

Meyers, Robert (COE)

From: Meyers, Robert (COE)
Sent: Monday, March 08, 2004 11:48 AM
To: Hall, Jerry (GSA)
Cc: Mazzella, Christopher (OIG)
Subject: Proposed GSA Real Estate Brokerage Unit

Jerry,

Sorry for not responding sooner, but I am aware that you recently had a conversation with Christina Prkic, who is our staff attorney. From what I gather from your memorandum, you wish to know whether an conflicts of interests arise when employees assigned to the County's Brokerage Unit activate their real estate licenses. As I understand it, the purpose for setting up this formal Brokerage Unit is to enable the County to negotiate commissions for performing real estate services on behalf of the County and to capture an additional source of income for the County. Moreover, you state that this arrangement does not affect either the market value or the sales price of the property. Finally, you will require that every active real estate licensee sign a statement acknowledging perceived conflicts of interest and these individuals will be barred from conducting any real estate business other than County business while they are employed by GSA in the County's Brokerage Unit.

Based on the facts you have provided me, I find nothing in the County Conflict of Interest and Code of Ethics Ordinance preventing your department from pursuing the abovementioned arrangements. Moreover, please understand that our office does not give opinions about perceived conflicts of interest and I defer to your office with respect to matters that you believe create appearances of impropriety.

If you have any additional questions, feel free to contact me at your convenience.

Sincerely,

Robert Meyers

Tracking:

Recipient

Read

Hall, Jerry (GSA)

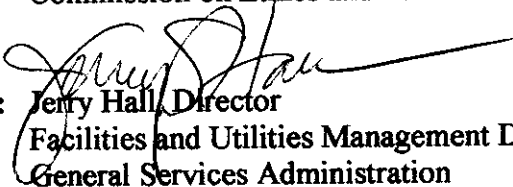
Mazzella, Christopher (OIG)

Read: 3/8/04 11:55 AM

MEMORANDUM

TO: Robert Meyers, Executive Director
Commission on Ethics and Public Trust

DATE: October 31, 2003

FROM:  Jerry Hall, Director
Facilities and Utilities Management Division
General Services Administration

SUBJECT: Proposed GSA Real Estate
Brokerage Unit

Real estate functions in GSA are performed by employees in the Real Estate Officer job classification. It is a requirement of this job classification that incumbents hold a current real estate salesperson's license with the State of Florida. It has been a longstanding, although unwritten, policy that this license must be maintained in an "inactive" status during their employment with GSA. In so doing, it eliminates the ability of the employee to work in a private capacity as a real estate salesperson, which, in turn, largely eliminates the potential for actual or perceived conflicts of interest between an incumbent's official duties and any private business activities that require a real estate license.

Notwithstanding this longstanding practice, GSA has looked at alternative approaches, both in order to respond to the severity of the County's current Budget funding crisis and to create a more practical, effective model for conducting government sector real estate services. In the real estate industry, it is common practice for a landlord or owner, wishing to lease or sell property, to include in their rent or sales price an amount for "commission," which is payable to a licensed real estate broker upon completion of the transaction. In effect, the commission is an integral cost to the landlord or owner of "doing business," and does not affect either the market value or the sales price of the property. Should no broker be involved, the sum set aside by the landlord/owner is retained by the landlord/owner as additional profit – it does NOT result in a reduced lease/sales price to the buyer.

Depending on the rental value or the sale price, the commission can be a significant amount of money. To date, when the County does these types of transactions, those commissions are being paid solely to the real estate broker representing the landlord/owner. To take advantage of this potential source of additional income, GSA is proposing to set up a County Real Estate Brokerage unit. One of its employees is a licensed real estate broker and will assign his/her license to the County Brokerage unit. All GSA real estate officers will activate their salesperson licenses and place them under the supervision of the real estate broker. GSA has consulted with the Florida Department of Business and Professional Regulation (DBPR) and the Florida Real Estate Commission (FREC). The correspondence attached provides the legal basis for our proposed actions.

