

Charles W. Drago, Secretary

Charlie Crist, Governor

**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
December 16 and 17, 2008
General Meeting**

Chair Ralph McCoig called the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., in Orlando, Florida, on this 16th day of December, 2008.

The following Commission members were in attendance: Chair Ralph McCoig, Vice-Chair Roger Enzor, Richard DeNapoli, S.W. Ellis, 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; Juana C. Watkins, Deputy Director; James P. Harwood, Chief Attorney; Jennifer Blakeman, Patrick Cunningham, Jason Holtz, Robert Minarcin and Joseph Solla, Senior Attorneys; Denise Johnson, OMC II; JoEllen Peacock, Education Coordinator; Zack Hayhurst, Regulatory Specialist III; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407) 896-1813 provided court reporter services.

Approval of the Minutes

The Commission unanimously approved the Minutes of the November 18 and 19, 2008, General Meeting, as written.

Unlicensed Activity Report

Executive Director O'Bryant presented the Unlicensed Activity Report and the Enforcement Report. You will know that this is an area the Department continues to work on and refine and as soon as we have our submission to the Legislature the Commission will receive a copy. Mr. O'Bryant and Mr. Harwood addressed questions from the Commission.

Rules Workshop

FREC Counsel Barnhart reported that effective October 1, 2008, when any rules are amended, the Legislature requires that the impact on small business be determined. Therefore, a Statement of Estimated Regulatory Costs (SERC) must be submitted to JAPC before any rule amendments become final. Director O'Bryant gave a summary of the Department's role in the determination process of the estimation of regulatory costs.

Rule 61J2-24.002 – Citation Authority

Director O'Bryant presented the SERC and rule for the Commission's review. The Commission reviewed the proposed SERC and rule amendments. Commissioner Ruffier moved to accept the proposed rule determination of impact on a small business. Commissioner Guju seconded the motion. Commissioner Ruffier moved to accept the proposed modifications to 61J2-24.002, Citation Authority. Commissioner Guju seconded the motion. The motion carried unanimously.

Rule 61J2-24.003 – Notice of Noncompliance

The Commission reviewed the proposed SERC and rule amendments. Commissioner Ruffier moved to accept the proposed rule determination of impact on a small business. Commissioner DeNapoli seconded the motion. Commissioner Ruffier moved to accept the proposed modifications to Rule 61J2-24.003, Notice of Noncompliance. Commissioner DeNapoli seconded the motion. The motion carried unanimously.

Nebraska Mutual Recognition Agreement Addendum

Director O'Bryant presented an addendum agreement the Nebraska Real Estate Commission (NREC) submitted for the Florida Real Estate Commission's consideration, which requires non-resident applicant from Florida seeking licensure as a nonresident salesperson or broker in Nebraska to complete a three-clock hour class in Nebraska license law and agency law approved by NREC prior to issuance of the nonresident license and to amend Paragraph a. 14. by changing "12 months" to "24 months". Commissioner Hornsleth moved to approve the Addendum to the Mutual Recognition Agreement. Commissioner Ruffier seconded the motion. The motion carried unanimously.

Ratification of Suspended License

Director O'Bryant requested the Commission ratify reinstatement of the real estate license of George Lambro who has met all requirements for reinstatement. The Commission ratified the action unanimously.

Letter to State Attorney's Offices

Commissioner DeNapoli inquired as to the status of the letter to the State Attorney's Office. Commissioner Guju stated that Deputy General Counsel April Skilling advised that she would provide a report. Director stated he would inquire whether the report was available.

Service Window in Tallahassee

Director O'Bryant reported that the Deputy Secretary is investigating this and it is on her agenda.

Governor's Hope Council Task Force Proposal

Director O'Bryant reported that the Office of General Counsel informed him that they are addressing some legal issues to ensure that the proposal meets all the requirements of Chapter 475, Florida Statutes. The Office of Financial Services, the Department and the

Miami-Dade Police Department are working toward a resolution. The Office of Financial Services will not release the money until every aspect of the proposal meets statutory guidelines. Director O'Bryant will provide an update at the next general meeting.

