

**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
February 20 and 21, 2007
Meeting**

Chair Poul Hornsleth called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at Hilton Garden Inn, Pensacola Beach, Florida, on this 20th day of February, 2007.

The Chair introduced the members of the Commission and its legal counsel. The following Commission members were in attendance: Chair Poul Hornsleth, Vice-Chair S.W. Ellis, Nancy B. Hogan, Denver Stutler and Matey Veissi. James Varnado appeared briefly via teleconference. Tom Barnhart, 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., Executive Director; James P. Harwood, Chief Attorney; Liz Hickman, Shiv Persaud and Joseph Solla, Senior Attorneys; Kathleen Koeberich, Bureau Chief of Enforcement; Fred Clanton Investigator Supervisor; JoEllen Peacock, Education Coordinator; Alma Roberts, OMC II; Donna Salters and Lori Crawford, Regulatory Supervisor/Consultants; Jeannie Adkinson, Regulatory Specialist III. Elaine Richbourg Reporting, Inc. (850-968-6465) provided court reporter services.

Approval of the Minutes

The Commission unanimously approved the Minutes of the January 16 and 17, 2007, General Meeting and Workshop, as written.

Chair Hornsleth stated that he recalled that an evaluation of costs incurred and attendance would occur after two (on the road) meetings. Commissioner Hogan moved to evaluate costs of traveling after one (on the road) meeting. Commissioner Veissi seconded the motion. Motion failed 3 to 2.

Chair Hornsleth moved to evaluate the costs of traveling after two (on the road) meetings. Vice-Chair Ellis seconded the motion. Motion carried 3 to 2.

Secretary Benson

Secretary Benson stated that it has been an honor to serve as Secretary and she was pleased to be back in her home town. Secretary Benson further stated that it was truly an honor to have everyone here thanking the staff and Commission for making the trip to Pensacola. Secretary Benson reported that she, together with her team, is committed to improving customer service which includes increasing staff.

Approval of Director

Secretary Benson stated that Mr. O'Bryant has been serving as the Acting Director of the Division of Real Estate and has been impressed with the work he has done in the short time he has been there. Secretary Benson asked that the Commission confirm Mr. O'Bryant as the permanent Director of the Division. Vice-Chair Ellis moved to approve the appointment of Thomas W. O'Bryant, Jr. as Director of the Division of Real Estate. Chair Hornsleth seconded the motion. Commissioner Veissi stated she would like to hear a little about Mr. O'Bryant's background before voting.

Acting Director O'Bryant stated that his proudest achievements were being a father, being a product of the Florida education system and the first in his family to earn a college degree. Mr. O'Bryant provided a brief summary of his experiences and qualifications.

Vice-Chair Ellis and Commissioner Hogan stated that they have seen many accomplishments during one month of Director O'Bryant's tenure and applaud him for that. Being no more discussion, the motion carried unanimously.

Misc. Business

Mr. Buck Lee, General Manager of the Santa Rosa Island Authority, welcomed the Commission and provided a brief history of the area and provided a summary of the duties of the Santa Rosa Island Authority. Mr. Lee thanked the Department and the Commission for bringing the meeting to Pensacola Beach and looks forward to seeing everyone again.

Chair Hornsleth announced that James Varnado has accepted a position as Inspector General with the Attorney General's Office.

Legal Docket

At approximately 8:35 a.m., the Commission addressed the Legal Agenda, consisting of 32 docket items. The Commission considered 26 docket items. The Commission approved the withdrawal of six docket items. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

DOAH Recommended Orders - Applicants

Michael Delagarza v. FREC – DOAH Case No. 06-3813

The Commission considered the Recommended Order of the Division of Administrative Hearings denying Petitioner's application for licensure as a real estate broker. Commissioner Hogan moved to accept the Administrative Law Judge's recommendation. Vice-Chair Ellis seconded the motion. The motion carried unanimously.

Sonia L. Taylor v. FREC – DOAH Case No. 06-3036

The Commission considered the Recommended Order of the Division of Administrative Hearings denying Petitioner's application for licensure as a real estate broker. Commissioner Hogan moved to accept the Administrative Law Judge's recommendation. Vice-Chair Ellis seconded the motion. The motion carried unanimously.

Escrow Disbursement Orders

Senior Attorney Joe Solla presented 106 Escrow Disbursement Orders for Commission consideration with the exception of numbers 36, 80 and 83, which have been resolved. Mr. Solla addressed questions from the Commission. Upon recommendation of the Legal Section, the Commission issued 103 Escrow Disbursement Orders.

