

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/6/2018
File #	2018-02548

**IN RE: Petition for Declaratory Statement
by Serber & Associates, P.A.**

DS 2017-084

**FINAL ORDER GRANTING PETITION FOR
DECLARATORY STATEMENT**

Serber & Associates, P.A. filed a petition for declaratory statement on August 17, 2017. 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 21, 2018.

By its petition, Serber & Associates, P.A. seeks the Commission's opinion as to how many members in a Florida limited liability company (LLC), or what percentage of membership interests are required to be licensed in order for the company's real estate business to comply with State law.

Section 475.15, Florida Statutes, provides in part:

Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker shall register with the commission and shall renew the licenses or registrations of its members, officers, and directors for each license period. However, if the partnership is a limited partnership, only the general partners must be licensed brokers or brokerage corporations registered pursuant to this part. If the license or registration of at least one active broker member is not in force, the registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during that period of time.

Rule 61J2-4.007, F.A.C. provides that:

Every partnership shall be registered and at least one of its partners licensed or registered as an active broker. Each partner who expects to deal with the public in the partnership's practice or business as a broker shall hold a valid and current active broker's license or registration.

Rule 61J2-5.015, F.A.C. also provides that:

All officers and directors of a real estate brokerage corporation, domestic or foreign, shall be registered. No registration shall be issued to the corporation or licenses to any officer or director, unless the corporation shall cause to register, and biennially renew the license of at least one active officer. A foreign corporation shall biennially present proof that at least one active officer, holding a valid and current active license, or for whom such a license is requested, is authorized to transact brokerage business in the State of Florida, and to bind the corporation with respect to such business.

FINDINGS OF FACT

Petitioner presents the following facts in the petition:

1. Our client intends to conduct business activity requiring licensure pursuant to Chapter 475, Florida Statutes under the name of a Florida limited liability company.
2. The subject LLC consists of five (5) individual members. Only one (1) of these members has an active broker's license. That individual holds a ten percent (10%) membership interest in the company.
3. The Manager of the above mentioned LLC is a separate limited liability company comprised of three (3) members. None of those members holds a broker's license.

CONCLUSIONS OF LAW

1. The Commission is authorized to issue this declaratory statement by Section 120.565, Florida Statutes.
2. Under the facts and circumstances outlined by the Petitioner in their request for a declaratory statement, the Commission states that the holding of an active and valid broker's license by one member holding a minority interest in a domestic LLC is sufficient to comply with the registration requirements of Chapter 475, Florida Statutes.
3. The Commission grants the petition for declaratory statement.

DONE AND ORDERED this 26 day of March, 2018.


Lori Crawford
Executive Director
Florida Real Estate Commission

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 Alexander J. Sanchez, Esquire, Serber & Associates, P.A., 2875 N.E. 191st Street, Suite 801, Aventura, Florida 33180 and Tom Barnhart, Special Counsel, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, all on this 6th day of April, 2018.



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Department of Business and Professional Regulation Deputy Agency Clerk	
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Date	8/17/2017
File #	

SERBER & ASSOCIATES, P.A.

Turnberry Plaza, Suite 801 2875 N.E. 191st Street - Aventura, Florida 33180
Phone 305-932-6262 Fax 305-933-9393 From Buenos Aires 5246-0518
www.serberlawfirm.com

June 1, 2017

DS 2017-084

Department of Business and Professional Regulation
Division of Real Estate
400 W Robinson St. N801
Orlando, FL 32801

**RE: Request for Declaratory Statement
Petitioner – Serber & Associates, P.A.**

Dear Sir or Madam:

Petitioner hereby requests a declaratory statement with regard to **Florida Statutes §475.15, and Sections 61J2-5.015 and 61J2-4.007, Florida Administrative Code.**

Florida Statutes **§475.15** states that:

Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker shall register with the commission and shall renew the licenses or registrations of its members, officers, and directors for each license period. However, if the partnership is a limited partnership, only the general partners must be licensed brokers or brokerage corporations registered pursuant to this part. If the license or registration of at least one active broker member is not in force, the registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during that period of time.

The above referenced statute section is ambiguous and/or unclear in that it does not provide clear guidance as to how many members in a Florida limited liability company (LLC), or what percentage of membership interests, are required to be licensed in order for the company's real estate business to comply with state law.

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DBPR Agency Clerk

Section ~~61J2-5.015~~ of the Florida Administrative Code provides that all officers and directors of a real estate brokerage "corporation" must be registered and that all least one officer or director must hold an active license.

Section ~~61J2-4.007~~ also provides that, in the case of a "partnership", any partner who expects to deal with the public as a broker needs to hold a valid and current broker's license or registration.

These provisions speak directly to partnerships and corporations only. Neither of the foregoing rules, nor any other provision of the Code provides clear guidance on licensing requirements as to members of a Florida limited liability company (LLC).

We present the following facts:

1. Our client intends to conduct business activity requiring licensure pursuant to Chapter 475, Florida Statutes under the name of a Florida limited liability company.
2. The subject LLC consists of five (5) individual members. Only one (1) of these members has an active broker's license. That individual holds a ten percent (10%) membership interest in the company.
3. The Manager of the above mentioned LLC is a separate limited liability company comprised of three (3) members. None of those members holds a broker's license.

We request the Division's official opinion as to how the above mentioned statutes and rules apply to this particular set of facts, and confirming whether or not the holding of an active and valid broker's license by one member holding a minority interest in a domestic LLC is sufficient to comply with the registration requirements of Chapter 475, Florida Statutes.

At this time, we do not request a hearing.

Should you require additional information in order to provide the requested statement, please do not hesitate to contact the undersigned.

Sincerely,

Alexandra J. Sanchez, Esq.
FOR THE FIRM

AJS/