

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

**IN RE: Petition for Declaratory Statement
 by PEL Realty LLC**

DS 2019-047

**FINAL ORDER GRANTING PETITION FOR
DECLARATORY STATEMENT**

PEL Realty LLC (“Petitioner”), filed a Petition for Declaratory Statement (“Petition”) on July 22, 2019. Notice of the petition was published in the Florida Administrative Register on August 6, 2019, in Volume 45, Number 152. The Florida Real Estate Commission (“Commission”) considered the Petition at its meeting in Orlando, Florida on September 18, 2019. Petitioner was not present.

By its Petition, Petitioner seeks the Commission’s opinion on four (4) inter-related questions regarding interpretation of Rules 61J2-5.015, 5.016, and 5.017, Florida Administrative Code, and the requirements, permissions, or prohibitions on ownership, management, licensure and/or compensation between various parties.

FINDINGS OF FACT

1. PEL Realty, LLC is a Florida Limited Liability Corporation. Other facts about this corporation are as set forth in the Petition, including the ownership structure and interests.
2. The Commission accepts the facts as presented in the Petition and relies upon those facts without taking any position thereon.
3. No Petitions for Intervention or for Administrative Hearing were received.
4. Petitioner asks the Commission’s opinion on the following four (4) questions:

A. Is Probate Executors LLC, a non-licensed entity, allowed to have an ownership interest in PEL Realty, LLC, a licensed brokerage entity?

B. Are C. Leon McKenzie and A. Paul Shapansky, non-licensed individuals, able to manage, participate in valuations, or identify real estate opportunities for PEL Realty?

C. Is compensation paid for management and expense reimbursement from a brokerage account to which commissions are deposited classified as a commission?

D. Can Probate Executors LLC receive distributions from the earnings of PEL Realty LLC?

CONCLUSIONS OF LAW

5. The Commission is authorized to issue this Declaratory Statement by Section 120.565, Florida Statutes and rule chapter 28-105, Florida Administrative Code.

6. Under the facts and circumstances outlined by the Petitioner in their Petition, and accepted by the Commission, the Commission answers the questions and states as follows:

A. Yes. Probate Executors LLC is allowed to have an ownership interest in PEL Realty, because a non-licensed corporation or other legal entity is allowed to have an ownership interest in a licensed Florida real estate brokerage.

B. Yes, in part. C. Leon McKenzie and A. Paul Shapansky are able to manage PEL Realty. The Commission is unable to answer the remainder of the question, since unlicensed individuals are not allowed to engage in activities which constitute the practice of Real Estate in Florida, and for which a license under chapter 475, F.S., is required. Without specific details of the exact activities to be performed regarding "valuations" or "identification of real estate opportunities," the Commission is unable to determine whether such activities constitute the practice of real estate and for which a Florida Real Estate license is required.

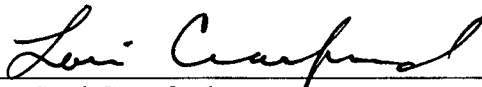
C. The Commission is unable to answer this question without additional details.

Whether compensation is classified as a commission, and would therefore be prohibited, depends on the exact structure and details surrounding the activity and payment; without exact details, the Commission cannot speculate on whether a payment or reimbursement would be acceptable or prohibited.

D. Yes. Probate Executors, LLC is allowed to receive distributions from the earnings of PEL Realty, LLC because earnings are not commissions as defined by Florida Statute and Administrative Code.

7. The Commission grants the Petition for Declaratory Statement IN PART, as outlined in paragraph 6, above.

DONE AND ORDERED this 13 day of October, 2019.



By: 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 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 PEL Realty LLC, c/o Charles G. Tessler, 7465 Campo Florio, Boca Raton, Florida 33433 and Francis R. Gil, Esq., 1041 Ives Dairy Road, Suite 238, Miami, Florida 33179; and by electronic mail to Lawrence Harris, Senior Assistant Attorney General, Office of the Attorney General, Lawrence.harris@myfloridalegal.com this 24th day of October, 2019.

Brandon M. Nichols

**PETITION FOR DECLARATORY STATEMENT
BEFORE
THE DEPARTMENT OF BUSINESS PROFESSIONAL REGULATION:
THE FLORIDA REAL ESTATE COMMISSION**

Company: **PEL Realty LLC** (a Florida Limited Liability Company)
Address: 7465 Campo Florio, Boca Raton, Florida 33433
Broker Entity License: CQ 1058642

Name: **Charles G. Tessler**
Title: Broker, FL License # 3444564
Telephone: 561-716-7464
E-Mail Charlent1@comcast.net

DS 2019-047

Petitioner's Attorney: Francis R. Gil
Address: 1041 Ives Dairy Road, Suite 238 Miami, FL 33179
Telephone: 305-493-2400 Ext. 2
Facsimile: 305-941-5681
E-Mail frglaw@bellsouth.net

RULES

Rules: Fla. Admin. Code r. 61J2-015, Fla. Admin. Code r. 61J2-5.016, and Fla. Admin. Code r. 61J2-5.017

61J2-5.015 License Status of Officers and Directors Required.

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.

Specific Authority 475.05 FS. Law Implemented 475.01(3), 475.15 FS. History—New 1-1-80, Formerly 21V-5.15, Amended 7-20-93, Formerly 21V-5.015, Amended 2-24-00.

61J2-5.016 License Status of Active Officers and Directors.

