

## Notice of Declaratory Statement

### **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

#### **Florida Real Estate Commission**

The Florida Real Estate Commission hereby gives notice that it has issued an Order on the Petition for Declaratory Statement that was filed on February 22, 2006, by Thomas A. Jimenez, Jr. The Notice of Petition for Declaratory Statement was published in Volume 32, Number 13, of the Florida Administrative Weekly. Petitioner inquired as to whether a flat fee for certain broker services would be considered an advance fee under Section 475.452, F.S., subject to the requirements that it be held in trust and accounted for monthly. The Commission considered the Petition at its meeting held on April 18, 2006, in Orlando, Florida. The Commission's Order, filed on May 22, 2006, denied the Petition for Declaratory Statement concluding that a flat fee collected for services is considered to be an advance fee subject to the requirements in Section 475.452(1), Florida Statutes.

A copy of the Commission's Order may be obtained by contacting Lori Crawford, Deputy Clerk, Division of Real Estate, 400 West Robinson Street, Suite N801, Orlando, Florida 32801.

Final Order No. BPR-2006-03432 Date: 5-22-06  
FILED

Department of Business and Professional Regulation  
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandi M. Nibel

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
FLORIDA REAL ESTATE COMMISSION

IN RE: Petition For Declaratory Statement of

TOMAS A. JIMENEZ, JR.

**DS 2006-009**

**FINAL ORDER**

The Florida Real Estate Commission considered the Petition for Declaratory Statement filed by Tomas A. Jimenez, Jr., at a duly-noticed meeting of the Commission held on April 18, 2006 in Orlando, Florida. The Notice of Petition for Declaratory Statement was published on March 31, 2006, in Volume 32, Number 13, of the Florida Administrative Weekly. Petitioner was present, but was not represented by counsel.

The petition filed by Tomas A. Jimenez Jr., inquired as to whether a flat fee for certain broker services would be considered an advance fee under Section 475.452, F.S., subject to the requirements that it be held in trust and accounted for monthly.

**Findings Of Fact**

1. The Petitioner wants to offer services to the public on a flat fee basis.
2. The customer would pay an up front fee for broker services.
3. The broker wants to deposit the fee into the broker's operating account and use the funds for normal business operations as he markets the property.
4. The fee is not contingent on procuring a contract for the sale of the property.

### Conclusions Of Law

5. The Florida Real Estate Commission has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code.

6. Petitioner has standing to obtain a declaratory statement.

7. Section 475.452, Florida Statutes, provides, in part:

(1) It is unlawful for any broker to contract for or collect any advance fee for the listing of real property from any principal without depositing 75 percent of such amount, when collected, in a trust account with a bank or other recognized depository located and doing business in this state. Such funds shall be held as trust funds and may not be commingled with the funds of the broker who has collected the fee. Prior to the withdrawal of any fees from the trust account, the broker shall furnish a statement to the principal itemizing how the advance fees are to be expended and the amounts thereof. Amounts may be withdrawn for the benefit of the broker only when actually expended for the benefit of the principal or 5 days after verified accounts have been mailed to the principal. If the listed property is not sold within the period of time specified in the broker's contract or within 18 months after the contract date, whichever period is shorter, any funds held by the broker in the trust account shall be refunded to the principal, together with a final accounting relating to any or all funds expended by the broker.

8. In an effort to give meaning to the plain reading of Section 475.452, F.S. and Rule 61J2-10.029, F.A.C., as well as to protect the public, the Commission concludes that a flat fee collected for services is considered to be an advance fee subject to the requirements of the above-cited statute and rule.

9. This Final Order responds only to the specific facts and questions set forth by Petitioner in the Petition for Declaratory Statement.

DONE AND ORDERED this 8<sup>th</sup> day of May, 2006.

For Florida Real Estate Commission

Michael E. Murphy

By Michael Murphy, Director  
Division of Real Estate

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Certified Mail to Tomas A. Jimenez, Jr., Florida Real Estate Marketing Group, LLC, 1828 W. Pensacola St. #55, Tallahassee, Florida 32304 and Tom Barnhart, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; on this 22<sup>nd</sup> day of May, 2006.

