.net/conference_presentations.php.

Public Comments

The Board heard comment from the audience thanking them for the work they do and recognizing the benefits of attending the meeting.

Adjournment

There being no other business, the Chair adjourned the meeting at approximately 3:05 p.m. The next general meeting of the Florida Real Estate Appraisal Board will held Monday August 7, 2017 in Orlando.

ATTEST:



Michael Roy, Chair
Florida Real Estate Appraisal Board



Lori Crawford, Executive Director
Florida Real Estate Appraisal Board