

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	3/19/2015
File #	2015-02595

**IN RE: Petition for Declaratory Statement
 Before the Florida Real Estate Commission**

**Retirement Housing Foundation and
Foundation Property Management, Inc.
Petitioners**

DS 2015-001

**FINAL ORDER GRANTING PETITION
FOR DECLARATORY STATEMENT**

Retirement Housing Foundation ("RHF") and Foundation Property Management, Inc. ("FPM" and collectively with RHF sometimes called "Petitioners") filed a letter petition for declaratory statement dated January 7, 2015 and received by Florida Real Estate Commission ("Commission") on January 8, 2015. Notice of the receipt of the petition was published in the Florida Administrative Register. The Commission considered the petition at its meetings in Orlando, Florida on February 17, 2015 and on March 17, 2015.

By its petition, Petitioners seek the Commission's opinion whether Petitioners are exempt from the requirement of having a real estate license, when providing property management services including maintenance, operations management, and leasing services for Petitioner's affiliate companies' real property pursuant to §§ 475.011(2) and (4), Florida Statutes, which provide:

This part does not apply to:

(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.

(4) Any salaried employee of an owner, or of a registered broker for an owner, of an apartment community who works in an onsite rental office of the apartment community in a leasing capacity.

FINDINGS OF FACT

1. Petitioners are both 501(c)(3) non-profit California corporations that are affiliated companies.
2. Petitioners generally provide affordable housing to low income households. RHF is the developer and/or owner of real estate projects and FPM provides maintenance, leasing, advertising, operations management and other property management services for these real estate projects. RHF controls FPM through its bylaws and has the same or similar board(s) of directors. In order to separate liabilities, tax issues and satisfy mortgage lender requirements, RHF caused the creation of affiliate companies that own real property. These affiliate companies are controlled by RHF. The real property owned by these affiliate companies is maintained, leased, operated and managed by FPM.
3. FPM salaried employees are on site at the real property and provide property management services such as maintenance, advertising, operation management and leasing. They are not paid on a transactional basis and only provide property management services including maintenance, advertising, operations management and leasing, for the real properties owned by RHF's affiliate companies.

CONCLUSIONS OF LAW

4. The Commission is authorized to issue this declaratory statement pursuant to Section 120.565, Florida Statutes, and Rule 28-105.001, Florida Administrative Code.


5. The issue in this case, as framed by the Petitioners, is whether Petitioners is/are owners of the real property that is titled in the names of Petitioners' affiliated companies, and therefore exempt pursuant to §§ 475.011(2) and (4), Florida Statutes, from maintaining a real estate license to provide property management services including maintenance, advertising, operations management, and leasing services for the real property of Petitioners' affiliated companies.

6. Petitioners are exempt pursuant to §§ 475.011(2) and (4), Florida Statutes, from maintaining a Florida real estate broker or agent license when Petitioners' salaried or hourly employees provide property management services including maintenance, advertising, operations management, and leasing for real property which is owned by Petitioners' affiliated companies.

7. The Commission grants the petition for declaratory statement.

DONE AND ORDERED THIS 18 day of March, 2015.

For Florida Real Estate Commission


By Juana Watkins, Director
Division of Real Estate

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 Stuart Hartman, Retirement Housing Foundation, 911 N. Studebaker Road, Long Beach, CA 90815 and to Don J. Miner, Esquire, Fennemore Craig, P.C., 2394 East Camelback Road, Suite 600, Phoenix, AZ 85016-3429, and to Tom Barnhart, Special Counsel, Office of the Attorney General, PL-01, The Capitol, Tallahassee, FL 32399-1050, all on this 19th day of March, 2015.

A handwritten signature in black ink, appearing to read "Ronde L. Brown", is written over a horizontal line. The signature is fluid and cursive.

DIVISION OF REAL ESTATE

JAN 08 2015

FRONT DESK
RECEIVED BY _____

FENNEMORE CRAIG, P.C.

