

Charles W. Drago, Secretary

Charlie Crist, Governor

**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
October 14 and 15, 2008
General Meeting**

Chair S.W. Ellis called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., in Ft. Lauderdale, Florida, on this 14th day of October, 2008.

The following Commission members were in attendance: Chair S.W. Ellis, Vice-Chair Ralph McCoig, Richard DeNapoli, Roger P. Enzor, Poul Hornsleth, Michael Guju and John Ruffier. Tom Barnhart, Senior 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 and Executive Director; James P. Harwood, Chief Attorney; Patrick Cunningham, Senior Attorney; Denise Johnson, OMC II; Alma Roberts, OMC II; Zack Hayhurst, Regulatory Specialist III; Lori Crawford, Regulatory Supervisor/Consultant. Official Reporting Services, LLC (954) 467-8204 provided court reporter services.

Approval of the Minutes

The Commission unanimously approved the Minutes of the September 15 and 16, 2008, General Meeting, as written.

Unlicensed Activity Report

Executive Director O'Bryant presented the Unlicensed Activity Report and the Enforcement Report. Mr. O'Bryant addressed questions from the Commission.

Petition for Declaratory Statement

FREC Counsel Barnhart presented the Petition for Declaratory Statement regarding Section 475.01(1)(a), *Florida Statutes*, received from Management Planning, Inc. and requested the Commission address the Petition. Attorney Lawrence E. Sellers, Jr. appeared on behalf of Planning Management Inc. and presented his position summarizing the petition. The Commission considered Mr. Seller's position. Commissioner DeNapoli moved to not support the Declaratory Statement. Commissioner Hornsleth seconded the motion. The motion failed 3 to 4. Commissioner Ruffier moved to support the Declaratory Statement. Commissioner Guju seconded the motion. The motion carried 4 to 3.

Mortgage Fraud Presentation

Former FREC members Nancy Hogan and Matey Veissi appeared before the Commission to speak on the subject of mortgage fraud. Ms. Hogan stated that over 2 years ago she brought her concerns to the Commission regarding mortgage fraud and as a result Director O'Bryant immediately incorporated mortgage fraud into the instructor training statewide. Ms. Hogan provided a brief summary of accomplishments that have been made to bring this issue to the forefront. Ms. Veissi provided an outline of the laws and indicators to look for regarding mortgage fraud and ways to avoid being a victim. In closing, Ms. Hogan stated that with Florida the number one state in mortgage fraud she highly urges the Commission to form a task force to discuss ways to more effectively help with this crisis. The Commission thanked Ms. Hogan and Ms. Veissi for their presentation.

Financial Report

Director O'Bryant presented financial reports regarding the Operating, Education and Research Foundation and Unlicensed Activity accounts. Director O'Bryant provided an overview of the reports and addressed questions and comments from the Commissioners.

Chair Ellis inquired whether funds from the Education and Research Foundation could be utilized to send the entire Commission to ARELLO. Director O'Bryant stated that he would contact Finance & Accounting for a determination on this request.

Vice-Chair McCoig moved to accept the financial report. Commissioner Ruffier seconded the motion. The motion carried unanimously.

Education and Research Foundation Proposal

The Commission considered a proposal received from Glenn Theobald, Chairman of the Governor's Hope Council and Mortgage Fraud Task Force and Chief Counsel to the Miami-Dade Police Department, requesting financial assistance through the Education and Research Foundation to create and sustain statewide education and training to the public and real estate professionals to resolve the mortgage fraud crisis in Florida. O'Bryant stated that he would forward this proposal to Finance and Accounting for a determination whether this qualifies for disbursement from the fund. Vice-Chair McCoig moved to proceed forward with this request. Commissioner DeNapoli seconded the motion. The motion carried unanimously.

Legal Docket

The Commission addressed the Legal Agenda, consisting of 24 docket items. The Commission considered 21 docket items and approved the continuance or withdrawal of 3 docket items. The Commission's decisions on these matters are attached to the official minutes maintained at the Division of Real Estate headquarters.

Escrow Disbursement Orders

Chief Attorney James Harwood presented 36 Escrow Disbursement Orders and 5 Orders for Commission consideration. Upon recommendation of the Legal Section, the Commission issued 36 Escrow Disbursement Orders and 5 Orders.