Sarah Wachman

# Petition for Declaratory Statement Before DBPR / FREC

February 22, 2006

## DS 2006-009

### Petitioner information:

**Tomas A. Jimenez, Jr.**

Lic # BK 3040937

**Florida Real Estate Marketing Group, L.L.C.**

CQ 1024135

1828 W. Pensacola St. #55

Tallahassee, FL 32304

Tel: (904) 982-2656

Email: t\_jimenezjr@yahoo.com

**Statutory provision: 475.452**

## FILED

Department of Business and Professional Regulation  
DEPUTY CLERK


CLERK *Brandon M. Nichols*  
DATE 2-22-2006

I (hereafter referred to as "the broker") am a licensed Florida real estate broker desiring to offer services to the public on a flat fee basis. The fee would be substantially less than the traditional 6% commission typically earned on residential real estate sales. Instead, the client/customer would pay an upfront fee for broker services. The fee is not contingent on procuring a contract for the sale of the property. Instead, the broker agrees to provide specified services in exchange for a fixed or flat fee.

The broker desires to immediately deposit the fee paid by the client/customer into the brokers operating account and use those funds for normal business operations as he fulfills the obligation to market the property. The broker is aware of Florida Statute 475.452 as well as the corresponding regulations adopted by the Florida Real Estate Commission. As a result, the broker is seeking an interpretation whether the flat fee described above would be considered an advanced fee subject to the requirements that it be held in trust and accounted for monthly.

As drafted Florida Statute 475.452 seems to contemplate the situation in which a client deposits funds with the broker to be used for direct or special advertising with the balance to be returned if not actually expended. Obviously, the situation described above is not the situation contemplated by the statute. In reviewing this matter, attorneys nor I have been able to locate any rules directly addressing the above proposed business model. This communication is in effort to determine whether I have been overlooking an applicable provision or, in the alternative, to determine the Commission's position in this regard. I am not looking to debate the issue. Instead, I am simply attempting to ascertain the Commission's position, and the statutory or regulatory basis for that position.

Thank you in advance for your help in this matter.

  
2-22-06  
Tomas A. Jimenez, Jr.

RECEIVED  
FEB 22 2006

DBPR Agency Clerk

**FAJUA Advisory Committee Meeting**

DATE AND TIME: Tuesday, April 11, 2006, 1:00 p.m.  
 PLACE: Ponte Vedra Inn & Club, 200 Ponte Vedra Blvd., Ponte Vedra Beach, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: Discuss servicing carrier agreement, new servicing carrier start up and any other matters that may come before the committee.

**FAJUA Finance Committee Meeting**

DATE AND TIME: Tuesday, April 11, 3:00 p.m.  
 PLACE: Ponte Vedra Inn & Club, 200 Ponte Vedra Blvd, Ponte Vedra Beach, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: To review and discuss matters relating to FAJUA Financial Reporting and any other matters that may come before the committee.

**Board of Governors Meeting**

DATE AND TIME: Wednesday, April 12, 2006, 8:30 a.m.  
 PLACE: Ponte Vedra Inn & Club, 200 Ponte Vedra Blvd., Ponte Vedra Beach, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: To receive reports of the general manager, committees, and counsel; to consider and take actions based on those reports; and consider any other matters that may come before the Board.

**Annual Meeting of Members**

DATE AND TIME: Wednesday, April 12, 2006, TBA  
 PLACE: Ponte Vedra Inn & Club, 200 Ponte Vedra Blvd, Ponte Vedra Beach, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: To approve Annual Meeting minutes of April 15, 2005; receive Association's annual report; and consider any other matters that may come before the Members.

Additional information may be obtained from: Lisa Stoutamire, 1425 Piedmont Drive East, #201A, Tallahassee, FL. (850)681-2003, stoutamire@fajua.org.