By setting up a formal Brokerage Unit, the County will be able to negotiate commissions for performing real estate services on behalf of the County in a manner similar to the private sector. All commissions will be payable to the County and the use of those funds dictated by GSA and OMB. In addition to oversight by the County administration, the unit will fall under the regulation of the DBPR and FREC. I am confident that this brokerage unit will be run professionally and achieve the purposes of providing the County with the highest possible standard of real estate services while adding a new and much needed source of income.

Robert Meyers
Proposed GSA Real Estate Brokerage Unit
Page Two

Prior to implementing this new unit, GSA would like both the Commission on Ethics and Public Trust and the Inspector General to review existing County rules and regulations with regard to operating a real estate brokerage unit to make sure none are being violated, and to suggest any additional steps they think may assist in preventing any real or perceived conflict of interest (or other problems). Toward that end, a similar request is being sent under separate cover to the Inspector General.

I would suggest that, at a minimum, every active real estate licensee be required to sign a separate statement that they are aware of the possible perception of conflict of interest; that they will always act within the rules set out by the County, DBPR and FREC; that they will not conduct any real estate business other than the County's business while their license is under the County's Brokerage Unit and they are employed by GSA; and, that they will never accept payment of any kind, whatsoever, from a third party for any transaction they handle on behalf of the County. In addition, all licensees shall be responsible for keeping their licenses current and active while employed by GSA's Real Estate Brokerage Unit. Any violation of any of the foregoing would be grounds for immediate dismissal.

Please contact me if you require any clarification or additional information. Thank you in advance for your consideration.

cc. Bernard McGriff, Director, GSA
Wendi Norris, Deputy Director, GSA
Elva Marin, Manager, Real Estate Section, GSA
Leland Salomon, Asset Management and Development Supervisor, GSA

Daniel Villazon, P.A.***Attorney at Law*****419 W. Vine Street, Kissimmee, FL 34741****(407) 483-0041 office****(407) 483-0043 fax**

October 6, 2003

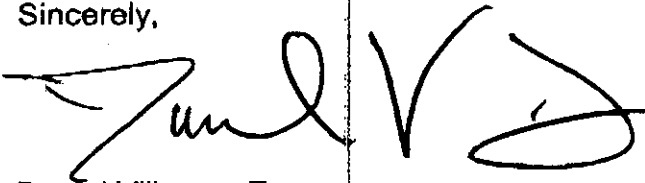
Mr. Leland Salomon
General Services Management Division
Real Estate Section
Suite 2460
111 N.W. 1st Street
Miami, FL 33128-1994

Dear Mr. Salomon:

Your letter was presented to the Florida Real Estate Commission (FREC) at its August 20, 2003 meeting. FREC instructed me to correspond with you directly. The FREC stated that if Miami-Dade County obtained the appropriate licenses that there is no prohibition in Chapter 475, Florida Statutes or FREC rules that would prohibit Miami-Dade County from establishing its own real estate brokerage corporation.

If you have any further questions regarding this matter please call me directly.

Sincerely,



Daniel Villazon, Esq.
Legal Counsel to FREC

Cc: Matey Veissi, Chairman FREC
Jason Steele, Director
Juana Watkins, Chief Attorney

Daniel Villazon, P.A.

Attorney at Law

419 W. Vine Street, Kissimmee, FL 34741

(407) 483-0041 office

(407) 483-0043 fax

July 24, 2003

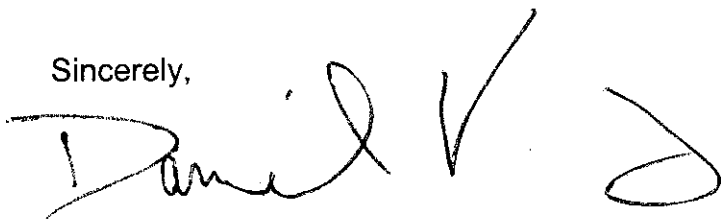
Mr. Leland Salomon
General Services Management Division
Real Estate Section
Suite 2460
111 N.W. 1st Street
Miami, FL 33128-1994

Dear Mr. Salomon:

I have no authority at this time to provide you the written confirmation you requested from FREC. However, I will present your letter to the FREC at its next scheduled meeting on August 20, 2003, and request permission to provide written confirmation. In addition, I will advise FREC, as its legal counsel, that it is my position that nothing in Chapter 475, Florida Statutes, prohibits the County from establishing its own brokerage unit to transact real estate activities.

