

**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
March 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., in Orlando, Florida, on this 20th day of March, 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, Mately Veissi, Nancy B. Hogan and Denver Stutler. 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., Director; Elizabeth A. Hickman, Deputy Director; James P. Harwood, Chief Attorney; Joseph Solla, Shiv Persaud, Sorin Ardelean, Chris Lindamood and Patrick Cunningham, Senior Attorneys; Kathleen Koeberich, Bureau Chief of Enforcement; Fred Seli, OPS Unlicensed Activity Supervisor; Brian Piper and David Guerdan, Investigator Supervisors; John Platt and Martin Straw, Investigators; JoEllen Peacock, Education Coordinator; Donna Salters and Lori Crawford, Regulatory Supervisor/Consultants; American Court Reporting (407.896.1813) provided court reporter services.

Approval of the Minutes

The Commission unanimously approved the Minutes of the February 20 and 21, 2007, General Meeting and Workshop, as amended.

Unlicensed Activity Report

Bureau Chief of Enforcement, Kathleen Koeberich and OPS Unlicensed Activity Supervisor Fred Seli presented the monthly report regarding unlicensed activity and the Enforcement Report. Ms. Koeberich and Mr. Seli addressed questions from the Commission.

Commissioner Hogan reported that she recently met with Frederic Kerstein of the State Attorney's Office in Miami who provided an explanation of the process required to facilitate prosecution of unlicensed activity by the State Attorney's Office. Ms. Koeberich stated that she was familiar with this process. Director O'Bryant stated that the Division has scheduled a meeting for tomorrow with Mr. Kerstein and a representative of the Division.

Director O'Bryant reported that the Division will send ten investigators to training, which includes report writing. This training is sponsored by the Council on Licensure Enforcement and Regulation.

Director O'Bryant and Ms. Koeberich further reported that the Division is in the process of setting up a prototype to reorganize the unlicensed activity section, beginning with the investigative office in Miami. If the prototype is successful, this model may be implemented throughout the state.

Director O'Bryant and Ms. Koeberich addressed questions from the Commission.

Ratification

Director O'Bryant requested the Commission ratify reinstatement of the real estate licenses of Robert J. Carullo, Carmen Iglesias, Jesus S. Iglesias, Guillermo Sanchez and Michael Thomas, who have met all requirements for reinstatement. The Commission ratified the actions unanimously.

Legal Docket

At approximately 9:00 a.m., the Commission addressed the Legal Agenda, consisting of 56 docket items. Legal docket continued to March 21, 2007.

Chief Attorney Harwood reported that the Division recently received an opinion from the Fifth District Court of Appeals of the State of Florida, ruling that FREC has no authority under s. 475.25, *Florida Statutes*, to order a licensee to attend FREC meetings as discipline for violating Florida's real estate license law. However, Mr. Harwood believes FREC has authority under s. 455.227(2)(f), *Florida Statutes*, to require licensees attend FREC meetings as a condition of probation.

Escrow Disbursement Orders

Senior Attorney Solla presented 86 Escrow Disbursement Orders (EDO) and 7 Orders for Commission consideration. Mr. Solla reported that EDO numbers 31, 42 and 80 have been resolved. Mr. Solla addressed questions from the Commission. Upon recommendation of the Legal Section, the Commission issued 83 Escrow Disbursement Orders and 7 Orders. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Recovery Fund Claims

Senior Attorney Solla, presented the Recovery Fund Claim case Michael Ditore and Kathy Ditore v. Scott J. Travers, Case Number RFC 2006062758. Mr. Solla stated that the claimants did not qualify to receive payment from the recovery fund and recommended the Commission deny the request. Counsel for Claimants, Stephan A. Baker, presented argument. Commissioner Hogan moved to deny payment from the recovery fund. Commissioner Stutler seconded the motion. The motion carried unanimously.

Senior Attorney Solla, presented the Recovery Fund Claim case Violet Schloss v. Benjamin Vargas, Case Number RFC 2004060223. Mr. Solla stated that the claimant did not qualify to receive payment from the recovery fund and recommended the Commission deny the request. Commissioner Hogan moved to deny payment from the recovery fund. Commissioner Veissi seconded the motion. The motion carried unanimously.

FREC Business

Meeting Suspended

Chair Hornsleth suspended the general meeting at approximately 4:45 p.m.

General Workshop

The purpose of the workshop is to discuss three issues, which include: 1) deposits held by lawyers and title companies, 2) Rule 61J2-14.008, *Florida Administrative Code*; and 3) definition of qualifying broker as it relates to form DBPR RE-2050.

