

FLORIDA REAL ESTATE APPRAISAL BOARD MINUTES

Orlando, Florida
April 2 & 3, 2007

Amended June 4, 2007

Chair Frank Gregoire called the meeting of the Florida Real Estate Appraisal Board to order at 9:00 a.m., Monday, April 2, 2007.

Member Cynthia Wright offered the Invocation and Member Jay Small led the Pledge of Allegiance. The Chair introduced the Members present: Vice-Chair Joni Herndon; Patricia Birch, Susan Dailey, Cynthia Wright and Jay Small. June C. McKinney appeared as counsel for the Board. The Chair declared a quorum present.

Division staff present at the meeting: Thomas W. O'Bryant, Jr., Director; Elizabeth A. Hickman, Deputy Director; Kathleen Koeberich, Bureau Chief of Enforcement; James Harwood, Chief Attorney; Racquel White, Senior Attorney; Fred Clanton, Investigation Supervisor; JoEllen Peacock, Education Coordinator; Beverly Ridenauer, Government Analyst II; Lori Crawford, Regulatory Supervisor/Consultant; and Sheila Hall, Government Analyst I. American Court Reporting, 407-896-1813 provided court-reporting services.

Upon motion by Member Small seconded by Member Herndon, the Board approved the minutes of the February 5 & 6, 2007 meeting.

Summary of Applicants

Informal Hearings:

Ms. McKinney presented the Summary of Applicant informal hearings and the Board decisions are as follows:

01-04-07 Alex J. Sampedro – Registered Trainee – Denied
02-04-07 Alia Sossous – Registered Trainee – Denied

New Applicants:

Ms. Ridenauer presented the Summary of Applicants and the Board decisions are as follows:

03-04-07 John M. Busciglio, Sr. – Registered Trainee – Denied
04-04-07 John J. Cardenas – Registered Trainee – Denied
05-04-07 Owen L. Chinsee – Registered Trainee – Denied
06-04-07 George H. Yates – Registered Trainee – Approved
07-04-07 Sidney D. Conyers – Registered Trainee – Denied
08-04-07 Raymond M. Cox – Registered Trainee – Approved
09-04-07 Walter J. Gaylord, III – Registered Trainee – Approved
10-04-07 Allan Jarboe – Registered Trainee – Approved
11-04-07 Vickie L. Jones – Registered Trainee – Approved
12-04-07 Jose E. Marroquin, Sr. – Registered Trainee – Approved
13-04-07 Ricardo Molina – Registered Trainee – Denied
14-04-07 Earvin K. Williamson – Registered Trainee – Denied
15-04-07 Sandra A. Winstead – Registered Trainee – Denied

Board Business:

Board Counsel Matters - Rules Report

FREAB Counsel McKinney addressed the Rules Report and reported the following:

- 61J1-3.004 – Issuance of Certification

Ms. McKinney stated that the Joint Administrative Procedures Committee (JAPC) had sent a letter stating that the acronym "AQB" is not defined. She said she called the new JAPC attorney to explain two things:

1. Technical change can just spell out language in parentheses, but it's not that way anywhere else.
2. The new attorney did not specify in her email where in the rule she wanted to see the definition of AQB.

Ms. McKinney said she asked that the rule be allowed to go through as it is. Then, the implementation rule would be in place. If there is something that needs to be changed, she will be able to notice it and start to promulgate the rule to make the correction or edit.

Counsel McKinney asked the Board to delegate approval authority to one member who will work with her to approve this type of change when it does not affect or change the meaning of the rule. Member Birch moved to delegate authority to Chair Gregoire to approve non-technical changes to deal with the JAPC letter. With second by Member Dailey the motion carried.

- 61J1-6.001 - Experience Requirement

Ms. McKinney reported that the deletion of the affidavit language from the rule had been questioned by Suzanne Printy of JAPC, but with the supporting documentation for the language change the rule should be effective April 18, 2007.

