

Real Estate Commission, awarding licenses

Number: INFORMAL

Date: December 31, 1998

The Honorable Mark R. Ogles
Representative, District 67
1101 6th Avenue West
Suite 212
Bradenton, Florida 34205

Dear Representative Ogles:

As Chairman of the Florida House of Representatives Committee on Business Regulation and Consumer Affairs, you question whether the Florida Real Estate Commission (commission) has the authority and discretion to direct the Department of Business and Professional Regulation (department) to award either a salesperson's or broker's license to a person who is otherwise statutorily unqualified for licensure. You also ask whether serving as an employee of the Division of Real Estate (division) satisfies any of the licensure requirements through experience.

Based upon the following discussion, it does not appear that the commission has the authority to certify such individuals for licensure as salespersons or brokers. However, in light of the commission's interpretation of section 475.181, Florida Statutes, it may be advisable for the Legislature to clarify its intent on this matter.

You note that in 1998 the commission twice directed the department to award a real estate broker's license to individuals that did not appear to be statutorily qualified for licensure. At its July 22, 1998 meeting, the commission directed the department to award a broker's license to the division's chief prosecutor. At its October 21, 1998 meeting the commission directed the department to award a broker's license to the division director. Both licenses were awarded after the division employees had announced their respective resignations.

Although occurring infrequently, the commission has over the years granted licenses to departing directors and certain long-standing investigators. The commission relies on the provisions of section 475.181, Florida Statutes, as the basis of its authority.

Section 475.181, Florida Statutes, provides in pertinent part:

"(1) The department shall license any applicant whom the commission certifies to be qualified to practice as a broker or salesperson.

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25. The application shall expire 1 year from the date received if the applicant fails to take the appropriate examination."

The commission apparently reads subsection (1) of the statute as permitting the commission to certify any applicant whom it deems to be qualified, while subsection (2) authorizes the commission to certify for licensure any applicant who has satisfied the requirements of sections 475.17, 475.175, and 475.180, Florida Statutes.[1]

This office, in providing legal representation to the commission,[2] has previously advised the commission that it does not have the authority to grant such licenses. Section 475.181(1), Florida Statutes, rather than granting the commission independent authority to certify persons as qualified for licensure, appears to address the department's responsibility to do so. Section 475.181(2), Florida Statutes, on the other hand, addresses the commission's authority to certify those persons statutorily qualified for licensure. Thus, section 475.181(1), Florida Statutes, requires the department to license those applicants certified by the commission to be qualified to practice as a salesperson or broker, while section 475.181(2), Florida Statutes, prescribes those persons whom the commission may certify to the department as qualified.

In light of the commission's position regarding its authority under section 475.181, Florida Statutes, however, it would appear to be advisable for the Legislature to clarify its intent on this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] In determining whether an individual is qualified for licensure, the commission has concluded that the individuals involved, based upon the positions held and their knowledge of the real estate licensure laws, have achieved the education equivalent of the required classroom hours. Section 475.17(2)(b), Fla. Stat., goes on to state the paragraph does not apply to a person employed as a real estate investigator by the Division of Real Estate, provided the person has been employed as a real estate investigator for at least 24 months. However, the person must be currently employed as a real estate investigator to sit for the real estate broker's examination, and must have held a valid and current salesperson's license for at least 12 months.

[2] See s. 455.221(1), Fla. Stat., providing in part that "[a] board shall retain, through the department's contract procedures, board counsel from the Department of Legal Affairs."