

Chuck Drago, Interim Secretary

Charlie Crist, Governor

**Minutes of
THE FLORIDA REAL ESTATE APPRAISAL BOARD
April 4 and 5, 2008
General Meeting**

Chair Joni Herndon called the meeting of the Florida Real Estate Board to order, at approximately 9:05 a.m., in Tallahassee, Florida, on this 7th day of April, 2008.

Chair Herndon offered the Invocation and led the Pledge of Allegiance. The Chair introduced the members present: Vice-Chair Michael Rogers, Cynthia Wright, Jay Small and Susan Dailey. Cathy Lannon, Michael Gross, Assistant Attorneys General, appeared as counsel for the Board. Ms. Lannon declared a quorum present.

Division staff present at the meeting: Thomas O'Bryant, Jr., Division Director and Executive Director for the Board; James P. Harwood, Chief Attorney; Fred Clanton, Investigations Supervisor; Diana Woods, Investigator II; JoEllen Peacock, Education Coordinator; Beverly Ridenauer, Government Analyst II; Alma Roberts Office Management Consultant II; Lori Crawford, Regulatory Supervisor/Consultant. Third Circuit Court Reporters (386.754.2482) provided court reporter services.

Approval of the Minutes

The Board unanimously approved the Minutes of the February 4 and 5, 2008, General Meeting, as written.

Summary of Applicants:

New Applicants:

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

01-04-08	Richard Van Austin – Registered Trainee – Denied
02-04-08	Richard Joseph Cutler – Registered Trainee – Denied
03-04-08	Robert B. Tahar – Certified Residential – Approved
04-04-08	Phillip Westfall – Certified Residential – Approved
05-04-08	Antonio Rodriguez – Registered Trainee – Denied

Board Business

Rules Workshop

The purpose of this workshop is to review the Florida Administrative Code, Chapter 61J1 for possible changes to ensure compliance with the newly adopted Appraiser Qualification Board Criteria changes. The Board addressed the following rules:

- ◆ **61J1-3.004 – Issuance of Certification**
 - ◇ 3.004(2) "...as further defined in Rule ~~61J1-4.004~~ 10.002, 10.003, and 10.004, F.A.C."
 - ◇ 3.004(4) Recommend moving to 10.001(3)

- ◆ **61J1-4.001 – Education Requirements**
 - ◇ Recommend a title change to this rule when all other revisions have been completed.
 - ◇ 4.001(1) Repeal – addressed in 10.002
 - ◇ 4.001(2) Repeal first sentence and retain second sentence as "The ~~420~~ classroom hours may include the classroom pre-license education required to become a registered trainee appraiser, the classroom pre-license education required to become a licensed appraiser, a certified residential appraiser, or the applicable classroom hours of post-license education for registered trainee appraisers.
 - ◇ 4.001(3) Repeal – covered by Chapter 10.004
 - ◇ 4.001(4) Move "Credit towards the classroom hour requirement shall only be granted where the length of the educational offering is at least 15 classroom hours, and the person successfully completes an examination pertinent to that educational offering." to 10.001; and strike the last sentence "A classroom hour is defined as 50 minutes out of each 60 minute segment."
 - ◇ 4.001(5) Recommend combining with 10.002(1)(d) and correcting technical error so the rule will read "Appraisal Subject Matter Electives ~~(20)-(25)~~ which shall include six (6) hours of Florida Laws and Rules and three (3) hours of Roles and Rules of Supervisors and Trainees. The same language would be added to 10.003(1)(c)(10) and 10.004(1)(c)(10).
 - ◇ 4.001(5)(n) Recommend move to 10.001(5) as a definition and strike remainder of rule
 - ◇ 4.001(5)(n)(1) Make reference to Section 475.611(o)
 - ◇ 4.001(5)(n)(4) Technical correction to read 61J1-9.001 and change "Advisory Opinion ~~5~~ 31"
 - ◇ 4.001(6) Repeal – moved to 10.001
 - ◇ 4.001(7) Repeal – moved to 10.001
 - ◇ 4.001(8) through (12) remain as written
 - ◇ 4.001(13) Recommend "...by teaching Board approved appraisal courses."
 - ◇ 4.001(14) Repeal – covered by 3.004(6)