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FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/8/2015
File #	

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January 7, 2015

DS 2015-001

VIA OVERNIGHT DELIVERY SERVICE

Ms. Juana Watkins
Director
State of Florida, Division of Real Estate
The Florida Real Estate Commission
400 West Robinson St., N801
Orlando, Florida 32801

Re: Retirement Housing Foundation and Foundation Property Management;
Ownership and Management of subsidized housing communities in
Florida

Dear Ms. Watkins:

As you may recall, by letter dated December 24, 2014, on behalf of Retirement Housing Foundation ("RHF") and its wholly owned subsidiary, Foundation Property Management, Inc. ("FPM"), both of which are 501(c)(3) non-profit California corporations, we sent, via over-night delivery, a letter (the "Initial PDS Letter") submitted as a petition for declaratory statement ("PDS") requesting a statement to the effect that neither RHF, FPM, their sponsored entities, nor on-site-employees for locations in Florida would be required to hold real estate broker or sales associate licenses in order to own, lease, manage and operate RHF-sponsored housing communities in Florida. Included with the letter was a copy of Florida Statutes Sections 475.011(2) and (4) (the "Applicable Statutes") and a packet of facts and other information ("Information Packet") about RHF, its vision and mission in the limited income housing sector.

Upon further review of the letter, we determined that a few corrections and slight revisions needed to be made. We have made such revisions and enclose with this letter a revised PDS letter, dated as of January 7, 2015 ("Updated PDS Letter"), along with an additional copy of the Applicable Statutes. We also include for your easy reference a redline copy of the Updated PDS Letter showing revisions made.

FENNEMORE CRAIG, P.C.

Ms. Juana Watkins

January 7, 2015

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Assuming your approval, please substitute the enclosed Updated PDS Letter in lieu of the Initial PDS Letter and process the PDS request using the Updated PDS Letter. If you have any questions, please do not hesitate to contact me at the contact information set forth on this letter.

We appreciate your kind assistance.

Sincerely,

FENNEMORE CRAIG, P.C.



Don J. Miner

DMIN

Enclosures

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~~December 24, 2014~~ January 7, 2015

VIA OVERNIGHT DELIVERY SERVICE

Ms. Juana Watkins
Director
State of Florida, Division of Real Estate
The Florida Real Estate Commission
400 West Robinson St., N801
Orlando, Florida 32801

Re: Retirement Housing Foundation and Foundation Property Management;
Ownership and Management of subsidized housing communities in
Florida

Dear Ms. Watkins:

This firm is assisting Retirement Housing Foundation, ~~Inc.~~ ("RHF"), a 501(c)(3) non-profit California corporation that is faith-based with national offices in Long Beach, California. The mission of RHF is to provide housing and related services for older adults, persons with disabilities and low-income families in an environment that seeks to enhance quality of life. Most of such housing is federally subsidized. RHF offers on-site services, including, among others, property management, through its wholly-owned subsidiary Foundation Property Management, Inc. ("FPM"), also a 501(c)(3) non-profit California corporation. Such housing and services are currently provided to residents of 173 RHF-sponsored housing communities in 28 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Enclosed for your information and review please find a typical packet of facts and other information about Retirement Housing Foundation, its vision and mission in the limited income housing sector.

Please accept this letter as a petition for declaratory statement ("PDS") to the effect that neither RHF, FPM, their sponsored-acquisition entities, nor on-site employees for locations in Florida would be required to obtain real estate broker or sales associate licenses to own, manage and operate RHF's subsidized housing communities in Florida based upon the acquisition and operational structures more fully described below.

FENNEMORE CRAIG, P.C.

VIA OVERNIGHT COURIER

Ms. Juana Watkins
Director, Division of Real Estate
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On approximately October 30, 2014, you were kind enough to briefly discuss with me, via telephone, Florida real estate licensing requirements as they relate to RHF and FPM. In multi-family residential housing communities held and operated by or through RHF, RHF typically holds an ownership interest in the RHF sponsored-acquisition entities and then manages the multi-family housing communities through FPM, its wholly owned subsidiary. It was suggested that the licensing exemptions under Florida statutes sections 475.011(2) and (4) would likely apply but you wanted to see a PDS request letter for consideration by the appropriate panel before formally responding on behalf of the Florida Division of Real Estate.

RHF is currently contemplating the ~~sponsored acquisition in~~ Managing General Partner of a Florida of a housing community in the Jacksonville, Duval County area. The acquisition contemplated is to "preserve" an existing affordable, senior housing community. Following acquisition, RHF's intention is to cause seven to ten million dollars of improvements to be made that will be of substantial benefit to the property's residents and the surrounding area. An important mission of RHF is to provide housing options and services that are affordable to "very low income and extremely low income people" and provide a sense of community for its residents. Please see some sample comments from residents of multiple RHF housing communities in the publication entitled "In Their Own Words" that is a part of the packet of information enclosed with this letter. The planned rehab work will also generate a significant number of jobs in the local community for roughly eighteen months.

