

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/30/2010
File #	2010-02288

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

IN RE: **Petition for Declaratory Statement
by Everglades Housing Group, Inc.**

**FINAL ORDER GRANTING PETITION
FOR DECLARATORY STATEMENT**

DS 2009-078

Everglades Housing Group, Inc., filed a petition for declaratory statement on December 11, 2009. Notice of the receipt of the petition was published in the Florida Administrative Weekly. The Commission considered the petition at its meeting in Orlando, Florida on February 16, 2010.

By its petition, Everglades Housing Group, Inc., (EHG) seeks the Commission's opinion whether EHG is exempt from the requirement of having a real estate license, when providing property management services for its parent's corporation's affiliate companies' real property pursuant to Section 475.011(2), Florida Statutes, which provides:

This part does not apply to:

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.

FINDINGS OF FACT

1. EHG is a Florida not-for-profit corporation that is an affiliated company of Rural Neighborhoods, Incorporated (RN) a Florida not-for-profit Corporation. EHG does not own any of the real property in question.

2. RN and EHG generally provide affordable housing to low income households. RN is the developer of real estate projects and EHG provides property management services for these real estate projects. RN controls EHG through its bylaws and has the same board of directors. In order to separate liabilities RN created affiliate companies that own real property. These affiliate companies are controlled by RN. The real property owned by these affiliate companies is managed by EHG.

3. An EHG salaried employee is on site at the real property and provides property management services such as maintenance, advertising, and preparing leases. They are not paid on a transactional basis and only provide property management services for the real properties owned by RN's affiliate companies.

CONCLUSIONS OF LAW

4. The Commission is authorized to issue this declaratory statement pursuant to Section 120.565, Florida Statutes.

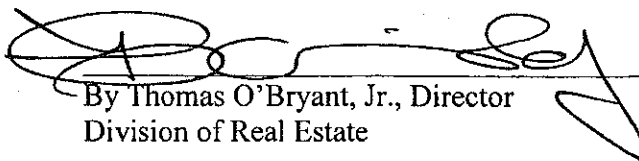
5. The issue in this case, as framed by the Petitioner, is whether EHG is considered an owner of the real property that is titled in the name of EHG's affiliated companies, and therefore exempt pursuant to Section 475.011(2), Florida Statutes, from maintaining a real estate license to provide property management services for the real property of its affiliated companies.

6. EHG respectfully requests that FREC issue a declaratory statement, stating that EHG is exempt pursuant to Section 475.011(2), Florida Statutes, from maintaining a Florida real estate broker license when its salaried employees provide property management services for real property owned by EHG's parent corporation's affiliated companies.

7. The Commission grants the petition for declaratory statement.

DONE AND ORDERED this 2 day of March, 2010.

For Florida Real Estate Commission


By Thomas O'Bryant, Jr., 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, FIRST DISTRICT, OR 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 has been furnished by U.S. Mail to Daniel Villazon, Esquire, 1420 Celebration Boulevard, Suite 200, Celebration, Florida 34747, and to Tom Barnhart, Special Counsel, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, all on this 30th day of March, 2010.



7006 0810 0002 5097 6997

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Fo/DEC Statement Everglades OS 2009-078	
Sent To <u>Daniel Villazon Esq.</u>	
Street, Apt. No., or PO Box No. <u>1420 Celebration Blvd Ste 200</u>	
City, State, ZIP+4 <u>Celebration FL 34747</u>	
PS Form 3800, June 2002 See Reverse for Instructions	

FILED	
<small>Department of Business and Professional Regulation</small>	
<small>Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	12/11/2009
File #	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

IN RE: Petition for Declaratory Statement
Before the Florida Real Estate Commission

Everglades Housing Group, Inc.
Petitioner.