Course Approvals

Commissioner DeNapoli requested if there has been any progress regarding the length of time it takes to approve CE courses up for renewal. Director O'Bryant reported that he forwarded Mr. Fryer's concerns to the Bureau of Education and Testing relating to renewal of CE courses. Additionally, he reported that Deputy Secretary Olson visited that department and requested that by the end of the year, BET must provide a process timeline for her review. Commissioner Hornsleth requested whether the Commission could have a copy of the report at the January meeting. Director O'Bryant stated he would inquire whether a written report would be available.

Passing of Two DBPR Employees

Director O'Bryant reported that there were two recent deaths within the Department. Kathleen Koeberich and Dan Combs passed away within a day of each other. Secretary Drago visited the Division to offer his condolences and support. Commissioner Hornsleth commended both Ms. Koeberich and Dr. Combs for their long, exceptional service to the Commission, the Department and to the public. Commissioner Ellis also offered a few words regarding Ms. Koeberich's character and stated that they all are going to miss her.

Escrow Disbursement Orders

Senior Attorney Joe Solla presented 20 Escrow Disbursement Orders and 4 Orders for Commission consideration. Upon recommendation of the Legal Section, the Commission issued 20 Escrow Disbursement Orders and 4 Orders.

Commissioner Hornsleth inquired whether there is an alternative method that brokers may resolve disputes, specifically over rental deposits and still meet the requirements of Chapters 475 and Chapter 83, Florida Statutes. Mr. Solla stated that complying with Chapter 83 does mandate resolving the matter in court and the Department cannot change the statute to require Chapter 475 supersede Chapter 83. Mr. Solla further stated that brokers should be educated on the duties involved to act as an escrow agent. Chair McCoig asked steps what need to be taken to include that in an educational component. Mr. James Mitchell, Esquire, stated that there is a provision in Section 83.49(3)(d), Florida Statutes, which allows the broker to make a decision as to who is entitled to the escrowed funds and was not required to follow the settlement provisions in Chapter 475, relating to rentals only. Chair McCoig requested to discuss this issue further at the next FREC meeting.

Recovery Fund Claims

DBPR Case No. 2008035396 – Timothy Kennedy v. Frederick Joseph Hoffman. Mr. Solla stated that the claimant does qualify to receive payment from the recovery fund and recommended the Commission approve payment in the amount of \$1,031.24. Mr. Hoffman, Licensee, appeared to offer mitigation. The Commission considered the facts and agreed

that payment should be approved. Commissioner Hornsleth moved to approve payment. Commissioner DeNapoli seconded the motion. The motion carried unanimously.

DBPR Case No. 2007032895 – All Action, Inc. v. DBPR. Mr. Solla stated that the claimant qualifies to receive payment from the recovery fund and recommended the Commission approve the request. The Commission considered the facts and agreed that payment should be approved. Commissioner Hornsleth moved to approve payment. Vice-Chair Enzor seconded the motion. The motion carried unanimously.

DBPR Case No. 2008052262 – Mark and Dorothy Enman v. David Gonzalez. Senior Attorney Solla presented the case to the Commission. Mr. Solla stated that the claimant does qualify to receive payment from the recovery fund and recommended the Commission approve payment in the amount of \$30,000.00. The Commission considered the facts and agreed that payment should be approved. Commissioner Hornsleth moved to approve payment. Commissioner Guju seconded the motion. The motion carried unanimously.

DOAH Recommended Order - Applicant

Ariella Rubinger v. FREC – DOAH Case No. 08-2674

FREC Counsel Tom Barnhart presented the Recommended Order of the Administrative Law Judge. Petitioner's Counsel did not appear to present mitigation. The Commission considered the Recommended Order of the Division of Administrative Hearings recommending the Petitioner's application for licensure as a real estate sales associate be held in abeyance until resolution of the pending circuit court case. Commissioner DeNapoli moved to approve Recommended Order, but modify the disposition and deny the Petitioner's application for licensure as a real estate sales associate. Commissioner Ellis seconded the motion. The motion carried unanimously.