RHF currently sponsors and operates four other residential housing assisted living and skilled nursing communities, located in Holly Hill, Merritt Island, Tallahassee and DeLand. In connection with the contemplated new acquisition, a question has arisen as to whether RHF or FPM would be required to hold a real estate license in Florida. RHF has previously considered its housing communities in Florida exempt from licensing requirements but in light of this question having arisen, RHF would like to obtain a formal PDS to that effect, if possible.

To recap for you the essential information from our late October, 2014 conference call, in its Florida housing communities, RHF is ~~generally the managing general partner~~ the sponsor or sole controlling member of the nonprofit entity. In this particular acquisition RHF would be the Managing General Partner of the acquisition entity and ~~holds~~ would hold a small ownership interest in the acquisition entity. RHF's subsidiary (of which RHF is the sole controlling member), FPM, provides on-site management and other services. The housing ~~communities~~ community to be acquired would largely provide federally subsidized housing to older adults, persons with disabilities and/or low income families. In connection with federal subsidies, the acquisition entity, RHF and FPM would interface with and be subject to the regulatory requirements of the U.S. Department of Housing and Urban Development ("HUD").

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~~December 24, 2014~~ January 7, 2015
Page 3

The contemplated new acquisition in the Jacksonville area would be based upon a federal tax credit enhanced transaction. It is contemplated that RHF would be the managing general partner of the limited partnership acquisition entity and would hold a one-tenth percentage (.1%) limited partnership interest. RHF would have the right to appoint five (5) of the ~~nineteen (910)~~ members ~~directors~~ of the acquisition entity board of directors. It is also contemplated that FPM would hold a one-hundredth percentage (.01%) limited partnership interest and would have the right to appoint one (1) of the ~~nineteen (910)~~ members ~~directors~~ of the acquisition entity board of directors. Thus six of the ~~nine members~~ ten (10) directors of the acquisition entity board of directors would be appointed collectively by RHF and FPM. In its capacity as property manager, FPM would hire one or more on-site property managers, resident services ~~coordinators~~ coordinator and project engineers. Such employees would be paid via salary or via an hourly rate for hours in service on the job. No on-site employees would be paid commissions or other compensation based solely upon leases entered into with residents or potential residents leasing apartment units.

Existing housing communities in Florida held or sponsored by RHF and managed by FPM have similar structures except ~~only~~ that FPM does not hold a direct ownership interest in the ~~acquisition entities~~ but manages them as the owned or wholly controlled subsidiary of RHF (RHF is the sole controlling member), which does hold all of the direct ownership interest in the ~~acquisition entities and also acts as the managing general partner, limited liability company manager, or corporate officer of the acquisition entity entities.~~

In light of the above structures, we believe that based upon exemptions provided for in Florida Statutes, Section 475.011(2) and (4), neither RHF, FPM, the acquisition entity nor other owned entities, nor on-site employees would be required to hold Florida real estate broker or sales associate licenses. For your easy reference, a copy of Florida statute Section 475.011 is enclosed herewith. Such statute provides exemptions for licensing to, among others: (i) any corporation which sells or leases its own real property where no agent or employee is paid a commission (emphasis added) or other compensation strictly on a transactional basis to make sales or leases with residents/customers; or (ii) any salaried employee of an owner of an apartment community who works in an onsite rental office of the apartment community in a leasing capacity. We believe, and hope you and the panel will be able to confirm, that such exemptions from licensing apply to RHF and FPM.

As discussed in our October, 2014 conference call, we respectfully request that this PDS letter be submitted to the panel you mentioned within the Florida Division of Real Estate and ask that such panel consider this PDS request at the soonest available monthly panel meeting after submission, for a determination that under the above-stated structures, neither RHF, FPM, the

FENNEMORE CRAIG, P.C.

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Ms. Juana Watkins
Director, Division of Real Estate
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acquisition entities nor on-site employees would be required to hold Florida real estate broker or sales associate licenses in order to lease, manage and operate RHF-sponsored housing communities in Florida.