Rule Development Workshop

61J2-3.011 – Instructor Education

Director O'Bryant presented the following additional amendment to the language previously approved by the Commission in February 2008 (Double underline and double strikeout previously approved by the Commission):

“(1) ~~Any~~ All persons holding a “school instructor” permits shall recertify ~~their~~ competency during each permit period by satisfactorily completing 7 classroom hours of instruction and/or instructional techniques as prescribed and conducted by the Commission. A school instructor is not required to complete the 7 hours of recertification education as a condition for initial permit renewal if the time between the effective date on the initial permit as an instructor and the beginning of the initial renewal permit is less than 12 months. Of the required 7 classroom hours, up to 3 hours may be applied toward the continuing education core law requirement for licensure pursuant to Rule 61J2-3.009, F.A.C.

(2) ~~Satisfactory completion of the 7 classroom hour seminar is demonstrated by attending all 7 classroom hours of instruction.~~ Satisfactory completion of these courses will not entitle any person to renew a permit as a school instructor until such person has met all other requirements of law.

(3) Any active member in good standing with The Florida Bar and who is otherwise qualified under the real estate license law is exempt from the continuing education requirements of this rule.”

Vice-Chair McCoig moved to proceed with the recommended changes for publication of rule development. Commissioner DeNapoli seconded the motion. The motion carried unanimously.

Commissioner Ruffier moved to amend paragraph (1) and proceed with the additional recommended changes for publication of rule development. Commissioner DeNapoli seconded the motion. The motion carried unanimously.

61J2-24.006 – Probation

Director O'Bryant stated that Chair Ellis requested to revisit this rule to review the disciplinary probation requirement referenced in paragraph (6)(b). The Commission reviewed the language and made no changes. The Chair requested that the Division ensure that this information is provided to the Probationers.

Rules Workshop

61J2-24.002 – Citation Authority

Director O'Bryant stated that the Commission approved amendment of this rule in February 2008 to include a provision to address violation of Rule 61J2-14.008(2)(b), F.A.C. Director

O'Bryant further stated that this rule and Rule 24.003 are related and the Commission agreed last month to issue a Notice of Noncompliance for the first violation of Rule 61J2-14.008(2)(b) for a period of one year and the second offense would result in the issuance of a citation. Board Counsel Tom Barnhart suggested that the language be amended to explain "failure to notify" in detail. Director O'Bryant suggested to copy the wording in Rule 61J2-14.008(2)(b) and that the Division will wordsmith the language and bring it before the Commission for its review at the next available meeting.

61J2-24.003 – Notification of Noncompliance

Director O'Bryant stated that the Division would amend this rule to provide for the issuance of a Notice of Noncompliance for the first violation of Rule 61J2-14.008(2)(b) for a period of one year. Director O'Bryant stated that the Division would amend the language as suggested and bring it before the Commission for its review at the next available meeting.

Letter to State Attorney's Offices

Director O'Bryant recommended that the Commission delay submitting the letter to the State Attorney's Offices to allow the Office of General Counsel submit a report regarding this issue to the Legislature. Director O'Bryant addressed questions from the Commission. The Commissioners discussed modifying the letter to include reasons why they are sending this letter. Commissioner Guju suggested simply including "However, the Division's efforts will be for naught if aggressive prosecution does not occur by the State Attorneys." after the second paragraph. The Commissioners thanked Commissioner DeNapoli for drafting a very well written letter.

Commissioner Hornsleth moved to send the letter to the State Attorney's Office as modified. Vice-Chair McCoig seconded the motion. The motion carried unanimously. Director O'Bryant stated he would forward the letter to the Office of Communications for the appropriate handling.

Commissioner DeNapoli requested to receive a copy of the Department's and Division's suggestions for the Legislative Agenda. Director O'Bryant stated he would forward the Commission's request to the Office of Legislative Affairs.

Nomination of Chair and Vice-Chair

Commissioner Hornsleth moved for the nomination of Vice-Chair Ralph McCoig as Chair. Commissioner DeNapoli seconded the motion. The motion carried unanimously.

Commissioner Hornsleth moved for the nomination of Roger Enzor for the position of Vice-Chair.

Commissioner Guju moved for the nomination of Richard DeNapoli and John Ruffier for the position of Vice-Chair. Commissioner Guju inquired whether there are any restrictions allowing a consumer member to serve as Chair or Vice-Chair. Director O'Bryant reported that there are no restrictions.

Chair Ellis closed the nominations for Vice-Chair. Commissioners Ruffier and DeNapoli withdrew their nominations. By unanimous vote Commissioner Enzor was elected as Vice-Chair.

Board Calendar

Commissioner Hornsleth moved to approve the 2009 FREC Meeting Calendar as modified. Commissioner Guju seconded the motion. The motion carried unanimously.