Chair Hornsleth called the meeting to order at 4:45 p.m. The following Commission members were in attendance: Chair Poul Hornsleth, Vice-Chair S. W. Ellis, Matey Veissi, Nancy B. Hogan and Denver Stutler. Tom Barnhart, Assistant Attorney General, appeared as counsel for the Commission.

The following Division staff was present at the workshop: Thomas O'Bryant, Director; Elizabeth A. Hickman, Deputy Director; James P. Harwood, Chief Attorney; Kathleen Koeberich, Bureau Chief of Enforcement; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting (407.896.1813) provided court reporter services.

Deposits Held by Lawyers and Title Companies

Senior Attorney Solla stated that this item relates to inquiries the Department receives from real estate buyers and sellers calling to find out when an Escrow Disbursement Order would be issued directing the title company or lawyer how to disburse the deposit. Mr. Solla further stated that perhaps there might be a need for some sort of disclosure requirement. The Commissioners and members of the audience, including Rania Soliman, an Attorney with FAR and Ray Glynn, Realtor, discussed possible solutions to address this issue. Ms. Soliman reported that the FAR 9 contract will have a provision in the contract to disclose that the escrow disbursement request process is not available when the deposit is held by a title company or attorney. Mr. Glynn pointed out that a very small percentage of brokers use FAR contracts. Director O'Bryant addressed Mr. Glynn's remarks.

Mr. Solla suggested since we are not in a rule workshop that the focus of this discussion should not be on the exact language of the disclosure but rather on whether or not the consumer or even brokers need that disclosure. Chairman Hornsleth requested that the Division, Mr. Fryer, President of IFREC and Ms. Soliman get together to discuss this issue, and provide a report at a future FREC meeting.

Rule 61J2-14.008 – Definitions

Director O'Bryant recommended that the Chair appoint a taskforce to address this issue and bring it back to a future FREC meeting for a workshop. Chair Hornsleth suggested that a representative from the Division, Ms. Soliman and Mr. Fryer serve on the taskforce. Director O'Bryant stated that he or Deputy Director Hickman will be happy to

serve on this taskforce as well. Chairman Hornsleth stated that he would also like to serve on the taskforce.

Discussion of Term “Qualifying Broker”

Director O’Bryant reported that he will be meeting in Tallahassee this month to address this and several other issues relating to the RE 2050 form and would provide an update.

The Chair adjourned the workshop at 5:10 p.m.

Rule Development Workshop

The purpose of the workshop is to discuss Rule 61J2-3.010, *Florida Administrative Code*.

Chair Hornsleth called the meeting to order at 5:10 p.m. The following Commission members were in attendance: Chair Poul Hornsleth, Vice-Chair S. W. Ellis, Matey Veissi, Nancy B. Hogan and Denver Stutler. Tom Barnhart, Assistant Attorney General, appeared as counsel for the Commission.

The following Division staff was present at the workshop: Thomas O’Bryant, Director; Elizabeth A. Hickman, Deputy Director; James P. Harwood, Chief Attorney; Kathleen Koeberich, Bureau Chief of Enforcement; JoEllen Peacock, Education Coordinator; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting (407.896.1813) provided court reporter services.

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

Director O’Bryant reported that the Division submitted to the Commission appropriate language for this particular rule, which outlines what sessions, in relation to the syllabus, need to be addressed in reactivation education for licensed real estate sales associates and brokers.

Mr. John Greer, Gold Coast Schools, requested that the Commission consider adding a paragraph which addresses when someone fails the end-of-course exam and suggested mirroring the language from Rule 61J2-3.008(6).

Mr. Fryer requested that this change not be implemented close to a renewal cycle. Director O’Bryant assured Mr. Fryer that the Division would take this request into consideration and perhaps add language reflecting an effective date of October 1, 2007.

Workshop Adjourned – 5:17 p.m.

The Chair recessed the general meeting at approximately 5:20 p.m., March 20, 2007.

March 21, 2007

Chair Poul Hornsleth reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., at Orlando, on this 21st day of March, 2007.

The following Commission members were in attendance: Chair Poul Hornsleth, Vice-Chair S. W. Ellis, Matey Veissi, Nancy B. Hogan and Denver Stutler. 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., Director; Elizabeth A. Hickman, Deputy Director; James P. Harwood, Chief Attorney; Kathleen Koeberich, Bureau Chief of Enforcement; Shiv Persaud, Sorin Ardelean, Chris Lindamood and Patrick Cunningham, Senior Attorneys; David Guerdan, Investigator Supervisor; Martin Straw, Investigator II; JoEllen Peacock, Education Coordinator; Donna Salters, Regulatory Supervisor/Consultant Jeannie Adkinson, Regulatory Specialist III; Janis Dodd, Regulatory Specialist II; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporters (407.896.1813) provided court reporter services.