We would appreciate being advised in advance as to the date, time and location of the panel's consideration of this PDS letter, as well as whether it is recommended or permitted for RHF to have someone attend such panel meeting to respond to questions. We would also appreciate a response to this PDS letter as soon as reasonably possible.

If you or the panel would like additional information or if you have questions, please feel free to contact the undersigned my contact information shown at the top of this letter.

Thank you,

Sincerely,

FENNEMORE CRAIG, P.C.

Don J. Miner

DMIN

cc: Robert Amberg, Esq.
Stuart Hartman

Document comparison by Workshare Compare on Wednesday, January 07, 2015 3:25:37 PM

Input:	
Document 1 ID	interwovenSite://PFCWORKSITE/iManage/9813869/2
Description	#9813869v2<iManage> - Letter to FL Division of Real Estate requesting Declaratory Statement that no FL real estate license is required
Document 2 ID	interwovenSite://PFCWORKSITE/iManage/9813869/4
Description	#9813869v4<iManage> - Letter to FL Division of Real Estate requesting Declaratory Statement that no FL real estate license is required
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Legend:	
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Deletions	25
Moved from	0
Moved to	0
Style change	0
Format changed	0

Select Year: 2014

The 2014 Florida Statutes

<u>Title XXXII</u>	<u>Chapter 475</u>	<u>View Entire</u>
REGULATION OF PROFESSIONS AND OCCUPATIONS	REAL ESTATE BROKERS, SALES ASSOCIATES, SCHOOLS, AND APPRAISERS	<u>Chapter</u>

475.011 Exemptions.—This part does not apply to:

- (1) Any person acting as an attorney in fact for the purpose of the execution of contracts or conveyances only; as an attorney at law within the scope of her or his duties as such; as a certified public accountant, as defined in chapter 473, within the scope of her or his duties as such; as the personal representative, receiver, trustee, or general or special magistrate under, or by virtue of, an appointment by will or by order of a court of competent jurisdiction; or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and intent whereof is charitable, is philanthropic, or provides for those having a natural right to the bounty of the donor or trustor.
- # (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.
- (3) Any employee of a public utility, a rural electric cooperative, a railroad, or a state or local governmental agency who acts within the scope of her or his employment, for which no compensation in addition to the employee's salary is paid, to buy, sell, appraise, exchange, rent, auction, or lease any real property or any interest in real property for the use of her or his employer.
- # (4) Any salaried employee of an owner, or of a registered broker for an owner, of an apartment community who works in an onsite rental office of the apartment community in a leasing capacity.
- (5) Any person employed for a salary as a manager of a condominium or cooperative apartment complex as a result of any activities or duties which the person may have in relation to the renting of individual units within such condominium or cooperative apartment complex if rentals arranged by the person are for periods no greater than 1 year.
- (6) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, sells, offers to sell, advertises for sale, buys, offers to buy, or negotiates the sale or purchase of radio, television, or cable enterprises licensed and regulated by the Federal Communications Commission pursuant to the Communications Act of 1934. However, if the sale or purchase of the radio, television, or cable enterprise involves the sale or lease of land, buildings, fixtures, and all other improvements to the land, a broker or sales associate licensed under this chapter shall be retained for the portion of the transaction which includes the land, buildings, fixtures, and all other improvements to the land.
- (7) Any full-time graduate student who is enrolled in a commission-approved degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a licensed broker or a licensed or certified appraiser and is engaged only in appraisal activities related

to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual.

(8)(a) An owner of one or part of one or more timeshare periods for the owner's own use and occupancy who later offers one or more of such periods for resale.

(b) An exchange company, as that term is defined by s. 721.05(15), but only to the extent that the exchange company is engaged in exchange program activities as described in and is in compliance with s. 721.18.

~~(9) Any person registered, licensed, or certified by the department under part II as an appraiser or trainee appraiser performing appraisals in accordance with that part.~~

(10) Any person who appraises under the unit-rule method of valuation a railroad or railroad terminal company assessed for ad valorem tax purposes pursuant to s. 193.085.

(11) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, rents or advertises for rent, for transient occupancy, any public lodging establishment licensed under chapter 509.

