

Charlie Liem, Interim Secretary

Charlie Crist, Governor

**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
January 19 and 16, 2010
General Meeting**

Chair Roger Enzor called the meeting of the Florida Real Estate Commission to order, at approximately 8:40 a.m., in Orlando, Florida, on this 19th day of January, 2010.

The following Commission members were in attendance: Chair Roger Enzor, Poul Hornsleth, Ralph McCoig, Michael Guju and John Ruffier. Vice-Chair Richard DeNapoli was excused. 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; Juana Watkins, Deputy Director; Patrick Cunningham, Acting Chief Attorney; Brad Koshland, Bureau Chief of Enforcement; Patrick Cunningham, Joseph Solla, Senior Attorneys; JoEllen Peacock, Education Coordinator; Denise Johnson, OMC II; Jocelyn Pomaes, Regulatory Specialist III; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407) 896-1813 provided court reporter services.

Approval of the Minutes

Commissioner Hornsleth moved; Commissioner McCoig seconded to approve the Minutes of the December 15 and 16, 2009, General Meeting, as written. Motion carried unanimously.

Unlicensed Activity Report

Director O'Bryant presented the Unlicensed Activity Report and made an oral amendment to the report. Director O'Bryant addressed questions from the Commissioners.

Proposed Rule Development

The purpose of this workshop is to discuss incorporating of forms rules into the applicable Florida Real Estate Commission rules. The Commission addressed the following rules:

61J2-10.023 Branch Office – Commissioner Hornsleth moved to amend the rule adopt language incorporating forms Rule 61-35.02717; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

- (1) If a broker desires to conduct business from more than one office, each additional office must be registered as a branch office pursuant to Rule 61-35.0271, Florida

Administrative Code, and the fee must be paid for its registration, as provided in subsection 61J2-1.011(3), Florida Administrative Code.

(2) though (3) – No change.

61J2-10.034 Trade Names – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.0271; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

An individual broker, partnership or corporation may use a trade name and, if so, it must be disclosed upon the request for license, made pursuant to Rule 61-35.0271, Florida Administrative Code, and be placed upon the registration or license. The trade name shall not be, and the Commission will refuse to issue a license containing a trade name which is the same as the real or trade name of another registrant or licensee registered or licensed with the Commission. No individual, partnership or corporation may be registered under more than one trade name. The actual name of the individual or an entity is not a trade name.

61J2-10.038 Mailing Address – Commissioner Ruffier moved to adopt language incorporating forms rule 61-35.0271; seconded by Commissioner McCoig; motion carried unanimously. The proposed changes are:

- (1) No change
- (2) Each licensee and permit holder is required to notify the BPR in writing of the current mailing address and any change in the current mailing address within 10 days after the change pursuant to Rule 61-35.02721, Florida Administrative Code.

61J2-17.011 School Instructor Requirements and Qualifications – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.02717; seconded by Commissioner McCoig; motion carried unanimously. The proposed changes are:

A person shall qualify for an instructor’s permit by meeting the qualifications for practice set forth in Section 475.451(2)(c), Florida Statutes. “Extensive real estate experience” shall be defined as a minimum of three years of full-time experience as a broker. This experience must include having participated in closing at least five real estate transactions as a licensee, or as the employing broker of licensees, for either party to the transaction, within the 12-month period immediately preceding the filing of an instructor's application pursuant to Rule 61-35.02712, Florida Administrative Code.

61J2-2.027 Applications by Individuals – Recommended changing 12 months to 24 months relating to sections (1)(b)1, (b)2 and (b)3. Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.02717; seconded by Commissioner Guju; motion carried unanimously. Changes to Sections (1)1, 2 and 3 were previously approved by the Commissioners. The proposed changes are:

The application of a natural person for active licensure pursuant to Rule 61-35.0271, Florida Administrative Code, with respect to sales associates and pursuant to Rule 61-35.02711, Florida Administrative Code, with respect to brokers, whether the applicant expects to operate alone, or as a partner, or with a corporation, or as a sales associate, is governed by substantially the same rules and forms.

(1) The applicant must meet necessary personal qualifications as follows:

(a) Is 18 years of age or older.

(b) If the application is for broker:

1. Has been registered as an active sales associate for at least ~~12~~ 24 months during the preceding 5 years under one or more brokers;

2. Has held a current and valid real estate sales associate's license for at least ~~12~~ 24 months during the preceding 5 years in the employ of a governmental agency for a salary and performing the duties authorized in Chapter 475, F.S.; or

3. Has held a current and valid real estate broker's license for at least ~~12~~ 24 months during the preceding 5 years in any other state, territory, or jurisdiction of the United States, or in any foreign national jurisdiction.

(c) Hold a high school diploma or its equivalent.

(2) through (4) – No change.

61J2-2.031 Where to Apply – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.027; seconded by Commissioner McCoig; motion carried unanimously. The proposed changes are:

Completed applications for licensure pursuant to Rule 61-35.027, Florida Administrative Code, shall be submitted to the Division of Real Estate online or at the address listed on the application(s).