Sunshine Law and Code of Ethics Presentation

FREC Counsel Barnhart gave a PowerPoint presentation outlining State of Florida Code of Ethics for the Commissioners. Mr. Barnhart also provided a brief overview of the Sunshine Law. The Commissioners thanked him for his presentation.

Legal Docket

The Commission addressed the Legal Agenda, consisting of 22 docket items. The Commission considered 13 docket items and approved the continuance or withdrawal of 9 docket items.

Consent Agenda

The Commission considered 20 applicants from the Consent Agenda and required 10 applicants to appear at a future meeting.

The Chair adjourned the meeting at approximately 3:30 p.m.

December 17, 2008

Chair Ralph McCoig reconvened the meeting of the Florida Real Estate Commission to order, at approximately 8:30 a.m., in Orlando, on this 17th day of December, 2008.

The following Commission members were in attendance: Chair Ralph McCoig, Vice-Chair Roger Enzor, Richard DeNapoli, S.W. Ellis, 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 W. O'Bryant, Jr., Director and Executive Director; Juana C. Watkins, Deputy Director; Jason Holtz and Jennifer Blakeman, Senior Attorneys; Denise Johnson OMC II; JoEllen Peacock, Education Coordinator; Jeannie Adkinson, Regulatory Specialist III; Zack Hayhurst, Regulatory Specialist III; Lori Crawford, Regulatory Supervisor/Consultant. American Court Reporting, Inc. (407) 896-1813, provided court reporter services.

Summary of Applicants

Denise Johnson, OMC II, presented 48 Summary of Applicants requesting to sit for the real estate examination.

Chair's Remarks

Chair McCoig asked Commissioner DeNapoli to provide a report regarding a proposal requesting the use of funds from the Education & Research Foundation to send the Commissioners to ARELLO conferences. Commissioner DeNapoli provided an overview of a proposal he drafted for the Commission's consideration. The proposal outlined the benefits to the real estate industry and to the citizens of Florida. Additionally, any Commissioner attending the conferences under this project's parameter must follow requirements set forth in the proposal. Commissioner DeNapoli specified that the proposal is for a two-year period.

Commissioner Ellis provided a statement in support of the proposal. In addition, she requested the Commission pass a resolution allocating \$25,000.00 to allow the seven Commissioners and their Counsel to attend ARELLO.

Commissioner Guju moved that the Florida Real Estate Commission approve the proposal as written by Commissioner DeNapoli and further moved to establish this project and direct the Director of the Division of Real Estate to immediately put into effect the terms hereof, specifically, but not limited to, the planning and implementation of the Commissioners and Commission Counsel attending the ARELLO meetings held during the calendar year 2009. Vice-Chair Enzor seconded the motion. The motion carried unanimously. The Commissioners further discussed whether they should set a monetary limit and requested guidance from Director O'Bryant. Director O'Bryant stated he would forward the proposal to both the Office of General Counsel and the Office of Budget and Financial Management for their review and direction.

Chair McCoig inquired of Mr. Barnhart whether the Commissioners are able to communicate with each other relating to committee. Mr. Barnhart stated he would research the details relating to his inquire but recommended that they communicate through Director O'Bryant.

Commissioner Hornsleth stated that in talking with Frank Gregoire, former Chair of the Florida Real Estate Board (FREAB) he learned that the FREAB prays before the general meeting. Commissioner Hornsleth further stated that during his tenure as Chair of the FREC, people sworn in under oath ending in with the statement of "So Help You God". Commissioner Hornsleth requested that the statement of "So Help You God" be included when being sworn in. Chair McCoig directed the court reporter to include that phrase when administering the oath.

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 January 20 and 21, 2009, in Orlando, Florida.

Ralph McCoig, 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