Recovery Fund Claims

Senior Attorney, Joe Solla, presented the Recovery Fund Claim styled John W. Browning, III v. Robert E. Haught, Jr., Case Number RFC 2007001735. Mr. Solla stated that the claimant did not qualify to receive payment from the recovery fund and recommended the Commission deny the request. Chair Hornsleth moved to deny payment from the recovery fund. Vice-Chair Ellis seconded the motion. The motion carried unanimously. Mr. Solla addressed questions from the Commission.

FREC Business

Financial Report

Ms. Jean Whitten, Director, Office of Planning and Budget, presented the financial report for FY 05/06 and the financial report for the six months ending December 31, 2006. The Commission requested that they have an opportunity to review the reports and should they have any questions they would contact her and perhaps she could appear at a future meeting via teleconference. Ms. Whitten provided a brief summary of the following reports for FY 05/06 and for the Six Month Ending December 31, 2006:

- Florida Real Estate Commission Operating Account
- Florida Real Estate Commission Unlicensed Florida Real Estate Commission Education and Research Foundation
- Florida Real Estate Recovery Fund
- Statutory Responsibilities in Regards to Fee and Cash Balances

Meeting Suspended

Chair Hornsleth suspended the general meeting at approximately 1:00 p.m.

General Workshop – 2:00 p.m.

The purpose of the workshop is to discuss three issues, which include: 1) Term “Qualifying Broker”; 2) Rule 61J2-5.014, *Florida Administrative Code*; and 3) Rule 61J2-14.008, *Florida Administrative Code*.

Chair Hornsleth called the meeting to order at 2:00 p.m. The following Commission members were in attendance: Chair Poul Hornsleth, Vice-Chair S. W. Ellis, Nancy B. Hogan, Denver Stutler and Matey Veissi. Tom Barnhart, Assistant Attorney General, appeared as counsel for the Commission.

The following Division staff was present at the workshop: Thomas O’Bryant, Executive Director; James P. Harwood, Chief Attorney; Kathleen Koeberich, Bureau Chief of Enforcement; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant. Elaine Richbourg Reporting, Inc. (850.968.6465) provided court reporter services.

Discussion of Term “Qualifying Broker”

Executive Director O’Bryant stated that he can make a request to modify the form to remove the term “Qualifying broker”. Commissioner Veissi stated that all the forms need to be address as the forms are difficult for the individuals to understand what the State wants. Mr. O’Bryant stated that the Governor has mandated a “plain language” initiative and that includes reviewing all letters and forms. Commissioner Veissi inquired what term will be used to designate the broker responsible for the office. Mr. O’Bryant stated that neither the statute nor rule uses the term “qualifying” and is something that the Legislature under statute would have to define.

Mr. Dick Fryer of IFREC Schools, stated that people in the industry know that the “qualifying broker” is the broker qualifying the corporation to be activated. Mr. Fryer stated that the Department is working on a legislative initiative for this year and suggested the Department add one other item to that piece of legislation amending s. 475.01 to define “qualifying broker”. Commissioner Veissi requested that the Department give the Commissioners a copy of the bill before the next meeting.

Members of the audience also suggested looking at raising the requirements in becoming a broker. Chair Hornsleth stated that many people agree with this statement but the difficulty in that is getting people to agree what the criteria should be. Commissioner Hogan stated that there needs to be a grass roots movement and take this issue to the lobbyists for the Florida Association of Realtors (FAR) to get the statute changed. Commissioner Veissi agreed that perhaps a taskforce should be assembled to discuss ideas of what criteria should be met in order to get a broker license. Mr. Fryer stated that FAR has been studying this issue for some time and FAR is looking at increasing the requirements which is in the works, however, this is not something that can be put together haphazardly, but requires a well thought out drafted bill to present to the Legislature.

Ms. Linda Crawford of Dearborn, stated that qualifying broker does mean something to the process of the application and feels the answer is not removing qualifying broker from the application but defining the term “qualifying”. Ms. Crawford added that a previously used name was “broker of record”. Ms. Crawford agreed that the issue needs to be addressed in statute.