61J2-4.007 Registration Requirements – Commissioner Ruffier moved to adopt language incorporating forms Rules 61-35.02716 and 61-35.02711; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

Every partnership shall be registered pursuant to Rule 61-35.02716, Florida Administrative Code, and at least one of its partners licensed or registered as an active broker pursuant to Rule 61-35.02711, Florida Administrative Code. Each partner who expects to deal with the public in the partnership's practice or business as a broker shall hold a valid and current active broker's license or registration.

61J2-4.009 Incorporation by Reference – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.02716; seconded by Commissioner Hornsleth; motion carried unanimously. The proposed changes are:

All of the provisions and requirements of Rules 61J2-5.014 through Rule 61J2-5.018 with respect to applications pursuant to Rule 61-35.02716, Florida Administrative Code, shall apply to partnerships and its partners so far as they may be made applicable by reading into them "partnership" for "corporation" and "partners" for "officers" or "directors."

61J2-4.010 Successor Partnerships – Commissioner Ruffier moved to adopt language incorporating forms Rules 61-35.02716 and 35.02721; seconded by Commissioner McCoig; motion carried unanimously. The proposed changes are:

Ordinarily when a partner dies or withdraws, or a new partner is added, that partnership is dissolved and a new one is created. For Commission purposes, if the business is continued by two or more persons, one of whom is an active broker with the partnership, the partnership will be deemed to be continued. In this latter case, it is only necessary to cancel, issue, or reissue registration and licenses, perfecting the changes in organization, including change of name of the partnership, if any, and including a reissue of licenses to each sales associate if there is a change of name or address pursuant to Rules 61-35.02716, Florida Administrative Code and 61-35.02721, Florida Administrative Code. If there is dispute between two former partners, or groups thereof, as to the right to use a trade name or firm name, no registration or licenses shall be issued to either until the dispute is settled by agreement or judicially and the registration and licenses of all, as well as the sales associate(s), shall be involuntary inactive until the dispute is so settled, or a request shall be filed for the issuance of registration and licenses under another name.

61J2-5.012 Domestic Corporations – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.02716; seconded by Commissioner Hornsleth; motion carried unanimously. Proposed changes are:

Before initial registration pursuant to Rule 61-35.02716, Florida Administrative Code, is granted, proof must be furnished of legal corporate existence. Before renewal registration is granted, the Commission may require proof of legal corporate existence. Proof may be by letter from the Secretary of State or by certification.

61J2-5.013 Foreign Corporations – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.02716; seconded by Commissioner McCoig; motion carried unanimously. The proposed changes are:

Before registration pursuant to Rule 61-35.02716, Florida Administrative Code, is granted or, if demanded, renewal registration is issued to a foreign corporation, and licenses to its active officers and directors, proof shall be filed that the corporation is authorized to do business in the State of Florida. A letter from the Secretary of State shall be deemed to be sufficient proof.

61J2-5.014 Registration of Corporation – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.02716; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

Unless the Commission or BPR shall have information that the corporation has been in violation of Chapters 475 and 455, Florida Statutes, or the rules promulgated under said chapters, it will be assumed to be qualified for registration if its officers and directors are qualified and if the answers to questions in the application, or in supplemental inquiries, are satisfactory. Otherwise, investigation and other proceedings, as in cases of individual applicants, shall commence. No registration pursuant to Rule 61-35.02716, Florida Administrative Code, shall be granted or renewed for any corporation if it shall appear that the individual(s) having control of the corporation has been denied, revoked, or suspended and not reinstated, or if a person having control of the corporation has been convicted of a felony in any court and has not had civil rights restored for at least 5 years, or if an injunction has been entered against the individual for operating as a real estate licensee

without a license. A person shall be deemed to be in control of a corporation where such person or spouse, children, or member of the household shall own or control, directly or indirectly, more than 40 percent of the voting stock of such corporation.

61J2-5.015 License Status of Officers and Directors Required – Commissioner Ruffier moved to adopt language incorporating forms Rules 61-35.02716 and 35.02711; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

All officers and directors of a real estate brokerage corporation, domestic or foreign, shall be registered pursuant to Rule 61-35.02716, Florida Administrative Code. No registration shall be issued to the corporation or licenses to any officer or director, unless the corporation shall cause to register, and biennially renew the license of at least one active officer. A foreign corporation shall biennially present proof that at least one active officer, holding a valid and current active license pursuant to Rule 61-35.02711, Florida Administrative Code, or for whom such a license is requested, is authorized to transact brokerage business in the State of Florida, and to bind the corporation with respect to such business.

61J2-5.016 License Status of Active Officers and Directors – Commissioner Ruffier moved to adopt language incorporating forms Rules 61-35.02721 and 35.027211; seconded by Commissioner Guju; motion carried unanimously.

Officers and directors who expect to be active must qualify and become licensed in the same manner and procedure as any other applicant for active license pursuant to Rule 61-35.02721, Florida Administrative Code. No registration shall be issued to the corporation or partnership unless every broker licensed pursuant to Rule 61-35.027211, Florida Administrative Code, with the corporation or partnership is registered as an officer, director or partner of the corporation or partnership. No sales associate or broker associate may be registered as an officer, director of a brokerage corporation or general partner of a brokerage partnership.

