

Notice of Declaratory Statement

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Commission

The Florida Real Estate Commission hereby gives notice that it has issued an Order on the Petition for Declaratory Statement that was filed on September 16, 2005, by Jennifer L. DeSantis, Esq. on behalf of DeSantis Commercial, Inc. The Notice of Petition for Declaratory Statement was published in Volume 31, No. 39, of the September 30, 2005, Florida Administrative Weekly. Petitioner sought the Commission's interpretation as to whether an individual exempt under Section 475.11(2), Florida Statutes, at the time he procures an executed contract for sale, is paid a salary; but, if that individual becomes a licensed real estate sales associate prior to the closing of that contract, is the individual entitled to a commission or other compensation on a transactional basis, or does Section 475.41, Florida Statutes, preclude same? If no commission is payable, can payment continue on a salary basis? The Commission considered the Petition at its meeting held on October 18-19, 2005, in Orlando, Florida. The Commission's Order, filed on February 20, 2006, GRANTED the Petition for Declaratory Statement and provided that Section 475.011(2), Florida Statutes, precludes payment of a commission to a licensee, who is not licensed at the time of first involvement in the transaction.

A copy of the Commission's Order may be obtained by contacting Lori Crawford, Deputy Clerk, Division of Real Estate, 400 West Robinson Street, Suite N801, Orlando, Florida 32801.

STATE OF FLORIDA
DIVISION OF REAL ESTATE
FLORIDA REAL ESTATE COMMISSION

By: Brandon M. Nichols

In Re: Petition for a Declaratory Statement by DeSantis Commercial, Inc.

FINAL ORDER

DS 2005-043

This Petition was filed on September 16, 2005. It was noticed in the September 30, 2005, issue of the Florida Administrative Weekly, and considered at the meeting of the Florida Real Estate Commission held on October 18-19, 2005 at the Division of Real Estate, 400 W. Robinson Street, Suite N 801, Orlando, Florida 32801.

After introduction of the issue by the Commission's attorney, and consideration of the petition filed by the Petitioners, the Commission determined that an order be entered stating that in order to be entitled to a commission under Chapter 475, an individual must hold a real estate license from the beginning of a transaction. An individual exempt under 475.011(2) when the transaction began, cannot receive a commission at closing, even if licensed at that time.

WHEREFORE, the Petition for a Declaratory Statement was granted and provided that Section 475.011(2) precludes payment of a commission to a licensee, who was not licensed at the time of first involvement in the transaction.

DONE and ORDERED this 9 day of February, 2006.

Michael E. Murphy
Michael Murphy, Director
Division of Real Estate

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES, REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to, Jennifer L. DeSantis, Esquire., 222 Lakeview Avenue, 8th Floor, West Palm Beach, Florida 33401 and Gary Asbell, Assistant Attorney General, PL 01, The Capitol, Tallahassee, Florida 32399-1050 on this 20th day of February, 2006.

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SEP 27 2005

DIV. OF REAL ESTATE LEGAL SECTION

PETITION SEEKING DECLARATORY STATEMENT
BEFORE DIVISION OF REAL ESTATE

Petitioner Information

DeSantis Commercial, Inc.
719 Colorado Avenue
Stuart, FL 33494

License Number: 264223

772.283.4698 (phone)
772.283.4677 (fax)

DS 2005-043

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SEP 16 2005

DBPR Agency Clerk

Attorney Information

Jennifer L. DeSantis, Esq.
222 Lakeview Avenue, 8th Floor
West Palm Beach, FL 33401

561.838.4517 (phone)
561.514.3417 (fax)

FILED

Department of Business and Professional Regulation
DEPUTY CLERK

CLERK *Brandon M. Nichols*
DATE 9-16-2005

Statutory Provisions

475.41 Contracts of unlicensed person for commissions invalid.--No contract for a commission or compensation for any act or service enumerated in s. 475.01(3) is valid unless the broker or sales associate has complied with this chapter in regard to issuance and renewal of the license at the time the act or service was performed.

475.01 Definitions.--

3) Wherever the word "operate" or "operating" as a broker, broker associate, or sales associate appears in this chapter; in any order, rule, or regulation of the commission; in any pleading, indictment, or information under this chapter; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this chapter as constituting or defining a broker, broker associate, or sales associate, not including, however, any of the exceptions stated therein. A single such act is sufficient to bring a person within the meaning of this chapter, and each act, if prohibited herein, constitutes a separate offense.

475.011 Exemptions.--This part does not apply to:

2) Any individual, corporation, partnership, trust, joint venture, or other entity which sells, exchanges, or leases its own real property; however, this exemption shall not be available if and to the extent that an agent, employee, or independent contractor paid a

commission or other compensation strictly on a transactional basis is employed to make sales, exchanges, or leases to or with customers in the ordinary course of an owner's business of selling, exchanging, or leasing real property to the public.

Description of Circumstances

An entity sells its own property, under the exemption set forth in Section 475.011(2), Florida Statutes, via agents, employees or independent contractors. These agents, employees or independent contractors sell the entity's property in the ordinary course of its business. They do not receive a commission or other compensation based strictly on a transactional basis. They are paid a salary only and thus fit within the exception to Part 1, Chapter 475, Florida Statutes as set forth in Section 475.011(2).

If an individual selling the entity's property is not a licensed real estate agent at the time he or she procures contracts to sell the property, but he or she obtains his or her real estate license between the time of procuring the contract and the closing of the transaction covered by the contract, it is unclear how Sections 475.011(2) and 475.41, read together, affect the transaction:

Can such an individual, at the time of closing, then be paid a commission or other compensation on a transactional basis by the entity that owns the property, or would Section 475.41, Florida Statutes, disallow such compensation since the individual was not a licensed real estate agent at the time he or she procured the contract?

Please provide clarification as to how to proceed with payment to individuals who fall within the foregoing description, i.e. whether payment should continue on a salary basis for the described transaction or whether payment can proceed on a commission basis for the described transaction. Any guidance or comments on this issue would be appreciated as the specific issue is not addressed by either the Florida Statutes or the Florida Administrative Code.

Dated April _____, 2005.

Jennifer L. DeSantis, Esq.,
Petitioner's Authorized
Representative

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DIV. OF REAL ESTATE LEGAL SECTION

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DIVISION OF REAL ESTATE

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Department of Business and Professional Regulation
DEPUTY CLERK

CLERK

Brandon M. Nichols

DATE

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FILE MANAGEMENT

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Dated April ____, 2005.

Jennifer L. DeSantis, Esq.,
Petitioner's Authorized
Representative