

Charles W. Drago, Secretary

Charlie Crist, Governor

**Minutes of
THE FLORIDA REAL ESTATE APPRAISAL BOARD
February 9 & 10, 2009
General Meeting**

Chair Joni Herndon called the meeting of the Florida Real Estate Board to order, at approximately 9:15 a.m., in Orlando, Florida, on this Monday, 9th day of February, 2009.

Chair Herndon offered the Invocation and Member Dailey led the Pledge of Allegiance. The Chair introduced the members present: Vice-Chair Michael Rogers, Cynthia Wright and Susan Dailey. Mary Ellen Clark, Assistant Attorney General, appeared as counsel for the Board. Ms. Clark declared a quorum present.

Division staff present at the meeting: Thomas O'Bryant, Jr., Division Director and Executive Director for the Board; James Harwood, Chief Attorney, Beverly Ridenauer, Government Analyst II; Sheila Hall, Government Analyst; Peggy Hanna, Government Analyst I; Peter Patterson, Government Analyst I. American Court Reporting (407.896.1813) provided court reporter services.

Approval of the Minutes

The Board unanimously approved the Minutes of the December 8 & 9, 2008 General Meeting as written.

Nomination of Chair and Vice-Chair for 2009:

Vice-Chair Rogers made the motion to elect current Chair Herndon to a second term as Chair. With second by Member Wright, the vote passed unanimously.

Upon motion by Member Wright, with second by Member Dailey, Vice-Chair Rogers was elected to serve a second term as Vice Chair.

Board Business

Rules Report

Counsel Clark informed the Board that the rules discussed at the December 2008 meeting were published for comment on January 16, 2009. If no comments are received the rules will be effective in early March 2009.

61J1-4.010 Supervision and Training of Registered Trainee Appraisers – The Board tabled the rule until the March 2009 meeting for additional discussion.

61J1-6.001 Experience Requirements – The Board tabled the rule until the March 2009 meeting for additional discussion.

Ken Foltz Request for Declaratory Statement

Ms. Clark provided the Board with an explanation of the proper format to be used to request a Declaratory Statement. She advised the Board they could conduct discussion of the questions, but advised against issuing a Declaratory Statement due to the fact the petition did not conform to petition guidelines.

Upon motion to deny the petition by Member Dailey and with second by Vice-Chair Rogers, the Board denied the petition.

Although the Board denied the request for a Declaratory Statement, they provided responses to the questions outlined in Mr. Foltz' correspondence.

Following much discussion of Rule 61J1-4.010, Florida Administrative Code the Board asked that the rule be placed on the agenda for discussion at the March meeting.

Trainee / Supervisor Discipline Report

Director O'Bryant presented a revised version of the Trainee / Supervisory Discipline Report that was requested by Chair Herndon. The Board used the report statistics to support the implementation of a rule to extend the time that a person must be certified before they can undertake the training of a registered trainee appraiser.

Supervision of Trainees

Vice-Chair Rogers cited the discipline report statistics as an indicator showing two years as a registered trainee appraiser is not sufficient experience to qualify as a supervising appraiser. Mr. Rogers explained that the learning process takes longer than the required minimum 24 months and requires more than minimum experience to teach another person the process correctly.

At the request of the Board Investigations Supervisor Fred Clanton provided insight from the enforcement perspective. He explained the original intent of the rule was to ensure the supervisor and the trainee was located in close enough proximity to work side by side on a daily basis.

Prior to polling the Board members, the Board asked Director O'Bryant to give insight about the effective date to implement the new process. The Director stated November 2010 is the end of the next appraiser renewal cycle.

The Chair polled the members for the length of time to be 24 months or 48 months. The members all agreed that 48 months is a more appropriate waiting period for a certified appraiser to wait before being able to register as a supervising appraiser.

Status of Licensed Appraisers

Director O'Bryant told the Board there are currently forty-nine appraisers in Florida who hold the Licensed Appraiser designation. The Board determined those individuals must take the appropriate steps to become certified residential appraisers.

Home Valuation Code of Conduct (HVCC)

The Board discussed at length the Home Valuation Code of Conduct (HVCC) will become effective on May 1, 2009. The Chair reported that even small banks will be using appraisal management companies to obtain appraisal services. The Board expressed concerns about the HVCC as follows:

- Lack of connection to the Uniform Standards of Professional Appraisal Practice (USPAP) which will make enforcement a serious issue
- Increase of incoming complaints and the enforcement by Florida Statutes if there is no violation of USPAP
- Working relationships between appraisers and clients will be lost
- Is there any recourse for payment to the appraiser for appraisal services rendered if the loan does not close?
- RESPA violations on the HUD-1 when the lender states on the form the appraiser was paid a certain fee when, the appraiser was in reality only paid a portion of the fee and the remainder of the fee was paid to an appraisal management company (AMC).
- Chair Herndon encouraged the members of the audience to contact their state representative and state senator to express their concerns and ask for support of the regulation of AMCs in Florida.