Officers and directors who expect to be active must qualify and become licensed in the same manner and procedure as any other applicant for active license. No registration shall be issued to the corporation or partnership unless every broker licensed with the corporation or partnership is registered as an officer, director or partner of the corporation or partnership. No sales associate or

broker associate may be registered as an officer, director of a brokerage corporation or general partner of a brokerage partnership.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.15, 475.161 FS. History—New 1-1-80, Amended 7-15-84, 6-9-85, Formerly 21V-5.16, Amended 6-28-93, Formerly 21V-5.016, Amended 4-15-04.

61J2-5.017 Registration of Inactive Officers and Directors.

Individual applications for renewal shall not be required of inactive officers and directors of a corporation. Registration shall be maintained upon the representations contained in the application or request for renewal by the corporation.

Specific Authority 475.05 FS. Law Implemented 475.01, 475.011, 475.15, 475.183 FS. History—New 1-1-80, Formerly 21V-5.17, Amended 6-28-93, Formerly 21V-5.017.

FACTS

1. PEL Realty, LLC is a Florida limited liability company and has been licensed as a real estate entity in Florida by the DBPR.
2. PEL Realty is owned by Probate Executors LLC, a non-licensed entity and Charles C. Tessler, a Florida licensed broker. Probate Executors owns ninety percent (90%) of PEL Realty, and Charles C. Tessler owns the remaining ten percent (10%).
3. The members of the board of directors for PEL Realty are C. Leon McKenzie, A. Paul Shapansky, both having an ownership interest in Probate Executors LLC, and Charles C. Tessler.
4. PEL Realty is a manager-managed LLC. The Managers are C. Leon McKenzie, A. Paul Shapansky, and Charles C. Tessler. C. Leon McKenzie and A. Paul Shapansky are not, and have never been licensed brokers.
5. No commission earned by PEL Realty will be paid to the managers or Probate Executors. Commissions are to be deposited into the corporate brokerage account.
6. All current licensed and non-licensed managers and board members will participate in valuations of personal property and also the identification of real estate opportunities for which they may incur reasonable expenses related to these types of business transactions.
7. PEL Realty intends to pay C. Leon McKenzie and A. Paul Shapansky, the non-licensed managers, a salary as compensation for their role as managers of PEL Realty and reimburse them for any reasonable expenses from the brokerage account.
8. No unlicensed member or manager is to hold themselves out as a real estate broker or business broker except as allowed for the sale of property owned or to be owned by the member, manager, or the company.

QUESTIONS

1. Is Probate Executors, a non-licensed entity allowed to have an ownership interest in PEL Realty, LLC, a licensed brokerage entity?
2. Are C. Leon McKenzie and A. Paul Shapansky, non-licensed individuals, able to manage, participate in valuations, or identify real estate opportunities for PEL Realty.
3. Is compensation paid for management and expense reimbursement from a brokerage account to which commission is deposited classified as commission?
4. Can Probate Executors receive distributions from the earnings of PEL Realty, LLC?

SUMMARY

Petition respectfully believes the following:

1. Probate Executors is allowed to have ownership in PEL Realty, because Probate Executors nor any of its member are performing work which would require a real estate license under Florida Administrative Code.
2. C. Leon McKenzie and A. Paul Shapansky, are able to manage, participate in valuations and identify real estate opportunities as non-licensed managers as long as they do not participate in any commissions earned by PEL Realty.
3. Compensation paid to the managers from a brokerage account in the form of salary or as expense reimbursement are necessary for the operation of a brokerage entity and are therefore not commissions.
4. Probate Executors is allowed to receive distributions from the earnings of PEL Realty, LLC because the earnings are not commissions as defined by Florida Administrative Code.



PEL REALTY, LLC

Subsidiary of Probate Executors, LLC

7465 Campo Florida

Boca Raton, FL 33433

L # CQ1058642

(561) 716-7464, EM: charlent1@comcast.net

U.S. CERTIFIED MAIL 7017019089959597

July 19, 2019

DEPARTMENT OF BUSINESS PROFESSIONAL REGULATION
DIVISION OF REAL ESTATE
400 W ROBINSON STREET
SUITE N801
ORLANDO, FL 32801

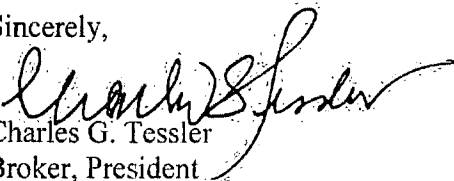
RE: PETITION FOR DECLARATORY STATEMENT BY PEL REALTY LLC

To whom it may concern,

Please find enclosed the Petition for a declaratory statement referencing the operation of an LLC in Florida with properly licensed and equitable owners and non-licensed equitable owners per FL SS Ch. 475.

If any questions or concerns arise contact us back at the above contact information addresses and or phone numbers or per the contact information supplied on the enclosed petition itself. Thank you in advance for your immediate attention to this request.

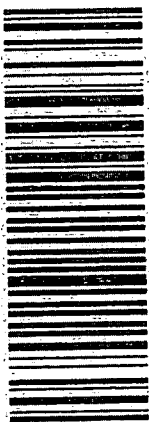
Sincerely,


Charles G. Tessler
Broker, President



Charles Tessler
7465 Campo Florida
Boca Raton, FL 33433-7450

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS TO OBTAIN THIS SERVICE
CERTIFIED MAIL



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ORLANDO, FL 32801



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