Discussion of Rule 61J2-5.014

Executive Director O’Bryant stated that one of the concerns is that we have worked on this rule for some period of time. Mr. O’Bryant stated that the Department would certainly like to see the last sentence “No corporation shall operate as a real estate broker until they have received written notification from the Department that the corporation has been properly registered,” left in the rule, however, the Joint Administrative Procedures Committee (JAPC) has some questions regarding the map track authority. Mr. O’Bryant stated that he has discussed this with FREC and Department Counsel and through some research feels that the map track is ss.475.15 and 475.42(1), *Florida Statutes*, giving the Commission statutory authority to put into place the last sentence. Mr. Barnhart stated that he is willing to ask JAPC for approval. Concerns were raised relating to the amount of time it takes to process the corporation. Mr. O’Bryant stated he would discuss this with Secretary Benson.

Discussion of Rule 61J2-3.010 – License Reactivation Education for Brokers and Sales Associates

Education Coordinator JoEllen Peacock addressed this issue providing the background of this rule and explained the changes referenced in the draft proposal of 61J2-3.010(2) and (3). Mr. O'Bryant provided details of changes to the current language.

Ms. Linda Crawford of Dearborn requested to address the change reflecting the two questions per instructional hour. Ms. Crawford suggested making it a 50 item end-of-course exam in lieu of the 28-hour course having 56 questions since the 63-hour course only requires 100 items. Mr. Dick Fryer of IFREC suggested using "shall contain at least 50 items or 2 items per instruction hour." Mr. Fryer also pointed out that these students will be in and out of the course to cover everything. Mr. O'Bryant agreed that this would make course management difficult. Mr. Edward Anderson of Bert Rodgers inquired whether any language is needed to permit online distance education for this course. Mr. O'Bryant stated the statute currently allows for this type of learning.

The Commission requested to schedule another workshop in order to review the syllabus in conjunction with the rule. This rule will be set for a proposed rule development in March. Chair Hornsleth requested that Mr. Combs attend the workshop. Mr. O'Bryant inquired whether the Commission wants the Division to follow the evaluation procedures currently used for pre and post course approvals. The Commission responded affirmatively.

Commissioner Veissi inquired whether any educational allowances should be made to individuals that have a master's degree in real estate since there are allowances for individuals who have a four-year degree in real estate. All agreed that this would require a statutory change.

Workshop Adjourned - 3:00 p.m.

General meeting reconvened

Education and Research Foundation Initiatives Update

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

- Scholarship Program – Mr. O'Bryant reported that the Commission authorized \$150,000, exclusive of the costs to run the program, is ready for signature and that the contract is retro active to the fall semester of 2006 and is a two year contract instead of one.
- Newsletters – Mr. O'Bryant reported that the FREC Newsletter is currently at PitneyBowes and is ready for distribution.
- Sales Associate and Broker Syllabi – Mr. Ed Anderson inquired whether Design Café is going to put a syllabus together or will they seek input from the educators. Mr. O'Bryant stated that he made it very clear that the Division would like to put together a group to discuss various aspects of the development of this tool.

Public Comments

Dick Fryer wanted to discuss renewing school permits online, in particular, that he has eight permits which can not be renewed online nor can he add or remove instructors online and inquired whether there is any way this can be addressed. Mr. O'Bryant asked Mr. Fryer to send him a detailed email outlining these issues and will address it with Information Technology in Tallahassee.

The Chair recessed the meeting at approximately 3:20 p.m., February 20, 2007.

February 21, 2007

Chair Poul Hornsleth reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at Hilton Garden Inn, Pensacola Beach, Florida, on this 21st day of February, 2007.

The following Commission members were in attendance: Chair Poul Hornsleth, Vice-Chair S. W. Ellis, Nancy B. Hogan, Denver Stutler and Matey Veissi. Mr. Tom Barnhart, 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., Executive Director; James P. Harwood, Chief Attorney; Kathleen Koeberich, Bureau Chief of Enforcement; Elizabeth Hickman and Shiv Persaud, Senior Attorneys; JoEllen Peacock, Education Coordinator; Alma Roberts, OMC II; Jeannie Adkinson, Regulatory Specialist III; Donna Salters, Regulatory Supervisor/Consultant; Lori Crawford, Deputy Clerk. Elaine Richbourg Court Reporting (850.968.6465) provided court reporter services.

Unlicensed Activity Report

Bureau Chief of Enforcement, Kathleen Koeberich presented the monthly report regarding unlicensed activity and the Enforcement Report. Ms. Koeberich addressed questions from the Commission.