Correspondence:

Counsel McKinney read a letter received on March 28, 2007 from Warren F. Todd, Permit Holder for National Education Seminars, Inc., dba Ed Klopfer School of Real Estate. Mr. Todd expressed his concerns over proposed Rule 61J1-3.004, F.A.C., which will implement the 2008 Appraiser Qualifications Board criteria changes.

Chair Gregoire responded by explaining that the date of January 1, 2009 is there because ASC believes the segmented approach does not last indefinitely and the Board had to establish a date to end the segmented approach. The Board reached what they believe is something that is acceptable to the ASC and yet provides some flexibility to those who are already operating as registered trainee appraisers. He stated further that the Board could have adopted a firm date scenario and there would be no flexibility at all.

Member Birch expressed concern about where the one year came from and how it was included in the rule. Chair Gregoire explained that a lot of this rule was achieved between meetings by former Board Counsel working closely with ASC Executive Director, Ben Henson and their legal counsel, Mark Weinberg. The one year language, specifying an end date for the segmented approach, was a necessary component of the rule to obtain approval of the ASC. Mr. Gregoire stated his personal opinion is that the Board should not alter the date because it will jeopardize Florida's compliance with Title XI, but asked the Board for their opinion.

Member Herndon stated that no matter what date is used, there will always be registered trainee appraisers who will be affected by an end date. She expressed concern about extending the end date as it might jeopardize Florida's compliance.

Director O'Bryant explained that a specific end date is critical to set up the Department's computer system to track the changes that were effective on a specific date.

Rule Language:

- Rule 61J1-4.001(6)(g) – Education Requirements

Director O'Bryant asked the Board to draft a rule that is consistent with the existing education rules and include the course criteria for the three-hour Supervisor / Trainee Roles and Relationships continuing education course in the body of the rule.

Counsel McKinney advised the Board that if the course outline was included in the rule, it would make it much easier for consumers to understand what the Board wants in the class. She pointed out that the Board had outlined the course content at the February meeting, so they only need to determine where the language should appear. The Board directed its counsel to publish Rules 61J1-4.001 and 61J1- 4.003 for rule making at the June 2007 meeting.

Upon motion by Member Birch, with second by Member Wright, the Board voted to establish that the previously adopted outline is the guideline that describes course material for the Supervisor / Trainee relations whether it is pre-registration, pre-certification or continuing education.

- Rule 61J2-4.010 (6) (c) – Supervision and Training of Registered Trainee Appraisers.

Chair Gregoire reported that Rule 61J1-4.010 (6) (c) Client Name and Address is a serious issue for some corporate clients. An appraiser is employed by banks, institutions and other employers who feel this particular item removes the client confidentiality part of USPAP. Upon motion by Member Small with second by Member Birch, the Board voted to delete Subsection (6) (c) from the rule.

Appraisal Subcommittee Field Review Report

Chair Gregoire this is the first time in a long time where the Appraisal Subcommittee (ASC) letter does not say there are substantial areas of non-compliance although there are areas of shortcomings.

Director O'Bryant provided the Board with the steps the Department and Division have taken to resolve each item identified by the ASC as follows:

1. Allowing tax assessors to be granted appraiser credentials without documented conformance with AQB experience criteria.
 - The affidavit language has been repealed from the experience rule.
 - He has sent a letter to each of the 67 county property appraiser offices notifying them that the affidavit has been rescinded and asking them to identify those employees, past and present since 2001, who have obtained certification by use of an affidavit.
 - When received, that information will enable the Division to address each item identified by the ASC.
2. Complaint investigation and resolution process does not comply with Title XI and ASC Policy Statement 10 because complaints are not investigated and resolved in a timely manner.
 - These are unreasonable expectations. Due to the terminology of "complaint resolution" it appears that it is just an investigation problem and the investigations are being completed within less than one year. The ASC wants resolution within one year for both investigations and legal prosecution. The resolution of this problem is to address this issue in a face-to-face meeting with ASC.