Review and Consideration of the Real Estate Continuing Education Courses

Director O'Bryant presented the following continuing education courses for the Commissions' consideration:

1. Legal Issues in the Self Storage Industry; 4 to 5 hour specialty course – Commissioner Hornsleth moved to deny the continuing education course. Vice-Chair McCoig seconded the motion. The motion carried unanimously.
2. The Americas and International Real Estate; 7-hour specialty course – Commissioner Hornsleth moved to approve the continuing education course. Commissioner Enzor seconded the motion. The motion carried six to one.
3. Europe and International Real Estate; 7-hour specialty course – Commissioner Hornsleth moved to approve the continuing education course. Commissioner Enzor seconded the motion. The motion carried six to one.
4. Asia & Pacific Rim; 7-hour specialty course – Commissioner Hornsleth moved to approve the continuing education course. Commissioner Enzor seconded the motion. The motion carried six to one.
5. The Middle East/Africa & International Real Estate; 7-hour specialty course – Commissioner Hornsleth moved to approve the continuing education course. Commissioner Enzor seconded the motion. The motion carried six to one.

Dick Fryer expressed his concern over the length of time for course approvals stating that it takes 3 and 4 months to receive an approval for renewal of an existing CE course. Chair Ellis asked Mr. Fryer what he suggested they do. Mr. Fryer suggested that the Commission request the Director O'Bryant work with the Department to change policy and procedure and perhaps if the Commission submitted a letter to the Secretary outlining its concerns it would carry more weight. Chair Ellis asked Commissioner Guju to draft a letter to submit to the Department.

Chair Ellis stated that about ten months ago she suggested that the Department get a P.O. Box for each Division so that the mail does not sit on the floor and inquired whether the Department did this. Director O'Bryant stated he would ask the Director of Service Operations to address the Commission at a future meeting.

Ratification of Suspended Licenses

Director O'Bryant requested the Commission ratify reinstatement of the real estate licenses of Ralph Isola and Leabeth D. Solito who have met all requirements for reinstatement. The Commission ratified the actions unanimously.

The Chair adjourned the meeting at approximately 5:30 p.m.

October 15, 2008

Chair S.W. Ellis reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., in Ft. Lauderdale, on this 15th day of October, 2008.

The following Commission members were in attendance: Chair S.W. Ellis, Vice-Chair Ralph McCoig, Richard DeNapoli, Roger P. Enzor, Michael Guju, Poul Hornsleth and John Ruffier. Tom Barnhart, Senior Assistant Attorney General, appeared as counsel for the Commission. Mr. Barnhart declared a quorum present.

Division staff present at the meeting: Thomas W. O'Bryant, Jr., Director and Executive Director; Patrick Cunningham, Senior Attorney; Denise Johnson OMC II; Alma Roberts, OMC II; Zack Hayhurst, Regulatory Specialist III; Lori Crawford, Regulatory Supervisor/Consultant. Official Reporting Services, LLC (954) 467-8204 provided court reporter services.

Consent Agenda

The Commission considered 20 applicants from the Consent Agenda and required 13 applicants to appear at a future meeting.

Summary of Applicants

Denise Johnson, OMC II, presented 37 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.

Director's Comments

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

- FAR Annual Convention – The Division of Real Estate occupied a booth in the Exhibit Hall allowing Division staff to show licensees how to use the licensing system and address licensing issues proving to be extremely successful. Additionally, Director O'Bryant participated in two speaking events. Commissioner Enzor stated that Director O'Bryant did a great job at the FAR convention.
- National Association of Realtors – NAR will hold its 2008 Realtor Conference & Expo, November 7-10, 2008, in Florida. The Division will have a booth which will provide an opportunity not only to help Florida licensees who may be in attendance but also to show other states our licensing systems. Chair Ellis recommended that information regarding unlicensed activity be available at the booth.

Director stated that it has been his pleasure to serve with this Commission with Commissioner Ellis as Chair.

Chair's Remarks

Chair Ellis stated that the Commission recommended using funds from the Education and Research Foundation for the Governor's Hope Council and Mortgage Fraud Task Force and suggested addressing accountability requirements. Director O'Bryant stated he would draw up some recommendations and submit them to Commission at the next meeting.

Chair Ellis thanked everyone for allowing her to be Chair and with Vice-Chair McCoig coming in as Chair she knows he will do great things.

Chair Ellis reported that she and Commissioner Enzor will attend the ARELLO Annual Conference in Indiana, October 17 – 20, 2008.

Public Comments

Commissioners 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 next general meeting of the Florida Real Estate Commission is scheduled for November 18 and 19, 2008, in Orlando, Florida.

S.W. Ellis, 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