61J2-5.018 Vacancies of Office – Commissioner Ruffier moved to adopt language incorporating forms Rules 61-35.02716, 35.02721 and 35.0272; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

- (1) A corporation shall have at all times registered the name(s) of its officer(s) and director(s) pursuant to Rule 61-35.02716, Florida Administrative Code. In the event that a corporation has but one active broker, and such broker dies, resigns, or is otherwise removed from the position as the active broker, then, in such event, such vacancy shall be filled within 14 calendar days during which no new brokerage business may be performed by the corporation or a licensee registered with the corporation until a new active broker is appointed and registered with the corporation pursuant to Rule 61-35.02721, Florida Administrative Code. It shall be the duty of the corporation to immediately notify the Commission of such vacancy and of the steps taken to fill this vacancy pursuant to Rule 61-35.0272, Florida Administrative Code.
- (2) through (4) – No change.

Commissioner Hornsleth requested to address increasing the number calendar days to fill the vacancy in the event that a corporation has but one active broker, and such broker dies, resigns, or

is otherwise removed from the position as the active broker. Director O'Bryant stated the division would research the issue and notice a workshop for a future meeting.

61J2-5.019 Responsibility for Registration Status – Commissioner Ruffier moved to adopt language incorporating forms Rules 61-35.02716, 35.02721, 35.02711 and 35.0272; seconded by Commissioner McCoig; motion carried unanimously. The proposed changes are:

- (1) It shall be the duty of every active corporate officer and director to see that the corporation and each of its officers, directors and salespersons are holders of current registration and licenses pursuant to Rules 61-35.02716 and 35.02721, Florida Administrative Code. It shall be the duty of every active broker partner of a partnership to see that each partner of a partnership required to hold registration and license does in fact hold registration and license pursuant to Rules 61-35.02711 and 35.0272, Florida Administrative Code.
- (2) through (3) – No change.

61J2-5.020 Execution of Papers by Corporation – Commission Ruffier moved to allow the department to suggest references relating to forms rules; seconded by Commissioner Guju; motion carried unanimously. Director O'Bryant stated that they would bring this rule back before the Commissioners at a future meeting.

61J2-6.006 Employment by More Than One Entity – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.02719; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

- (1) A salesperson or broker-salesperson registered pursuant to Rule 61-35.02719, Florida Administrative Code, may only be employed by one broker or by one owner-developer. Owner-developers shall be defined as any of those unlicensed entities enumerated in s. 475.011(2), F.S.
- (2) No change.

61J2-9.007 Change of Name – Commissioner Hornsleth moved to adopt language incorporating forms Rules 61-35.02719, 35.0272 and 35.0271; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

If a name or trade name is lawfully changed, a request for the reissuance of the license or registration shall be filed pursuant to Rules 61-35.02719, 61-35.0272 or 61-35.0271, Florida Administrative Code, and the license or registration shall be reissued.

61J2-1.011 License Fees and Examination Fees – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.027; seconded by Commissioner Guju; motion carried unanimously. The proposed changes are:

- (1) Every person, partnership, limited liability partnership, corporation or limited liability company deemed and held to be a licensee under Chapter 475, F.S., must register with the Florida Real Estate Commission (Commission) and must secure a license for each license period, pursuant to Rule 61-35.027, Florida Administrative Code.
- (2) through (10) No change.

61J2-1.013 – Registration Categories – Commissioner Ruffier moved to adopt language incorporating forms Rule 61-35.027; seconded by Commissioner Guju; motion carried unanimously.

- (1) Registration pursuant to Rule 61-35.027, Florida Administrative Code, in the following categories shall show the name, the business address, effective and expiration date:
(a) through (2) – No change.

Commissioner Hornsleth commended Commissioner Ruffier for a fine job.

Ratification of Suspended Licenses

Director O’Bryant requested the Commission ratify reinstatement of the real estate license of Renee Kozlowski who has met all requirements for reinstatement. The Commission ratified the action unanimously.

Escrow Disbursement Orders

Attorney Joseph Solla presented 35 Escrow Disbursement Orders for the Commission’s consideration. Upon recommendation of the Legal Section, the Commission issued 35 Escrow Disbursement Orders. Commissioner Hornsleth moved to approve the Legal Section recommendation. Commissioner McCoig seconded the motion. The motion carried unanimously.

Legal Final Order Docket

Tab J – Gustavo M. Arias, BK 701092, Case No. 2004009801 – Settlement Agreement

Mr. Gustavo was present and represented by Heather Rutecki, Esquire. No current members were recused due to participation on the probable cause panel.

Mr. Cunningham represented the department and presented the case to the Commission. Commissioner Ruffier moved; seconded by Commissioner Guju to accept the Settlement Agreement. Motion passed unanimously.