**Section VII**  
**Notices of Petitions and Dispositions**  
**Regarding Declaratory Statements**

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**PUBLIC SERVICE COMMISSION**

NOTICE IS HEREBY GIVEN that the Florida Public Service Commission has issued an order disposing of the petition for declaratory statement filed by Progress Energy Florida, Inc. The final order was issued on March 17, 2006. The Commission granted the petition to the extent that once franchise fees for the period September 24, 2002 through November 11, 2004 are found to be legally due and payable, Progress Energy Florida, Inc. may collect those fees only from its customers resident in the Town of Belleair pursuant to subsection 25-6.100(7), F.A.C.

A copy of the order may be obtained at: <http://www.psc.state.fl.us> or by writing: Division of the Commission Clerk and Administrative Services, 4075 Esplanade Way, Tallahassee, FL 32399-0862.

DOCKET NO.: 050925-EI.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

The Florida Real Estate Commission hereby gives notice that it has received a Petition for Declaratory Statement that was filed on February 22, 2006, by Thomas A. Jimenez, Jr. The Petition seeks an opinion from the Commission concerning Section 475.452, Florida Statutes, and its application to up front flat fee paid funds for real estate broker services and the requirement for escrowing of funds.

A copy of the Petition may be obtained by contacting: Lori Crawford, Deputy Clerk, Division of Real Estate, 400 West Robinson Street, Suite N801, Orlando, Florida 32801.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF HEALTH**

The Board of Chiropractic Medicine hereby gives notice that it has issued a Final Order on the Petition for Declaratory Statement, which was filed on January 10, 2006, on behalf of Fred Quintana, D.C. The Notice of Petition for Declaratory Statement was published in Vol. 32, No. 3, of the January 20, 2006, Florida Administrative Weekly. The Petitioner requested that the Board issue a Declaratory Statement to the effect that Section 460.403, Florida Statutes, entitled "Definitions," permits Petitioner to delegate to a trained, yet unlicensed assistant, the use of physical means or physiotherapy, including light heat, water, or exercise by way of simple physical modalities such as hot packs, electrical muscle stimulators, ultrasound therapy devices and mechanical massage. The



OFFICE OF THE ATTORNEY GENERAL  
Administrative Law Bureau

CHARLIE CRIST  
ATTORNEY GENERAL  
STATE OF FLORIDA

**Johnny Booth**  
Paralegal Specialist  
PL 01 The Capitol  
Tallahassee, Florida 32399-1050  
Telephone (850)414-3300 , SunCom 994-3300  
Fax (850) 922-6425, SunCom 292-6425

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**MEMORANDUM**

TO: Michael Murphy, Executive Director  
Florida Real Estate Commission

FROM: Johnny Booth, Paralegal Specialist (for Tom Barnhart, Counsel for the Board) *JB*

RE: Notice of Disposition to the  
Petition for Declaratory Statement filed  
by Thomas A. Jimenez, Jr.

DATE: June 20, 2006

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The above-referenced Notice of Disposition was submitted to the Bureau of Administrative Code on June 13 2006 and will publish in Vol. 32, No. 25, of the Florida Administrative Weekly on June 23, 2006.

Attached is a copy for your records.

Should you have questions, please call me at 414-3756. Thank you for your assistance in this matter.

cc: Josefina Tamayo, General Counsel

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
FLORIDA REAL ESTATE COMMISSION

NOTICE OF DISPOSITION

The Florida Real Estate Commission hereby gives notice that it has issued an Order on the Petition for Declaratory Statement that was filed on February 22, 2006, by Thomas A. Jimenez, Jr. The Notice of Petition for Declaratory Statement was published in Volume 32, Number 13, of the Florida Administrative Weekly. Petitioner inquired as to whether a flat fee for certain broker services would be considered an advance fee under Section 475.452, F.S., subject to the requirements that it be held in trust and accounted for monthly. The Commission considered the Petition at its meeting held on April 18, 2006, in Orlando, Florida. The Commission's Order, filed on May 22, 2006, denied the Petition for Declaratory Statement concluding that a flat fee collected for services is considered to be an advance fee subject to the requirements in Section 475.452(1), Florida Statutes. A copy of the Commission's Order may be obtained by contacting Lori Crawford, Deputy Clerk, Division of Real Estate, 400 West Robinson Street, Suite N801, Orlando, Florida 32801.

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REGISTRATION DIVISION