- ◆ **61J1-4.009 – Post Licensing Education for Registered Trainee Appraisers**
 - ◇ 4.009(1) Recommend striking (1)(b) to remove 15-hour National USPAP course
 - ◇ 4.009(2) Retain language

- ◆ **61J1-5.001 – Appraisal Examination Areas of Competency**
 - ◇ 5.001(2)(a) Recommend technical correction to "Appraisal Foundation"
 - ◇ 5.001(2)(b) Recommend "A passing score on the Florida Supplemental examination..."
 - ◇ The Division withdrew its remaining recommendations for amendment.

◆ 61J1-6.001 – Experience Requirement

- ✧ 6.001(5) Recommend adding Item #4 of AQB Guide Note 6; "...of supervising appraiser ~~(if applicable)~~, and correct technical error for reference to Section 475.611(1)~~(e)~~(q).
- ✧ 4.010(6) will need to be revised to meet Guide Note criteria.
- ✧ 6.001(5)(b) Ad valorem tax appraisals
The Board discussed this rule in detail. Although no vote was taken the consensus of the Board is that mass appraisal and ad valorem assessments are not federally related transactions. With the exception of those individuals who create models as referenced by USPAP Standard 6, this experience is not USPAP compliant and should not be accepted by the Division.

◆ 61J1-7.003 - Advertising

- ✧ 7.003(1)(h) Recommended amending the rule to include internet advertising and require companies to include the names of the individual appraisers within the company.

◆ 61J1-9.001 – Standards of Appraisal Practice

- ✧ Director O'Bryant recommended amending the rule to reflect 2008-2009. Board agreed.

Dress Code and Conduct Rule

Director O'Bryant requested the Board review a copy of the FREC rule relating to this issue. Director O'Bryant said that the Division will notice this rule for a development workshop.

Mutual Recognition Agreements

Director O'Bryant asked the Board to rescind the three existing mutual recognition agreements. Following discussion, the Board asked Director O'Bryant to discuss this matter with the AQB during the AARO meeting the following week and decided that each of the three contracts will be reviewed following evaluation of each state's appraisal program.

National Exam Pass / Fail Report

Director O'Bryant provided the Board with an update on the National Exam. He reported the Department has received a report with the results of the pass/fail ratios of the first three months of the exam.

DRE Form 2065 – Business Name and Address

The Division is unable to enforce the new rule until some changes to the licensing system are completed. Director O'Bryant explained he is working with the Division of Technology to change the existing process and provide licensees the ability to maintain this information themselves.

Discussion of Rule 61J1-4.010 and the Qualifications to Become a Supervising Appraiser

Director O'Bryant asked that the board not put any new regulations in place until the second half of 2009 when all the 2008 Criteria changes will be in place and complete. It is in the best interest of the state to allow the full implementation of the 2008 criteria changes before changing the program once again.

Chair Herndon asked for a report to demonstrate how long a certified appraiser was licensed before they became a supervisor to a trainee appraiser. The purpose of the report would be to determine if the rule governing the experience requirements for a trainee needs to be strengthened to stop incompetence.

Following discussion, the Board asked Director O'Bryant to put together a proposal that will show a complete picture of what the supervising appraiser and trainee appraiser program will become.

Automated Valuation Models

Chair Herndon addressed automated valuation models (AVMs) by saying the impact they have on the appraisal industry is important because they use the same process as the mass appraisal process of valuation models. The Chair explained that lenders use this type of report and applicants will want to place modeling system experience on their work logs for experience credit. Concerns to be addressed are:

- Proper use of AVMs
- Training to teach how to review AVMs as experience
- What will the Board do when disciplinary action must be taken on a data file alone

The State of Virginia's Petition to Limit the Use of Electronic Portals

The Chair reported the State of Virginia wants to limit the use of portals to submit an appraisal report because the report is altered by the recipient of the report. The data is taken from the electronic report and stored in a different format to be used in an automated valuation model in the future to determine a value at a later date. This process creates an altered document that has no signature and lenders cannot send it back to the appraiser in the exact format sent by the appraiser.