Penalty imposed: \$1,500.00 fine, \$602.50 costs, attend two 2-day FREC meetings, 12 months to complete penalties. **Violation:** Guilty of failure to maintain trust funds in the real estate brokerage escrow bank account or some other proper depository until disbursement thereof was properly authorized in violation of Section 475.25 (1)(k), F.S., guilty of failure to immediately deposit trust funds in violation of Rule 61J2-14.010, F.A.C. and Section 475.25 (1)(e), F.S.

Action taken: Settlement Agreement accepted.

Tab P – Mohamed B. Salaam, BK 3108353, Case No. 2008066728 – Settlement Agreement

Mr. Mohammed was not present. Heather Rutecki, Esquire, appeared on his behalf. Commissioner Ruffier was recused due to participation on the probable cause panel.

Mr. Cunningham represented the department and presented the case to the Commission. Commissioner Guju moved; seconded by Commissioner McCoig to accept the Settlement Agreement. Motion passed unanimously.

Penalty imposed: \$1,000.00 fine, \$1,844.70 costs within 6 months, 12 months probation, attend two 2-day FREC meetings. **Violation:** Guilty of failure to maintain trust funds in the real estate brokerage escrow bank account or some other proper depository until disbursement thereof was properly authorized in violation of Section 475.25 (1)(k), F.S., guilty of failure to preserve and make available to the Petitioner, all books, records, and supporting documents and failed to keep an accurate account of all trust fund transactions in violation of Rule 61J2-14.012 (1), F.A.C., Section 475.5015, F.S., and Section 475.25 (1)(e), the F.S.

Action taken: Settlement Agreement accepted.

Tab E – Anthony Alexander, BK 3052589, Case No. 2008030458– Respondent’s Request for Reconsideration

Mr. Alexander was present and represented by Steven W. Johnson, Esquire. Commissioner Ruffier was recused due to participation on the probable cause panel.

Ms. Blakeman represented the department and presented the case to the Commission. The Commission entered into discussion. Commissioner Hornsleth moved, seconded by Commissioner Guju to deny the request. After further discussion Commissioner Guju moved, seconded by Commissioner Hornsleth to grant reconsideration limited to discussion of health issues only. The motion carried unanimously. Commissioner Hornsleth moved to deny modifying the Final Order.

Action taken: Modification denied.

Tab K – Valeria Bagnasco, SL 3092936, Case No. 2007068036 – Settlement Agreement

Ms. Bagnasco was not present. Roderick F. Coleman, Esquire, appeared on her behalf. Vice-Chair DeNapoli, however not present, was recused due to participation on the probable cause panel.

Ms. Blakeman represented the department and presented the case to the Commission. Commissioner Guju moved; seconded by Commissioner McCoig to accept the Settlement Agreement as amended. Motion passed 4 to 1.

Penalty imposed: 60-day suspension, \$594.00 costs, 1 year probation, attend two 2-day FREC meetings. **Violation:** Guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme or device, culpable negligence, or breach of trust in any business transaction in violation of Section 475.25 (1)(b), F.S.

Action taken: Settlement Agreement accepted.

Tab L – Linette Guerra, BK 3122503 and 513822, Case No. 2007068038 – Settlement Agreement

Ms. Guerra was not present. Roderick F. Coleman, Esquire, appeared on her behalf. Vice-Chair DeNapoli, however not present, was recused due to participation on the probable cause panel.

Ms. Blakeman represented the department and presented the case to the Commission. Commissioner Guju moved; seconded by Commissioner McCoig to accept the Settlement Agreement. Motion passed 4 to 1.

Penalty imposed: \$643.50 costs, 1 year probation, attend three 2-day FREC meetings.

Violation: Guilty of culpable negligence, in any business transaction in violation of Section 475.25 (1)(b), F.S.

Action taken: Settlement Agreement accepted.

Tab B – Gregory John Owen, BK 3209421 and 3147448, Case No. 2008014092 – Recommended Order, Exceptions, Response to Exceptions, Motion to Strike Exceptions, Response to Motion to Strike

Respondent was present and represented by Daniel Villazon, Esquire. Commissioner DeNapoli was recused due to participation on the probable cause panel.

Ms. Blakeman represented the Department and presented the case to the Commission. Mr. Cunningham filed exceptions on behalf of the Department. Mr. Villazon filed a Response to Exceptions and motion to Strike Exceptions. Ms. Blakeman filed a Response to Motion to Strike. The Commission considered the Motion to Strike and Response to Motion to Strike and entered into discussion. Commissioner Hornsleth moved to deny Motion to Strike Exceptions. Seconded by Commissioner Ruffier, motion carried unanimously. Ms. Blakeman presented Exceptions I, II, III and V (sic) to the Recommended Order of the Administrative Law Judge. The Commission entered into discussion. Commissioner Hornsleth moved to accept Exception I; seconded by Commissioner Guju; motion passed 3 to 2. Commissioner Ruffier moved to deny Exception II; seconded by Commissioner Guju, motion carried unanimously. Commissioner Guju moved to deny Exception III; seconded by Commissioner Ruffier, motion carried unanimously. Commissioner Guju moved to deny Exception V; seconded by Commissioner Ruffier, motion passed 3 to 2. The Commission entered into discussion. Commissioner Guju moved; seconded by Commissioner Hornsleth moved to impose the penalty below. Motion passed 4 to 1.