I hope you understand my limitations in this matter.

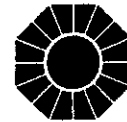
Sincerely,



Daniel Villazon, Esq.
Legal Counsel to FREC

Cc: Matey Veissi, Chairman FREC
Jason Steele, Director
Juana Watkins, Chief Attorney

03 AUG - 8 PM 3: 36
GENERAL SERVICES ADMINISTRATION
PERSONNEL SECTION



GENERAL SERVICES ADMINISTRATION
FACILITIES & UTILITIES MANAGEMENT DIVISION
REAL ESTATE SECTION
SUITE 2460
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1994
(305) 375-1150
FAX: (305) 375-1157

July 24, 2003

Daniel Villazon, Esq.
419 W. Vine Street
Kissimmee, FL 34741

Dear Mr. Villazon:

Confirming your telephone response to my letter of July 9, 2003 seeking FREC's position as to the County charging fees when transacting business on its own behalf without the assistance of a broker, I understand that this is not acceptable to FREC. Based on our conversation, the County is only permitted to receive compensation from a transaction in which a broker is involved.

One other point which I need a written confirmation of is that the County may accomplish this by setting up its own brokerage unit and transacting its real estate business through this unit. I would appreciate your sending me a written confirmation of this so that the County can proceed in forming the required entity and applying for the appropriate license.

I look forward to your response at your earliest convenience and thank you again for continued assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leland S. Salomon'.

Leland S. Salomon, GSA
Asset Management and Development Specialist

cc. Bernard McGriff, Director, GSA
Jerry Hall, Director, Facilities and Utilities Management Division, GSA
Elva Marin, Manager, Real Estate Section, GSA



GENERAL SERVICES ADMINISTRATION
FACILITIES & UTILITIES MANAGEMENT DIVISION
REAL ESTATE SECTION
SUITE 2460
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1994
(305) 375-1150
FAX: (305) 375-1157

July 9, 2003

Daniel Villazon, Esq.
419 W. Vine Street
Kissimmee, FL 34741

Dear Mr. Villazon:

Thank you for your letter of June 30, 2003 in response to my request for a ruling from FREC regarding real estate fees chargeable by the County. I apologize for any confusion resulting from my second question as to whether the County has a right to charge a fee when performing real estate transactions when no Licensed Broker is involved.

As a matter of clarification, my question refers to fees we want to charge only when the County is a party to a transaction. By way of example, if General Services Administration were to negotiate a lease, sale or purchase of a building for the County's own use directly with its owner, could the County (GSA) charge a fee to the owner for doing the transaction on behalf of the County? (The only difference I see between what is covered in Rule 61J2-10.028 (2), FAC, and this example is that the other party to the transaction is not being represented by a Broker.)

I would appreciate FREC's opinion on this matter at your earliest convenience. If you would like to speak with me directly, please call me at (305) 375-4421.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leland S. Salomon'.

Leland S. Salomon
Asset Management and Development Specialist

cc Bernard McGriff, Director, GSA
Jerry Hall, Director, Facilities and Utilities Management Division, GSA
Elva Marin, Manager, Real Estate Section, GSA

Daniel Villazon, P.A.

Attorney at Law

419 W. Vine Street, Kissimmee, FL 34741

(407) 483-0041 office

(407) 483-0043 fax

June 30, 2003

Mr. Leland Salomon
General Services Management Division
Real Estate Section
Suite 2460
111 N.W. 1st Street
Miami, FL 33128-1994

Dear Mr. Salomon:

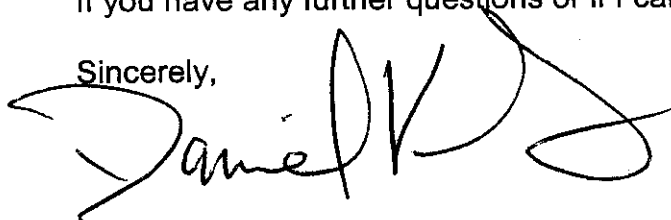
Your letter to Nancy Campiglia was presented to the Florida Real Estate Commission (FREC) at its June 18, 2003, general meeting. The FREC instructed me to correspond with you directly regarding your questions.