3. Approved continuing education courses that do not conform to Appraiser Qualifications Board (AQB) criteria.
 - The provider of the two courses that were identified by the ASC was offered the choice of re-develop the courses so they do comply with AQB criteria, but chose not to offer the courses again.

Director O'Bryant expressed his hope that the Board would be happy with the Department and Division in the work we have done to resolve the issues identified by the ASC.

Chair Gregoire said that with all things considered this is a big improvement over what has occurred in the past. However, these issues have not improved enough to keep up off the one-year review list. The Department and Division should be commended on their ongoing efforts.

Fraud Prevention and Awareness Publication

Member Susan Daily presented examples of mortgage fraud prevention with a list of "Do's and Don'ts" and information from the FBI for consumers. She volunteered to put together an information packet if the Department would consider placing it on the Internet website. Director O'Bryant asked to her put the information together and send it to him for review.

Chair Gregoire thanked Member Dailey saying that information on mortgage fraud should be a part of the website information for not only Real Estate, but also the State Attorney and the Department of Financial Services.

Administrative Matters:

License Reinstatement Ratification

With a motion by Member Small and second by Member Wright, the Board voted unanimously to ratify the reinstatements of Robert J. Carullo and Charles E. Scott, Certified Residential Appraiser licenses.

Ratification of Course Approvals

Upon a motion by Member Birch, followed by second from Member Small, the Board voted unanimously to ratify the course approvals, dated February 5, February 12, March 2 and March 13, 2007.

Chair's Remarks

Chair Gregoire commented on the following:

- The Appraisal Qualifications Board (AQB) adopted the proposed interpretation language for granting seven hours of continuing education credit for meeting attendance versus the ten hours Florida currently grants. The adoption of the language took place during an unpublicized teleconference meeting which was not open to the public. Although it was not noticed to the public, the change became effective on the date it was adopted, January 8, 2007.
- Following his contact with ASC Executive Director, Ben Henson and ASC Legal Counsel, Mark Weinberg with his concerns about the lack of public forum regarding the adoption of the interpretation and the immediate effective date, Chair Gregoire said he was notified by the AQB Chair, Sandy Guilfoil, that the effective date of the interpretation was changed to January 1, 2008. He commented that again, the AQB had held a meeting and made significant changes without public notice or comment and the rule is still not clear.

The impact to Florida's appraisers will be the following:

- Revising Rule 61J1-4.003(7), F.A.C. to reduce the number of hours of continuing education credit per renewal cycle to seven rather than ten hours and to permit continuing education credit for attendance at a single meeting during the renewal cycle.
- Appraisers will need to attend only one meeting to meet the requirement for continuing education credit of seven hours.
- The Chair pointed out that there are licensees who have already obtained ten hours of continuing education credit for attending meetings in December 2006 and February 2007.

Director O'Bryant stated Florida will note the issue of continuing education for board meeting attendance as an audit exception for the 2007 ASC Field Review.

Chair Gregoire stated the failure of the AQB to notice their meetings, failure to hold open meetings, the way they can change rules with an immediate effective date, and failure to realize state governments cannot comply that quickly. Chair Gregoire said this subject will be addressed at the upcoming meeting in St. Petersburg. Chair Gregoire stated Deputy Secretary Edwards was amazed when this very matter was discussed with him, asking if there is some way to appeal the process by addressing a group somewhere.

The Chair reported he wants to make a quality presentation to the Appraisal Subcommittee in Washington, D.C. in the fall to offer:

- an alternative for case resolution
- a statement explaining the length of time a state can resolve a complain even when everything goes perfectly
- to present evidence to them of how long their own Justice Department takes to resolve a case
- The alternatives are a "poor" job or put time into properly prosecuting a case

Chair Gregoire stated if they can adopt policy statements that effect regulatory boards, they should start adopting policy statements for the agencies they give money to, the Appraiser Qualifications Board and the Appraisal Standards Board. They should adopt performance standards for them such as open meetings, adequate notice and recognition of the way state government works in the implementation process. The ASC has given those two agencies approximately ten million dollars over the past few years.