Legal Agenda continued (non-appearances)

The Commission considered the remainder of the Legal Agenda, which were not addressed on the previous day. The Commission considered 49 docket items. The Commission approved the withdrawal of 6 docket items and the continuance of 1 docket item. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Consent Agenda

The Commission considered 26 applicants from the Summary of Applicants Consent Agenda, requiring nine applicants from the Consent Agenda to appear at a future meeting. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Summary of Applicants

At approximately 9:10 a.m. Jeannie Adkinson, Regulatory Specialist III, presented the Summary of Applicants requesting to sit for the real estate examination. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Chair's Remarks

Chair Hornsleth expressed his appreciation to the Division staff for all their hard work in facilitating the meeting in Pensacola Beach and feels that it was a wonderfully successful event. Chair Hornsleth requested that Director O'Bryant, Deputy Director Hickman and Chief Attorney Harwood convey the Commission's sincere appreciation to the staff.

Chair Hornsleth turned the floor over to Commissioner Hogan. Commissioner Hogan stated she understands that the mortgage fraud bill went before the Legislature and expressed her concerns that mortgage fraud was dropped to a third degree felony from a second degree felony. Commissioner Hogan reported that she has been stating on the record that mortgage fraud is a serious issue that affects the economy throughout the United States and now Florida is number one for mortgage fraud. Commissioner Hogan requested whether the Commission should make a statement that they are very concerned about this issue. Director O'Bryant recommended that the Commissioners identify which Committee is addressing mortgage fraud, who is on such Committee, and send each Committee member an email outlining their concerns.

Commissioner Hogan commented that every time a Recommended Order with Exceptions comes before the Commission there appears to be a little confusion from the Commissioners and suggested perhaps the Commissioners could have a training session. Director O'Bryant stated that the Division would work with FREC Counsel on this issue.

Director O'Bryant addressed additional questions and concerns from the Commission relating to unlicensed activity.

Chair Hornsleth wanted to commend Director O'Bryant publicly for an excellent start as Director of the Division of Real Estate.

Director's Comments

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

- Requirements to apply for a broker license – Director O'Bryant acknowledged the Commissioners' concerns relating to the requirements of becoming a broker and their request to raise or increase the requirements. Director O'Bryant suggested that the Commission create a taskforce to begin looking at the requirements and concerns in preparation for the next Legislative session. Commissioner Hogan recommended that some of the educators participate. Director O'Bryant requested the Commissioners email their suggestions to him.
- Contracts – Director O'Bryant reported that the scholarship program contract has been approved and is in its final process and also reported that the Design Café contract has been forwarded to the vendor for signature.
- Instructors' inability to add or remove employees online – Director O'Bryant reported that as a result of an inquiry last month this issue was brought to the Department's attention and it was discovered that Alcohol, Beverages & Tobacco was having the same problem. Director O'Bryant stated that Technology is addressing this issue.
- Mutual agreements – Director O'Bryant reported that the Connecticut Mutual Recognition agreement is complete and awaiting signature. Additionally, Director O'Bryant suggested the Commission review all the agreements that come under the Commission and revise as necessary using the prototype currently in place as a guide to close any possible loopholes, as some of the agreements are 10-15 years

old and the industry has changed. Chair Hornsleth requested the Division bring recommendations to the Commission. Director O'Bryant agreed.

- Instructor Seminars – Director O'Bryant reported that the Division is in the process of setting dates for the 2007 Instructor Seminars as follows: May 25th – Seminole Community College in Lake Mary; June 13th – Palm Beach Community College in Palm Beach Gardens; June 15th – Manatee Community College in Bradenton; July 27th – Seminole Community College; Tallahassee – date to be announced. Director O'Bryant stated that there will be one short session followed by smaller break out sessions. Director O'Bryant provided a brief outline of tentative topics.
- Board Appointments – Director O'Bryant reported that he is working with the Governor's Appointment Office to ensure that the appropriate paperwork is in for those Commissioners who are up for reappointment and to fill the empty seats so that the Governor can make decisions based on the information he has and to ensure that that we do not have quorum issues.

The Commission thanked Director O'Bryant for his report.

Public Comments

Chair Hornsleth thanked the audience for attending. The Commission received one comment from the audience relating to mortgage companies.

Adjournment

There being no further business and no objection, the Chair adjourned the meeting at approximately 12:00 p.m. The next general meeting of the Florida Real Estate Commission is scheduled for April 17 and 18, 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