In regard to your first question pursuant Rule 61J2-10.028 (2), FAC, the County can share in brokerage compensation without being licensed as long as the County is a party to the transaction and it is disclosed to all parties involved. I have enclosed a copy of the rule for your convenience.

In regard to your second question I need further information about the fees the County is considering to charge. However, as a general rule an unlicensed entity cannot charge a fee for real estate services as defined in section 475.01 (1) (a), Florida Statutes.

If you have any further questions or if I can be of further assistance please contact me directly.

Sincerely,



Daniel Villazon, Esq.
Legal Counsel to FREC

Cc: Nancy Campiglia, Former Acting Director
Matey Veissi, Chairman FREC
Jason Steele, Director
Juana Watkins, Chief Attorney

03 JUL -8 AM 3:48
GENERAL SERVICES ADMINISTRATION
PERSONNEL SECTION

character of activities customarily conducted at the office or shelter shall determine whether it must be registered.

(3) If a broker closes a branch office and, at about the same time, establishes another at a different location, the registration of the office which was closed may not be transferred. Such new location is a new branch office which must be registered and the fee paid as though the other had not been closed. Upon application to the BPR, the broker may reopen the first office at any time during the license period without payment of an additional fee.

61J2-10.024 Office Entrance Signs.

All licensed active real estate brokers must maintain a sign on or about the entrance of their principal office and all branch offices. The sign must be easily observed and read by persons entering the offices. The sign shall be placed on either the exterior of the office entrance or the interior of the office. Every such sign must contain, in letters not less than one inch in height for exterior signs or one-half inch in height for interior signs, the name of the broker, together with the trade name, if any. For a partnership or corporation the sign shall contain the name of the firm or corporation, or trade name of the firm or corporation along with the name of at least one of the brokers. At a minimum, the words "Licensed Real Estate Broker" must appear (or Lic. Real Estate Broker) on the office entrance signs.

61J2-10.025 Advertising.

(1) All advertising must be in a manner in which reasonable persons would know they are dealing with a real estate licensee. All real estate advertisements must include the licensed name of the brokerage firm. No real estate advertisement placed or caused to be placed by a licensee shall be fraudulent, false, deceptive or misleading.

(2) When the licensee's personal name appears in the advertisement, at the very least the licensee's last name must be used in the manner in which it is registered with the Commission.

(3)(a) When advertising on a site on the Internet, the brokerage firm name as required in paragraph (1) above shall be placed adjacent to or immediately above or below the point of contact information. "Point of contact information" refers to any means by which to contact the brokerage firm or individual licensee including mailing address(es), physical street address(es), e-mail address(es), telephone number(s) or facsimile telephone number(s).

(b) The remaining requirements of paragraphs (1) and (2) apply to advertising on a site on the Internet.

61J2-10.027 Use of Association Names.

No licensee shall use an identification or designation of any association or organization having to do with real estate unless entitled to use such identification or designation.

61J2-10.028 Kickbacks or Rebates.

(1) Any real estate licensee who receives, or makes any arrangement or agreement to receive, directly or indirectly, any kickback or rebate for the placement of, or favor in, any business transaction which forms a part of, or is incident to, any transaction(s) negotiated or handled by said licensee is a violation of ss. 475.25(1)(b) or (d), or both of said subsections of the *Florida Statutes*, unless prior to the time of the placement of, or favor in, said business transaction, the licensee shall have fully advised the principal and all affected parties in the transaction(s), which the licensee is handling, of all facts pertaining to the arrangement of kickbacks or rebates.

(2) The sharing of brokerage compensation by a licensee with a party to the real estate transaction with full disclosure to all interested parties is not considered a violation of Chapter 475, Part I, *Florida Statutes*.

6.1J2-10.029 Advance Fee Accounting and Reporting Procedures.