Penalty imposed: \$1,000.00 fine, \$845.63 costs, 6 months suspension effective 30 days from the date of filing of the Final Order, 12 months probation, attend two 2-day Florida Real Estate Commission meetings. **Violation:** Guilty of failure to maintain trust funds in the real estate brokerage escrow bank account or some other proper depository until disbursement thereof was properly authorized in violation of Section 475.25 (1)(k), F.S.

Tab H – Phillip B. Gilbert, BK 460883, Case No. 9480219 – Respondent’s Motion for Reconsideration

Mr. Gilbert was present and not represented by counsel. No current members were recused due to participation on the probable cause panel.

Ms. Blakeman represented the department and presented the case to the Commission. The Commission entered into discussion. Commissioner Guju moved, seconded by Commissioner Ruffier; motion carried unanimously to deny Respondent's Motion for Reconsideration.

Action taken: Reconsideration request denied.

Tab A – Glinda G. Hatfield, BK 676140, Case No. 2008029263 – Recommended Order

Ms. Hatfield was not present and not represented by counsel. Commissioner Guju was recused due to participation on the probable cause panel.

Mr. Cunningham represented the Department and presented the case to the Commission. Neither party filed exceptions. The Commission considered the Recommended Order and entered into discussions. Commissioner Hornsleth moved, seconded by Commissioner Ruffier to accept the Recommended Order; motion passed 3 to 1.

Penalty imposed: 1 year suspension; \$250.00 fine, \$198.00 costs. **Violation:** Guilty of aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to Chapter 455, 475 or the rules of the Petitioner in violation of Section 455.227(1)(j), F.S.; guilty of failure to have a current registration with the Petitioner in violation of Rule 61J2-5.019, F.A.C. and, therefore, in violation of Section 475.25(1)(e), F.S.; guilty of sharing a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker-salesperson, or salesperson under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in Section 475.01(1)(a), F.S. and, therefore, in violation of Section 475.25(1)(h), F.S.; guilty of having advertised property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content in violation of Rule 61J2-10.025, F.A.C. and Section 475.25(1)(c), F.S.

Tab C – Alex Moyer, III, BK 489123, Case No. 2008060557 – Respondent's Informal

Mr. Moyer was not present and not represented by counsel. Vice-Chair DeNapoli, not present, was recused due to participation on the probable cause panel.

Mr. Cunningham represented the department and presented the case to the Commission. The Commission granted the Informal Hearing and entered into discussion. Commissioner Guju moved seconded by Commissioner McCoig; motion carried unanimously to find the Respondent guilty as charged. Commissioner Hornsleth moved, seconded by Commissioner McCoig; motion passed 4 to 1 to impose the following sanctions:

Penalty imposed: Suspension for 6 months or until Respondent satisfies the previous Final Order relating to Case No. 2006001735, \$500.00 costs. **Violation:** Guilty of having violated a lawful order of the Florida Real Estate Commission in violation of Section 475.42(1)(e), F.S. and, therefore, in violation of Section 475.25(1)(e), F.S.

Tab D – David Allen Rossman, BK 3078655, Case No. 2007051878; Pelican Reef R E Services LLC, CQ 1021247, Case No. 2007051880– Petitioners Request for an Informal Hearing

Mr. Rossman was not present and not represented by counsel. Vice-Chair DeNapoli, not present, was recused due to participation on the probable cause panel.

Mr. Cunningham represented the department and presented the case to the Commission. The Commissioners granted the informal hearing and entered into discussion. Commissioner Ruffier moved, seconded by Commissioner McCoig; motion carried unanimously to find the Respondent guilty as charged. Commissioner Ruffier moved, seconded by Commissioner Hornsleth; motion carried unanimously to impose the following sanctions:

Penalty imposed: Respondent Rossman – \$2,000.00 fine, \$389.40 costs, 12 months probation, must attend two 2-day FREC general meetings. Respondent Pelican – Reprimand, \$290.40, 12 months probation **Violation:** Guilty of failure to maintain trust funds in the real estate brokerage escrow bank account or some other proper depository until disbursement thereof was properly authorized in violation of Section 475.25(1)(k), F.S.; guilty of failure to properly prepare the required written monthly escrow statement-reconciliations in violation of Rule 61J2-14.012(2) and (3), F.A.C.; guilty of failure to immediately deposit trust funds in violation of Rule 61J2-14.010, F.A.C. and Section 475.25(1)(e), F.S.

Tab F – Marie Y. Myrtil Ferdilus, SL 3192614, Case No. 2008059197 – Voluntary Surrender of Licensure for Permanent Revocation

Ms. Ferdilus was not present nor presented by counsel. Vice-Chair DeNapoli, not present, was recused due to participation on the probable cause panel.