Altered appraisal reports will create problems with the enforcement of Florida Statute and Rule as they pertain to appraisers. The Board asked Director O'Bryant to contact the State of Virginia to comment upon their petition to limit the use of electronic portals.

Appraisal Management Companies

The Chair stated that appraisal management companies who use portals as a point of entry for appraisal reports from across the country and they are not regulated by any state or federal agency.

Ms. Herndon asked to have Attorney General Bill McCollum and Chief Financial Officer, Alex Sink informed of the problems with appraisal management companies. Their involvement will be helpful in determining:

- Are these companies financial institutions
- Should they be regulated by the Division of Real Estate
- They are Florida companies, not national companies
- They are being managed by individuals who are licensed as appraisers in Florida, but say they are not operating as an appraiser in Florida
- With no regulation, a person whose appraiser credential was revoked can operate an appraisal management company

Vice-Chair Rogers suggested that the appraiser who submits a report to a client through a portal, knowing it will be altered, has not followed records retention responsibilities.

New York Agreement with Fannie Mae and Freddie Mac

Chair Herndon stated that the agreement between the State of New York, Fannie Mae and Freddie Mac is going to provide for another appraisal management company with the creation of the Independent Valuation Protection Institute (IVPI). This organization is being established by Fannie Mae and Freddie Mac at the cost of 24 million dollars to accept complaints from New York consumers and appraisers.

The new organization is slated to establish new rules and monitor their enforcement. If this occurs, it could potentially usurp the authority of the individual states to regulate their own licensees with their own regulatory agencies. The implementation of this plan will have a much larger impact on the individual states if the Appraisal Subcommittee (ASC) and the Appraiser Qualifications Board (AQB) adopt the program and make it mandatory as part of the appraiser regulatory program at the Federal level.

The Chair stated she would like to write a letter to the Office of Federal Housing Enterprise Oversight to make public Florida's concerns about this program and let it be known that Florida is against such a policy. Director O'Bryant stated the Department has been working with the Governor's office in Washington and our Congressional Delegation on this matter.

Criminal History of Applicants from Other States

The Chair expressed concern about Florida's mutual recognition agreements with other states. There is a need to verify what kind of background inquiries, if any, the other state is conducting. Director O'Bryant to ensure background inquiries are part of the written agreement. Some states do not question an applicant's background.

Chair Herndon stated the Florida electronic fingerprinting program is so successful and widely recognized, that Director O'Bryant has been asked to speak to the subject at the upcoming meeting of the Association of Appraiser Regulatory Officials (AARO).

Administrative Matters

Ratification of Suspended Licenses

Upon motion by Member Small with second by Member Dailey, the Board voted unanimously to ratify the reinstatement of Registered Trainee license of Escobar Guillermo.

Ratification of Course Approvals

Upon motion by Member Dailey with second by Member Small, the Board voted unanimously to ratify the course approvals for the weeks of January 1, 2008; January 18, 2008; February 22, 2008; and March 13, 2008.

Correspondence

The Board reviewed six pieces of correspondence and thanked Member Jay Small for two letters he wrote on behalf of the Board.

- A letter to the Florida Senate regarding Senate Bills 475 and 678, which addresses the concept of highest and best use in connection with *ad valorem* tax purposes.
- The second letter Mr. Small wrote was sent to the United States House of Representatives regarding the U. S. House of Representatives Bill 3102 (H.R. 3012). The purpose of this letter was to bring attention to the Board's concerns over increasing an appraiser's liability to individuals with whom he does not have a privity of contract.

Member Small also provided information about how the correct process for a legal case in this board room could impact an appellate court case should a respondent appeal the decision of the Board, such as occurred in *Goodson vs. DBPR*.