(1) Any broker who claims, demands, charges, receives, collects or contracts for an advance fee in a listing to sell or lease real property or any interest therein for the purpose of promoting the sale or lease of real estate or for the referral of real estate brokers or salespersons, or both, in advance of the transaction actually closing, shall deposit not less than 75 percent of the advance fee so collected into a special trust or escrow account entitled "advance fee trust account" or "advance fee escrow account" in a trust or escrow bank account maintained by said broker with a bank or other recognized depository located and doing business in Florida. The advance fee trust or escrow account shall not be commingled with any other funds, trust, escrow or otherwise, of the broker.

(2) The broker must maintain separate and distinct accounting records and files for the advance fee operations and periodically report all such activity to the BPR including but not limited to, all fees collected, all funds expended or withdrawn from said escrow or trust account, and all monies or funds returned to the principal during the period of the report. For the purpose of this rule the broker may withdraw amounts from the advance fee trust or escrow account when expended for the benefit of the principal which benefit shall be for direct or special advertising the principal's interest only or as provided by statute. Expenses such as telephone calls, office supplies, rental, automobiles, commissions, controlled publications, etc., are considered overhead of the broker and shall not be paid from the broker's advance fee trust or escrow account or other recognized depository. All unexpended funds shall be returned to the principal at the end of the contract period or as provided by law, whichever period is shorter unless a sale of the property is consummated, and in such event said advance fee funds shall be disbursed in accordance with the listing contract. The provisions of s.475.452 may not be waived.

(3) The broker must reconcile the advance fee account(s) monthly and produce the accounting records upon demand to the BPR with prior notice.

(4) If accounting records, as noted in preceding, do not provide a clear trail then it will be necessary to prepare a complete report from the records available for each deposit.

(a) The report should be arranged in six columns showing the following for each deposit received:

Column 1	Date of Transaction
Column 2	Name, address, telephone of principal
Column 3	Registered name of salesperson and/or broker involved together with License Number
Column 4	Reason for deposit
Column 5	Amount of deposit

(b) Below this information, on the same sheet every expenditure made from the advance fee will be shown as follows:

Column 1	Date
Column 2	Reason for expenditure
Column 6	Amount of expenditure

(c) If during the reporting period a deposit is returned the following entry will appear



COPY



STEPHEN P. CLARK CENTER

GENERAL SERVICES ADMINISTRATION
FACILITIES & UTILITIES MANAGEMENT DIVISION
REAL ESTATE SECTION
SUITE 2460
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1994
(305) 375-1150

May 8, 2003

Ms. Nancy Campiglia
Acting Director
Department of Business and
Professional Regulation
400 West Robinson Street, Suite 802 North
Orlando, Florida, 33801

Dear Ms. Campiglia:

In our telephone conversation on Tuesday, May 6, 2003, I told you that Miami-Dade County through its General Services Administration Department, Facilities and Utilities Management Division, Real Estate Section was interested in exploring the possibility of sharing in the commissions of Licensed Real Estate Brokers who earn commissions on transactions involving the County. My question was whether or not the County would have to be licensed in order to do this and whether or not the County's personnel would have to be licensed.

You indicated to me that, based on the Florida Administrative Code, Section 61J2-10.028(2), the County could share in brokerage compensation without itself being licensed. You offered to forward my request to the Florida Real Estate Commission for a written response. I would greatly appreciate your doing this on my behalf. In addition, I wonder if you would also ascertain from FREC whether the County has the right to charge fees when performing real estate transactions when no Licensed Broker is involved? We often do transactions directly with property owners and would like to have fees paid to our department for performing these services.

I look forward to receiving your (FREC's) response. Should you have any questions or need clarification, please do not hesitate to call me directly at 305.375.4421.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leland S. Salomon'.

Leland S. Salomon, GSA
Asset Management and Development Specialist.

Cc Bernard McGriff, Director, GSA
Jerry Hall, Director, Facilities and Utilities Management Division, GSA
Elva Marin, Manager, Real Estate Section, GSA

61J2-10.025 Advertising.

(1) All advertising must be in a manner in which reasonable persons would know they are dealing with a real estate licensee. All real estate advertisements must include the licensed name of the brokerage firm. No real estate advertisement placed or caused to be placed by a licensee shall be fraudulent, false, deceptive or misleading.