The Chair further stated he would not like the Division to allow prosecution cases accumulate again. Director O'Bryant assured him that would not happen.

Board Counsel McKinney advised the Board Rule 61J1-4.003 FAC for continuing education is already being opened to revise the language for the supervisor / trainee relationship. With the Board's approval, she can make the appropriate language changes while the rule is open. The Chair asked her to proceed.

Member Herndon asked about those licensees who already have attended two meetings and believe they have ten hours of continuing education. She asked that a notice be posted to the Division's website or at very least post notice on conference room door saying they will only receive credit for 7 hours of continuing education for attendance at the disciplinary portion of the meeting.

Member Birch suggested placing the information under the Hot Topics banner on the Division's website. Director O'Bryant stated the information will be posted.

Chair Gregoire reported the Appraiser Qualifications Board (AQB) has adopted Guide Note 5 (GN – 5) relating to existing credential holders. He explained the difference between a Guide Note and an Interpretation is an Interpretation is binding; it has the effect of the qualifications criteria. A guide note is just that, guidance to regulatory agencies.

Guide Note 5, effective January 1, 2008 says if you are certified and in good standing in one state and you apply to another state, you may be “grandfathered” in under the criteria in place at the time you passed the exam and received the certification. This guide note is important because the criteria will change to the higher standard on January 1, 2008 and it permits the state to grant an exemption from taking the exam again.

Chairman Gregoire stated his opinion is Florida should take this opportunity with the criteria changes to recognize the guide note so we can recognize the experience and education earned by certified appraisers from other states and dispense with the duplication of effort to recertify their education from day one. The Chair said they should still take an examination and certainly have to disclose their criminal background.

The Chair asked Counsel McKinney to revise Chapters 61J1-3.001 and 61J1-4.001, FAC pertaining to these changes. He asked the Board and the Division if there were any objections or comments and none were made.

Chair Gregoire stated the Association of Appraiser Regulatory Officials (AARO) will be meeting in St. Petersburg, May 5 through 7, 2007. He thanked the Department and Division for arranging for so many staff to attend. Mr. George Ayrish, Senior Management Analyst with the Bureau of Education and Testing will make a presentation which will include Florida’s model course approval program.

Member Wright asked the Department to provide some small items to place in the welcome baskets for the AARO attendees.

Director’s Remarks

Director O’Bryant provided a brief update on the following topics:

- Staffing issues - The Department is in the process of adding staff to the Division and reorganizing existing staff members:
 - two new support staff member to replace two staff dismissals
 - one new attorney to replace one attorney who moved up to Deputy Director
 - a new attorney position being filled
 - an operations assistant and a new executive administrative assistant
 - a team lead investigator position for the Miami office
 - has in current budget a request for five additional full time staff and three Other personnel Service staff positions
 - when the House budget recommendations were announced the Department was granted nothing but was granted everything asked for by the Senate budget recommendations
- Legislation - One Bill in the Legislature will allow the Division to drop the term “medical” in a hardship extension and allow people to be considered for a “hardship” based on certain hardship criteria other than “medical”. It will enable the Division to grant an extension to those registered trainees who lost their licenses at the November 2006 renewal to be granted an extension to obtain the required education to make their licenses whole again.
- Instructor seminars - information has gone out to instructors about upcoming seminars. They will be held in Palm, Manatee, Leon counties and two in Seminole County. They are going to be different and will have break out sessions.
- Website issues – Director O’Bryant reported he and Board members have complained about the Division of Real Estate (DRE) website. He has sent two employees for web training and the Division will be taking over the management of its own website so it will use the Florida Bar website as an example. The policy will be that nothing will be put on the website until it has been approved. Chair Gregoire asked that the Division start tracking who uses the site to determine who is actually using the website and design it to meet those needs.