Ms. Blakeman represented the department and presented the case to the Commission. Commissioner Hornsleth moved, seconded by Commissioner McCoig to accept the Affidavit for the Voluntary Surrender of License for Permanent Revocation; motion carried unanimously.

Penalty imposed: Revoked.

Tab G – Peter Cole Fischbach, BK 532780, Case No. 2007028634 – Respondent’s Request for an Extension of Time to Comply with Final Order

Mr. Fischbach was not present and not represented by counsel.

Ms. Blakeman represented the department and presented the case to the Commission. The Commission entered into discussion. Commissioner Hornsleth moved, seconded by Commissioner McCoig; motion carried unanimously to grant a 1-year extension from the filing date of the Order to complete the requirements of the Final Order.

Action Taken: Extension granted.

Tab I – Eric Pearl, BK 588406, Case No. 2008034403– Respondent’s Request for an Extension of Time to Comply with Final Order

Mr. Pearl was not present and not represented by counsel. Commissioner Guju was recused due to participation on the probable case panel.

Ms. Blakeman represented the department and presented the case to the Commission. The Commission entered into discussion. Commissioner Hornsleth moved, seconded by Commissioner Ruffier; motion carried unanimously to grant a 90-day extension from the filing date of the Order to complete the requirement of the Final Order.

Action Taken: Extension granted.

Tab M – Mary A. Joy, SL 3169984, Case No. 2009007467 – Settlement Agreement

Ms. Joy was not present and not represented by counsel. Commissioner Hornsleth was recused due to participation on the probable cause panel.

Mr. Cunningham represented the department and presented the case to the Commission. Commissioner Ruffier moved; seconded by Commissioner Guju to accept the Settlement Agreement. Motion carried unanimously.

Penalty imposed: \$500.00 fine and \$99.00 costs with in 6 months, attend one 2-day Florida Real Estate Commission meeting. **Violation:** Respondent failed to comply with the requirements of Rule 61J2-2.027 (2), F.A.C. by failing to disclose a no contest plea to a misdemeanor offense in 1985 and, therefore, is in violation of Section 475.25(1) (e), F.S.

Action taken: Settlement Agreement accepted.

Tab N – Sean Negm, SL 3086735, Case No. 2008024247 – Settlement Agreement

Mr. Negm was present and not represented by counsel. Commissioner Ruffier was recused due to participation on the probable cause panel.

Mr. Cunningham represented the department and presented the case to the Commission. Commissioner Hornsleth moved; seconded by Commissioner Guju to accept the Settlement Agreement. Motion carried unanimously.

Penalty imposed: \$1,000.00 fine, \$247.50 costs, 12 months probation, attend three 2-day FREC meetings. **Violation:** Guilty of failure to immediately place with the registered employer any money, fund, deposit, check or draft entrusted to her as agent of the registered employer in violation of Rule 61J2-14.009, F.A.C., Section 475.25 (1)(k), F.S. and Section 475.25 (1)(e), F. S.

Action taken: Settlement Agreement accepted.

Tab O – Hamid Reza Pouvalifazel, SL 3162679, Case No. 2007038548 – Settlement Agreement

Mr. Pouvalifazel was not present and not represented by counsel. No current members were recused due to participation on the probable cause panel.

Mr. Cunningham represented the department and presented the case to the Commission. Commissioner Hornsleth moved; seconded by Commissioner Ruffier to accept the Settlement Agreement. Motion carried unanimously.

Penalty imposed: \$1,000.00 fine and \$1,023.00 costs within 15 months from the filing of the Final Order, attend two 2-day Florida Real Estate Commission meetings. **Violation:** Failure to immediately place with the registered employer any money, fund, deposit, check or draft entrusted to her as agent of the registered employer in violation of Rule 61J2-14.009, F.A.C., Section 475.25(1)(k), F.S., and Section 475.25(1)(e), F.S., alleged violation of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme or device, culpable negligence, or breach of trust in any business transaction in violation of Section 475.25(1)(b), F.S.

Action taken: Settlement Agreement accepted.

Consent Agenda

The Commission considered 1 applicant from the Consent Agenda B; Commissioner Hornsleth moved; seconded by Commissioner Guju to require 1 applicant to be placed on the Summary of Applicant Agenda; motion carried unanimously.

The following applicants will be placed on the next available Summary of Applicant agenda:

Hipp Douglas L.

The Commission considered 48 applicants from the Consent Agenda A; Commissioner Hornsleth moved; seconded by Commissioner McCoig to approve 41 applicants and require 7 applicants to be placed on the Summary of Applicant Agenda; motion carried unanimously.