Broker Price Opinion (BPO) / FREC Report

Director O'Bryant commended Chair Herndon on her presentation to the Florida Real Estate Commission (FREC) regarding the subject of Broker Price Opinions.

The Chair reported to the Board that Chapter 475, Part I, Florida Statutes does provide for real estate brokers to perform broker price opinions in the course of their business. Ms. Herndon thanked Director O'Bryant for the opportunity to address the Real Estate Commission.

Administrative Matters

Ratification of Course Approvals

Upon motion by Member Wright with second by Member Dailey, the Board voted unanimously to ratify the course approvals for the weeks of December 19, 2008.

Review and Consideration of Appraisal Continuing Education Courses

Upon motion by Member Wright with second by Member Dailey, the Board voted to approve Course HP-12c for Appraisers. Vice-Chair Rogers voted against the motion.

Ratification of Suspended Licenses

Upon motion by Member Wright with second by Vice-Chair Rogers, the Board voted unanimously to ratify the reinstatement of the certified residential license of Robert Pena.

Director's Comments

Director O'Bryant asked for appointments to attend the Association of Appraiser Regulatory Officials (AARO) meeting on April 4 – 6, 2009 in New Orleans, Louisiana. The Board selected Vice-Chair Rogers and Member Wright to attend the conference with Director O'Bryant.

Chair's Comments

Chair Herndon gave comment on an article by Kenneth R. Harney, *An Appraisal Upheaval* explaining that this article brings attention to the very concerns expressed by Florida's Appraisal Board.

The Chair also reported that the Illinois Real Estate Appraisal Board has issued a response to the Proposed Interagency Appraisal and Evaluation Guidelines. The response from Illinois addresses retention of a "true copy" of an appraisal report submitted through a Delivery Portal.

Ms. Herndon read into the record correspondence from Former FREAB Chair Frank Gregoire regarding the move to replace the Office of the Attorney General (OAG) representation to the FREAB with representation by the Office of General Counsel (OGC). The Board expressed concern that the move to representation by the OGC will remove the Board's ability to act independently outside the umbrella of the Department of Business and Professional Regulation (DBPR).

Board Counsel Clark explained to the Board that typically the prosecutors and board counsels come from different agencies. One reason is to protect the licensees of the state and the retention of the independence of the board counsel in that respect is very important. Ms. Clark further stated the proposal from the DBPR was made directly to the Legislature, not through the Office of Attorney General.

The Chair conducted a poll of the Board members to determine if there was a consensus of opinion regarding the legal representation. The members all stated they would rather be represented by the Office of the Attorney General.

Correspondence

The Board reviewed correspondence from Michael Woodruff regarding the Appraiser Qualifications Board 2008 Criteria. The Board did not make a statement in response to Mr. Woodruff's question, but deferred to the information in the 2008 Appraiser Criteria, which was supplied by Mr. Woodruff with his correspondence.

The Board also reviewed correspondence from Rob Beal regarding broker price opinions.

Board Member Comment

Member Dailey reported that her company has been actively submitting complaints to the Division which may create a conflict of interest in the near future pertaining to her duties as an active board member.

At the Board's inquiry, Director O'Bryant reported that the Governor's office is aware of the vacancies on this Board.

Public Comment

The Board heard comments from the Public.

Adjournment

There being no other business, the Chair adjourned the meeting at 3:40 p.m.

February 10, 2009

Chair Joni Herndon reconvened the meeting of the Florida Real Estate Board at approximately 8:45 a.m., in Orlando, Florida, on this 10th day of February 2009.

Member Wright offered the Invocation and Vice-Chair Rogers led the Pledge of Allegiance. The Chair introduced the members present: Vice-Chair Michael Rogers, Susan Dailey, and Cynthia Wright. Mary Ellen Clark, Assistant Attorney General, appeared as counsel for the Board. Ms. Clark declared a quorum present.

Division staff present at the meeting: Thomas O'Bryant, Jr., Division Director and Executive Director for the Board; James Harwood, Chief Attorney, Chris Lindamood, Jason Holtz, Allison McDonald, Robert Minarcin, and Jennifer Blakeman, Senior Attorneys; Fred Clanton, Investigations Supervisor; Beverly Ridenauer, Government Analyst II and Zack Hayhurst, Regulatory Specialist III. American Court Reporting (407.896.1813) provided court reporter services.

Legal Matters:

Plain Language for Disciplinary Actions

Chief Attorney James Harwood provided the Board with examples of plain language to be used in the stipulations agreed to between the Department and the licensee who is being disciplined. After discussion, the Board thanked Mr. Harwood and Senior Attorney Allison McDonald for the presentation.

Legal Docket

The Board addressed the Legal Agenda, consisting of twenty-six docket items. The Board considered twenty-four docket items, with two items being withdrawn. The Board's decisions on these matters are 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 2:30 p.m. The Florida Real Estate Board will hold its next general meeting on March 30 & 31, 2009 in Orlando, Florida.

ATTEST:

Joni L. Herndon, Chair
Florida Real Estate Appraisal Board

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

Date _____

Date _____

Prepared by: _____
Beverly Ridenauer
Government Analyst II

Date _____