(12) Any dealer registered under the Securities and Exchange Act of 1934, as amended, or any federally insured depository institution and any parent, subsidiary, or affiliate thereof, in connection with the sale, exchange, purchase, or rental of a business enterprise to or by a person who is an accredited investor as defined by 15 U.S.C. s. 77b, the Securities Act of 1933, or any regulation adopted thereunder. This exemption applies whether stock or assets of the business enterprise are purchased or sold. The exemption does not apply to a sale, exchange, purchase, or rental of land, buildings, fixtures or other improvements to the land which is not made in connection with the sale, exchange, purchase, or rental of a business enterprise. Any reference to rental in this subsection includes a lease transaction.

(13) Any property management firm or any owner of an apartment complex for the act of paying a finder's fee or referral fee to an unlicensed person who is a tenant in such apartment complex provided the value of the fee does not exceed \$50 per transaction. Nothing in this subsection authorizes an unlicensed person to advertise or otherwise promote the person's services in procuring or assisting in procuring prospective lessees or tenants of apartment units. For purposes of this subsection, "finder's fee" or "referral fee" means a fee paid, credit towards rent, or some other thing of value provided to a person for introducing or arranging an introduction between parties to a transaction involving the rental or lease of an apartment unit. It is a violation of s. 475.25(1)(h) and punishable under s. 475.42 for a property management firm or any owner of an apartment complex to pay a finder's fee or a referral fee to an unlicensed person unless expressly authorized by this subsection.

History.—ss. 3, 42, ch. 79-239; ss. 1, 5, ch. 80-307; ss. 2, 3, ch. 81-318; ss. 31, 45, ch. 82-179; s. 3, ch. 85-84; ss. 1, 2, ch. 85-215; s. 1, ch. 86-107; s. 1, ch. 87-205; ss. 2, 28, 30, ch. 88-20; s. 2, ch. 89-368; ss. 3, 10, ch. 91-89; s. 2, ch. 91-289; s. 4, ch. 91-429; s. 3, ch. 93-261; s. 135, ch. 94-119; s. 2, ch. 94-337; s. 362, ch. 97-103; s. 2, ch. 98-250; s. 2, ch. 99-384; s. 7, ch. 2001-179; ss. 2, 23, ch. 2003-164; s. 85, ch. 2004-11; s. 33, ch. 2004-279.

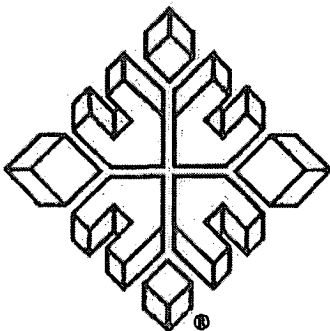
Our Vision

The Vision of RHF (Retirement Housing Foundation) is a society in which all persons have quality, affordable housing thus reducing the difficult choices which would otherwise need to be made between the basic necessities of life.

Our Philosophy and Values

- We are faith-based and mission-driven.
- We believe each person is a child of God and is loved by God, and as such each one is to be treated with respect and dignity.
- We are proud of our roots in and our relationship with the United Church of Christ, however, we honor the faith and traditions of every religion and the nonreligious, and we will not attempt to impose our faith on others.
- We will advocate for public policies which enhance the lives of those whom we seek to serve.
- We will be ethical in our business arrangements and we will strive to hold our vendors to the same high standards.
- Our concern for the whole person includes our residents, their families, and our staff, and we will strive to be fair in all our relationships.
- We believe the non-profit community has unique responsibilities and opportunities to provide shelter and services, especially for those who are most vulnerable in society.
- We will practice sound business principles.
- We will serve and employ without regard to race, creed, color, national origin, gender, religion, ancestry, age, marital status, physical disability, medical condition (including pregnancy), familial status, or sexual orientation.
- In order to be sure that we are treating our team members fairly and being equitable and competitive in our compensation packages, we will periodically engage experts to provide guidelines for compensation and benefits.

Our Logo



Retirement Housing Foundation's logo is a registered trademark that represents the integration of our mission with our Christian heritage. What appears to be a snowflake is actually a grouping of four houses and four apartment buildings. The buildings are joined together by a cross, representing our Christian tradition and the motivating force of RHF's mission. The diamond shape of the logo emphasizes our sense of community, and the houses have open doors, symbolizing availability to those who need housing. The logo points in all directions - East, West, North and South - signifying our geographical diversity and inclusiveness.

Our Motto

Committed to Service, Dedicated to Excellence, Enhancing Quality of Life.