The following applicants were approved:

Andrews, Keith J.	Arcaro, Lauren	Atakanli, Kristine G.
Bailey, Skye W.	Banks, Ronald E.	Barber, Ransul C. Jr.
Burdge, Glenn S.	Carchedi, Bruno G.	Cardillo, Lorraine J.
Carey, Austin P.	Condon, Todd J.	Corcoran, Robert
Cosenzi, Diane L.	Cox, John Baxter	Deese, Harold Lamar
Dipiazza, Domenic	Eddins, Michael D.	Gallardo, Ronny M.
Gallo, Abraham	Gomez, Livia	Harden, Jason Patrick
Henke, Gordon John	James, Tyler	Jones, Donna Sue
Jorge, Joao E.	Lagasse, William G.	Lancaster, Theresa M.
Lariviere, Alfred Joseph	Lopez, Juan	Maher, Kyle J.
Naftzger, Darren Dale	Nazarenke, Oleg	Octala, Asmad Jr.
Rhyre, Shawn R.	Ross, Anthony	Simpson, Kaseem

Smith, Bradley Wilson
Smith, Robert

Surette, Thomas E.
White, Terrence E.

Walker, Steven C.

The following applicants will be placed on the next available Summary of Applicant agenda:

Hill, Roger L. Jr.
Piersall, Mary J.
Romanenko, Viktor G.

McDowell, Anthony Todd
Rafailovite, Steven

Mueller, Charles
Robinson, Stephen L.

Correspondence

Mr. Tom Barnhart, Counsel to the Florida Real Estate Commission, reported he received correspondence from Attorney Nancy Norelli advising of a law suit between Brokerless v. ForSaleByOwner.com Corp asking for a declaratory judgment. Mr. Barnhart asked the Commissioners to review the packet for future discussion. Mr. Barnhart addressed questions from the Commissioners.

There being no further business and no objection, the Chair adjourned the meeting at approximately 3:40 p.m.

January 20, 2010

Chair Roger Enzor reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., in Orlando, on this 20th day of January, 2010.

The following Commission members were in attendance: Chair Roger Enzor, Poul Hornsleth, Ralph McCoig, Michael Guju and John Ruffier. Vice-Chair Richard DeNapoli was excused. 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; Juana Watkins, Deputy Director, Jennifer Blakeman, Senior Attorney, Bradford Koshland, Bureau Chief of Enforcement, Denise Johnson, OMC II; Jeannie Adkinson, Regulatory Specialist III; Jocelyn Pomales, Regulatory Specialist III; Calvin Thomas, Unlicensed Activity; Lori Crawford, Regulatory Supervisor/Consultant; American Court Reporting, Inc. (407) 896-1813, provided court reporter services.

Law Suit Against FREC

Director O'Bryant stated that the division has not answered this suit as it is against the Florida Real Estate Commission and the Attorney General's Office is handling the matter. However, the division will absorb the costs relating to this issue and the division will play an active role to minimize the funds while still protecting the public.

Mr. Barnhart stated this suit is the result of a company taking a position that what two other companies involved is doing is wrong. Mr. Barnhart stated he will discuss this case with the attorney representing the company who filed the lawsuit and mostly likely file a motion to dismiss on various grounds. Mr. Barnhart addressed questions and comments from the Commissioners and stated he will keep the Commission apprised of the case as it moves forward.

Summary of Applicants

Denise Johnson, OMC II, presented 41 Summary of Applicants requesting to sit for the real estate examination.

Tab A – Anderson, Andrew T.; present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Tab B – Baker, Joseph Anthony; not present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab C – Bello, Elton; not present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Tab D – Bennett, Lateesha; present; Commissioner Guju moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Tab E – Brown, Donald Jr.; not present – Commissioner Ruffier moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab F – Butler, Michelle; not present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab G – Carswell, Derek; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to continue to approve; motion carried unanimously.

Tab H – Chadwell, Larry Jr.; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab I – Cokinos, James; present – Commissioner Guju moved; seconded by Commissioner Hornsleth to continue to approve; motion carried unanimously.

Tab J – Deler, Mark A.; present – Commissioner Ruffier moved; seconded by Commissioner Guju to deny; motion carried unanimously.

Tab K – Dixon, Mark A.; present – Commissioner McCoig moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab L – Elarbee, Hal S.; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab M – Elwartowski, Heidi Jo; present – Commissioner McCoig moved; seconded by Commissioner Hornsleth to deny; motion failed 2 to 3. Commissioner Guju moved; seconded by Commissioner Ruffier to approve; motion passed 3 to 2.

Tab N – Emanoil, Guy V.; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab O – Garlarza, Mercedes; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion passed 4 to 1.

Tab P – Galavis, Andrew B.; present – Commissioner McCoig moved; seconded by Commissioner Hornsleth to deny; motion passed 3 to 2.

Tab Q – Haines, Jessica M.; present – Commissioner McCoig moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab R – Hazlewood, Christopher A.; not present – Commissioner Hornsleth moved; seconded by Commissioner Hornsleth to deny; motion carried unanimously.

Tab S – Kepple, Paul; present – Commissioner Guju moved; seconded by Commissioner Ruffier to approve; motion carried unanimously.

Tab T – Lemmo, Robert M.; not present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to deny; motion carried unanimously.

Tab U – Masse, Neil E.; present – Application withdrawn and waived 90-day requirement.