- Newsletter – The Division had all its work done on time and sent it to Communications. Communications has the responsibility of doing the layout. At the time our newsletter arrived it was about the same time as all the other professions newsletters. We were about 30 days from being completed and the Department hired a new graphics designer and we are still about three weeks away from getting it completed and mailed.

Chair Gregoire asked Director O'Bryant to negotiate two more newsletters this year to compensate for the delay in publishing the newsletter. Director O'Bryant stated that he will get this resolved.

Public Comments

- Pamela Crowley asked the Department to implement photo ID for licenses. She asked Member Dailey to explain cash back deals; what are they, what is wrong with them and when they are legal and not legal. She also asked about the implication of digital signatures.
- Ms. Crowley asked what the implication is to an appraiser who knows their report is being sent to someone who opens the report and makes changes to it. Counsel McKinney cautioned the Board about providing a legal response to questions like this in a public forum. Chair Gregoire suggested the Board might want to discuss the matter of appraisal brokers in a different forum to work on drafting legislation to address this matter under Chapter 475, Part II, Florida Statutes.
- Ms. Crowley read a lengthy document into the record about a company who opens the appraisal reports and alters them by adding a watermark to the original document.
- Dennis Black –The American Society of Appraisers will have a dinner where Investigations Supervisors Fred Clanton and Brian Piper will be speakers. He also conveyed his thanks to the Department and Division for allowing them to be a part of their program.
- Member Wright conveyed thanks on behalf of her son, Shawn Wright. While Private Wright was in basic training in Missouri he received letters and card from several people who attended the last Appraisal Board meeting. Chair Gregoire expressed the Board's thanks for Private Wright's commitment to his country.

The Board adjourned at approximately 2:45 p.m.; reconvening at 8:30 a.m. on Tuesday, April 3, with Vice-Chair Herndon providing the invocation and Member Birch leading the Pledge of Allegiance.

Chair Gregoire introduced the Members present: Vice-Chair Joni Herndon; Patricia Birch, Susan Dailey, Cynthia Wright and Jay Small. June C. McKinney appeared as counsel for the Board. The Chair declared a quorum present.

Division staff present at the meeting: Thomas W. O'Bryant, Jr., Director; Elizabeth A. Hickman, Deputy Director; Kathleen Koeberich, Bureau Chief of Enforcement; James Harwood, Chief Attorney; Racquel White, Sorin Ardelean, D. Chris Lindamood and Patrick Cunningham, Senior Attorneys; Fred Clanton, Investigation Supervisor; JoEllen Peacock, Education Coordinator; Beverly Ridenauer, Government Analyst II; and Lori Crawford, Regulatory Supervisor/Consultant;. American Court Reporting, 407-896-1813, provided court-reporting services.

Mr. Harwood presented the Legal Agenda, consisting of 48 cases. The Board heard forty-four cases and withdrew four cases. The Board's decisions on these matters are attached to the official minutes as maintained at its headquarters in Orlando, Florida.

Chair's Comments

Updated DRE Form 2065 – Director O'Bryant explained it is used to implement new statute 475.6223, requiring appraisers to register their firm name and physical location. It can be found at the Forms Center on the DRE website.

Chair Gregoire thanked the Legal staff and Board members for spending their time in completing so many legal cases this meeting.

Director O'Bryant reported the FREAB newsletter has been completed by the Communications office and has been sent to the printer.

Public Comments

None

The next general meeting of the Florida Real Estate Appraisal Board is scheduled for June 5 & 6, 2007, in Orlando, Florida.

There being no other business, the meeting adjourned at 5:55 p.m.

ATTEST:

Frank Gregoire, Chair
Florida Real Estate Appraisal Board

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

Prepared by: _____
Beverly Ridenauer
Government Analyst II