

Board of real estate; probable cause

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Subject:
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DEPARTMENT OF PROFESSIONAL REGULATION--ESTABLISHMENT OF TWO OR MORE PROBABLE CAUSE PANELS FOR A REGULATORY BOARD UNAUTHORIZED

To: The Honorable Samuel R. Shorstein, Secretary, Department of Professional Regulation

Prepared by: Randy Schwartz, Assistant Attorney General

QUESTION:

Does the Board of Real Estate have statutory authority to establish 2 or more probable cause panels under the provisions of s. 455.225(3), F.S.?

SUMMARY:

Unless and until legislatively or judicially determined otherwise, the Board of Real Estate is not statutorily authorized to establish more than one probable cause panel under the provisions of s. 455.225(3), F.S., as amended. The statute provides for a single probable cause panel at any given time for each regulatory board within the Department of Professional Regulation.

The Board of Real Estate consists of 7 members, 2 of whom are lay persons pursuant s. 475.02, F.S.

Section 455.225(3), F.S., as amended by s. 33, Ch. 81-302, Laws of Florida, provides, among other things, that the "determination as to whether probable cause exists shall be made by . . . a *probable cause panel* of the board" (emphasis supplied), and that each regulatory board shall provide by rule that "the determination of probable cause shall be made by *a panel of its members*" (emphasis supplied), but not more than one of "*the panel* members shall be a lay member". (Emphasis supplied.) When the department has completed an investigation of a complaint filed before it, its investigative report is submitted to "*the probable cause panel*" (emphasis supplied) of the appropriate regulatory board. Section 455.225(1) and (2), F.S., as amended by Ch. 81-302. Throughout the statute it refers to "a probable cause panel," "a panel," "the panel," "the probable cause panel," and "its" rather than by the plural forms of such terms.

While "a" is not necessarily a singular term and its meaning depends upon the context in which used, the indefinite article "a" when placed before nouns of the singular number, in our case "panel," denotes an individual object and, when properly placed before a singular noun, has the meaning "one." 1 C.J.S., A, p. 1. "The" is a definite article generally used before nouns with a specifying or particularizing effect and as opposed to the generalizing effect of the indefinite

article "a" or "an" and, depending on the context, generally is used to mean but one. 86 C.J.S., *The*, p. 656. "Its" is the possessive form of the singular pronoun "it." See 48A C.J.S., *It* and *Its*, pp. 246, 247. The plural forms of "it" are "they," "their" or "theirs." See *The Random House Dictionary of the English Language*, unabridged edition.

A review of the total context of s. 455.225, F.S., manifests the Legislature has employed singular terms throughout and that the statute provides for a single probable cause panel at any given time for each regulatory board within the department. Rule 21V-20.09, F.A.C., is to the same effect, consistent with the terms of the statute. If the Legislature had wished to provide for more than one probable cause panel for a regulatory board within the department, it would have or could have easily so provided. *Cf. Dobbs v. Sea Isle Hotel*, 56 So.2d 341, 342 (Fla. 1952). When the Legislature has prescribed the particular manner of doing a thing, it impliedly forbids it being done in any other way. See *Weinberger v. Board of Public Instruction of St. Johns County*, 112 So. 253, 256 (Fla. 1927); *Alsop v. Pierce*, 19 So.2d 799, 805-806 (Fla. 1944).