

**STATE OF FLORIDA
FLORIDA REAL ESTATE COMMISSION**

**IN RE: THE PETITION OF NEW WESTERN
ACQUISITIONS FOR DECLARATORY
STATEMENT**

DS 2021-058

FINAL ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

This matter came before the Florida Real Estate Commission (Commission) pursuant to section 120.565, Florida Statutes on December 15, 2021, in Orlando, Florida. Through agent Tim Scott, New Western Acquisitions (“Petitioner”) filed a Petition for Declaratory Statement (“Petition”), attached hereto and incorporated herein as Attachment A, on October 4, 2021; notice of its receipt was published in the Florida Administrative Register in Vol. 47, No. 210 on October 28, 2021. No Petitions to Intervene were received. Petitioner was present, and was NOT represented by legal counsel. Having considered the Petition and relevant statutes and rules, the Commission issues the following:

FINDINGS OF FACT

1. The facts considered by the Commission are as alleged in the Petition, a copy of which is attached hereto and incorporated by reference, and presented at the meeting, with no further investigation by the Commission.

2. Petitioner asks the Commission to issue a statement that, pursuant to section 475.01(2), Florida Statutes, Petitioner may employ certain unlicensed personnel to make “cold calls” to gauge homeowner’s interest in selling their property; if so, the unlicensed employees would provide contact information for a Florida real estate licensee to follow up.

3. Section 120.565, Florida Statutes, provides, in part:

(1) Any substantially affected person may seek a declaratory statement regarding any agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

4. Section 475.01(1)(a), F.S. provides:

475.01 Definitions.

(1) As used in this part:

(a) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a). Where the term "appraise" or "appraising" appears in the definition of the term "broker," it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

(Emphasis Added.)

5. Section 475.42(1), F.S. provides:

475.42 Violations and penalties.

(1) VIOLATIONS.

(a) A person may not operate as a broker or sales associate without being the holder of a valid and current active license therefor. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, as provided in s. 775.083.

(e) A person may not commit any conduct or practice set forth in s. 475.25(1)(b), (c), (d), or (h).

(Emphasis Added)

6. Section 475.25(1)(h), F.S. provides:

475.25 Discipline.—

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

* * * *

(h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a). For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state.

(Emphasis Added)

CONCLUSIONS OF LAW

7. The Commission has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code.

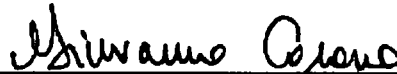
8. For the forgoing reasons, the Commission GRANTS the Petition, answers the question in the negative, and issues a statement that, pursuant to the statutory provisions

cited above, the conduct described by Petitioner would NOT fall within the scope of the statutory exemption to licensure and would likely subject persons engaging in such to investigation and or prosecution for violation of the Florida Real Estate Practice Act. It is, therefore

ORDERED that the Petition for Declaratory Statement by New Western Acquisitions is GRANTED, with the statement above in Paragraph 8.

This Final Order shall be effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE and ORDERED this 5 day of January, 2022.



For the Florida Real Estate Commission
By Giovanna Corona
Executive Director

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 HEALTH 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 THE FILING DATE OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to: **New Western Acquisitions c/o Tim Scott, 5000 Riverside Drive,**

Building 4, Suite 100W, Irving TX 75039; by email to Lawrence Harris, Senior Assistant Attorney General, Lawrence.harris@myfloridalegal.com and Cassandra.Fullove@myfloridalegal.com; and by hand/interoffice delivery to the Florida Real Estate Commission, 400 West Robinson Street, Suite N801, Orlando, Florida 32801-1757, this 14th day of January, 2022.

Brandon M. Nichols

NW NEW WESTERN

FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/4/2021
File #	

New Western Acquisitions
2000 Riverside Dr. Building 5 Suite 100W
Irving, TX 75039

Via CMRRR

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

DS 2021-058

RE: Petition for Declaratory Statement before Florida Real Estate Commission
Petitioner: New Western Acquisitions
Name: Timothy Scott
Position: Compliance Manager
Email: compliance@manpow.com
Phone: (972) 573-1224

Statutory Provision: Florida Statutes Chapter 475.011(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."*

Statement: Petitioner is requesting a declaratory statement from the Department of Business and Professional Regulation, Division of Real Estate about how the exemption statute to broker licensure requirements applies to an entity which purchases its own property. Petitioner seeks further understanding of this statute and guidance from the Division to ensure compliance with Florida real estate regulations.

Relevant Facts:

1. New Western Acquisitions ("New Western") is a licensed real estate brokerage engaged in providing real estate brokerage services in the state of Florida.
2. New Western only engages in brokerage services on behalf of its clients—all of which are commonly owned and controlled entities. New Western does not ever represent individual consumers or act as a dual agent.

3. One of New Western's clients is HomeGo, a cash-buying principal entity, whose primary business is buying residential real estate. Thus, buying real property is in the ordinary course of HomeGo's business.
4. If permitted, HomeGo would like to use unlicensed HomeGo employees or independent contractors to assist in cold-calling individual homeowners to inform them of HomeGo's business model and assess interest in selling their homes to HomeGo. HomeGo's intent is to have unlicensed employees or independent contractors place these cold-calls without crossing the line of soliciting, negotiating, or attempting to solicit or negotiate. HomeGo will ensure that its actions do not violate the Telephone Consumer Protection Act or any other related regulations.
5. The unlicensed HomeGo employees and independent contractors would not discuss specific property details or offers with the homeowners, and they would not directly ask whether the homeowner was willing to sell their property.
6. The HomeGo unlicensed employees would be paid an hourly wage based on time worked and not on a commission or transactional basis.
7. The employees or independent contractors of HomeGo would assist by:
 - a. Cold-calling homeowners;
 - b. Telling the homeowner they know of a cash buyer who purchases homes in their area; and
 - c. Asking if the homeowner would like to speak with a licensed real estate agent who represents the buyer.
 - d. If the homeowner was interested, the employee or independent contractor would put them in touch with a New Western licensed real estate agent to discuss details of the potential home purchase.

Based on the foregoing facts, Petitioner respectfully requests answers to the below specific questions:

1. **Declaratory Request:** Does the definition of "selling" within 475.011(2) inherently include an entity seeking to buy real property on its own behalf such that an employee or independent contractor of the buying entity may place calls to homeowners to discuss their willingness to sell their home to the entity?
2. **Declaratory Request:** Can an unlicensed employee or independent contractor of a principal entity, whose ordinary course of business is buying real estate, engage with homeowners through cold calling for purposes of gauging interest in whether the

homeowner might be interested in speaking with an agent for a cash buyer looking to purchase homes in their area?

Hearing Request: Petitioner does not request a hearing to resolve this matter.

I appreciate your attention to this matter. Should you wish to further discuss the above, please do not hesitate to contact me at compliance@manpow.com.

Sincerely,

/s/ Timothy Scott

Timothy Scott
Compliance Manager
New Western

Scott
20 Riverside Dr.
Building 5, Suite 100W
 Irving, TX 75039

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RIO GRANDE DISTRICT
30 SEP 2021 PM 3 L

Thinking
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Florida Department of Business + Professional Regs
Division of Real Estate
400 W. Robinson St. N801
Orlando, FL 32801

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