(2) When the licensee's personal name appears in the advertisement, at the very least the licensee's last name must be used in the manner in which it is registered with the Commission.

(3)(a) When advertising on a site on the Internet, the brokerage firm name as required in paragraph (1) above shall be placed adjacent to or immediately above or below the point of contact information. "Point of contact information" refers to any means by which to contact the brokerage firm or individual licensee including mailing address(es), physical street address(es), e-mail address(es), telephone number(s) or facsimile telephone number(s).

(b) The remaining requirements of paragraphs (1) and (2) apply to advertising on a site on the Internet.

Specific Authority 120.53, 475.05 FS. Law Implemented 475.01, 475.25, 475.42, 475.421, 475.4511 FS. History—New 1-1-80, Amended 2-17-81, 3-14-85, Formerly 21V-10.25, Amended 12-29-91, 7-20-93, Formerly 21V-10.025, Amended 4-18-99.

61J2-10.027 Use of Association Names.

No licensee shall use an identification or designation of any association or organization having to do with real estate unless entitled to use such identification or designation.

Specific Authority 475.05 FS. Law Implemented 475.25(1)(b) FS. History—New 1-1-80, Formerly 21V-10.27, Amended 7-20-93, Formerly 21V-10.027.

61J2-10.028 Kickbacks or Rebates.

(1) Any real estate licensee who receives, or makes any arrangement or agreement to receive, directly or indirectly, any kickback or rebate, for the placement of, or favor in, any business transaction which forms a part of, or is incident to, any transaction(s) negotiated or handled by said licensee, is a violation of Section 475.25(1)(b) or (d), Florida Statutes, or both of said subsections of the Florida Statutes, unless prior to the time of the placement of, or favor in, said business transaction, the licensee shall have fully advised the principal if any and all affected parties in the transaction(s), which the licensee is handling, of all facts pertaining to the arrangement of kickbacks or rebates.

(2) The sharing of brokerage compensation by a licensee with a party to the real estate transaction with full disclosure to all interested parties is not considered a violation of Chapter 475, Part I, Florida Statutes.

Specific Authority 475.05 FS. Law Implemented 475.25(1)(b), (d) FS. History—New 1-1-80, Formerly 21V-10.28, Amended 6-28-93, Formerly 21V-10.028, Amended 12-30-97.

61J2-10.029 Advance Fee Accounting and Reporting Procedures.

(1) Any broker who claims, demands, charges, receives, collects or contracts for an advance fee in a listing to sell or lease real property or any interest therein for the purpose of promoting the sale or lease of real estate or for the referral of real estate brokers or salespersons, or both, in advance of the transaction actually closing, shall deposit not less than 75 percent of the advance fee so collected into a special trust or escrow account entitled "advance fee trust account" or "advance fee escrow account" in a trust or escrow bank account maintained by said broker with a bank or other recognized depository located and doing business in Florida. The advance fee trust or escrow account shall not be commingled with any other funds, trust, escrow or otherwise, of the broker.

(2) The broker must maintain separate and distinct accounting records and files for the advance fee operations and periodically report all such activity to the BPR including but not limited to, all fees collected, all funds expended or withdrawn from said escrow or trust account, and all monies or funds returned to the principal during the period of the report. For the purpose of this rule the broker may withdraw amounts from the advance fee trust or escrow account when expended for the benefit of the principal which benefit shall be for direct or special advertising the principal's interest only or as provided by statute. Expenses such as telephone calls, office supplies, rental, automobiles, commissions, controlled publications, etc., are considered overhead of the broker and shall not be paid from the broker's advance fee trust or escrow account or other recognized depository. All unexpended funds shall be returned to the principal at the end of the contract period or as provided by law, whichever period is shorter unless a sale of the property is consummated, and in such event said advance fee funds shall be disbursed in accordance with the listing contract. The provisions of Section 475.452, Florida Statutes, may not be waived.

(3) The broker must reconcile the advance fee account(s) monthly and produce the accounting records upon demand to the BPR with prior notice.

(4) If accounting records, as noted in preceding, do not provide a clear trail then it will be necessary to prepare a complete report from the records available for each deposit.

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