Ms. Koeberich also reported that the Division has received responses from the State Attorney's Office. Commissioner Hogan stated that her concern is that 77 cases were filed with the Economic Crimes Division within the last ninety days and would the State Attorney's Office, Economic Crimes, have enough man power to handle both mortgage fraud and unlicensed activity. Mr. O'Bryant stated that it is the Division's responsibility to turn it over to the state attorney's office and if it is necessary to go through the chain of command that is what will be done.

Connecticut Mutual Recognition Agreement

FREC Counsel Tom Barnhart presented the modified agreement submitted by Connecticut for the Commission's consideration. Chair Hornsleth stated that the revised agreement received from Connecticut reflect that if a licensee holds a license in Florida and Connecticut then only one continuing education class from either state is required, and he does not agree with that. Vice-Chair inquired should the requirements in Florida change relating to obtaining a broker license, would that affect the agreement. Mr. Barnhart responded that Florida would be required to notify Connecticut and either send a new agreement or submit an addendum to the agreement. Mr. Barnhart also pointed out that Connecticut does not have any residency requirement and someone living in New York could obtain a license in Connecticut by

means of mutual recognition and through that obtain a license in Florida. Mr. O'Bryant stated that the Department would prefer to be specific and add the State of Florida in paragraph one "e". The Commission discussed various concerns regarding mutual recognition in general.

Upon further discussion the Commission agreed to make the following amendments to the agreement submitted by Connecticut:

- Add the following language under the requirements relating to Connecticut obtaining a Florida license: "Is a legal resident of the State of Connecticut at the time of application for licensure by mutual recognition."
- Change "C" on page 3 of the agreement to: "All required fees and fingerprint processing."
- Add the following language under the requirements relating to Connecticut obtaining a Florida license: "Comply with Florida's continuing education course requirements."
- Change "A(h)" to: "Agree to be bound by the Florida Statutes and Florida Administrative Code."

Commissioner Hogan moved to approve the agreement as amended. Commissioner Veissi seconded the motion. Motion carried unanimously.

Ratification

Mr. O'Bryant requested that the Commission ratify reinstatement of the real estate licenses of Ivania Filgueiras, Herbert Holcomb, Martin H. Parrish, Toby Spill and Frances J. Yanick, who have met all requirements for reinstatement. The Commission ratified the actions unanimously.

Consent Agenda

The Commission considered 21 applicants from the Summary of Applicants Consent Agenda, requiring 7 applicants from the Consent Agenda to appear at a future meeting.

Summary of Applicants

At approximately 8:40 a.m. Jeannie Adkinson, Regulatory Specialist III, presented the Summary of Applicants requesting to sit for the real estate examination. The Commission orders on these matters are attached hereto and made part of the official minutes maintained at the Division of Real Estate headquarters.

Set Date/Time for March Workshops

Executive Director O'Bryant addressed the topics for which the FREC has requested a workshop and recommended that the topics "Definitions", "Deposits Held by Lawyers and Title Companies", and "2050 Form" be scheduled for a general workshop and to schedule Rule 61J2-3.010 for a rule development workshop. Chair Hornsleth suggested scheduling the general workshop at 3:00 p.m. and rule development at 4:00 p.m.

Chair Comments

Chair Hornsleth stated that it has been a sincere pleasure to be here and appreciates the welcome they have received from the people of west Florida. He further stated it was suggested to work on a legislative change so that licensees could get three hours credit to encourage more licensees to attend a FREC meeting.

Executive Director's Comments

Executive Director O'Bryant agreed with Chair Hornsleth that it has been a pleasure to visit the western part of Florida and commended the Commission on thinking outside the box to include all the citizens of the State of Florida.

Mr. O'Bryant reported that the Division is in the process of setting dates for the Instructor Seminars, which will be tentatively held in Broward, Leon, Orange and Brevard counties.

Last, Mr. O'Bryant wanted to take the opportunity to thank the Division staff for their diligent preparation efforts in moving the FREC meeting to Pensacola Beach, however, would like to make a special thanks to Alma Roberts for taking care of all the small details for the meeting and coordinating travel arrangements for the Commissioners and the entire staff.

The Commission thanked Mr. O'Bryant for his report.

Public Comments

Commission received comments from several members of the audience thanking the Commission and Department for traveling to the Florida Pan Handle to conduct a meeting.

Adjournment

There being no further business and no objection, the Chair adjourned the meeting at approximately 11:00 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for March 20 and 21, 2007, at Orlando, Florida 32801.

Poul Hornsleth, Chair
Florida Real Estate Commission

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

Respectfully submitted,

Lori L. Crawford
Deputy Clerk, FREC
Regulatory Supervisor/Consultant