DS 2009-078

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA REAL ESTATE COMMISSION

Pursuant to s. 120.565, Florida Statutes, and Rule 28-105.002, F.A.C., Petitioner, Everglades Housing Group, Inc. (herein "EHG" or "Petitioner") requests that the Florida Real Estate Commission (herein "FREC") issue a declaratory statement regarding the applicability of certain statutory provisions, rules or orders over which it has authority. In support thereof, Petitioner states:

Identification of Petitioner

1. The name, address, and telephone number of EHG corporate headquarters are:

Everglades Housing Group, Inc.
19308 S.W. 380th Street
Florida City, Florida 33034
Phone Number: (305) 242-2142

Identification of Petitioner's Representative

2. The name, address, telephone number, and facsimile number of the Petitioner's attorney are set forth below.

Daniel Villazon
Daniel Villazon, P.A.
1420 Celebration Blvd., Suite 200
Celebration, FL 34747
Phone Number: (407) 483-0041
Facsimile Number: ((321) 939-1440

RECEIVED
DEC 11 2009
DBPR Agency Clerk

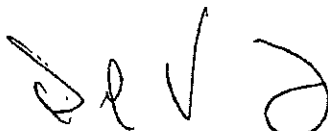
¹ Unless otherwise noted, all references to statutes are to Florida Statutes (2009)

Statutory Provisions and Agency Rules
on which the Declaratory Statement is Sought

3. Petitioner seeks FREC's opinion regarding whether EHG is exempt from the requirement of having a real estate license, when providing property management services for its parent's corporation's affiliate companies' real property pursuant to section 475.011(2), Florida Statutes which provides:
This part does not apply to:
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.
4. EHG is a Florida not-for-profit corporation that is an affiliated company of Rural Neighborhoods, Incorporated ("RN") a Florida-not-for-profit Corporation.
5. RN and EHG generally provide affordable housing to low income households. RN is the developer of real estate projects and EHG provides property management services for these real estate projects. RN controls EHG through its bylaws and has the same board of directors. In order to separate liabilities RN created affiliate companies that own real property. These affiliate companies are controlled by RN. The real property owned by these affiliate companies is managed by EHG.
6. An EHG salaried employee is on site at the real property and provides property management services such as maintenance, advertising, and preparing leases. They are not paid on a transactional basis and only provide property management services for the real properties owned by RN's affiliate companies.
7. The issue is whether EHG is considered an owner of the real property that is titled in the name of EHG's affiliated companies, and therefore exempt pursuant to section 475.011(2), Florida Statutes, from maintaining a real estate license to provide property management services for the real property of its affiliated companies.

EHG respectfully requests that FREC issue a declaratory statement, stating that EHG is exempt pursuant to section 475.011(2), Florida Statutes, from maintaining a Florida real estate broker license when its salaried employees provide property management services for real property owned by EHG's parent corporation's affiliated companies.

Respectfully submitted this 8th day of December, 2009.



Daniel Villazon, Esquire
Attorney for the Petitioner
1420 Celebration Boulevard, Suite 200
Celebration, FL 34747
Phone No.: (407) 483-0041
Facsimile No.: (321) 939-1440
FL Bar No.: 956090

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provide by U.S. Mail/Email Delivery on this the 9th day of December, 2009 to the following:

U.S. MAIL

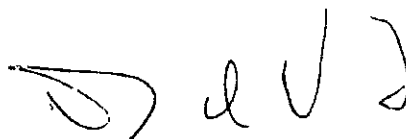
Agency Clerk's Office
The Department of Business
and Professional Regulation
1940 N. Monroe Street
Tallahassee, FL 32399

VIA EMAIL

Thomas L. Barnhart, Esq.
Assistant Attorney General and
Counsel to Florida Real Estate Commission
Office of the Attorney General
400 S. Monroe St., #PL-01
Tallahassee, FL 32399-6536

VIA EMAIL

James P. Harwood, Esq.
Chief Attorney
Florida Real Estate Commission
400 W. Robinson Street, Suite N801
Orlando, FL 32801



Daniel Villazon, Esquire