Tab V – Mattesi, Michael; present – Commissioner McCoig moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab W – Matthews, Jason S.; present – Commissioner McCoig moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab X – May, Crystal L.; present – Commissioner Guju moved; seconded by Commissioner McCoig to application; motion carried unanimously.

Tab Y – McCammon, Stanley P.; not present – Application withdrawn and waived 90-day requirement.

Tab Z – McCardle, Jason P.; present – Commissioner Ruffier moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Tab AA – McAliley, Wade; not present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Tab AB – Mittler, William G.; not present – Commissioner Ruffier moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab AC – Morreale, Lisa T.; present – Commissioner Ruffier moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab AD – Orloski, Todd A.; present – Commissioner Hornsleth moved to approve, seconded by Commissioner Guju; motion carried unanimously.

Tab AE – Ortiz, Robert V.; present – Commissioner Guju moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab AF – Packer, Daniel A; present – Commissioner Hornsleth moved; seconded by Commissioner Ruffier to approve; motion carried unanimously.

Tab AG – Patel, Rajnikant R.; not present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to deny; motion carried unanimously.

Tab AH – Perez, Yoneiqua Y.; not present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab AI – Pickard, Tammie M.; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to deny; motion carried unanimously.

Tab AJ – Pietrak, Andrew J.; present – Commissioner Ruffier moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab AK – Piros, Andrew R.; present – Commissioner McCoig moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab AL – Puzacke, Jason L.; present – Commissioner McCoig moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab AM – Saide, Joseph G.; not present – Commissioner Ruffier moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Tab AN – Scarfone, Joseph; present – Commissioner Guju moved; seconded by Commissioner Ruffier to approve; motion carried unanimously.

Tab AO – Sierra, Glevy D.; present – Commissioner Ruffier moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab AP – Silva, Paul; not present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab AQ – Silver, David Marc; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to deny; motion carried unanimously.

Tab AR – Snead, Derrick A.; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion passed 4 to 1.

Tab AS – Soto, Juan Marcos Jr.; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to deny; motion carried unanimously.

Tab AT – Stacy, Brian M.; present – Commissioner Ruffier moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab AU – Stratton, Debra; present – Commissioner Guju moved; seconded by Commissioner Ruffier to approve; motion carried unanimously.

Tab AV – Thomas, Albert Lee Sr.; not present – Commissioner Ruffier moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab AW – Troher, Richard J.; present – Commissioner Ruffier moved; seconded by Commissioner Hornsleth to approve; motion carried unanimously.

Tab AX – Van Why, Carolyn M.; not present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to deny; motion passed 4 to 1.

Tab AY – Vivenzio, Melissa L.; not present – Vice-Chair DeNapoli moved; seconded by Commissioner Guju to continue to January 2010; Applicant waived 90-day requirement

Tab AZ – Webster, Eric T.; present – Commissioner Hornsleth moved; seconded by Commissioner Guju to approve; motion passed 4 to 1.

Tab BA – Weingartner, Raymond F.; present – Commissioner Ruffier moved; seconded by Commissioner Guju to approve; motion carried unanimously.

Tab BB – Wilcox, Cassius; present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Tab BC – Wolf, Linda M.; not present – Commissioner Hornsleth moved; seconded by Commissioner McCoig to approve; motion carried unanimously.

Director's Comments

Director O'Bryant reported that the department's House Bill 713 was filed yesterday. There are very few sections which affect the Division of Real Estate, one of which is Section 455.02, Florida Statutes, pertaining to members in good standing in the armed forces and their spouses obtaining a temporary license and which affects all professions. Chair Enzor asked how the division will comply with the changes. Director O'Bryant stated that the division will provide a 6 month temporary license based on licensure in good standing in another state. The division had to consider all licenses under the department, which included licenses with Federal oversight. Director O'Bryant will complete the Legislative Analysis of the bill outlining which areas affect the Division of Real Estate.

Director O'Bryant stated that the division has been working with Florida Realtors to put together a group of subject matter experts to review and update the broker exam and the department anticipates the publishing date of the exam will be August of 2010.

Director O'Bryant reported that he and Secretary Liem have public appearances at the Florida Realtor Legislative & Regulatory Business Issues Subcommittee meeting on January 22, 2010, in Orlando.

Commissioner McCoig asked if it would be possible to ask newly appointed Interim Secretary Charlie Liem to attend a Florida Real Estate Commission meeting. Director O'Bryant stated that it has been the tradition that the Secretary visits all the professional board and commissions and expects that Secretary Liem will follow suit.

Director O'Bryant recently discussed board/commission appointment issues with the Governor's Appointments Office. That office will be working that to make appointments within the confines of the statutes.

Commission Remarks

Chair Enzor thanked everyone for their diligence and involvement in facilitating this month's meeting.

Commissioner Hornsleth stated that it has been his pleasure to serve on the Commission.

Adjournment

There being no further business and no objection, the Chair adjourned the meeting at approximately 12:45 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for February 16 and 17, 2010, in Orlando, Florida.

Roger Enzor, Chair
Florida Real Estate Commission

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