Director's Comments

Director O'Bryant provided a brief update regarding the following topics:

- **Newsletter** – The Spring Issue of FREAB newsletter is now posted online. The newsletter is no produced in a paper version.
- **Florida Supplemental Exam** –
 - Is not part of the National Exam
 - Applicant must register for this exam separately from National Exam
 - Is approximately one and one-half hours long and contains forty questions
 - Pass score of seventy-five percent according to rule
 - Currently has a failure rate of 23.8 percent
- **National Exam** – An applicant must register for the National exam separately from Florida Supplemental Exam
 - Pass score is 100 questions
 - certified residential is approximately six hours, with 165 questions
 - Certified General is approximately eight hours, with 165 questions
- **New Staff** –
 - Deputy Director – Juana Watkins is coming back to the Division from the Florida Association of Realtors. She is a former Acting Director of the DRE and also former Chief Attorney for the Division. The Staff are very thankful to have her back at the DRE.
 - Staff vacancies that have been filled are Complaint Analyst, Senior Attorney, and Legal Support Staff
 - The Legislature has over the past two Legislative Sessions, allocated positions to the DRE and the number of staff has increased. Soon we will be able to take over the entire 8th floor to provide space for the newly acquired positions and to accommodate the return of the investigators who have been working from their homes.
- **Appraiser Licensee Report** – The number of current appraiser licenses for the month of February 2008 is 14,794.

- **2008 Appraiser Renewal** - The appraiser renewal cycle will begin on September 1, 2008 and end on November 30, 2008. The fee holiday the Board approved in September 2007 will apply to this renewal cycle. The fee for a registered trainee appraiser will be only the Unlicensed Activity fee of five dollars (\$5.00) and the fee for
- Certified appraisers will be the National Registry fee of fifty dollars (\$50.00) and the Unlicensed Activity fee of five dollars (\$5.00) for a total of fifty-five dollars (\$55.00).
- **Expert Witness Contracts** – Member Small asked if the Department has adequate funds to hire expert witnesses. The Director explained the fifteen expert witness contracts on file are being reviewed and updated by Chief Attorney James Harwood. The current rate of compensation is \$100 per hour, which comes from the overall funds allotted by the Legislature to the Department. Mr. Harwood stated that although the licensees want to volunteer time, it becomes too difficult when they discover they may need to give up two or three days of work to do so.

Chair's Comments

- **Appraisal management companies** will be a focus point for her this year. Defining what these companies are and how they should be regulated, either under the Division of Financial Regulation or under the Division of Real Estate, are key points to be addressed.
- **Reporting portals** need to be addressed. The processing of portal submissions may be in conflict with Florida Statutes. The processes need to be reviewed to determine if their use puts Florida appraisers at risk of violating Florida law.
- **Disciplinary Actions** – Thanked Director O'Bryant for putting all of the past disciplinary actions on the website.

Public Comments

The Board received comments from the audience.

Chair adjourned the meeting at approximately 3:15 p.m.

April 8, 2008

Chair Joni Herndon called the meeting of the Florida Real Estate Board to order, at approximately 8:40 a.m., in Tallahassee, Florida, on this 7th day of April, 2008.

Chair Herndon offered the Invocation and led the Pledge of Allegiance. The Chair introduced the members present: Vice-Chair Michael Rogers, Cynthia Wright, Jay Small and Susan Dailey. Cathy Lannon and Michael Gross, Assistant Attorneys General, appeared as counsel for the Board. Ms. Lannon declared a quorum present.

Division staff present at the meeting: Thomas O'Bryant, Jr., Division Director and Executive Director for the Board; James P. Harwood, Chief Attorney; Fred Clanton, Investigations Supervisor; Diana Woods, Investigations Specialist II; JoEllen Peacock, Education Coordinator; Beverly Ridenauer, Government Analyst II; Alma Roberts Office Management Consultant II; Lori Crawford, Regulatory Supervisor/Consultant. Third Circuit Court Reporters (386.754.2482) provided court reporter services.

Legal Docket

The Board addressed the Legal Agenda, consisting of 19 docket items. The Board considered seventeen docket items and approved the continuance or withdrawal of two docket items. The Board's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Public Comments

The Board received comments from the audience.

Adjournment

There being no further business and no objection, the Chair adjourned the meeting at approximately 11:40 a.m. The next general meeting of the Florida Real Estate Board is scheduled for June 2 and 3, 2008, in Orlando, Florida.

Joni Herndon, Chair
Florida Real Estate Appraisal Board

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

Date: _____

Date: _____

Prepared by: _____
Beverly Ridenauer,
Government Analyst II

Date: _____